

**THE USE OF CCTV RECORDINGS AS ELECTRONIC EVIDENCE IN MURDER CASES IN
THE COURT PROCESS (CASE STUDY OF CASE NUMBER
777/PID.B/2016/PN.JKT.JUNCTO APPEAL DECISION NUMBER 393/PID/2016/PT.DKI
JUNCTO CASSATION DECISION NUMBER 498/K/PID/2018 JUNCTO PK DECISION
NUMBER 69 PK/PID/2018)**

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Abstract

The use of CCTV recordings as electronic evidence in criminal murder cases, the conclusions of which are as follows: First, that the regulation of the use of CCTV (*Closed Circuit Television*) recordings, which are electronic evidence, as circumstantial evidence in criminal law enforcement, as stipulated in Law Number 8 of 1981 concerning Criminal Procedure Law (KUHP) Article 188 paragraph (1), where circumstantial evidence is an act, event or circumstance which, due to its consistency, either between one another or with the criminal act itself, indicates that a criminal act has occurred and who the perpetrator is. However, because evidence can only be obtained from witness statements, letters, and statements from the accused, the Indonesian Criminal Justice System adheres to the *stelsel negatief wettelijk*, whereby only evidence that is valid according to the law can be used for proof. This means that outside of these provisions, CCTV (*Closed Circuit Television*) cannot be used as valid evidence in such cases. Second, that in terms of legal interpretation, CCTV (*Closed Circuit Television*) recordings, which are electronic evidence, are circumstantial evidence in Case Number 777/Pid.B/2016/Pn.Jkt.Pst *Juncto* Appeal Decision Number 393/PID/2016/PT.DKI *Juncto* Cassation Decision Number 498/K/Pid/ 2018 *Juncto* PK Decision Number 69 PK/Pid/2018, because the CCTV (*Closed Circuit Television*) was not taken directly by the investigator, but by an unauthorised person, witness Dermawan Salihin, who went directly to Olivier Restaurant and took the CCTV USB (*Closed Circuit Television*), which was then seized by the police, the electronic evidence was not obtained lawfully. Furthermore, in criminal cases, because the Indonesian criminal procedural law system adopts the *Stelsel negatief wettelijk* system, where only evidence that is lawful according to the law can be used for proof, and the collection of evidence must be done lawfully, then because during the trial process, information was obtained from witnesses presented in the criminal case that the CCTV footage was taken by someone who was not authorised to do so, it can be legally interpreted that the CCTV footage cannot be used as evidence or as circumstantial evidence.

Keywords: Use of CCTV Footage, Electronic Evidence, Criminal Murder Case, Judicial Process, Case Study Number 777/PID.B/2016/PN.JKT.PST *Juncto*, Appeal Decision Number 393/PID/2016/PT.DKI, *Juncto* Cassation Decision Number 498/K/PID/2018, *Juncto* Pk Decision Number 69 PK/PID/2018).

Introduction

Crime has long been known in the history of human civilisation. So it is not surprising that there is a perception that crime is as old as humanity itself. One of the first forms of crime to occur was murder (JE. Sahetapy, 1987). Therefore, murder has long been considered an act that is not in accordance with the morality of God Almighty, so that taking a life has become a prohibited act to this day.

Historically, Hammurabi also established criminal law policies, such as 'whoever commits a crime must be punished accordingly.' The essence of Hammurabi's law is 'retribution,' for example, an eye for an eye, a tooth for a tooth. The application of this law was very harsh (Timbo Mangaranap Sirait, 2021). Through these historical events, those who hold irrational natural law beliefs strongly defend that the source of law is 'morality' rather than 'fact', morality that stems from their belief in God, while those who hold rational natural law beliefs believe that morality stems from human beings themselves. These morals are then bound and codified into law, and manifest themselves in all branches of law. These manifestos are found, among others, in criminal law, where moral values such as 'do not kill' in religious moral principles are then made into formal and material offences, and equipped with sanctions, so that they are obeyed and complied with by everyone (Timbo Mangaranap Sirait, 2017).

