

Validity and Legal Strength of Closed Circuit Television (CCTV) Evidence in Enforcing Electronic Tickets

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Abstract

The application of an electronic ticket or Electronic Traffic Law Enforcement (ETLE) by the police is considered to have many problems and challenges for the police in the future, with reference to closed circuit television (CCTV) evidence that causes the gap in the use of CCTV (Closed Circuit Television) evidence in the criminal justice process, the first is the legal factor itself where the use of CCTV is not included in legal evidence in the Criminal Procedure Code, the two different perspectives which will result in different thoughts that will be accepted by someone, the three norms which becomes legalistic positivistic is not clear in certain cases. Legal basis for prosecution of traffic violations. According to Law Nomor 2 of 2009 concerning Traffic And Road Transportation, article 260 and article 262 who are authorized to take action against traffic violations using CCTV can carry out law enforcement such as investigations and investigations of criminal acts of LLAJ or other crimes, acts of handling of accidents, violations, and traffic jams by the Police and the pursuit, ambush, arrest, and prosecution of perpetrators and/or vehicles involved in crimes or traffic violations. The formulation of the legal problem contains points regarding the juridical review and application of the validity of ETLE as evidence in the trial. This research is a legal research with a normative juridical approach with a statutory and case approach, especially the decision of ticketing for traffic violations. The results of the research and discussion conclude that the use of CCTV (Closed Circuit Television) evidence can be used as evidence in the criminal justice process and the application of the e-Tilang system can reduce the number of traffic accidents.

Keywords: *Electronic Traffic Law Enforcement (ETLE), CCTV (Closed Circuit Television), Traffic Violations, Evidence*

A. INTRODUCTION

1. Background

The development of the number of vehicles in Indonesia has been increasing from time to time, so the challenges of traffic problems that must be faced such as traffic accidents, traffic violations, traffic congestion, traffic crimes, the development of the number of motor vehicles, the development of the number of driver's licenses, the development of the number of population, the development of road length and land area, and the development of police capabilities in the field of traffic.¹

The National Police of the Republic of Indonesia (POLRI) as a state apparatus has the main duties in accordance with Article 13 of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia, namely maintaining public security and order, enforcing the law, and providing protection, protection, and services to the community. One of the operational functions of the National Police that carries out the task of coaching security, order and smooth traffic is the Traffic Police.

Technological developments are used in all fields including police agencies. Modernization is also carried out in the enforcement of traffic violations. One of them is the emergence of the National Police's work program, namely Electronic Evidence of Violations. The increase in traffic violations is a new challenge for the Police to be able to implement sanctions that educate but still have a deterrent effect. One way to suppress violations is to carry out administrative sanctions (tickets) carried out by the police. However, what has happened so far is that the ticketing system is often skewed by civilians and police members to compromise with each other so that their respective interests can be achieved without following the applicable procedures, so that every violation committed by the community is only recorded in a ticket letter and inventoried in the Ticket Administration division and then sanctioned, and only up to the final recording level, So that when there is a repeat of the violation by the same person, there is no significant increase in sanctions.

The E-ticketing program that is carried out must be managed properly so that in each implementation it produces a deterrent effect for the traffic violator community. Therefore, the information system for every violation by

¹ <https://jateng.inews.id/berita/pakar-it-ungkap-sejumlah-kelemahan-sistem-tilang-elektronik-apa-saja>, accessed September 28, 2021.

motorists on the highway must be able to be the basis for enforcement of violations in the next stage, meaning that information on violations that have been committed by everyone must always be identified by every police member who commits a traffic ticket.²

The Law of the Republic of Indonesia on Road Traffic and Transportation explains that the Road Traffic and Transportation Information and Communication System is a set of subsystems that are interconnected through the merger, processing, storage, and distribution of data related to the implementation of Road Traffic and Transportation.³

To achieve a relevant ticketing process, it is necessary to have an information system supported by a network-based software or website that allows the dissemination of information to every member of the police force in *real time*. The software in question is an application program that can store information on every violation of traffic rules committed by the public in a database, and when the violation is repeated by the same person, then this application program or information system will review the violations that were previously committed, and the violation data that is displayed again (*review*) will be the basis for further action, so that violators do not get sanctions at the same level but can be acted upon at a higher level, and of course this will have a deterrent effect on violators.

The police provide protection, protection and service to the community, as the existence of the Indonesian National Police (Polri) together and in unity with the community. In such a position, if the evaluation of the performance of the National Police is directly given by the public to the National Police, it will have a great influence on the image of the National Police. Currently, the quality of the image of the National Police is considered by observers to have deteriorated. The deterioration of the image of the National Police in the eyes of the public is an important issue that until now continues to shackle the National Police in carrying out its duties and authorities as guardians of public security and order, carrying out law enforcement, and carrying out protection,

² Rahardian IB, Dian AK, a **steam-based application program to increase the accountability of the ticketing system for traffic order violations in the Majalengka Police area**. ICT-STMIK IKMI Online Journal Vol 1-o1 July 2011 Edition, p. 43.

