

August 29th 2018



THE 4th INTERNATIONAL AND CALL FOR PAPER

Legal Construction and Development in Comparative Study
The Role of Indigenous and Global Community in Constructing National Law



IMAM AS SYAFEI BUILDING
Faculty of Law, Sultan Agung Islamic University
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

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THE 4th INTERNATIONAL AND CALL FOR PAPERS

"Legal Construction and Development In Comparative Study"
The Role of Indigenous and Global Community in Constructing National Law

29-30 August 2018

IMAM AS SYAFEI BUILDING
Faculty of Law, Sultan Agung Islamic University
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

INVITED SPEAKERS :

1. Prof. Henning Glaser
Thammasat University, Thailand
2. Dr. Hilaire Tegnau, LL.M.
Faculty of Law, Sorbonne University
3. Prof. Shimada Yuzuru
Nagoya University, Japan
4. Prof. Dr. Topo Santoso, S.H., M.H.
Indonesia University (UI), Indonesia
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Sultan Agung Islamic University
Jl. Raya Kaligawe, KM. 4
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AND CALL FOR PAPER**

“Legal Construction and Development in Comparative study (The Role of Indigenous and Global Community in Constructing National Law)”

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PREFACE

Assalamu'alaikum, Wr. Wb

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: **Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, HilaireTegnan, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.**

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

See you in our fifth International and call for paper next year.

Wassalamualaikum, Wr. Wb

Semarang, August 31th 2018

Chairman of the Committee,



Dr. Anis Mashdurohatun, S.H., M.Hum
NIDN : 06-02105-7002

GREETING FROM THE DEAN OF FACULTY OF LAW

As-salamu'alaikum Wr. Wb.

Thank to Allah is an absolute act that we must say after conducting the International Conference and Call for Paper by theme : “Legal Construction and Development in Comparative study (The Role of Indigenous and Global Community in Constructing National Law)” which was held by Faculty of Law Sultan Agung Islamic University (UNISSULA) Semarang, on August 29th 2018.

This conference tried to reviews different theories of legal development focusing on The Role of Indigenous and Global Community in Constructing National Law in order to highlight their similarities and differences. In the field of law, the substance of the discussion does not lie in 'whether the law is traditional because of the heritage of the past or not', but on the meaning of justice contained in the law. Often in discussing legal matters, we are caught up in the understanding of law in a procedural sense, not a law in a substantive sense-that satisfies the sense of justice. So it is not realized, there is a reduction of the meaning of the law substantively (which meets the sense of justice) becomes law procedurally. Especially when human life enters the era of globalization characterized by modern, as well as loaded with contemporary challenges and issues.

Globalization, in general people understand it is a process in the life of mankind to a society that covers the whole globe. This process is possible and facilitated by advances in technology, especially communication and transportation technology. Such understanding is not much different from the understanding of globalization as a process that refers to "a single interdependent world in which capital, technology, people, ideas, and cultural influences flow across borders". With such understanding, we are gradually going to live in a one world where individuals, groups and nations become more interdependent. In the global human society there will be patterns of social relationships that are different from before. And that too is a portrait of social life not found before.

Therefore, to discuss more about legal construction and development, Faculty of Law, Sultan Agung Islamic University was confidence to conduct a conference by the theme “Legal Construction and Development in Comparative study (The Role of Indigenous and Global Community in Constructing National Law)” focusing on the development of law in both developed and developing countries and its role in shaping a good future.

Finally, we thank to the presenters, article senders, and comittee who had contributed in this event, so that this international seminar ran well.

Wassalamu'alaikum Wr. Wb.

Semarang, August 31th 2018

Dean,

A handwritten signature in black ink, consisting of a long horizontal stroke with a small upward tick at the end, and a shorter horizontal stroke below it.