Therefore, in the Criminal Code (*Wetboek van Strafrecht*) which currently applies as substantive criminal law, murder has been normalised and classified as a crime against life, which is specifically regulated in Chapter XIX of the Criminal Code, consisting of 13 articles, namely Articles 338 to 350. and to enforce the substantive law related to murder, the procedures for its enforcement have been regulated, including regulating the evidence that can be used to prove a criminal act in the form of formal criminal law through Law Number 8 of 1981 concerning Criminal Procedure Law (KUHP).

Various forms of criminal acts of 'crimes against life' include criminal acts of "intentionally taking the life of another person, which is punishable by a maximum imprisonment of fifteen years (Republic of Indonesia, Law Number 1 of 1946 concerning Criminal Law (KUHP), Article 338). Murder that is followed, accompanied or preceded by a criminal act, committed with the intention of preparing or facilitating its execution, or to free oneself or other participants from punishment in the event of being caught red-handed, or to ensure control of goods obtained unlawfully, is punishable by life imprisonment or a fixed term of imprisonment of up to twenty years (Republic of Indonesia, Law No. 1 of 1946 on Criminal Law (KUHP), Article 339). And the criminal act of deliberately and with prior planning taking the life of another person is punishable as premeditated murder, with the death penalty or life imprisonment or a fixed term of imprisonment of up to twenty years (Republic of Indonesia, Law Number 1 of 1946 concerning Criminal Law (KUHP), Article 340).

Scientifically, there are written and unwritten legal norms, but both can be used as a reference in drafting criminal provisions. Criminal law is part of public law because it is related to the public interest, namely regulating the relationship between citizens and society or the state. As a logical consequence of this, criminal law not only regulates all matters between individuals and the legal community or the state, but also regulates how the state should carry out its duties (Marwan Effendy, 2014).

Moeljatno argues that acts that are prohibited by criminal law and punishable by criminal penalties (for anyone who violates these prohibitions) are, in short, called criminal acts or offences. Criminal acts, according to their form and nature, are contrary to the order or rules desired by the law or acts that are against (violate) the law. The meaning of 'contrary' in this context is the obstruction of the implementation of order in a good and fair society (Moelyatno, 2015).

As in the above element, an act committed by a person is an act prohibited by a legal rule, and the prohibition by that rule is accompanied by a penalty in the form of a specific criminal offence. According to Moeljatno, it should be noted that the prohibition is directed at the act (a situation or event caused by a person's behaviour), while the criminal penalty is directed at the person who caused the event (Moelyatno, 2015).

Criminal acts only refer to acts that are prohibited and punishable by a criminal penalty, but whether the person who commits the act is also punished as threatened depends on whether the act committed by the legal subject contains elements of fault or not.

The existence of an element of fault is linked to the ability to be held responsible, so that the act committed by the person must be a criminal act (unlawful in nature), the person must be above a certain age, there must be an element of fault in the form of intent or negligence, and there must be no extenuating circumstances (Moelyatno, 2015). Meanwhile, according to Marwan Effendy, the element of fault consists of several elements, namely: (a) The ability to be held responsible (*schuldfähigkeit* or *zurechnungsfähigkeit*), meaning that the perpetrator must be of sound mind; (b) An inner connection between the perpetrator and the act in the form of intent (*dolus*) or negligence (*culpa*); (c) The absence of reasons that eliminate fault or the absence of exculpatory reasons (Marwan Effendy, 2014).

Therefore, people are generally mentally normal and capable of being responsible, or this element (normal mind) is silent and always present, unless there are signs that indicate that the person is mentally abnormal. Therefore, in order to formulate a person's ability to be responsible to prove the fulfilment of the element of fault, this element must be proven. In this case, the judge must order a special examination of the mental state of the defendant (Moeljatno, 2015) so that it can be

determined with certainty whether a perpetrator of a criminal act of murder can be held criminally responsible (*Criminal Responsibility*) for a criminal act.

Responsibility can basically be imposed on the perpetrator of a criminal act and they can be found guilty if there is a final and binding court decision or one that is *inkracht van gewijsde*. With this decision, the person is legally and can be declared guilty of committing the act they are accused of (Abdul Wahid, Mohammad Labib, 2005). As stipulated in the Criminal Procedure Code (hereinafter referred to as KUHAP) in Article 183, a judge may not impose a criminal penalty on a person unless, based on at least two pieces of valid evidence, he or she is convinced that a criminal act has actually occurred and that the defendant is guilty of committing it.