³ Indarti, Erlyn. **Professionalism carries out the main function of the police in law enforcement in the Central Java Police**. MMH, Volume 43 Number 3. 2014, p. 349.

protection and creating security, order and smooth traffic in serving the community.⁴

This phenomenon seems to remain a perpetual cycle in the National Police (National Police of the Republic of Indonesia), if the commitment to professionalism, transparency and accountability is not manifested in the attitudes and actions of the police in carrying out their daily duties and authorities. The E-ticketing system will replace the manual ticketing system that uses blanks/tickets, where violating drivers will be recorded through an application owned by police personnel. With the existence of the E-ticket, it makes it easier for people to pay fines through banks. However, not all people can follow the E-ticket procedures provided by the police. Especially for ordinary people who do not understand technology.

The application of the law in the enforcement of traffic and road transportation violations based on the results of electronic equipment recordings, the National Police Officer of the Republic of Indonesia or the Civil Servant Investigator in the field of Traffic and Road Transportation can issue a Ticket Letter. The ticket letter must be attached with proof of electronic law enforcement device recordings. The Ticket Letter is submitted to the violator as a notice and a summons to appear in the court hearing. In the event that the violator is unable to comply with the summons to appear in the court hearing, the violator can deposit the fine money through a bank appointed by the Government.

The validity of evidence in the form of surveillance cameras or *CCTV* used today is only able to capture images. This capability is not yet equipped with AI (*artificial intelligence*) or artificial intelligence that has been used in many developed countries. So that the final decision of a traffic violation is still in the hands of the Traffic Police (Polantas) to develop the ETLE website and its application to help the public find out information related to electronic tickets, as well as the process of paying fines, blocking STNK, to how cameras take action against traffic violators. The existence of E-ticketing can certainly support accountability from the police who have the authority to be able to handle existing traffic violations. All violations of the Traffic can then be rigidly recorded by the existing system from input to output. So the handling data of the violation will not be missed. If at any time there is data that is incorrect or

⁴ Halawa, SK. **The application of ticket fines for traffic violators is based on Law Number 22 of 2009 concerning Traffic and Road Transportation in the jurisdiction of the Pekanbaru City Resort Police.** JOM Faculty of Law Volume I Number 1. 2015, p. 2.

obstructed, this will be easily tracked. Through this E-ticketing system, all information about actions that are categorized as traffic violations and penalties for actions taken will make it easier for the public to know.

Thus, the community is expected to have legal awareness and in the future will not commit violations again. This system aims to make it easier for violators and the police, as well as prevent violations by members of the task force in terms of illegal levies or pungli. The implementation of e-ticketing aims to provide legal certainty for violators in the field of traffic, this is also a form of professionalism and transparency for police officers in terms of law enforcement. Some of the increase in traffic violation cases in 2021 has started to rise somewhat again, so 2500-3000 ticket files as a whole, be it conventional tickets, ETLE or enforcement from the Transportation Department that is loaded (ODO / Over dimension overload vehicle case),

Of the thousands of ticket files that came in at Kejari Surabaya, 20 of them were electronic ticket files or ETLE. A total of 12 Regional Police (Polda) throughout Indonesia simultaneously launched an electronic ticketing system or Electronic Traffic Law Enforcement (ETLE). As for the city of Surabaya itself, it has implemented ETLE installed at 39 points in Surabaya.⁵

By exercising the first few options, violators pay the maximum fine through BRIVA. After paying the fine, violators can confirm with the police for the unblocking process. If the hearing is due or the day after, then the violator will return to BRI by taking the remaining change from the maximum fine after the verdict hearing. The second option is to wait for the verdict of the trial by checking on the tilang.kejaksaan.go.id website. If it has entered the trial schedule, the violator can check the website and the amount of fine that must be paid and the payment code appear.

3. Problem Formulation

Based on the above background, the author draws the formulation of the problem: What is the Validity and Legal Force of *Close Circuit Television (CCTV)* Evidence in the Enforcement of Electronic Tickets?

4. Research Methods

This type of research is normative juridical, that is, research is interpreted as a scientific procedure to find the truth based on legal scientific

⁵ <https://www.suarasurabaya.net/kelanakota/2021/tahun-2021-jumlah-pelanggar-tiket-di-surabaya-increase/>, accessed 25 September 2021

logic from its normative side. Normative law research is a research by analyzing laws and regulations based on dogmatic law, legal theory, and legal philosophy. The approaches used in this study are the statute *approach* and the conceptual *approach*. The statute *approach* is an approach taken to various legal rules related to the problem in this study. Meanwhile, the conceptual approach is used to examine and analyze the framework or conceptual framework as well as the theoretical foundation in accordance with the objectives of this research.

B. DISCUSSION

1. Evidence of *Closed Circuit Television (CCTV)*

The legal system of criminal proof in Indonesia is regulated in article 184 of the Criminal Code. Paragraph 1 of the article states that the valid evidence is:

- 1) Witness statements;
- 2) Expert testimony;
- 3) Letters;
- 4) Instructions; and
- 5) Defendant's statement.

