THE POSITION OF ELECTRONIC DOCUMENTS IN THE PROCESS OF EVIDENCE IN THE STATE ADMINISTRATIVE JURISDICTION IN INDONESIA

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ABSTRACT

After enacting Law Number 11 of 2008 concerning Electronic Information and Transactions, there is a new type of evidence in the form of electronic information and electronic documents and printed results submitted in the process of evidence in the state administrative court. It has caused new problems regarding the position of electronic information and electronic documents and/or printed results as valid evidence and procedures that must be followed so that electronic information and / or electronic documents and / or printed results can be accepted as valid evidence state administrative court proceedings. This research uses normative legal research methods using a statutory approach and literature study.

Keywords: Position, Electronic Documents, Evidence, State Administrative Court.

INTRODUCTION

The technology and information revolution 4.0 that occurred in Indonesia had a significant influence on Indonesia's government, for example, with electronic documents issued by the government. Electronic documents issued by the government itself based on Law Number 5 of 1986 concerning State Administrative Courts cannot be used as valid evidence in court. Still, after Law Number 11 of 2008 concerning Electronic Information and Transactions, these electronic documents can be used as valid evidence in court.

Electronic evidence or electronic evidence as evidence in the proof system in Indonesia receives at least special attention. This particular concern is not only due to the above reasons, but electronic evidence also demands that the law of proof be flexible enough to deal with its nature, which tends to be very difficult to prove (David I Bainbridge, 1993: 200). One form of difficulty contained in electronic evidence is that it is very vulnerable to be changed, tapped, faked, and sent to various parts of the world within seconds (Mardani, 2009: 91)

In the evidentiary process in the procedural law of state administrative court, the parties to the dispute are given the broadest possible opportunity to present evidence supporting the lawsuit's arguments or the arguments for its rebuttal. The provisions of Article 100 of Law Number 5 the Year 1986 concerning State Administrative Courts (Administrative Court Law) state that the evidence materials that the parties can submit include: Letters or writings; Expert statement; Witness testimony; Recognition of the parties; Judge's knowledge. The Administrative Law adopts a limited free proof system (Indroharto, 1991: 317).

The proof in the procedural law of state administrative court where the judge is active (dominus litis) and what is sought is the material truth. So that the state administrative court Judge can determine for himself: (a) What must be proven; (b) Who should be burdened with proof, what the judge himself must prove things; (c) Which evidence is prioritized to be used in evidence; (d) The strength of evidence that has been submitted (Soemaryono and Erliyana, 1999: 76). After enacting Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE), especially in Article 5, it is an extension of legal evidence by the applicable procedural law in Indonesia.

From the provisions of Article 100 Jo. In conjunction with article 107 of the Administrative Law, Article 5 of the ITE Law has raised legal issues in the form of electronic documents in the evidentiary process in settlement of state administrative disputes because the two laws above regulate different things. Still, they both regulate legal norms regarding book equipment that can be submitted in court, of which the substance is different so that it gives rise to a different understanding of which legal norms should be applied or how to apply the two legal norms of the two laws at the same time.

The formulation of the problem that will be discussed in this research is what is the position of electronic documents in the process of proof in the state administrative court and what are the procedures that must be followed so that electronic documents can be accepted as valid evidence in proceedings at the state administrative court?

This research uses a normative juridical research method by examining the applicable laws and regulations (Law Number 11 of 2008 concerning Electronic Information and Transactions, Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information. And Electronic Transactions, Law Number 5 of 1986 concerning State Administrative Courts, Law 9 of 2004 concerning the First Amendment to Law Number 5 of 1986 concerning State Administrative Courts and Law Number 51 of 2009 concerning the Second Amendment On Law Number 5 of 1986 concerning State Administrative Courts) and literature studies to dig up information and various books, journals and other legal materials. This research focuses on Indonesia because it is used as reading material for Indonesian citizens, especially those related to the proof of electronic documents in the process of evidence in state administrative court proceedings.

RESULTS AND DISCUSSION

1. Position of Electronic Documents in the Evidence Process in State Administrative Courts.

The law of proof is the law that regulates the procedures for establishing evidence of evidence which is the legal basis for consideration in making a decision (Latifah Amir, Journal of Legal Studies, 2015: 4). According to Indroharto (1991: 313), what is meant by facts are:

a. Legal facts are events or circumstances whose existence depends on the application of a rule.
b. Ordinary facts are events, circumstances that also determine the existence of specific legal facts.

The regulation regarding evidence tools in the procedural law of state administrative court is regulated in Article 100 of the Administrative Law, which states that evidence consists of letters or writings, expert statements, witness statements, recognition of the parties, and judges' knowledge. (Latifah Amir, Journal of Legal Studies, 2015: 5).