In a criminal case, when investigators conduct an investigation, they collect information from witnesses and experts through interview reports and collect letters/data that confirm or deny the circumstances of a case. This is not yet considered evidence, but rather material. then it will be determined whether this material can be used as evidence (Timbo Mangaranap Sirait, Jeremy Nathanael Sirait, 2024).

According to Alfitra, the evidence system is a regulation concerning the types of evidence that can be used, the description of evidence and how it is used, as well as how judges must form their convictions in court (Alfitra, 2011). Furthermore, according to Marbun, the purpose of evidence is to present certain evidence to the judge so that the panel of judges can be certain of the disputed legal facts, which will then be used as a basis for consideration in the decision-making process (S.F. Marbun, 2003). Bambang Poernomo explicitly defines the law of evidence as the entirety of legal rules or regulations concerning activities to reconstruct the true facts of any past event relevant to allegations against a person suspected of committing a criminal act and the validation of any means of evidence in accordance with applicable legal provisions for the purposes of criminal proceedings (Eddy O.S. Hiariej, 2012).

In the context of criminal law, evidence is the core of criminal proceedings because what is sought in criminal law is material truth. Nevertheless, evidence in criminal cases begins at the investigation stage to search for and discover events suspected of being criminal acts in order to determine whether or not an investigation can be carried out. At this stage, evidence has already been gathered, with investigators searching for evidence in order to clarify a criminal act and determine or find the suspect.

The process of evidence is one way to search for and discover the truth regarding the alleged occurrence of a criminal act. The purpose of evidence is to convince and provide certainty to the judge regarding the truth of the circumstances considered to be a criminal act (Bambang Waluyo, 1996). Evidence must be obtained through 'valid evidence' as regulated in the Criminal Procedure Code in the form of

‘Witness Testimony; Expert Testimony; Documents; Clues; and Expert Testimony’ (Timbo Mangaranap Sirait, Jeremy Nathanael Sirait, 2023).

Therefore, it can be said that it is almost impossible for someone to commit a crime without leaving traces at the scene. In many cases, crimes always leave some form of evidence that can bring the perpetrator to justice, and this evidence is often in the form of testimony and objects or tools. This means that the perpetrator's actions can be identified through the victim or witnesses and objects or tools found at the scene of the crime. The obstacle often faced by investigators and detectives is that not all crimes can be solved due to the lack of evidence found at the scene of the crime. Therefore, in the disclosure of legal cases, the role of investigators in gathering evidence is very important, because this is the beginning of the disclosure of a case that leads to a sense of justice in society that the law can be enforced and that the objectives of the law, which are none other than certainty, justice and the benefits of the law, have been achieved.

Although the number of homicide cases fluctuates from year to year, the total number is very large. In 2016, there were 1,292 homicide cases (Central Bureau of Statistics, 2020-2022), while in 2020 there were 898 cases, in 2021 there were 927 cases, and 832 cases in 2022 (Central Bureau of Statistics, 2014-2016). One of the criminal cases that occurred in Indonesia and was controversially decided in a 2016 trial was case number 777/Pid.B/2016/PN.JKT.PST *juncto* Appeal Decision Number 393/PID/2016/PT.DKI *juncto* Cassation Decision Number 498/K/Pid/2018 *juncto* PK Decision Number 69 PK/Pid/2018, that the defendant's legal counsel debated the process of proving the case using *closed circuit television* (hereinafter referred to as ‘CCTV recordings’) from Café Olivier, where the incident took place, even though the video recordings did not clearly show the defendant putting something into the glass of Vietnamese iced coffee. During the trial, the CCTV recordings were declared valid (without any tampering or manipulation), as confirmed by the testimony of a digital forensics expert. Therefore, based on these events and the trial proceedings, as stated in the decision in case number 777/Pid.B/2016/PN.JKT.PST *juncto* Appeal Decision Number 393/PID/2016/PT.DKI *juncto* Cassation Decision Number 498/K/Pid/2018 *juncto* PK Decision Number 69 PK/Pid/2018, the defendant was found guilty by the judge, and based on the evidence presented, the defendant was sentenced to 20 (twenty) years in prison.