The use of CCTV footage as evidence is also regulated in Law Number 11 of 2008 concerning Information and Electronic Transactions. In this Law, the expanded evidence regulated in Article 5 of Law Number 11 of 2008 is explained as follows:

1. Electronic Information and/or Electronic Documents and/or printed results are valid legal evidence;
2. Electronic Information and/or Electronic Documents and/or
3. The printed result as referred to in paragraph (1) is an extension of valid evidence in accordance with the Procedural Law in force in Indonesia.

CCTV is a media that can be used to contain recordings of every information that can be seen, read and heard with the help of CCTV recording facilities. CCTV footage is used as evidence whose system uses a video camera to display and record images at a certain time and place where this device is installed, which means using a closed signal, unlike ordinary television which is a *broadcast signal*.⁶

⁶ Roro Ayu Ariananda, et.al, **The Use of CCTV (Closed Circuit Television) Recording Evidence in the Criminal Justice Process**, Poenale Journal, Volume 5, Number 3, December 2017, p. 4

In general, CCTV footage is used as a complement to security systems and is widely used in various fields such as the military, airports, shops, offices and factories. Even in its development, CCTV footage has been widely used within the scope of private homes. However, to uncover crimes that are directly related to CCTV footage which is evidence in a case that is starting to be rampant. The development of criminality or criminal acts in a society that is undergoing modernization includes problems related to the frequency of crime, the quality of crime, and the possibility of new types of crimes or criminal acts.

CCTV as evidence can be identified in its regulation in criminal law in Indonesia. CCTV is included in the category of electronic evidence or in the Law called electronic information and/or electronic documents. Law Number 11 of 2008 concerning Information and Electronic Transactions as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (hereinafter referred to as the ITE Law) uses the term Electronic Information and Electronic Documents to state a data or information or document that is processed using electronic equipment. This can be seen from the definition of Electronic Information and Electronic Documents in Article 1 number (1) and Article 1 number (4) of the ITE Law.

Article 1 number (1) of the ITE Law stipulates that "Electronic Information is one or a set of electronic data, including but not limited to writings, sounds, images, maps, designs, photographs, electronic data interchange (EDI), electronic mail, telegram, telex, telecopy or the like, letters, signs, numbers, Access Codes, symbols, or perforations that have been processed that have meaning or can be understood by people who are able to understand them." Electronic Documents are regulated in

Article 1 number (4) of the ITE Law stipulates that "Electronic Document is any Electronic Information created, transmitted, transmitted, received, or stored in analog, digital, electromagnetic, optical, or similar form, which can be seen, displayed, and/or heard through a Computer or Electronic System, including but not limited to writing, sounds, images, maps, designs, photographs or the like, letters, signs, numbers, Access Codes, symbols or perforations that have meaning or meaning or can be understood by people who are able to understand them.

The regulation of CCTV footage as electronic evidence in Indonesia's criminal law is regulated in positive law (*Ius Constitutum*) and aspired law (*Ius Constituendum*) in Indonesia. These arrangements have been spread in various laws and regulations (*Ius Constitutum*), namely Law Number 8 of 1997

concerning Company Documents, Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes (hereinafter referred to as the Corruption Law), Law Number 30 of 2002 concerning the Corruption Eradication Commission, Law Number 15 of 2003 concerning the Stipulation of Government Regulations in Lieu of Law Law No. 1 of 2002 concerning the Eradication of Terrorism Crimes into Law, Law No. 21 of 2007 concerning the Eradication of Trafficking in Persons, Law No. 11 of 2008 concerning Information and Electronic Transactions, Law No. 35 of 2009 concerning Narcotics, and Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes. The existence of electronic evidence is recognized as valid evidence, emphasized in Article 5 paragraph (1) and paragraph (2) of the ITE Law and the issuance of the 2016 Constitutional Court Decision. As for the *Ius Constituendum*, it is regulated in the Draft Criminal Procedure Code in Article 175 paragraph (1) of the Draft Criminal Procedure Code recognizing the existence of CCTV footage as electronic evidence.

With the enactment of the provisions in Article 5 paragraph (1) and paragraph (2) of the ITE Law, the valid evidence in the civil and criminal procedure law is not only limited to the evidence in the Criminal Procedure Code, 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 evidence brings changes in the law of proof that applies in procedural law in Indonesia.

The position of CCTV footage as evidence has two views. The first view states that CCTV footage as part of electronic evidence is part of the evidence regulated in Article 184 of the Criminal Procedure Code, namely instructional evidence. CCTV footage is categorized as an extension of valid evidence, namely clue evidence used to prove corruption in Article 26A of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption which states:

Valid evidence in the form of instructions as referred to in Article 188 paragraph (2) of Law Number 8 of 1981 concerning the Criminal Procedure Law, specifically for corruption crimes can also be obtained from:

- 1) Other evidence in the form of information spoken, sent, received, or stored electronically with an optical device or similar to it; and
- 2) Document, which is 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 it is written on paper, any physical object other than paper, or that is recorded electronically in the form of writing, sound,

images, design maps, photographs, letters, signs, numbers, or perforations that have meaning.