Prof. Dr. Gunarto, SH, SE, Akt, M.Hum
NIDN.062004670

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THE VERIFICATION OF *CLOSE CIRCUIT TELEVISION (CCTV)* STANDING IN INDONESIA POSITIVE LAW PERSPECTIVE AND ISLAMIC VALUES

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ABSTRACT

The purpose of this study was to strengthen the verification of Closed Circuit Television (CCTV) as an evidence in the court process in Indonesia. Considering that CCTV is always used as an evidence. One of the courts to the case of criminal theft in District Court of Semarang states that CCTV is a supporting evidence through a decision of No.176/Pid.B/2016/PN.Smg. However, The article 5 Section (1) and (2) UU No. 11 Year 2008 *jo* UU No. 19 Year 2016 about Information and Electronic Transaction *Jo* Constitutional Court Decision No. 20/PUU-XIV/2016 7th of September 2016 regulates that electronic information and electronic documents are valid evidence and as an expansion of valid evidence based on the applicable procedural law in Indonesia. However, there is a gap in criminal code procedures (KUHP) that haven't set it yet. The article 184 section (1) KUHP only mentions 5 criminal evidences such as witness information, expert information. Letter, instruction, and defendant information. Therefore, the research used normative juridical method stated the importance of CCTV role in proving a crime by optimizing the latest technology. This research used Islamic values as "Knife Analysis" which puts forward the principle of legality, the presumption of innocence and the prohibition of moving errors to others.

Keywords: *Verification, Standing, Closed Circuit Television (CCTV), Technology, Islamic Values*

Introduction

Related to the law protection efforts and realizing justice in the community, then law institutions need to be equipped with the aspects of verification in the criminal justice process. Especially in globalization era which marked by technology advances. The use of technology is very appropriate in the process of verification, it needs to be anticipated by law institution and law enforcement.

Related to the law protection efforts in the community, it cannot be separated from the evidence in the criminal justice system. The verification is the most decisive stage in the

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court. Considering that, at the stage of verification it will be determined whether or not a defendant committed a criminal act charged by the public prosecutor.

According to M.YahyaHarahap the verification is a provision that contains inheritance and guidelines on ways that are justified by laws proving the mistake that was charged to the defendant. The verification is also a provision that regulates evidence that is justified by law and may be used by a judge to verify the indicted.³

The verification is a part of criminal procedural law that regulates various types of legal evidence that are regulated in Article 184 section (1) criminal code procedures (KUHAP) The legal evidences are:

1. Witness information
2. Expert information
3. Letter
4. Instruction
5. Defendant information⁴

Whereas the aspect of criminal responsibility implies the denunciation of the author (law subject) for the crime committed. Therefore, the criminal responsibility contains of objective and subjective denunciation/ responsibility. It means, objectively someone who has committed a crime according to the applicable law (legality principle) and subjectively someone deserves to be criticized or blamed / accounted for the crime he committed (principle culpability / error) so he deserves to be punished.⁵

In connection with aspects of criminal verification, the cases that occur in contact with information and telecommunications technology, especially involving of video recorder, CCTV camerait has begun to be widely discussed in the community. So that, the user in revealing crime or as a supporting facility in verifying a criminal act will be faced with its validity as evidence which will collide with the existing of law instruments, considering that the verification in criminal cases used CCTV as an evidence

Based on the explanation above, the researcher intends to study more deeply about the strength and legality of the CCTV camera evidence into the study with the title, ” **The Verification of Close Circuit Television (CCTV) Standing in Indonesia Positive Law Perspective And Islamic Values**”.

³ M. Yahya Harahap , 2003, *Pembahasan Permasalahan dan Penerapan KUHAP*, Sinar Grafika, Jakarta, page 273

⁴ Article 184 Section (1) KUHAP.

⁵ Barda Nawawi Arief, 2006, *Tindak Pidana Mayantara Perkembangan Kajian Cyber Crime di Indonesia*, Rajawali Pers, Jakarta, p.101-102.

Research Questions

1. How is the criminal evidence set in the positive criminal law currently?
2. How is the standing of Closed Circuit Television (CCTV) in verifying crime?
3. What are the obstacles faced in verifying crime by using Closed Circuit Television (CCTV)?
4. What is the reconstruction of CCTV recording evidence in verifying criminal acts based on technology and Islamic Values?