Provisions regarding valid evidence of a general nature (*lex generalis*) are regulated in a limitative manner in the Criminal Procedure Code, namely in the form of "witness testimony; expert testimony; documents; clues; defendant's testimony" (Republic of Indonesia, *Law Number 8 of 1981 concerning the Criminal Procedure Code*, Article 184 paragraph (1) whereas the means of evidence for investigation, prosecution and examination in court according to the provisions of the ITE Law (*Lex Specialis*) are very broad, consisting of: 1). evidence as referred to in the Criminal

Procedure Code; and 2). other evidence in the form of Electronic Information and/or Electronic Documents in the form of a collection of electronic data, including but not limited to writing, sound, images, maps, designs, photographs, electronic data interchange (EDI), electronic mail (*electronic mail*), telegrams, telexes, telecopies or the like, letters, signs, numbers, Access Codes, symbols, or perforations that have been processed and have meaning or can be understood by people who are able to understand them, and any Electronic Information that is created, forwarded, sent, received, or stored in analogue, digital, electromagnetic, optical, or similar forms, which can be seen, displayed, and/or heard through a Computer or Electronic System, including but not limited to writing, sound, images, maps, designs, photographs or the like, letters, signs, numbers, access codes, symbols or perforations that have meaning or significance or can be understood by persons capable of understanding them, as well as Electronic Information and/or Electronic Documents and/or their printouts (Timbo Mangaranap Sirait, 2023).

Although the criminal case of Wayan Mirna Salihin with the defendant Jessica Kumala Wongso was a general criminal case (*Lex Generalis*), the panel of judges handling the case stated that electronic evidence in the form of surveillance camera (CCTV) recordings could be used as evidence in the trial. "Electronic evidence is commonly used in court. Therefore, CCTV recordings can be used as evidence for criminal cases. According to the judge, they are not bound by specific evidence but use evidence that is appropriate based on the law, including witness testimony, expert testimony, documentary evidence, and defendant testimony. "The judge depends on which evidence is in accordance with the order of valid evidence, witness testimony, expert testimony, documentary evidence, and defendant testimony (<https://www.antaranews.com/berita>).

The provisions of the article are linked to the judge's interpretation based on the description in case number 777/Pid.B/2016/PN.JKT.PST *juncto* Appeal Decision Number 393/PID/2016/PT.DKI *juncto* Cassation Decision Number 498/K/Pid/2018 *juncto* PK Decision Number 69 PK/Pid/2018 that CCTV evidence is included as part of circumstantial evidence. However, there is no explicit statement in the form of a phrase clearly mentioning CCTV recordings as part of circumstantial evidence in the provisions of articles related to evidence in the Criminal Procedure Code. As a consequence, Indonesia adheres to the concept of *rechtstaat* as a legal system, which is closely related to the description according to expert F. J. Stahl's opinion that the purpose of the rule of law is to protect human rights by limiting and supervising the state's power so that it cannot expand its authority beyond what is outlined by *wetmatig regulations*. Any action that contradicts the provisions of laws and regulations is *onwetmatig*, even if it is beneficial and improves the welfare of the community (Marwan Effendy, 2014).

The rapid development of technology has indirectly impacted people's lives. Technological developments have significant implications for every aspect of life, from economics, social, culture, politics, and law (Edmon Makarim, 2005). As part of the government's anticipation of various possibilities of technology abuse, preventive measures must be taken as a form of control so as not to harm others. As has been explained, the development of technology has had an impact on the legal field, as can be seen in the enactment of a special law (*Lex Specialis*), namely Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as the ITE Law).

Criminal law provisions also incorporate the concepts regulated in the ITE Law, namely the development of technology, especially in relation to CCTV recordings as evidence, as is known in the process of proving cases in court. This description is also supported by the affirmation in Article 28 paragraph (1) of Law Number 4 of 2004 concerning Judicial Authority (hereinafter referred to as the Judicial Authority Law), which states that judges are obliged to explore, follow and understand the legal values and sense of justice that exist in society.