In general, CCTV footage is used as a complement to security systems and is widely used in various fields such as the military, airports, shops, offices and factories. Even in its development, CCTV footage has been widely used within the scope of private homes. However, to uncover crimes that are directly related to CCTV footage which is evidence in a case that is starting to be rampant. The development of criminality or criminal acts in a society that is undergoing modernization includes problems related to the frequency of crime, the quality of crime, and the possibility of the emergence of new types of crimes or electronic crimes, including but not limited to writing, sounds, images, maps, designs, photographs or the like, letters, signs, numbers, Access Codes, symbols or perforations that have meaning or can be understood by people who are able to understand it." With the enactment of the provisions in Article 5 paragraph (1) and paragraph (2) of the ITE Law, the valid evidence in the civil and criminal procedure law is not only limited to the evidence in the Criminal Procedure Code, 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 evidence brings about changes in the law of proof that applies in procedural law in Indonesia."

Traffic and road transportation systems. This law has delegated a very significant role to the National Police of the Republic of Indonesia as a government agency that is directly involved in providing community services in the field of traffic and road transportation. The rules contained in Law Number 22 of 2009 concerning Road Traffic and Transportation do not only consist of static elements reflecting what is stated and normative but also elements that are direct and proper, "*law is distinguish from laws, is the system of authoritative materials for grounding or guiding and administration action recognized or established in politically organized society*".⁷

The birth of Law Number 22 of 2009 concerning Road Traffic and Transportation with the purpose as stated in Article 3 of the Law, is a real and earnest effort from the government to realize traffic and road transportation services for public safety and order. Good traffic and road transportation management is part and form of Public Service. The basis for consideration of public services in Law Number 25 of 2009 is:

⁷ Romli Atmasasmita, **Integrative Legal Theory**, Bandung: Genta Publishing, 2015, p. 45.

- 1) The State is obliged to serve every citizen and resident to fulfill their basic rights and needs within the framework of public service which is the mandate of the Constitution of the Republic of Indonesia in 1945;
- 2) Building public trust in public services carried out by public service providers is an activity that must be carried out in line with the expectations and demands of all citizens and residents about improving public services;
- 3) That as an effort to affirm the rights and obligations of every citizen and resident as well as the realization of the responsibility of the state and corporations in the implementation of public services, legal norms that provide clear regulations are needed.

One of the objectives of the law is to uphold legal certainty which is continued with guaranteed public interests. In order to provide better legal certainty, the existence and presence of Law Number 22 of 2009 concerning Road Traffic and Transportation provides several changes that bring legal consequences.

Referring to the provisions of Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE), in the provisions of Article 5 paragraphs (1) and (2) and Article 44, the provisions regarding the role of electronic information and electronic documents which are part of the evidence as per the procedural law applicable in Indonesia and as an extension of the legal evidence in accordance with the provisions of the procedural law that applied in Indonesia, although currently the Criminal Code has not expressly regulated the provisions on the role of Electronic Information and/or Electronic Documents as evidence.

However, if the author analyzes the Constitutional Court Decision Number 20/PUU-XIV/2016 which states that electronic information and electronic documents have a role as evidence, then it must be interpreted, especially the phrase electronic information and electronic documents as part of evidence carried out as part of a law enforcement that is based on a request from the police, prosecutor's office, and other law enforcement institutions in accordance with applicable laws. Considering that based on the description above, the role of electronic information and/or electronic documents and their printouts which are legal evidence, must be carried out as a law enforcement effort based on requests from the Police, Prosecutor's Office and other law enforcement institutions.

Obtained on the basis of the provisions of the law, guaranteed integrity and originality of information that can be accounted for, accessible, and can be

displayed, thus explaining a situation. So that if one and/or three of these criteria has been met, then electronic information and electronic documents and printed results have a role as valid evidence according to the applicable procedural law as long as it is interpreted, especially the phrase electronic information and electronic documents as evidence carried out as a law enforcement effort based on a request from the police, prosecutor's office, and/or other law enforcement institutions determined in accordance with applicable laws as long as the information contained therein can be accessed, displayed, and guaranteed originality and/or authenticity and integrity that can be accounted for so that it can explain a situation, as stipulated in Article 6 jo. Article 31 paragraph (3) of the ITE Law and the Constitutional Court Decision Number 20/PUU-XIV/2016.

The regulation of Closed Circuit Television as a means of evidence in accordance with the procedural law enforced in Indonesia which of course cannot be separated from Law Number 11 of 2008 as it has now been amended into Law Number 19 of 2016 concerning Information and Electronic Transactions (UU ITE) and the Decision of the Constitutional Court Number 20/PUU-XIV/2016. as CCTV is included in the meaning 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 are valid evidence in accordance with the applicable procedural law, which if in the criminal procedure law can be used as evidence in the investigation, prosecution and trial process in accordance with the provisions of Article 5 paragraphs (1) and (2) and Article 44 of the ITE Law.

In simple terms, in its ruling, the Constitutional Court Number 20/PUU-XIV/2016 determines which phrases of electronic information and electronic documents have binding legal force when interpreted, especially the phrases of electronic information and electronic documents as evidence carried out as a law enforcement effort based on requests from the police, prosecutor's office, and/or other law enforcement institutions, in accordance with the laws and regulations specified in the Article 31 paragraph (3) of the ITE Law.

Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, as well as the Constitutional Court Decision Number 20/PUU-XIV/2016, in its development, the regulation of electronic evidence is contained in several provisions of laws and regulations that specifically regulate it as reflected in 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 to Law No. 20 of 2001, Law No. 15 of 2003 concerning the Stipulation of Government Regulations in

Lieu of Law No. 1 of 2002 concerning the Eradication of Terrorism Crimes into Law,

Law 24 of 2003 concerning the Constitutional Court which has now been amended to Law 08 of 2011, Law 21 of 2007 concerning the Eradication of Trafficking in Persons, Law 08 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes.

Thus, it can be understood that, CCTV is included in the definition of electronic information and/or electronic documents in accordance with the provisions of Article 1 number 1 and number 4 of the ITE Law which as electronic evidence in the form of electronic information and electronic documents as valid evidence in the criminal procedure law in accordance with the provisions of Article 5 paragraph (1) and paragraph (2) jo Article 44 of the ITE Law. Which is that electronic evidence has the status of a substitute for letters, stand-alone evidence, and an expansion of clue evidence. As the status of this electronic evidence is not regulated in the provisions regulated by the Criminal Procedure Code, but the regulation is contained in several special legal provisions, such as the principle of *Lex Specialis Derogat Legi Generali* and legal arrangements issued by the Constitutional Court.

Evidence must be interpreted, especially the phrase electronic information and electronic documents as evidence that is carried out as an effort to enforce the law on the basis of requests from the Police, Prosecutor's Office and other law enforcement institutions, obtained in accordance with applicable laws, and guaranteed the integrity and originality of information that can be accounted for its authenticity, accessibility, and display, so that it can explain a situation. So that if one and/or three of these elements are fulfilled, electronic information and electronic documents have a role as evidence, as specified in the provisions of Article 6 jo. Article 31 paragraph (3) of the ITE Law and the Constitutional Court Decision 020/PUU-XIV/2016.

The regulation of Closed Circuit Television (CCTV) as evidence cannot be released in Law Number 11 of 2008 which has now been amended into Law Number 19 of 2016 concerning Information and Electronic Transactions (UU ITE) and the Constitutional Court Decision 020/PUU-XIV/2016. CCTV is a criterion for the definition of electronic information and electronic documents according to the provisions of Article 1 number 1 and number 4 of the ITE Law which are valid evidence in accordance with the applicable procedural law, which in the criminal procedure law can be used as evidence in the investigation, prosecution and trial process in accordance with the provisions of Article 5 paragraph (1), (2) jo Article 44 of the ITE Law. As the status of this electronic evidence is not regulated in the provisions that have been regulated

by the Criminal Procedure Code, but the regulation is contained in several special legal provisions, as reflected in the principle of *Lex Specialis Derogat Legi Generali* and the legal arrangements issued by the Constitutional Court.

2. Validity of Closed Circuit Television (CCTV) Evidence in the Criminal Procedure Code

In the case of proof, of course, there must be someone to prove in the proof process. Proving itself has a purpose is convincing the Judge about the postulates or postulates presented in a dispute.⁸ In the process of proof, of course, there must also be relevant evidence as regulated in the Criminal Procedure Code Article 184 Paragraph (1). The evidence is something (events and so on) that is enough to show the truth of something (events and so on). There are also those who say that evidence has a meaning, that is, information that provides the basis that supports a belief that some part or all of the facts are true.⁹

In Article 183 of the Criminal Procedure Code, it is said that at least 2 (two) pieces of valid evidence are needed for the judge to sentence the crime and obtain confidence whether the criminal act has really occurred and the defendant is the one who has committed the criminal act. In this case, it means that the judge may only impose a criminal sentence on the defendant if 2 (two) valid pieces of evidence are found that can prove that the defendant has committed a criminal offense.¹⁰

In the Criminal Procedure Code Article 184 Paragraph 1 (one) there are 5 (five) pieces of evidence that can be said to be valid. It is also explained in Article 184 Paragraph 2 (two) that is generally known does not need to be proven, which means that if it has been known by the public, it does not need to be proven at the time of trial. So that the things that must be proven are the things listed in Article 184 Paragraph 1 (one) of the Criminal Procedure Code. These types of evidence must be proven to be true because they can play an important role in the evidentiary stage during the trial which can facilitate or enlighten the public prosecutor to determine whether the defendant is guilty or not. The valid evidence listed in Article 184 Paragraph 1 (one) is to prove the material truth of the defendant whether he is guilty or not.

⁸ Bambang Waluyo, **The System of Proof in Indonesia's Judiciary**, Jakarta: Sinar Grafika, 1992, p. 1.

⁹ Eddy O.S. Hiarij, **Theory and Law of Proof**, 1st Edition, Jakarta: Erlangga, 2012), p. 2.