Research Method

The method approach in this study used a normative juridical approach. In normative law research several approaches are used such as *statute approach*, *conceptual approach* and *comparative approach*.⁶

The researcher used primary, secondary and tertiary legal materials. To understand the problems in this study the researcher used Qualitative Data Processing Methods.⁷

The Data obtained from *library research* and analyzed juridical qualitatively. Then, the data is processed, sought linkages and connected between one another. So that, the results are obtained with the expected goals appropriately.⁸

Result Analysis and Discussion

1. Criminal Evidence in the Current Positive Criminal Law

The verification plays an important role in investigating court session process. Therefore, the judge must be careful, accurate, and mature in assessing and considering the value of the verification in a court case. The verification about the defendant committed the act that was charged or not is the most important part of the criminal program. A truth must be tested by evidence with verification power contained in every evidence which found. If it is not in accordance with the procedure, the guilty person is not punished and the innocent person is punished. Therefore the criminal procedural law aims to seek material truth. The evidence is a provision that contains inheritance and guidelines on ways that are justified by laws proving the mistake that was charged to the defendant. The verification is also a provision that regulates evidence that is justified by law and may be used by a judge to verify the indicted.

⁶ Johnny Ibrahim, 2005, *Teori dan Metodologi Penelitian Hukum Normatif*, Bayumedia Publishing, Surabaya, p. 444.

⁷ Soerjono Soekanto, 1986, *Pengantar Penelitian Hukum*, Cet. 3, UI-Press, Jakarta, p. 132.

⁸ Burhan Ashshofa, 1996, *Metode Penelitian Hukum*, PT. Rineka Cipta, Jakarta, p. 20.

The verification is a central point in the investigation of cases in court session. The verification is also a certainty that regulates the evidence that is justified by the laws that may be used by a judge to verify the guilt that was charged.⁹

2. The standing of CCTV in verifying of crime

In connection with the rapid advancement of science and technology in the field of telecommunications, informations and computers has resulted in convergence in its application. Many people use digital technology tools, including interacting with each other. Including the use of electronic documents is a common thing today. Therefore, the use of electronic documents has become a demand as one of the digital forensics at present, especially in terms of crime evidence.

The standing of CCTV in criminal law in Indonesia that arranged in UU No. 11 year 2008 *jo* UU No. 19 year 2016 about Information and Electronic Transaction *Jo* Constitutional Court Decision No. 20/PUU-XIV/2016 7th of September 2016. CCTV is categorized as electronic information and electronic documents as referred in Article 1 section 1 and 4 UU ITE and is a valid evidence in the applicable procedural law. Thus, in criminal procedural law can be used as evidence in the investigation, prosecution and court that arranged in Article 5 section (1) and (2) also in article 44 UU ITE.

The literature study about the decision of District Court of Semarang No. 176/Pid.B/2016/PN.Smg about theft. Based on the result research which conducted and one of the supporting evidences provided by the judiciary to expose the crime of theft by using CCTV camera.

In this case it was revealed that the theft of crime was reinforced by witness information and other evidence in the form of stolen goods. CCTV provides a clear and detailed description of the occurrence of a crime at the scene of the crime, where the witness's information is not clear enough to see the defendant is committing a crime.

According to the article 6 laws of Indonesia Republic Number 19 Year 2016 about the changes of Laws Number 11 Year 2008 about Information and Electronic Transactions state that information must be written or original. Electronic Information and / or Electronic Documents are considered valid as long as the information contained can be accessed, displayed, guaranteed their integrity, and can be accounted so it can explain its situation.

