

The Function of CCTV in Uncovering Crimes as a Form of Legal Renewal in the Digital Era

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Abstract: The use of Close Circuit Television (CCTV) as evidence in uncovering a criminal case in the digital era is one form of legal renewal to assist investigators in uncovering crimes. This is used to keep up with the rapid development of technology so that in uncovering a crime case, investigators must follow developments. The writing of this article uses various library materials that use the object of writing study in the form of literature studies, and laws and regulations that correlate the discussion of problems and are formulated in statements. The question discussed in this article, is about: How does and regulate CCTV evidence tools in uncovering crime cases in the digital age? And the conclusions obtained show that CCTV can be used as a means of evidence to support the proof of a criminal case, and can be used as a valid evidence tool by the court as long as it does not violate the personal rights of criminals.

Keywords: CCTV, evidence, crime.

Introduction

In proving whether or not there is an element of crime in an act that is alleged to a person, the investigator needs the existence of evidence and evidence to strengthen the allegations as a basis for the judge's consideration in deciding the case. The existence of evidence and evidence is very closely related. This is reinforced in article 183 of the Kuhap which reads: "The judge shall not impose a criminal offense on a person unless with at least two valid means of evidence he obtains the conviction that a criminal offense occurred and that the defendant is guilty of doing so". Evidence is all actions, wherewith these evidence tools can be used as evidence to cause the judge's confidence in the truth of a criminal act that has been committed by the defendant. In article 184 of the Criminal Procedure Law (KUHAP), the evidence is determined as follows, namely: Witness statement Expert description of the defendant's Certificate.

Finding material truth is not easy. The evidence available by law is very relative, such as testimony will be blurred because of the testimony given by humans who have a forgetful nature. Proof according to general understanding is to show the future about a situation that corresponds to the parent problem, or in other words is to find a conformity between the parent event and the roots of the event. In the case of criminal law conformity certainly does not have to be interpreted as a similarity, but it can also or should be interpreted as a correlation, or there is a mutually supportive relationship to strengthening or justification because of the law. For the sake of proof, the presence of objects caught in criminal acts is very necessary. The objects intended are commonly known as evidence or corpus delicti, namely evidence of the crime. The evidence has a very important role in criminal proceedings.

Along with the development of technology, law enforcement officials in this case investigators also follow the development of investigation methods in uncovering a crime case using technological developments. This is done to speed up and facilitate investigators in carrying out their duties. The use of electronic evidence is needed to overcome the problem. One of them is CCTV footage. The issuance of The Constitutional Court Decree No. 20/PUU-XIV/2016 dated September 07 2016, which exemplifies electronic evidence, became the basis for the establishment of Law No. 19 of 2016 concerning amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions, the Ruling aims to increase arrangements on interception or wiretapping that have not been specifically regulated in a Law No. 11 of 2008 concerning Electronic Information and Transactions, the Ruling aims to increase the arrangements on interception or wiretapping that have not been specifically regulated in a Law.¹

The use of CCTV electronic evidence as a new tool used in investigations by law enforcement in uncovering a crime gained a different understanding, first the view that electronic evidence is a stand-alone evidence tool, the second is of the view that the electronic evidence tool is separate from the evidence as stipulated in the KUHAP and has an effect on the verdict.

From a legal perspective, one of the new things regulated by uu-ITE is electronic evidence. The update on electronic evidence has been explained in the explanation of the 2008 ITE Law and was reiterated in the amendment to the ITE Law in 2016. However, there is a cross-opinion about the position of electronic evidence because it raises the central question of whether the position of electronic evidence is an extension of the evidence tools regulated in the formal law (Civil Code and Criminal Code). The proof is the presentation of evidence contained in Article 184 Number 8 of 1981 concerning the Criminal Procedure Law, according to the law to the judge who examines a case to provide certainty about the truth of the events raised. According to Pitlo, the proof is "a

¹ Tohirman Satriawan, 'TINJAUAN YURIDIS KEDUDUKAN DAN KEKUATAN PEMBUKTIAN REKAMAN CCTV (CLOSED CIRCUIT TELEVISION) SEBAGAI ALAT BUKTI DALAM PERKARA PIDANA', *Fakultas Hukum Universitas Mataram (UNIVERSITAS MATARAM, 2018)*.

way that is done by a party on facts and rights related to its interests”. Meanwhile, according to Subekti, what is meant by “proving” is “convincing the judge of the truth of the arguments or propositions put forward by the parties in a dispute”.²

If electronic evidence can be unlawful then it cannot be used as electronic evidence before the law. This view is actually seen from the existence of dissenting opinions related to electronic evidence from constitutional judges, Suhartoyo, namely as follows: “*Pasal 5 ayat (1) dan ayat (2) yang justru mengakomodir dan memberi perlindungan setiap warga negara yang dilanggar hak privasinya, karena ada dua esensi mendasar yang secara materiil terkandung dalam pasal a quo, yaitu ketentuan yang mengatur mengenai alat bukti informasi elektronik dan/atau dokumen elektronik dan/atau hasil cetakannya, di satu sisi merupakan perluasan alat bukti sebagai bukti petunjuk dan di sisi lain merupakan bukti yang berdiri sendiri di luar alat bukti yang diatur dalam hukum acara perdata dan hukum acara pidana. Sehingga ketentuan Pasal 5 ayat (1) dan ayat (2) UU ITE justru memberi kepastian hukum bahwa informasi elektronik dan/atau dokumen elektronik dan/atau hasil cetakannya adalah alat bukti yang sah*”.