Article 5 of the ITE Law states that electronic information and electronic documents, and printouts are valid legal evidence. This provision is an extension of procedural law evidence. Electronic information and electronic documents are declared valid when using an electronic system by the ITE Law provisions. In the provisions as mentioned above, two concepts need attention, namely the concept of electronic information (Article 1 number 1 Law 11/2008) and electronic documents (Article 1 number 4 Law 11/2008) whose existence these two aspects are contained in electronic systems (Article 1 point 5 Law 11/2008).

The ITE Law is the legal basis for the traditional strength of electronic evidence and the formal and material requirements for electronic evidence to be accepted in court. The formal requirements in question are that electronic information or documents are not documenting or letters that must be in written form according to the law. The material requirements in question are that electronic information or documents must be guaranteed their authenticity, integrity, and availability in essence.

For some people, an electronic document evidence-based on Article 5 of the ITE Law is interpreted as having caused a conflict between legal norms and the provisions of Article 100 of the Administrative Court Law. To respond to the view that there has been a conflict of legal norms, some argue that it must be returned to the principle of legal preference, namely the principle of lex superior derogate legi inferiori, lex posterior derogate legi priori, and the principle of lex specialist derogate legi generalis. In this context, it is not appropriate to apply the principle of legal preference. Therefore, the ITE Law and the Administrative Court Law are based on the same rank's legislative order, and each regulates different substances. Thus the principle of lex superior derogate legi inferiori,

Because the respective legal norms contained in the Administrative Law and the ITE Law cannot set aside one another, the respective legal norms of the two laws still exist and apply as positive Law in Indonesia. Normatively, each legal norm can be applied in the proceedings at the state administrative court. Evidence-based on Article 100 of the Administrative Court Law is still valid. Electronic documentary evidence based on Article 5 of the ITE Law has also come into effect in evidence in the state administrative court.

Based on the provisions of Article 5, paragraph 2 of the ITE Law stipulates that electronic information and electronic documents and their printed output are extensions of valid evidence. Expansion can be interpreted as the addition of evidence that has been known and regulated in the applicable procedural Law in Indonesia, including the addition of evidence in the procedural law of state administrative justice and expanding the scope of evidence that has been regulated in the Administrative Court Law In normative juridical terms, the existence of electronic documents can be accepted as valid evidence in the process of evidence at the state administrative court.

2. Procedures must be taken so that electronic documents can be accepted as valid evidence in proceedings at the State Administrative Court.

The purpose of the proof is to show the certain Judge pieces of evidence to give confidence and certainty to the judge that there are disputed legal facts. This belief and certainty will then be used as the basis for the judge's consideration in formulating his decision (Marbun, 2015: 316).

Facts are legal facts, such as events or incidents regulated by law. However, the rule of law can also be stated as a legal reality (Buuren, 1987: 6). Except for legal facts, it is also known that mere facts, such as events, incidents, or circumstances that contribute to the existence of legal reality (Buuren, 1987: 6). A judge, both implicitly and explicitly, must formulate his decision based on facts and verdicts in fact (de feitelijke beslissingen), which are often difficult to separate from legal judgments by judges.

The state administrative court's procedural law uses a system of free proof that does not require binding provisions for judges so that the evaluation of evidence is left to the Judge (Active Judge). Still, it is limited to evidence as stipulated in Article 100 of the Administrative Court Law and the conviction's existence. The judge becomes an essential and decisive requirement. The active role of judges is to seek material truth by their duties. The implications for judges in carrying out their duties are no longer entirely dependent on the arguments and evidence presented by the parties to him (Article 107 Law 5/1986).

The theoretical argument that can be put forward as a reason why state administrative court judges are given an active role because judges cannot allow and maintain the validity of a valid state administrative decision, only because the parties do not question it

in the object of the dispute (Marbun, 2015: 335). This is contrary to the principles of a democratic rule of law, especially state administrative disputes are disputes in the field of public Law (Marbun, 2015: 335). The judge's decision will be binding on the public (erga omnes) and not only binding on the disputing parties (inter partes) (Marbun, 2015: 335).

The evidentiary process relies heavily on the judge's conviction. The judge himself is considered free in judging and considering the reasons behind his beliefs in concluding (Vrije lewis). The judge is free to find out for himself the truth behind the available evidence, with his conviction to draw conclusions and overturn decisions that are considered fair (Simanjuntak, 2018: 239).

Concerning the facts held by the parties, all of these facts must be submitted at the trial to be included in the trial minutes. They may not be given outside the trial because the judge will not consider facts submitted outside the trial. Every fact accommodated in the evidence must first fulfill specific procedures to be accepted as valid evidence at trial. For example, before giving testimony in court, witnesses and experts must first be clarified by the judge whether they meet the requirements to be heard as witnesses and experts according to statutory regulations. An oath or promise must be taken before giving a testimony trial. Likewise, proof of letter or writing must first be photocopied, stamped, and recorded at the competent agency. Furthermore, the evidence documents are submitted at trial and matched with the actual evidence before the judge to be accepted as valid evidence.