The purpose of Criminal Procedure Law according to the Guidelines for implementation of the Criminal Code Procedures (KUHAP) issued by the Minister of Justice is to seek and to

⁹ Yahya Harahap, 2012, *Pembahasan, Permasalahan, dan Penerapan KUHAP, Pemeriksaan Sidang Pengadilan, Banding, Kasasi, dan Peninjauan Kembali*, Edisi Kedua, Sinar Grafika, Jakarta, p. 273

obtain to the truth material. In addition, the complete truth of a criminal case by applying the provisions of criminal procedural law honestly and appropriately in order to find out who the defendant can be charged with committing a violation of law and then requesting an examination and decision. Therefore, there are the advantages of Camera CCTV:

- a) *Deterrence*: The criminals often discourage if targets have CCTV camera
- b) *Monitoring*: CCTV system is useful for monitoring the situation and activities at home / office wherever you are.
- c) *Intensify*: With the existence of a CCTV system proven to significantly improve employee performance.
- d) *Investigation*: CCTV systems are useful to support the investigation of crimes that have occurred.
- e) *Evidence*: CCTV recording can be used as evidence of Criminal, but the use of CCTV recording cannot stand alone in evidence, it must be supported by other evidence in the evidence at the Court.¹⁰

3. The Constraint That Faced in Verifying Crime by Using CCTV as Evidence

a. Legal Constraints

The data in CCTV must be in a "status quo" state, which is to let the current state as before. In other words, it is still in its original state. The purpose of the "status quo" principle is to ensure that CCTV recording data results from no crime or avoid editing. If the investigator is able to maintain the "status quo" until a criminal offense is decided in court or when a case is declared complete, the new investigator can open the contents of the CCTV recorded data to the public, who previously will not open the data to the public in order to maintain confidentiality and authenticity of CCTV recording evidence. Because, if the publication of data from CCTV recording is carried out when the legal process takes place it is feared that the originality is doubtful.

This requirement is very important for investigators in collecting evidence that a crime has taken place. If it is related to the element of evidence according to Adami Chazawi:

- a) The first element, the existence of actions, events, corresponding circumstances
- b) The second element, there are 2 (two) conformations, are: Matching between each act, event and circumstance with one another, as well as correspondence between actions, events, and / or circumstances with the crime being charged

¹⁰ http://id.wikipedia.org/wiki/Telepon_genggam

- c) The third element, with such correspondence indicating (being a sign) or showing the existence of 2 (two) things, is: First, showing that a crime has actually taken place, and second, showing who the author is.¹¹

If viewed from these three elements, the requirements of the "status quo" required by the Court Council of the District Court of Semarang lead to an element of evidence. According to the researcher, the "status quo" is used in fulfilling the second element of evidence of the need for conformity between each act, event and circumstance with one another or circumstances with the criminal offense being charged. The data from CCTV recording must be in its original state in order to be seen that the criminal act can be proven by the results of CCTV recording. CCTV was obtained from a neutral party, that the surrender of CCTV evidence was not required to have a connection between the CCTV providers and the perpetrators, as well as the victims.

CCTV recording obtained from a neutral party is believed to be protected from video engineering made by the perpetrators of crime or victims. Data from CCTV recording obtained may not be from the offender or victim, because the investigators fear there has been engineering. This engineering can be presumed by an offense complaint by the aggrieved party. Complaint complaints or complaints according to Article 1 Number 25 of the Criminal Code Procedures is a notification accompanied by a request by an interested party to an official authorized to act according to the law of a person who has committed a criminal complaint that is detrimental to him. Complaints if complaints are filed by the victim can make video engineering aimed at overthrowing the opposing party who is in fact the opponent does not commit a criminal act. Usually this kind of motive is based on a feeling of dislike or hatred towards others. Those who act as victims want to make their opponents subject to criminal sanctions.

According to Moeljatno, the occurrence of acts / criminal acts must be fulfilled by elements:

- a) The existence of (human) criminal acts.
- b) Who fulfills the formulation in the law (this is a formal requirement, related to the coming into effect of Article 1 (1) of the Criminal Code)
- c) Are unlawful (this is a material requirement, related to the following of the teachings of nature against the material law in its negative function).¹²

¹¹Adami Chazawi, 2011, *Hukum Pembuktian Tindak Pidana Korupsi*, Bayumedia Publishing. Malang, p. 49-50.

¹²Tongat, 2012, *Dasar-Dasar Hukum Pidana Indonesia dalam Perspektif Pembaharuan*, UMM Pers, Malang, p. 96-97.