Similar research was conducted by David Hidayat with the title “The Use of Closed Circuit Television (CCTV) Video Recording Evidence In The Criminal Act of Theft of Motor Vehicles in Pekanbaru City Area”, which was published in the journal JOM Faculty of Law Volume VI No. 2 July - December 2019, in this study, the issue raised was the use of CCTV video recording evidence in the disclosure of criminal acts of theft of motor vehicles, and the inhibiting factors of the police in the disclosure of motorcycle theft crimes, as well as efforts made by the police in uncovering cases of bicycle theft crimes using CCTV footage evidence,³ The results of the research obtained, are that: The use of CCTV video recording evidence in Pekanbaru City in revealing cases of motorcycle theft can be used as evidence in the trial if it is requested from the investigators, prosecutors, and/or other law enforcement agencies,

Furthermore, similar research has also been conducted by Dian Rosita with the title "Juridical Analysis of the Use of Cctv as a Means of Evidence of Instructions in the Criminal Case Investigation Process" in the journal Legal Standing Legal Journal Law Vol 3, No. 1 (2019), in the article, the thing discussed is the urgency of electronic evidence as to effectiveness in the investigation and prosecution of criminal cases and how the influence of electronic evidence is met by the verdict. The results obtained are: Electronic evidence of urgency can be used as a valid evidence tool in the criminal procedure law for all types of criminal cases in the Court as well as other evidence. Electronic evidence can be used for investigation, prosecution, and proof of criminal cases if they meet the conditions of validity that can be accessed, displayed, guaranteed the situation, and can be accounted for to explain a criminal case that occurs.⁴

From the two studies above, it was obtained that CCTV as electronic evidence can be used in uncovering a legal case as a substitute for a letter and the expansion of the evidence of instructions is generally only needed if other evidence tools do not meet the minimum limit of proof that has been outlined by Article 183 of the Kuahap and cannot stand alone to prove the defendant's guilt, and must remain bound by the principle of a minimum limit of sufficient proof must be supported by at least one other evidence. The equation with the research conducted by researchers is that the object used is the same as CCTV, but the difference with this study is that researchers examine more broadly the use of CCTV to uncover various types of crimes, not just limited to one type of crime.

Based on the constitutional judge's decision above, it can be seen that electronic evidence can be seen into two forms, namely: (1) electronic evidence that can be used as valid legal evidence, and (2) electronic evidence that cannot be used as valid legal evidence. Referring to legal sources, above, electronic evidence should be seen as complementary legal evidence of evidence that has been known in the law of events. Meanwhile, in the case of electronic evidence collection, it should be considered that electronic evidence must be taken by the appropriate authorities, namely law enforcement to be used as a legitimate evidence tool. CCTV footage is the result of recording done by CCTV devices. Please note, CCTV not only consists of cameras and cables, but also has other parts, namely Camera, DVR (Digital Video Recorder), Hard Disk Drive (HDD), Coaxial Cable, Power Cable, and BNC Connector. It can be known that CCTV devices not only display what is visible to the CCTV camera through a connected monitor but also record and store it into the hard disk drive storage media. Data or information is recorded and stored in what is then called CCTV footage.⁵

According to Yahya Harahap, in the book Discussion, Problems, and Application of the Kuahap: “Examination of Court Hearings, Appeals, Cassation, and Judicial Review, Article 184 paragraph (1) of the Kuahap has determined imitatively the legal evidence”. So that law enforcement officials are not allowed to use tools outside of those that have been determined by article 184 paragraph (1) of the Kuahap, because in the article, which can be used for proof is evidence that has “the power of proof” is only limited to the evidence tools. Proof with evidence outside the type of evidence has no value and has no binding evidentiary force. So that this causes a mistake that is what about electronic evidence. Based on the explanation above, this article will discuss the function of CCTV in uncovering crimes as a form of legal renewal in the digital era. This is to answer the question of 1) How does CCTV function in uncovering crime cases in the digital age? 2) How to set up CCTV as evidence in uncovering a crime?

² David Hidayat, Emilda Firdaus, Erdiansyah, ‘PENGUNAAN ALAT BUKTI REKAMAN VIDEO CLOSED CIRCUIT TELEVISION (CCTV) DALAM TINDAK PIDANA PENCURIAN KENDARAAN BERMOTOR DIWILAYAH KOTA PEKANBARU’, JOM Fakultas Hukum, 6, 1–14.

³ David Hidayat, Emilda Firdaus, Erdiansyah.

⁴ Dian Rosita.

⁵ Ardiansyah Rolindo Saputra, ‘Penggunaan CCTV (Closed Circuit Television) Sebagai Alat Bukti Petunjuk Dalam Mengungkap Tindak Pidana Pencurian Kendaraan Bermotor (Studi Pada Satreskrim Polres Sawahlunto)’, *UNES Law Review*, 2.3 (2020),

Discussion

The function of CCTV in uncovering crime cases in the digital age

It should be realized that a good and precise interpretation of the formulations contained in criminal law is closely related to human efforts to give the highest appreciation to human rights, precisely because a poor and improper interpretation of the formulations contained in the Criminal Law will make the rights to personal freedom over the ownership of property without a legal basis can be deprived or arbitrarily restricted. Montesquieu once said that judges are just soulless creatures and are only automated planes whose job is none other than to recuse the law (mouthpiece judges of the Law).⁶