¹⁰ Ali Imron, & Muhamad Iqbal, **Law of Proof**, Unpampres, South Tangerang, 2019, p. 3. Lowered from <https://jdih.go.id/files/414/hukum%20pembuktian.pdf>

For law enforcement officials, it will be easier to prove if the witness can prove or show the guilt of the defendant who has committed the crime of the crime. But on the other hand, if the witness cannot prove or show the guilt that the defendant has committed the crime of the crime, then it will be more difficult for law enforcement officials to trace and prove the material truth. On this occasion that the author obtained,

Other regulations regarding electronic documents according to Article 5 Paragraph 1 (one) and Paragraph 2 (two) of Law Number 11 of 2008 concerning Electronic Information and Transactions are said that electronic information and/or electronic documents and/or printed results are valid legal evidence, which is an extension of valid evidence in accordance with the Procedural Law applicable in Indonesia.

However, in the Constitutional Court Decision 020/PUU-XIV/2016 dated September 7, 2016 following up on the application for judicial review of the Electronic Information and Transaction Law, it is said that in Article 5 Paragraph 1 (one) and Paragraph 2 (two) of Law Number 11 of 2008 concerning Information and Electronic Transactions is contrary to the Constitution of the Republic of Indonesia of 1945 as long as it is not construed, especially the phrase "Electronic Information and/or Electronic Documents" as evidence is carried out in the framework of law enforcement at the request of the police, prosecutor's office, and/or other law enforcement institutions stipulated based on the law as stipulated in Article 31 Paragraph 3 (three) of Law Number 11 of 2008 concerning Information and Electronic Transactions.

Article 5 Paragraphs (1) and (2) of Law Number 11 of 2008 concerning Information and Electronic Transactions. He interpreted that electronic information and electronic documents almost have the same meaning, but the difference is that electronic documents when the electronic information can be used repeatedly. He also gave examples of electronic information such as films, videos, television broadcasts, or broadcasts. When the film, video, television broadcast, or broadcast is stored, electronic information such as movies, videos, television broadcasts, or broadcasts turn into electronic documents. So, the nature of the electronic document is as a documentary or as an archive. According to him, the print result is when the information or electronic document is printed out.

Regarding valid legal evidence, he argued that the legal condition has conditions, namely in accordance with the Constitutional Court Decision Number 20/PUU-XIV/2016 that the evidence must be made by the authorities or indeed from the beginning it was intended to be evidence. Thus, not all

electronic information and/or electronic documents along with their printed results are valid legal evidence.

He also said that electronic information and/or electronic documents along with their printed results are an extension of the procedural law that applies in Indonesia, so that its nature is to complement Article 184 of the Criminal Procedure Code because it is an expansion.

Returning to CCTV, that the installation of CCTV can only be done by authorized agencies regulated by law. So, for example, from the Mirna murder case, the CCTV contained in the Mirna murder case cannot be used as evidence, because the CCTV was obtained before the investigation process, except when the CCTV investigation was only used and moreover that in accordance with the Constitutional Court Decision Number 20/PUU-XIV/2016, there must be a request from the police, prosecutor's office, and/or other law enforcement institutions for the acquisition of the electronic evidence to become a tool valid legal evidence.¹¹

3. Judge's Consideration in the Validity of CCTV as Evidence

In Indonesia, the theory of *proof negatief wettelijk* (the theory of proof based on the law negatively) is that the judge has the obligation to search and find the material truth that the defendant is wrong or not based on the rules of proof set in a limitative manner by law, but it must be followed by the judge's conviction.¹²

Judge's consideration is often associated with the Judge's belief theory, where in the Judge's belief theory there are several types, namely proof based on the judge's conviction alone (*conviction in time*), the judge's belief on logical reasons (*la conviction raisonnee*), proof based on the law positively (*positief wettelijk bewijs theorie*), and proof based on the law negatively (*Negatief wettelijk bewijs theorie*).¹³

In Indonesia, the judge's judgment is greatly influenced by one of the 4 (four) theories of the judge's belief above, namely proof based on the law negatively. The theory of proof based on the Law in a negative way must be based on Article 183 of the Criminal Procedure Code and it is determined that

¹¹ Andi Sofyan and Abd. Asis, *Op.Cit.*, p. 4.

¹² Abdussalam and Dessasfuryanto, **Criminal Justice System**. PTIK. Jakarta, 2012, p. 429

¹³ Ali Imron & Muhamad Iqbal, **Law of Proof**, Unpam Pres, Pamulang, South Jakarta,, 2019, pp. 128-131.

the proof must be based on the Law, namely the evidence stated in Article 184 Paragraph (1) of the Criminal Procedure Code.

With a system like this, criminalization can be said to be a double proof system, namely based on the Law and the Judge's conviction where the judge's conviction must be obtained from the law. The use of the theory of proof based on the Law is negative because basically in accordance with Article 183 of the Criminal Procedure Code, it is stated that the Judge may only impose a criminal sentence if at least 2 (two) valid legal evidence has been found and the Judge can gain confidence that the criminal act has really occurred and the Defendant has committed it.

Indirectly, Article 183 of the Criminal Procedure Code is in accordance with the theory of proof based on the Law negatively. By using the theory of proof based on the Law negatively which is also in accordance with Article 183 of the Criminal Procedure Code, the Judge cannot impose a criminal penalty on the Defendant if he does not obtain at least 2 (two) valid legal evidences

as valid legal evidence is listed in Article 184 (1) of the Criminal Procedure Code. After obtaining at least 2 (two) valid legal evidence, the Judge can only obtain his conviction and declare that a person has committed a criminal act. Thus, the meaning of the Judge's conviction arises not on the basis of the Judge's feelings, but has arisen based on valid legal evidence according to Article 184 (1) of the Criminal Procedure Code.