In connection with this, the legal constraints that can be faced are, the time interval for submitting CCTV data with the time of occurrence of a crime cannot be too long, the time period for delivering CCTV data is the time when CCTV data falls into the hands of Investigators that must be as soon as possible or close to the time of occurrence criminal act. If the CCTV data submission is long feared there will be changes to the CCTV data that are no longer "status quo". It is considered long if a criminal act has been known to the public before the investigator receives the CCTV evidence. The spread of the wider community in this case involves publication through mass media, online, or television news. So that the CCTV has fallen into the hands of the media that became publications. As well as the need for the use of technology has not been included in the Criminal Procedure Code so that the use of technology (CCTV) as a legitimate evidence because so far the use of CCTV and other technological tools only become supporters of valid evidence (Witness Information, Expert Information, Letters, Instructions and Explanation of the Defendant).

b) Non-Legal Constraints

The problem that becomes a problem is if the CCTV recording has undergone editing. Editing here what is meant is that it can be in the form of a reduction or addition to the data resulting from CCTV recording carried out by the perpetrators of the crime and the victim. This video editing is an easy thing to do, considering that there are currently many video editing providers. Editing carried out by the perpetrator of a crime can usually be in the form of omission or similarity in the characteristics of the perpetrator with him. Thus the perpetrator can avoid lawsuits.

In connection with that, the images from CCTV footage are not clear, Closed Circuit Television (CCTV) was created with different quality according to price, brand, and type of each. The quality of a CCTV camera is not only affected by the CCTV camera it self. But it can be caused by other factors from outside, such as the location of the CCTV camera installation is right to monitor the object or not, and is caused by the quality of the incoming lighting into the recorded object.

In connection with that, the obstacles that are usually faced also in the use of CCTV recordings, according to AndiHamzah¹³, CCTV is not recording in full. In the sense that the results of the CCTV recording do not fully record the full occurrence of the crime at the time the incident took place. Things like this can be caused by factors outside and from the CCTV

¹³AndiHamzah. 1996. *HukumPidana Yang BerkaitanDenganKomputer (edisi ke-2)*. Jakarta. SinarGrafika. p. 70

itself. External factors can be caused by actors who damage the CCTV connection, can be turning off the electricity connection or damaging the CCTV camera that is recording a crime. Disconnection of electricity can also occur suddenly outside the actions of the perpetrator of the crime, but because of a power cut from the center of the State Electricity Company (PLN). Factors in CCTV can be caused by CCTV storage memory or called a limited / full DVR so that the recording is not fully stored, but also the full CCTV storage capacity will automatically delete all previous video data and will re-do the recording for the next periodically.

4. Reconstruction of CCTV Recording as Evidence in Verifying Technology-Based Crime and Islamic Values

The verification according to the Arabic language comes from the word "al-bayyinah" which means something that explains¹⁴. Etymologically means information, which is everything that can explain rights. In technical terms, means evidence in court. Fiqh Ulama discussed evidence in court issues with all the tools. In the fiqh, the evidence is also called *at-turuq al-isbat*.¹⁵

Al-bayyinah is defined by fiqh Ulama according to its etymological understanding. Jumhur Ulama Fiqh interpreted al-bayyinah narrowly, that is the same as testimony. However, according to Ibn al-Qayyim al-Jauziyah, the figure of fiqh of Hanbali Mazhab, al-bayyinah contains a broader understanding from the definition of the Ulama of jumhur. According to Ibn al-Qayyim al-Jauziyah, the testimony is only one type of al-bayyinah which can be used to support one's indictment. Al-bayyinah is defined by Ibn al-Qayyim al-Jauziyah as everything that can be used to explain the right in front of the court council, both in the form of information, witnesses, and various indications that can be used as guidelines by the court council to give back rights to the owner.¹⁶

Terminologically, the verification means giving information with the argument to be convincing. Some Indonesian law experts provide a variety of notions of verification. Prof. Dr. Supomo in his book of civil procedure law of district court explained that the verification has broad meaning and limited meaning. In a broad meaning, the verification means strengthening conclusions with the requirements of valid evidence,

¹⁴ Sulaikhan Lubis, 2005, *Hukum Acara Perdata Peradilan Agama di Indonesia*, Jakarta: Kencana Prenada Media Group, p. 135

¹⁵ Abdul Aziz Dahlan, 1996, *Ensiklopedi Hukum Islam*, Jakarta: Ichtiar Baru Van Hoeve, p. 207.