In the field of Criminal Law, it is the obligation to apply the criminal provisions as precisely and interpret the criminal provisions as precisely as they are about what is meant by the formulation of the criminal provisions. The purpose of the act of interpreting the criminal is to determine the true meaning of “wilsbesluit” or from the will of the forming law as written in the formulations of the criminal provisions in the Law.⁷

Law enforcement can be done by the judge, to create justice both in the trial process and in the judge's decision. In the process of proof, law enforcement includes using evidence following the Criminal Procedure Law (KUHAP) and can also expand the evidence tool with strict rules. The existence of KUHAP cannot be separated from the history of criminal law in Indonesia. The theoretical science of criminal event law knows 3 (three) theories of the proof system, namely first. The system of proof according to the Law positively (*Positief Wettelijke Bewijs Theorie*) with the benchmark of the proof system depends on the means of existence of evidence tools that are limitedly mentioned in the Law. Second. The system of proof according to the judge's beliefs, the polarization of judges can impose verdicts based on mere beliefs not bound by a rule. Third. The system of proof according to the law negatively (*Negatief Wettelijke Bewijs Theorie*) that is, the judge can only criminally impose a criminal charge on the defendant if the evidence is limitedly determined by the law and supported by the judge's confidence in the existence of the evidence tools concerned. The proof is one of the series in the process of the criminal justice system.⁸

The determination of a person is guilty or not is determined by the means of evidence. If the evidence presented in front of the court is not enough to prove someone guilty then it will be separated from the sentence, but it is reversed if the evidence presented can prove someone guilty and must be sentenced following the applicable law. There are 2 (two) words that show the meaning of evidence in a foreign language, namely evidence, and proof. “Evidence is defined as information collected to be supporting data that can ensure that the fact is true, while proof refers to the results of an evaluation process”.⁹

Electronic evidence is often used in the investigation stage, prosecution stage, examination stage at court hearings, and verdict execution stages. The use of electronic evidence applies after the enactment of Law No. 11 of 2008, which means that any act that abuses the use of cyberspace will be charged with the Information and Electronic Crime Act. The benefits of Law No. 11 of 2008 are:

- a. Ensuring legal certainty for people who make transactions electronically.
- b. Encourage Indonesia's economic growth.
- c. As one of the efforts to prevent the occurrence of information technology-based crimes.
- d. Protect the public of service users by utilizing information technology.

A criminal case will be the subject matter if the perpetrator of the crime leaves evidence in the form of victims, physical evidence, and the presence of eyewitnesses who know. The situation becomes difficult when the Crime Scene (crime scene) found very minimal evidence or absolutely nothing. Whether or not there is evidence of living witnesses, then the role of criminalism as a technical and scientific means, in finding the truth in the criminal case process is very necessary, because with research or disclosure through various means of physical evidence with legal means and science or experience and knowledge as well as those possessed by experts will be useful for the case, for further development to find the perpetrator.

Electronic records (electronic records) are records that are made or stored in electronic form either analog or digital. Electronic archives are NARA (National Archives and Record Administration) are archives that are stored and processed in a format where only a computer machine can process them. Therefore electronic archives are often said to be machine-readable records (archives that can only be read through a machine).¹⁰ Evidence according to 184 paragraph 1 of the KUHAP mentioned that the valid evidence is witness statements, expert information, letters, instructions, and defendants' statements and electronic evidence (plus based on article 5 of the ITE Law). While the evidence is the belongings of the suspect or defendant obtained through a crime or deliberately used to commit a crime, as stipulated in article 39 of the Criminal Code paragraph 1, namely: “The goods belonging to the convicted person obtained by the crime or deliberately used will commit the crime can be seized”.

Evidence can explain criminal events or criminal acts. In other words, it can explain criminal acts without the help of parties such as:

- a. Witness statements, where witnesses can explain criminal acts following what he hears, sees and experiences himself. Witnesses cannot testify based on conjecture, estimates, or are limited to what is heard, seen, and felt for themselves.

⁶ Lamintang P.A.F, *Dasar-Dasar Untuk Mempelajari Hukum Pidana Yang Berlaku Di Indonesia* (Bandung Sinar Baru, 1990).

⁷ P.A.F. Lamintang

⁸ Mulyadi Lilik, ‘ASAS PEMBALIKAN BEBAN PEMBUKTIAN TERHADAP TINDAK PIDANA KORUPSI DALAM SISTEM HUKUM PIDANA INDONESIA DIHUBUNGAN DENGAN KONVENSI PERSERIKATAN BANGSA-BANGSA ANTI KORUPSI 2003’, *Jurnal Hukum dan Peradilan*, 4 (2015), 101–131

⁹ Hiariej Eddy O. S., *Prinsip-prinsip hukum pidana* (Cahaya Atma Pustaka, 2016).

¹⁰ Rifauddin Machsun, ‘PENGELOLAAN ARSIP ELEKTRONIK BERBASIS TEKNOLOGI’, *Khazalah Al Hikmah Jurnal Ilmu Perpustakaan, Informasi dan Kearsipan*, 4 (2016),

Providing information does not need the help of others, just what is conveyed by themselves in front of law enforcement officials which include police, prosecutors, and judges.

- b. Expert description. Experts can provide their information on the expertise they have or mastered regarding criminal acts or information given by someone about things needed to make light of a criminal case for examination in front of the court. Experts will provide information following the knowledge they master, without the need for the help of other parties. Everything that is said according to his expertise can be understood by law enforcement officials, as stipulated in article 186 of the KUHAP: “Expert information is what an expert declares at a court hearing”.
- c. Letters can tell you something that has something to do with a case. Law enforcement officials, such as police, prosecutors, KPK, and judges by reading the contents can understand and do not need to explain to others the meaning of the contents of the letter.
- d. Instructions, can not tell a criminal act.