In the theory of proof based on the Law negatively, there are 2 (two) things that are requirements, namely as follows:

- 1) *Wettelijk* because of the legal evidence and stipulated by law.
- 2) *Negatief*, because with valid evidence and applied by the law alone is not enough to force the criminal judge to assume that the evidence has been given, but the judge's confidence is still needed. Thus, between the evidence and the judge's conviction, there is a causal relationship (cause and effect).¹⁴

If it is related to some of the examples of cases that the researcher has described above, the Judge's consideration to use CCTV as evidence must certainly be in accordance with the theory of proof based on the Law negatively and Article 183 of the Criminal Procedure Code. Where the first condition, namely *wettelijk*, is that there are evidence in the form of witness statements and defendant statements which are part of valid legal evidence in accordance with Article 184 (1) of the Criminal Procedure Code. In addition to

¹⁴ Brahmin, Theory and Law of Proof, Article, downloaded from http://www.pn-lhoksukon.go.id/content/artikel/20170417150853209334910258f4781588e77.html#tabs|Tabs_Group_name:tabAppendix, on March 13, 2022

the acquisition of evidence in the form of witness statements and defendant statements. Witness statements in several examples of these cases also mentioned other evidence, namely in the form of CCTV which was used as a clue to explain the incident at that time in some of these cases. The second condition, which is negative, is a question of the judge's conviction.

The judge must have confidence in the evidence contained in the trial that the evidence explains correctly and that the criminal act has occurred. Moreover, in the use of CCTV in some of these cases, the Judge in considering that the CCTV can be used as evidence, the Judge must adjust the relationship between the CCTV and the witness statement and the defendant's statement. Because, the CCTV is used as evidence as a clue which expands the testimony of witnesses and the defendant's statements in several examples of these cases. Thus, the Judge in considering that CCTV can be used as a valid legal evidence must convince himself that it is true that the CCTV has a relationship between the witness statement and the defendant's statement. If, the Judge has obtained his conviction, the Judge can only decide that a criminal act has actually occurred and the correct Defendant has done it as has been proven through the existing evidence and clarified through the images running in the CCTV.

Thus, the actual evidence lies in the Judge's thoughts. Only the Judge determines whether the evidence of the clue can be used or not. In some of the case examples that the researcher has explained above, that CCTV in this case is used as evidence of clues. However, the Judge basically still considered whether the CCTV was worthy of being used as evidence or not. Thus, the Judge referred back to Article 188 of the Criminal Procedure Code, that the evidence of clues in these cases was CCTV, the Judge linked the CCTV based on the witness statement and the defendant's statement. Because, the Judge felt that the CCTV had a relationship with the facts provided by the witness statement and the defendant's statement and clarified by the moving images on the CCTV, the Judge determined that the CCTV could be used as an extension of the clue evidence in some of the cases above.

So that the Judge's consideration in determining CCTV as evidence must be based on Article 188 of the Criminal Procedure Code. Regarding the CCTV, it must be related to what is stated by Article 188 of the Criminal Procedure Code, then the Judge can consider CCTV as an extension of the instructional evidence used in some of the cases that the Researcher has described above.

So, CCTV in this case is a piece of evidence needed in this day and age that can make it easier to prove whether the criminal act has really occurred or not. Of course, CCTV to be used as evidence must still be guided by Article

188 of the Criminal Procedure Code where CCTV must be obtained or have a relationship with witness statements, letters, or statements of the defendant. CCTV that has this connection can be used as evidence to enlighten or clarify what has been obtained from witness statements, letters, and statements of the defendant.

In such a case, the Judge must also consider CCTV as a means of evidence. The judge must obtain confidence in the CCTV to be used as evidence of valid instructions. The judge must see whether the CCTV is related to witness statements, letters, or statements of the defendant. The judge can determine whether the CCTV can be used as evidence or not. If the CCTV is indeed related to the testimony of witnesses, letters, or statements of the defendant, then the Judge can make the CCTV as valid evidence and the Judge can also gain confidence that the criminal act has actually occurred which is certainly strengthened because of the existence of CCTV that clarifies the event.

4. Validity of Law Enforcement of Electronic Ticket Enforcement Against Traffic Violators

E-TLE uses CCTV-based cameras that operate for 24 hours. The types of violations that can be detected are Violations of road markings and signs, Violation of speed limits, Lane errors, Excess carrying capacity and dimensions, Breaking through red lights, Going against the flow, Driving at a speed exceeding the limit, Not using a helmet, Not using a seat belt, Using a mobile phone while driving. The implementation of E-TLE uses CCTV to monitor the condition of the road where the electronic ticket is enforced. The law of electronic ticketing can be seen in Law Number 22 of 2009 concerning Road Traffic and Transportation (UULLAJ). In article 272 of the LLAJ Law, it is stated that "to support activities to enforce violations in the field of Traffic and Road Transportation, electronic equipment can be used.