¹⁶ *Ibid*

whereas in a limited meaning the verification is only needed if the plaintiff is denied by the defendant.¹⁷

In Islamic law, Judge's conviction has several levels. The judge's conviction there are:

1. *Yaqiin* : The judge is absolutely sure (proven 100%).
2. *Zhaan* : strong suspicion, more inclined to justify the existence of evidence (proven 75-99%)¹⁸. *Zhaan* cannot be used to determine what a challenge for what is believed. Moreover, if *zhaan* is real, it's also wrong. In the book *al-Asybah wan Nadhair*, written by As-Suyuti and IbnNujaim there is a rule, namely:
The meaning is "It's legal to be the hand of zhaan that obviously wrong".¹⁹
it has been talked if *zhaan* becomes one of the strong *zhaan* categories, *zhaan* can replace conviction if conviction is difficult to obtain..²⁰
3. *Syubhat* : doubtful (proven 50%)
4. *Waham* : sanction more absence of evidence than evidence (proven < 50%) then the evidence is weak.

A verification is expected to provide a judge's conviction at a convincing level (proven 100%) and avoid giving a decision if there is a condition of *syubhat* or lower. This is because in making decision based on *syubhat* conditions it can allow fraud. Our Prophet Muhammad SAW forbids and recommends to leave *syubhat* case.²¹

According to Ibn al-Qayyim al-Jauziyah in Alquran or Sunnah there is no explanation states that *al-bayyinah* is specifically for testimony. Alquran and Sunnah only explain that *al-bayyinah* is argumentation, a proof, and a statement that can be used as an excuse.

According to UlamaFiqh, in a dispute in front of the court council the plaintiff must present evidence that can support his claim or the judge is obliged to request evidence from the plaintiff so that the judge can examine the disputed issue and establish the law fairly in accordance with convincing evidence. If a claim is not followed by convincing evidence, the claim cannot be accepted. Thus, in deciding a case, the judge is bound by the evidence submitted by the plaintiff. If the evidence submitted by the plaintiff is convincing and the

¹⁷Sulaikhan Lubis, *Hukum Acara Perdata Peradilan Agama di Indonesia*, p. 136

¹⁸*Ibid*, p 136

¹⁹Tengku Muhammad Hasbi Ash Shiddieqy, 1997, *Peradilan dan Hukum Acara Islam*, Semarang: PT. Pustaka Rizki Putra, p. 130.

²⁰*Ibid*.

²¹Sulaikhan Lubis, 2005, *Hukum Acara Perdata Peradilan Agama di Indonesia*, Kencana Prenada Media Group, Jakarta, p. 136.

defendant cannot refute or weaken the evidence, the judge will decide the case according to the available evidence.²²

The differences of opinion arise among Fiqh Ulama in the problem of false evidence, while the false cannot be proven in the court. Jumhur of Ulama Fiqh including Imam Abu Yusuf and Muhammad bin Hasanasy-Syaibani, both are the magnate of Hanbali Madzhab argued that the judge was only responsible for deciding cases according to the evidence presented to him. If the evidence is false, the judge is not responsible for forgery as long as it cannot be proven in front of court council, and if the evidence that submitted by the plaintiff is false, then the plaintiff is responsible physically (religion) to Allah SWT. This is in accordance with the rules of fiqh which states that "We only punish according to the zahir (the available information), while the hidden problem becomes the matter of Allah." In this case, if the evidence that submitted is false and it cannot be proven in front of the court council so the judge decides the case then, the one who wins the case is responsible to Allah SWT. Jumhur of Ulama Fiqh states that the judge is not responsible for any hidden matters.²³