It is not appropriate if it is included as evidence. Based on article 188 of the KUHAP:

- a. Clues are actions, events, or circumstances, which because of their relationship both between each other and with the criminal act itself, indicate that there has been a criminal act and who the perpetrator is.
- b. The instructions referred to in paragraph (1) can only be obtained from witness statements, letters, and statements of the accused.
- c. The assessment of the evidentiary power of a clue in any given circumstance is carried out by the judge wisely and wisely, after which he has conducted an examination with full accuracy and equality based on his conscience. Instructions based on article 188 of the KUHAP have been told directly in front of the judge and cannot be withdrawn from witness statements, letters, and defendants' statements as instructions.¹¹

Electronic evidence can be accepted as evidence because it can tell an event or act related to the case examined in advance of the trial without the help of others. According to Indroharto the evidence in the Criminal Procedure Law is:¹²

1. Evidence
2. Witness statement
3. Electronic evidence
4. Expert Information
5. Letter 6. Suspect
7. Judge's Conviction

According to Indroharto, the evidence and the judge's conviction do not include evidence, because to find out the status of evidence in a case must be explained by the other party. The judge's confidence is already the authority of the judge, as the evidentiary system adopted by Indonesian law ‘*wettelijk negatief stelsel*’ or at least two pieces of evidence and the judge believes and the judge assesses the relationship of one evidence with other evidence in determining the guilt of the defendant. Witness statements, electronic evidence, expert letters and suspect information can be accepted into the evidence group because they can explain or tell something related to criminal acts. Evidence is used to determine his position in criminal acts. Evidence requires an explanation of the other party whose status as a means of evidence, whether as a witness, letter, description of the suspect or defendant, and electronic evidence.

Without any explanation, the other party will not know the status or position of the evidence in the case in question. The legal provisions to determine the guilt of the suspect or defendant only mentions a minimum of two pieces of evidence and the judge is sure, while at least two pieces of evidence cannot determine the guilt of the suspect or defendant and are not regulated in the provisions of the law when in general the presence of evidence in a case is a very large influence in proving the guilt of the suspect or defendant. So, more precisely, the evidence is used to strengthen the evidence, as long as there is a relationship between witness statements, letters, and statements of suspects or defendants admit the evidence in advance of the trial. The position of evidence in criminal cases can only be used to strengthen evidence and cannot be used as evidence.¹³

With the enactment of the provisions in Article 5 paragraph (1) and paragraph (2) of the ITE Law, the legal evidence in civil and criminal event law becomes not only limited to the evidence contained in the KUHAP but also includes the evidence mentioned in Article 5 paragraph (1) and paragraph (2) of the Law, namely Electronic Information and/or Electronic Documents and/or printed results. The expansion of the evidence tool brought a change in the evidentiary law that applies in the law of events in Indonesia. CCTV footage that has been recognized as a valid evidence tool can be reviewed based on two views. The first view states that CCTV footage as part of electronic evidence is part of the evidence set out in Article 184 of the KUHAP, namely the evidence of clues.

CCTV footage is categorized as an extension of legitimate evidence, namely the evidence of instructions used to prove corruption in Article 26A of the Tipikor Law states: “Valid evidence in the form of instructions as intended by Article 188 paragraph (2) of the KUHAP, specifically for corruption crimes can also be obtained from:

- a. Other evidence in the form of information spoken, transmitted, received, or stored electronically with optical devices or similar thereof; and

¹¹ Siahaan Monang, *Pembaruan hukum pidana Indonesia* (PT Grasindo, 2016).

¹² Monang.

¹³ Monang.

- b. Documents, i.e. any recording and/or information that can be seen, read, and or heard that can be issued with or without the help of a means, whether contained on paper, any physical object other than paper, or electronically recorded in the form of writing, sound, drawing, design map, photograph, letter, sign, number, or perforation that has the meaning”.¹⁴

In article 182 paragraph (2) of the KUHAP limits the authority of judges in how to obtain evidence of instructions.' Sources that can be used to construct evidence of instructions are limited from the evidence tools that are imitatively specified Article 188 paragraph (2). In that provision, it has expressly set out with words only. Clues can only be obtained from witness statements, letters, and defendants' statements. From the words only, it seems to have been imitatively determined, which means it is forbidden to seek and obtain clues from expert evidence. If the provisions of Article 188 paragraph (1) and paragraph (2) of the KUHAP are associated with Article 26A of Law No. 20 of 2001, then currently the evidence of instruction comes from witness statements, letters, defendants' statements, and electronic evidence in the form of information and documents. Thus it can be understood, that electronic evidence in the form of information and/or electronic documents is valid in the criminal procedure law. In this case, electronic evidence has the status of a stand-alone evidence tool, and at the same time is an extension of the evidence set out in Article 184 of the KUHAP.¹⁵

The expansion of evidence is needed if there is a criminal law vacancy One of the tasks of criminal law is to analyze by utilizing legal discovery techniques (*rechtsvinding*). The discovery of the law according to Paul Scholten is the application of regulations to the facts and the regulations are only those given by the Law.¹⁶ Related to electronic evidence tools must be carried out further verification of electronic document evidence tools as well as verification of letter evidence tools. In this case, three things need to be considered related to CCTV footage as a means of evidence, namely related to the originality and authenticity of a CCTV recording, relevance to the case to be proven, and the existence of other evidence tools that strengthen the evidence of CCTV footage. These three things can be used as a reference so that the CCTV recording evidence has a perfect and indisputable proof force value.