The provisions of Article 28 paragraph (1) of the Judicial Authority Law provide scope for CCTV recordings to be used as circumstantial evidence in law enforcement during court proceedings so that they can be declared to have legal force and their existence recognised. As evidence in the process of proving a case in court, it is well known that proof is the central point of examination of a case in court.

CCTV recordings as circumstantial evidence in court proceedings are an extension of the provisions of Article 184 paragraph (1) of the Criminal Procedure Code, which is a *Lex Generalis* procedural law. Its validity needs to be examined more deeply from a scientific perspective, namely in relation to the validity and applicability of such evidence in general criminal cases so that there is legal certainty. The interpretation of CCTV recordings as circumstantial evidence in a case needs to be clearly formulated so that it is not interpreted as an action that is *onwetmatig* (illegal) under the provisions of the legislation.

Based on the above descriptions, this article examines the **"Use of CCTV Recordings as Electronic Evidence in Criminal Murder Cases in the Judicial Process (Case Study Number 777/Pid.B/2016/Pn.Jkt.Pst juncto Appeal Decision Number 393/PID/2016/PT.DKI juncto Cassation Decision Number 498/K/Pid/2018 juncto PK Decision Number 69 PK/Pid/2018)"**.

The issues are as follows: 1) How is the use of CCTV recordings, which are electronic evidence, regulated as circumstantial evidence in criminal law enforcement? 2) What is the process for obtaining CCTV recordings, which are electronic evidence, as circumstantial evidence in Case Number 777/Pid.B/2016/Pn.Jkt.Pst juncto Appeal Decision Number 393/PID/2016/PT.DKI juncto

Cassation Decision Number 498/K/Pid/ 2018 *juncto* PK Decision Number 69 PK/Pid/2018?

Research Method

Seeking and discovering the truth about a legal issue certainly has its own method, namely through scientific methods (M. Syamsudin, 2007). Scientific methods are procedures for obtaining knowledge called science. In other words, science is knowledge obtained through scientific methods. The ideal of science is to obtain systematic interrelationships (Bambang Sunggono, 2007).

Scientific research must use a specific research method. The scientific research method is a procedure for obtaining knowledge called science (Bambang Sunggono, 2007).

Empirical legal research, which is the development of legal science, cannot be carried out simply by studying the system of norms. Laws are in fact created and established by people living in society, which means that the existence of laws cannot be separated from the social conditions of society and human behaviour related to legal institutions. Meanwhile, normative legal research is legal research that places law as a system of norms. The system of norms referred to here concerns the principles, norms, and rules of legislation, court decisions, agreements, and doctrines (teachings) (Mukti Fajar ND, 2010).

This type of normative juridical research is referred to as qualitative research, which is descriptive research with a normative legal approach, namely by examining the law from an internal perspective where the object of research is legal norms. A qualitative approach is used when researchers have the ability and experience in conducting research because qualitative research seeks to construct reality and understand its meaning. Therefore, qualitative research usually pays close attention to processes, events and authenticity. With a normative approach, it is a type of research used to examine the application of rules or legal norms that are enforced in positive law or law that is still in force and has the power to bind legal subjects.

Results and Discussion

Regulations on the Use of CCTV Recordings as Electronic Evidence as Indicative Evidence in Criminal Law Enforcement

Technological Advances and Developments in the Use of Evidence

Technological advances are changing the way people interact in the world, and crime is no exception. Criminals are constantly updating and developing their illegal activities (Timbo Mangaranap Sirait, 2023). Technology is developing at an ever-increasing rate, changing the way humans think and behave. This has a significant impact on the outcome. Therefore, in today's globalised world, the law must be adaptive to technological advances. Every aspect of human life, whether

social, economic, cultural, political, or legal, is undergoing change and technological development as a result of the rapid growth of the information age. In line with this, modern technical advances can be a tool to facilitate the handling of current crimes (Feby Adzkari, Diding Rahmat, 2024), but the use of such technology must still comply with the laws and regulations that govern it.

Without the assistance of technological advances such as CCTV as evidence, it is often difficult to prove the truth of a case, as in Case Number 777/Pid.B/2016/Pn.Jkt.Pst *juncto* Appeal Decision Number 393/PID/2016 /PT.DKI *juncto* Cassation Decision Number 498/K/Pid/ 2018 *juncto* PK Decision Number 69 PK/Pid/2018, a criminal case at the Central Jakarta District Court which examined and tried the criminal case of the defendant Jessica Kumala Alias Jessica Kumala Wongso Alias Jess.