The provisions of evidence in the Administrative Court Law are also related to Article 38 of the AP Law, which regulates electronic government decisions. Electronic documents are used as a means of evidence in examining disputes in the state administrative court related to Article 5 of the ITE Law. Electronic decisions are also valid legal evidence and apply to all procedural Laws in Indonesia. In this regard, the Supreme Court has included legal norms regarding the submission of electronic information and electronic documents as valid evidence in the dispute resolution process in the state administrative court through the Supreme Court Decree (PERMA) Number 4 of 2015 concerning Guidelines for Procedures in Assessment Elements of Abuse of Authority.

The provisions of Article 13 letter f of PERMA Number 4 of 2015 state that the evidence in the assessment is whether or not there is an element of abuse of authority, including other evidence in the form of electronic information or electronic documents. In line with the legal norms above in the provisions of Article 11 PERMA Number 5 of 2015 concerning Procedure Guidelines for Obtaining Decisions on Acceptance of Applications to Obtain Decisions and Actions of Government Agencies or Officials, it states that other evidence in the form of electronic information or electronic documents is one type of evidence that can be submitted for examination at trial.

Based on the description above, it can be argued that before there was a positive law governing electronic information or electronic documents as valid evidence before state administrative court proceedings, sometimes the parties to a dispute have submitted electronic information or electronic documents as tools. Evidence in the trial of state administrative court. Because electronic information or electronic documents are not included as evidence as referred to in Article 100 of the Administrative Court Law. Several procedures must be followed so that electronic information or electronic documents can be accepted as evidence before a state administrative court trial.

During the preparatory examination, the parties can submit data or written statements to the panel of judges. So far, the data or written statements submitted are often termed in practice as "pre-evidence". Data submitted by the parties can be in the form of electronic information or electronic documents. Judges at the state administrative court, because of their active role, will receive data in the form of electronic information or electronic documents and study them even though there are no rules that regulate electronic information or electronic documents as valid evidence. After the judge studies the data, if there are legal facts that will serve as the basis for legal considerations in his decision, the legal facts will be accepted as valid evidence through the door of the evidence "judge's knowledge".

The above matters are the same as the legal facts obtained from local inspections/location inspections in state administrative disputes in the defense sector. A local inspection is carried out to ensure the correctness of the land's location and boundaries in the decision on the object of the dispute. Because the local examination or location examination is not the type of evidence as stipulated in Article 100 of the Administrative Court Law, the local examination results will be categorized as evidence of "judge knowledge".

Another possibility that can occur in state administrative court proceedings is that the judge will order the parties who submit electronic information data or electronic documents as evidence so that the parties first print data in the form of electronic information or electronic documents in written form (print out). Then the printouts of electronic information or electronic documents are each stamped and first dinazegelen at the post office then they can be submitted as evidence at the state administrative court trial and fall into the category of "letter or writing" evidence.

With the enactment of Article 5 of the ITE Law as positive Law in Indonesia, it cannot be denied that electronic information or electronic documents are false evidence in the proceedings at the state administrative court. The author believes that the possibilities like the above, where data in the form of electronic information or electronic documents are transferred into evidence "judge knowledge" or evidence "letters or writing," are no longer appropriate to be applied in state administrative court proceedings. This is because electronic information or electronic documents are already independent and are a new type of evidence that can be submitted in evidence in the state administrative court.

Suppose the state administrative court's disputing parties wish to submit electronic information or electronic documents as evidence in court. In that case, it no longer needs to be transferred to the category "judge knowledge" or "documentary evidence". Instead, electronic information or electronic documents can be directly submitted as valid evidence, which falls into the category of electronic information evidence and electronic documents and printed outputs as referred to in Article 5 of the ITE Law. Thus,

electronic information and electronic documents and printouts thereof are one type of valid evidence that can be submitted before a state administrative court trial.

CONCLUSIONS AND SUGGESTIONS

Starting from the description of the above discussion, in the opinion of the author, a conclusion can be drawn that the evidence in the form of electronic information and electronic documents and the printed result is a type of independent evidence that can be submitted in the process of evidence in the state administrative court. The procedure that must be taken to be accepted as valid evidence is no longer necessary for data in the form of information or electronic documents to be transferred to become evidence of "judge's knowledge" or evidence of "letter or writing". However, efforts to revise the Administrative Court Law need to be made to harmonize legal norms in the Administrative Law and the ITE Law not to cause a conflict of legal norms.

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