The originality and authenticity of CCTV footage, electronic information evidence tools, and electronic documents are very vulnerable to manipulation so the authenticity of electronic information evidence and electronic documents is very important in proving. Mudzakkir said the retrieval of electronic evidence, including computers and CCTV, must be following procedures. This procedure is regulated in Article 17 and Article 20 of the Regulation of the Head of Police of the Republic of Indonesia Number 10 of 2009 concerning Procedures and Requirements for Requests for Criminalistic Technical Examination of Crime Scenes and Laboratories of Criminalistic Evidence to the Forensic Laboratory of the State Police of the Republic of Indonesia (hereinafter referred to as Perkap). Article 20 perkap specifies that: “Examination of evidence of computer devices as intended in Article 17 shall meet the following formal requirements:

- a. A written request from the head of the regional unit or the head/head of the agency;
- b. police report; BAP witnesses/suspects or progress reports;
- c. BA the retrieval, confiscation, and packaging of evidence”.

The relevance of CCTV footage to the proven case, CCTV footage must have a connection with a criminal case so that the judge can accept and at the same time consider the CCTV footage submitted to the court hearing. To find out the CCTV footage has relevance to the case to be proven. Evidence Tool Relevance Theory teaches by answering the following questions:

- a. What will be proven by this evidence?
- b. What will be proven is material / substantial for the case?
- c. Does the evidence have a logical relationship with the problem to be proven?;
- d. Is the evidence helpful enough to explain the problem (enough to have an element of proof?);
- e. There is another piece of evidence that strengthens the CCTV footage.

Other evidence tools support CCTV evidence, such as digital forensic expert information that explains the specificity and authenticity of CCTV footage and the movement of candy or seconds of images, and the quality of CCTV camera resolution that will affect the evidence later in the trial. In addition, there is a confession from the defendant that confirms some or all of the substance of the CCTV footage that has been played. This will greatly affect the evidentiary power of a CCTV recording.¹⁷

The arrangement of CCTV evidence in uncovering crimes in the digital age.

In theory, the investigation needs to be underlined to find and find an event that is suspected of being a criminal offense. The target of “search and find” is “an event that is suspected to be a criminal offense”. In other words, “search and find”, means that investigators are trying on their initiative to find events that are suspected of being criminal acts. However, in everyday reality usually, investigators only begin to carry out their duties after reports/complaints from the aggrieved party. Because in the investigation process carried out by investigators or police using evidence wisely, with CCTV can help in the investigation

¹⁴ Takasya Angela Tanauw Khristanto, ‘KEDUDUKAN HUKUM CCTV SEBAGAI ALAT BUKTI ELEKTRONIK SETELAH TERBITNYA PUTUSAN MAHKAMAH KONSTITUSI NOMOR 20/PUU-XIV/2016 TANGGAL 07 SEPTEMBER 2016’, HUKUM UNTUK MENGATUR DAN MELINDUNGI MASYARAKAT, 6 Nomor 2 (2016), 145–55 <<https://doi.org/10.33541/JtVol5Iss2pp102>>.

¹⁵ Takasya Angela Tanauw Khristanto.

¹⁶ Maramis Frans, *Hukum Pidana Umum Dan Tertulis Di Indonesia* (PT RajaGrafindo Persada, 2012). Hlm 31-33

¹⁷ Fuady Munir, *Teori Hukum Pembuktian (Pidana Dan Perdata)* (PT Citra Aditya Bakti, Bandung, 2012).

uncovering a crime that we know the CCTV video footage can be played back, therefore the investigation is easier to find out the identity of the perpetrator by looking with the characteristics of the perpetrator.¹⁸

Criminal law is present in the community as a means of society in eradicating crime, therefore the regulation of criminal law revolves around what actions are prohibited or required by citizens related to crimes such as theft, murder, rape, fraud, and so on which in the community are seen as despicable acts.¹⁹ Article 184 Paragraph (1) of Law No. 8 of 1981 concerning Criminal Procedure Law or (KUHAP) only recognizes the existence of 5 (five) valid evidence tools that can be used by the judge in giving confidence for him in formulating a verdict.²⁰ Evidence is not only regulated in the KUHAP but also regulated outside the KUHAP, as in Law No. 11 of 2008 concerning Information and Transactions before being amended, where the use of CCTV tools as electronic evidence in the evidentiary process in court makes it a means that has an important position in proving.²¹

Strict measures must be imposed on dirty law enforcement to create security and order for the community. Likewise, CCTV is a very sensitive thing because, on the one hand, it is a restriction on human rights but on the other hand, has aspects of legal interests. In theory, surveillance cameras often need to be authorized by the court as evidence in proving criminal cases. This is usually only approved when other evidence tools listed in Article 184 of the KUHAP such as letters, witness statements, instructions, expert information, and defendants' statements show it is impossible to detect criminal acts that utilize communication information technology as a means or by conventional means.