Unlike the opinion of Imam Abu Hanifah, in his opinion even though the evidence used is false, the sentence decided by the judge applies physically and mentally. However, the plaintiff won must be responsible to Allah SWT for the forgery of the evidence. However, according to him, a judge's decision can only be applied physically and mentally if it fulfills the following two conditions:

1. The judge may not know the falsity of evidence.
2. The disputed object can be submitted physically and mentally to the plaintiff.²⁴

Islamic values that are universal in recognizing Islamic criminal law have 3 principles, legality principle (QS. Al Isra':15 and Al An'am: 19); The Principle of Prohibition of Moving Errors to Others (QS. Al-An'am: 64, Faathir: 18, Az-Zumar:7; An-Najm: 38, and Al-Mudatsir: 38; the Principle of Presumption of innocence. In accordance with the principle of the prohibition of moving mistakes to others. The principle of presumption of innocence is the underlying principle that a person accused of a crime must be presumed innocent before a judge with convincing evidence expresses his guilt..²⁵

The thing that is always in social relations is "change", including the influence of the development of science and technology. Thus law / criminal science is the science of

²²*Ibid*

²³*Ibid*

²⁴*Ibid.*

²⁵ Hukum Pidana Islam, access <https://iraaliamaerani.wordpress.com>

change.²⁶In the effort to develop national law, especially related to evidence of criminal law which is considered not to follow the development of technology and values that exist in Indonesian society, then it needs for reconstruction in that direction.

The reconstruction effort of criminal evidence in the form of CCTV which is originally not included in the legal evidence according to Article 184 section (1) criminal code procedures (KUHAP) it seems that it needs to be accommodated in the RUU Criminal code Procedures (KUHAP). Although, the article 5 Section (1) and (2) UU No. 11 Year 2008 *jo* UU No. 19 Year 2016 about Information and Electronic Transaction *Jo* Constitutional Court Decision No. 20/PUU-XIV/2016 7th of September 2016 states that electronic documents are valid evidence. However, it needs to be strengthened in the upcoming criminal procedure law which is regulated in RUU Criminal Code Procedures. So, as to provide conviction and legal certainty for the police, judiciary and judges in investigating, prosecuting and deciding cases in court. Accommodating the development of technology in the process of criminal evidence would be a positive thing for the development of criminal law in Indonesia. Especially in terms of criminal procedural law.

Conclusion

The provisions of the criminal procedure governing the evidence are regulated in Article 184 section (1) *Criminal Code Procedure* consisting of: witness testimony, expert testimony, letter, instruction, and the defendant information.

The position of CCTV as an electronic document is a legitimate evidence set in Article 5 Section (1) and (2) UU No. 11 Year 2008 *jo* UU No. 19 Year 2016 about Information and Electronic Transaction *Jo* Constitutional Court Decision No. 20/PUU-XIV/2016 7th of September 2016. The Constraints faced by CCTV as evidence consist of juridical and non-juridical constraints.

The reconstruction of CCTV evidence or electronic documents in proving criminal acts based on technology and Islamic values that need to be affirmed in the legislation product. So as to provide legal confidence and certainty for law enforcement officers in providing justice in the community. Where the principle of legality is fulfilled, the principle of presumption of innocence, and the principle of prohibition of transferring errors to others.

²⁶ Ira Alia Maerani, 2017, *Rekonstruksi Kebijakan Hukum Pelaksanaan Pidana Mati Berbasis Nilai-Nilai Pancasila*, Disertasi, Program Doktor Ilmu Hukum, Universitas Islam Sultan Agung, Semarang, hlm. 47.

Suggestion

Legal products are expected to provide protection and justice to the public by paying attention to the values (read: Islamic values) that develop in the community while keeping abreast of the dynamics of globalization that are synonymous with advances in technology.

In order to provide legal confidence and certainty for law enforcement officers, electronic documents, including Closed Circuit Television (CCTV), need to be reconstructed, included as valid evidence in the Criminal Code Procedures (KUHP).

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Dokumentasi