The implementation of E-Tilang is an effective option to achieve the target in the implementation of tickets against traffic violators, even though it is still in the trial stage. ETLE as a law enforcement system in the field of traffic that is quite effective, is based on electronic technology in the form of ANPR (*Automatic Number Plate Recognition*) cameras.

ANPR cameras can automatically detect Motor Vehicle Number Plates, record and store evidence of violations. Vehicles caught by ANPR cameras are immediately recorded on the Regional *Traffic Management Center* (RTMC) operator's server. The data is directly processed by the officers. In accordance with the ITE Law, CCTV footage is a valid piece of evidence, so it can be used as

evidence. Through CCTV cameras, traffic violators will be detected and get a confirmation letter sent to the registered address according to the vehicle used.

The mechanism for implementing the *Electromagnetic Traffic Law Enforcement* Ticket system is as follows: Violations are recorded by CCTV cameras, then managed by officers, checking the identity of Ranmordi in the RC database, making confirmation and verification letters. The officer sends or delivers the letter to the ranmor address listed.

After confirmation, the officer took action against the ticket and gave a ticket letter to the violator to immediately pay the ticket fine. Violators are given 5 days to confirm, violators get a blue ticket letter and a Virtual BRI Code for E-TLE payments, violators are given 7 days to pay ticket fines.

If you do not confirm after the letter is given. Blocking on vehicle papers will be carried out, so that the owner cannot pay taxes and change his identity. Furthermore, the officer will give a ticket to the violator by sending the Brivia E-Tilang code through the mobile phone number listed in the confirmation letter.

A blue ticket will also be sent to violators. RTMC officers will check the ticket sheet and check the Brivia code whether the ticket fine payment has been received or not by the violator. Violators can pay ticket fines through ATMs. After the payment is made, the violator can resume his activities.

The number of violations that occur must of course be addressed quickly and find solutions on how the implementation of the Electronic Traffic Law Enforcement system can be carried out effectively. Because this system has advantages such as:

- 1) The results of this CCTV recording can be used as evidence in the event of an accident or disaster on the highway that can be recorded on CCTV, helping the performance of the police. It can reduce fraud, between the police and motorists who are caught violating traffic violations;
- 2) The number of violations that occur must of course be addressed quickly and find solutions on how the implementation of the Electronic Traffic Law Enforcement system can be carried out effectively.

When viewed from the perspective of Criminal Law, based on the provisions of Article 359 of the Criminal Code which reads: "Whoever because of his fault (negligence) causes another person to die is threatened with imprisonment for a maximum of five years or imprisonment for a maximum of one year." With the following elements:

- 1) Element of anyone who is a person or subject of law who commits a criminal act and that person can be held accountable for his actions before the law that has been regulated in laws and regulations;
- 2) Negligence in the Criminal Code (KUHP) is also called mistake, lack of caution, and forgetfulness in Article 359 of the Criminal Code which states: "Whoever because of his fault (negligence) causes the death of another person is threatened with imprisonment for a maximum of five years or imprisonment for a maximum of one year.

There is no mention of what the definition of negligence is, only it is explained that the negligence (*culpa*) lies between coincidence and intentionality. *Culpa* is seen as lighter than intentional. According to Hazewinkel-Suringa, *culpa* is a pseudo-offense so that there is a reduction in the penalty. The various elements of negligence that cause accidents include:

- 1) Negligence due to human factors, for example drivers who use mobile phones, tired and drowsy body condition, driving vehicles in an unconscious or drunken state, lack of understanding of traffic signs. A person can be held criminally accountable in front of the court, it must be determined that the perpetrator of the crime committed the mistake intentionally (*dolus*) or negligence (*culpa*).
- 2) Negligence due to vehicle factors, this often occurs traffic accidents are vehicle brakes that do not function normally, tire conditions that are not good, and lighting. Several factors that cause vehicles to experience traffic accidents such as vehicles with modifications that do not meet the standards, brakes that do not function properly, tire conditions that are no longer suitable, load limits that exceed the vehicle transport limit in general that have been set.

This element is due to his negligence or forgetfulness causing the loss of another person's life, so this element is to see the relationship between the action that occurs and the consequences caused so that this formulation is an absolute requirement in this delicacy is the effect. According to Adami Chazawi, it is stated that: "Causing the death of another person is no different from the element of taking another person's life from murder in Article 338 of the Criminal Code. The difference lies in the element of guilt in murder is intentionality (*dolus*) while guilt is in the form of lack of caution or negligence (*culpa*)."

C. CONCLUSION

The validity and legal force of CCTV evidence in the Enforcement of Electronic Tickets based on Article 5 Paragraph 1 (and Paragraph 2 of Law Number 11 of 2008 concerning Information and Electronic Transactions) is

explained that electronic information and/or electronic documents and/or printed results are valid legal evidence, where it is an extension of valid evidence in accordance with the Procedural Law applicable in Indonesia. However, based on the Constitutional Court Decision 020/PUU-XIV/2016, it is explained that electronic evidence becomes valid if it meets several requirements, one of which is that it must be made by the authorities or indeed from the beginning it was intended to be evidence.

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