With increasingly sophisticated technology, it is not impossible to use electronic documents as evidence. The reason is, documents like this are now more or often used even in solving criminal acts, it requires electronic evidence. Law 19 of 2016 concerning Amendments to Law No. 1 of 2018 concerning Electronic Information and Transactions (ITE) wherein Article 5 Paragraph (1) states that: "The existence of Electronic Information and/or Electronic Documents is binding and recognized as a valid means of evidence to provide legal certainty for the Implementation of Electronic Systems and Electronic Transactions, especially in evidence and matters related to legal actions carried out through the System Electronics".²²

Looking at the fact that CCTV can be used to record all events, this can certainly help investigators to find suspects in case of recorded criminal acts. The public believes that the use of CCTV can help in providing a sense of security for them against security disturbances.²³ But the problem is that although CCTV is widely used by the public in helping to uncover the emergence of crimes, Article 184 of the KUHAP does not regulate CCTV as a means of evidence. CCTV has the advantage of providing clues because there is a technology that can be used to record all the smallest good events. Unlike human memory which can change to provide information according to the condition of memory and the situation of certain conditions under mental and physical pressure.

CCTV can be used as a valid legal evidence tool because Article 5 of Law No. 11 of 2008 Jo Law No. 19 of 2016 concerning Electronic Information and Transactions states that electronic information and/or electronic documents and/or printed results are legal evidence. In the ITE Law, it is also regulated about the requirements of how information or electronic documents can be used as evidence if the formal and material requirements are met. The requirements formal are listed in Article 5 paragraph (4), while the material requirements are listed in Article 6, Article 15, and Article 16 of the ITE Law. Thus there is an expansion of the type of legal evidence tools both in civil and criminal law. Then with the issuance of Constitutional Court Decision No. 20 / PUU-XIV / 2016 dated September 07, 2016, which gave an interpretation of electronic evidence, became the basis for the establishment of Law No. 19 of 2016 concerning changes to Law No. 11 of 2008 concerning ITE. The ruling aims to add to arrangements on interceptions or interceptions that have not been specifically regulated in an Act.²⁴

The existence of evidence such as CCTV is very important in the investigation of computer crime cases and computer-related crimes because it is with this evidence that investigators and forensic analysis can uncover these cases chronologically, to then track the whereabouts of the perpetrator and arrest him. Therefore, the position of this evidence is very strategic, investigators and forensic analysts must understand the types of evidence. Closed Circuit Television arrangement as a means of evidence following the law of the events enacted in Indonesia which of course cannot be separated from Law No. 11 of 2008 as now has been changed to Law No. 19 of 2016 concerning Electronic Information and Transactions (UU ITE) and Constitutional Court Decision No. 20 / PUU-

18 David Hidayat, Emilda Firdaus, Erdiansyah. Hlm 10

19 Efendi Erdianto, Hukum Pidana Indonesia : Suatu Pengantar (Refika Aditama, 2011). Hlm 1

20 PRESIDEN REPUBLIK INDONESIA, 'UNDANG UNDANG REPUBLIK INDONESIA NOMOR 8 TAHUN 1981 TENTANG HUKUM ACARA PIDANA', 1981 <<https://peraturan.bpk.go.id/Home/Details/47041/uu-no-8-tahun-1981>>.

21 Rayhani, Suriyadi, Maya, 'LEGALITAS PENGGUNAAN ALAT BUKTI CCTV UNTUK DIJADIKAN ALAT BUKTI YANG SAH DALAM PROSES PERADILAN PIDANA UMUM & KHUSUS SETELAH ADANYA PUTUSAN MAHKAMAH KONSTITUSI REPUBLIK INDONESIA NOMOR 20/PUU-XIV/2016', *Jurnal Langsung*, Vol. 6 No. 1 (2019), 75–85.

22 PRESIDEN REPUBLIK INDONESIA, 'UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 19 TAHUN 2016 TENTANG PERUBAHAN ATAS UNDANG-UNDANG NOMOR 11 TAHUN 2008 TENTANG INFORMASI DAN TRANSAKSI ELEKTRONIK', 2016.

23 Darus Harizona, 'Kekuatan Bukti Elektronik Sebagai Bukti Di Pengadilan Menurut Hukum Acara Pidana Dan Hukum Islam (Penggunaan Rekaman Gambar Closed Circuit Television)', *Jurnal Intelektualita: Keislaman, Sosial Dan Sains*, 7.1 (2018), 81–98 <<https://doi.org/10.19109/intelektualita.v7i1.2342>>.

24 Renhard Pebrian, 'REKAMAN CLOSED CIRCUIT TELEVISION (CCTV) SEBAGAI ALAT BUKTI DALAM TINDAK PIDANA KORUPSI SETELAH KELUARNYA PUTUSAN MAHKAMAH KONSTITUSI NOMOR 20/PUU-XIV/2016', *Jurnal Online mahasiswa*, 7, 1–14.

XIV / 2016. as that CCTV is included as an understanding of electronic information and electronic documents as referred to in the provisions of Article 1 number 1 and number 4 of the ITE Law which as valid evidence following applicable event law, which if in the criminal event law can be used as evidence in the civil education, prosecution and trial following the provisions in Article 5 paragraph (1) and (2) and Article 44 of the ITE Law.²⁵

In addition to Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions, as well as the Constitutional Court Decision No. 20/PUUXIV/2016, in its development, the regulation of electronic evidence is contained in several provisions of laws and regulations that specifically regulate it as a reflection of the principle of *Lex Specialis Derogat Legi Generali*. Some of these laws as previously stated are Law No. 8 of 1997 concerning Company Documents, Law No. 31 of 1999 concerning the Eradication of Corruption Which has now been amended by Law No. 20 Th 2001, Law No. 15 of 2003 concerning the Establishment of Government Regulation in Lieu of Law No. 1 of 2002 concerning the Eradication of Terrorism Into Law, Law No. 24 of 2003 concerning the Constitutional Court which has now been amended by Law No. 8 of 2011, Law No. 21 of 2007 concerning The Eradication of Trafficking in Persons, Law No. 8 of 2010 concerning prevention and eradication of money laundering crimes.²⁶

Electronic evidence is in principle copying or mirroring the contents of electronic objects. Indonesia does not yet have a law governing the position and quality of electronic evidence tools that apply generally (all types of criminal acts) but spread across various laws by placing different qualities and positions. The proof of instruction tool has the lowest quality gradation as a proof tool. Placement of electronic data as a means of evidence in cases of corruption or UUTPK is a form of discretion that does not reflect a good form of criminal policy. Electronic evidence must have the validity of the proof. The validity of electronic evidence is determined through the digital forensic process with stages: maintaining data integrity, the presence of competent people, maintaining the chain of custody, and compliance with regulations. Thus it can be understood that closed-circuit television (CCTV) includes an understanding of electronic information and or electronic documents following the provisions of Article 1 number 1 and number 4 of the ITE Law which is a means of electronic evidence in the form of electronic information and electronic documents as valid evidence in the criminal procedure law following the provisions of Article 5 paragraph (1) and paragraph (2) jo Article 44 of the ITE Law.

Conclusion

Criminal acts that already have a rule of law governing digital electronic evidence are not a problem. Because criminal acts that have been violated have special legal rules regarding electronic evidence as valid evidence in front of the court. So that the existing electronic evidence becomes evidence, as stipulated in article 184 of Law No. 8 of 1981 concerning the Criminal Procedure Law, in particular, has been considered as valid evidence in front of the court. Evidence of surveillance cameras in the use of recording devices and recording results as a legal basis for the use of electronic information/documents as evidence in court has become clear and becomes increasingly clear after the enactment of Law No. 11 of 2008 on Electronic Information and Transactions. Which is considered more providing legal certainty and the scope of its implementation is wider.

Although the use of CCTV is not regulated in the KUHAP, CCTV surveillance cameras have also proven successful in examining organized crime syndicates and other special crimes in Indonesia, because it helps law enforcement officials in making preventive arrests and in taking the necessary precautions, therefore by using CCTV investigators' efforts to uncover a crime, one of which is the use of CCTV evidence as evidence, it is good if the government firmly regulates CCTV evidence tools can be used by law enforcement officials in various cases of crime, not only for criminal offenders widely considering the development of technology, then the law must be able to keep pace with the progress of the times.

References

Books

Reading List:

- Eddy O. S., Hiariej, *Principles of criminal law* (Cahaya Atma Pustaka, 2016)
 Erdianto, Efendi, *Indonesian Criminal Law: An Introduction* (Refika Aditama, 2011)
 Frans, Maramis, *General And Written Criminal Law In Indonesia* (PT RajaGrafindo Persada, 2012)
 Monang, Siahaan, *Reform of Indonesian Criminal Law* (PT Grasindo, 2016)
 Munir, Fuady, *Legal Theory of Evidencing (Criminal and Civil)* (PT Citra Aditya Bakti, Bandung, 2012)
 P.A.F, Lamintang, *Basics for Studying Criminal Law Applicable in Indonesia* (Bandung Sinar Baru, 1990)
 Tolib, Effendi, *The Basics of Criminal Procedure Law: Its Development And Update In Indonesia* (Malang : Setara Press, 2014)

Journals

- Ardiansyah Rolindo Saputra, "THE USE OF CCTV (CLOSED CIRCUIT TELEVISION) AS EVIDENCE CLUES TO DISCLOSING THE CRIME OF MOTOR VEHICLE THEFT (Studi Pada Satreskrim Polres Sawahlunto)", *UNES Law Review*, 2.3 (2020), 321–30 <<https://doi.org/10.31933/unesrev.v2i3.125>>

25 I Dw. Agung Md, Simon Nahak, I Made Minggu Widyantara, 'Peranan Closed Circuit Television (Cctv) Sebagai Alat Bukti Dalam Persidangan Perkara Pidana', *Jurnal Analogi Hukum*, 1 (2) (2019), 163–68 <<https://doi.org/10.22225/ah.1.2.1749.163-168>>.

26 I Dw. Agung Md, Simon Nahak, I Made Minggu Widyantara.hlm 167

- Darus Harizona, 'The Power Of Electronic Evidence As Evidence In Court According To Criminal Procedure Law And Islamic Law (Use Of Closed Circuit Television Image Recording)', *Jurnal Intelektualita: Keislaman, Sosial Dan Sains*, 7.1 (2018), 81–98 <<https://doi.org/10.19109/intelektualita.v7i1.2342>>
- David Hidayat, Emilda Firdaus, Erdiansyah, 'THE USE OF VIDEO RECORDING EVIDENCE CLOSED CIRCUIT TELEVISION (CCTV) IN THE CRIME OF THEFT OF MOTOR VEHICLES IN THE CITY OF PEKANBARU', *JOM Fakultas Hukum*, 6, 1–14
- Dian Rosita, 'JURIDICAL ANALYSIS OF THE USE OF CCTV AS EVIDENCE GUIDANCE IN THE PROCESS OF INVESTIGATION OF CRIMINAL CASES', *Legal Standing : Jurnal Ilmu Hukum*, 3.1 (2020), 185 <<https://doi.org/10.24269/lv3i1.3110>>
- Eddy O. S., Hiariej, *Principles of criminal law* (Cahaya Atma Pustaka, 2016)
- Erdianto, Efendi, *Indonesian Criminal Law: An Introduction* (Refika Aditama, 2011)
- Frans, Maramis, *General And Written Criminal Law In Indonesia* (PT RajaGrafindo Persada, 2012)
- Hanafi, Muhammad Syahrial Fitri, and Muhammad Syahrial Fitri, 'JURIDICAL IMPLICATIONS OF THE POSITION OF ELECTRONIC EVIDENCE IN CRIMINAL CASES AFTER THE CONSTITUTIONAL COURT DECISION NUMBER 20/PUU-XIV/2016', *Al-Adl : Jurnal Hukum*, 12.1 (2020), 101 <<https://doi.org/10.31602/al-adl.v12i1.2639>>
- I Dw. Agung Md, Simon Nahak, I Made Minggu Widyantara, 'The Role Of Closed Circuit Television (Cctv) As Evidence In Criminal Proceedings', *Jurnal Analogi Hukum*, 1 (2) (2019), 163–68 <<https://doi.org/10.22225/ah.1.2.1749.163-168>>
- Lilik, Mulyadi, 'THE PRINCIPLE OF REVERSING THE BURDEN OF PROOF AGAINST CORRUPTION IN THE INDONESIAN CRIMINAL LAW SYSTEM IS LINKED TO THE UNITED NATIONS CONVENTION AGAINST CORRUPTION 2003', *Jurnal Hukum dan Peradilan*, 4 (2015), 101–31 <<https://doi.org/10.25216/jhp.4.1.2015.101-132>>
- Machsun Rifauddin, 'TECHNOLOGY-BASED ELECTRONIC ARCHIVE MANAGEMENT', *Khazalah Al Hikmah Jurnal Ilmu Perpustakaan, Informasi dan Kearsipan*, 4 (2016), 168–78 <<https://doi.org/10.24252/kah.v4i27>>
- Monang, Siahaan, *Reform of Indonesian Criminal Law* (PT Grasindo, 2016)
- Munir, Fuady, *Legal Theory Of Evidencing (Criminal And Civil)* (PT Citra Aditya Bakti, Bandung, 2012)
- P.A.F, Lamintang, *Basics for Studying Criminal Law Applicable in Indonesia* (Bandung Sinar Baru, 1990)
- PRESIDEN REPUBLIK INDONESIA, 'LAW OF THE REPUBLIC OF INDONESIA NO. 8 OF 1981 CONCERNING CRIMINAL PROCEDURE LAW', 1981 <<https://peraturan.bpk.go.id/Home/Details/47041/uu-no-8-tahun-1981>>
- PRESIDEN REPUBLIK INDONESIA, 'LAW OF THE REPUBLIC OF INDONESIA NO. 19 OF 2016 CONCERNING AMENDMENTS TO LAW NO. 11 OF 2008 CONCERNING INFORMATION AND ELECTRONIC TRANSACTIONS', 2016
- Rayhani, Suriyadi, Maya, 'LEGALITY OF USING CCTV EVIDENCE TO BE USE OF LEGITIVE EVIDENCE IN GENERAL & SPECIAL CRIMINAL PROCESSES AFTER THE DECISION OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA NUMBER 20/PUU-XIV/2016', *Jurnal Langsung*, Vol. 6 No. 1 (2019), 75–85
- Renhard Pebrian, 'CLOSED CIRCUIT TELEVISION (CCTV) RECORDINGS AS EVIDENCE IN THE CRIMINAL ACTION OF CORRUPTION AFTER THE PROVISION OF THE CONSTITUTIONAL COURT DECISION NUMBER 20/PUU-XIV/2016', *Jurnal Online mahasiswa*, 7, 1–14
- Satriawan, Tohirman, 'JURIDICAL REVIEW OF THE POSITION AND STRENGTH OF EVIDENCE OF CCTV (CLOSED CIRCUIT TELEVISION) RECORDING AS EVIDENCE IN CRIMINAL CASES', *Fakultas Hukum Universitas Mataram* (UNIVERSITAS MATARAM, 2018)
- Supardi, 'Measuring the Strength of Electronic Evidence in Proving Corruption Crimes', *Syntax Literate ; Jurnal Ilmiah Indonesia*, 6.5 (2021), 2509 <<https://doi.org/10.36418/syntax-literate.v6i5.2724>>
- Takasya Angela Tanauw Khristanto, 'LEGAL POSITION OF CCTV AS ELECTRONIC EVIDENCE EQUIPMENT AFTER THE ISSUANCE OF THE CONSTITUTIONAL COURT DECISION NUMBER 20/PUU-XIV/2016 DATE 07

SEPTEMBER 2016', *HUKUM UNTUK MENGATUR DAN MELINDUNGI MASYARAKAT*, 6 Nomor 2 (2016), 145–55
<<https://doi.org/10.33541/JtVol5Iss2pp102>>

Tolib, Effendi, *The Basics of Criminal Procedure Law: Its Development And Update In Indonesia* (Malang : Setara Press, 2014)

Laws and Regulations

PRESIDENT OF THE REPUBLIC OF INDONESIA, ' LAW OF THE REPUBLIC OF INDONESIA NO. 8 OF 1981 CONCERNING CRIMINAL PROCEDURE LAW', 1981 <https://peraturan.bpk.go.id/Home/Details/47041/uu-no-8-tahun-1981>

PRESIDENT OF THE REPUBLIC OF INDONESIA, 'LAW OF THE REPUBLIC OF INDONESIA NO. 19 OF 2016 CONCERNING AMENDMENTS TO LAW NO. 11 OF 2008 CONCERNING INFORMATION AND ELECTRONIC TRANSACTIONS'