Indonesia is a country based on the rule of law, as stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The existence of criminal procedure law is an important part of the enforcement of criminal law.

With the development of information technology in all aspects, including in court proceedings, there are other types of evidence that are not regulated in the Criminal Procedure Code. Such evidence includes electronic evidence or what is known as electronic evidence, such as electronic data, information or electronic documents, examination of witnesses via conference call, microfilms containing company documents, in addition to other evidence such as radio recordings, VCDs (Video Compact Discs) or DVDs (Digital Versatile Discs), photographs, faxes, CCTV (Closed Circuit Television) recordings, and even SMS (Short Message Service) or MMS (Multimedia Messaging Service) messages (Ramiyanto, 2017).

The existence of electronic evidence initially caused controversy in criminal law. This was because there were no regulations on electronic evidence in the Criminal Procedure Code, but only an expansion of the definition of additional evidence (Yoga Pratama Aditya, Ismawati Septiningsih, 2024).

Regulations on the Use of CCTV Footage as Evidence in Homicide Cases

In a criminal procedure system that adheres to the *stelsel negatief wettelijk*, only evidence that is valid according to the law can be used for proof. This means that anything outside of these provisions cannot be used as valid evidence. In this case, Andi Hamzah said that evidence in criminal cases is evidence regarding the object of the offence and the means by which the offence was committed (the tools used to commit the offence), including items that are the result of an offence.

Characteristics of objects that can be used as evidence: (Timbo Mangaranap Sirait, 2021) They are material objects, they speak for themselves, they are the most valuable means of proof compared to other means of proof, and they must be identified by witness statements and the defendant's statements. The use of

electronic systems has created a new perspective in responding to technological developments.

This is evidenced by the paradigm shift from paper-based to electronic-based systems. In its development, electronic-based information has become increasingly recognised for its efficiency in terms of creation, processing, and storage (Edmon Makarim, 2003).

Evidence is a process, whether in civil proceedings, criminal proceedings, or other proceedings, where, using valid evidence, special procedures are carried out to determine whether a fact or statement, particularly a fact or statement that is disputed in court, which is submitted and declared by one of the parties in the court proceedings, is true or not as stated (Munir Fuady, 2012).

Article 188 (1) Evidence is an act, event or circumstance which, due to its consistency, either between one another or with the criminal act itself, indicates that a criminal act has occurred and who the perpetrator is. Evidence can only be obtained from: witness statements; documents; and statements from the defendant (Republic of Indonesia, Law No. 8 of 1981 on Criminal Procedure (KUHAP), Article 188).

The assessment of the probative value of evidence in each specific case is carried out by the judge with wisdom and prudence after conducting a thorough and careful examination based on his conscience. Its expansion is influenced by the development of the nature of the criminal justice system, as a system that is essentially an open system, in the sense that the criminal justice system in its movement will always experience interface (interaction, interconnection and interdependence) with its environment in various levels, society, the economy, politics, education, and technology, as well as the subsystems of the criminal justice system itself (I. G. Yuliartha, 2010).

Electronic evidence such as CCTV (Closed Circuit Television) is a continuous electronic activity to monitor the situation and conditions at a certain location (locus), so it cannot be categorised as wiretapping and cannot be equated with wiretapping in the Electronic Information and Transaction Law.

Therefore, not all electronic evidence can be considered wiretapping, such as recordings made using CCTV (Closed Circuit Television) placed in public spaces, because CCTV (Closed Circuit Television) installed in public spaces is essentially public, such as evidence 1 (one) unit of a grey 32 GB Toshiba flash drive with serial number 1430A7A412CAT containing CCTV (Closed Circuit Television) recordings from the Olivier West Mall Grand Indonesia restaurant (Central Jakarta District Court, Decision Number: 777/Pid.B/2016/PN.JKT.PST), in the case of the Central Jakarta District Court examining and adjudicating the criminal case of the Defendant Jessica Kumala Alias Jessica Kumala Wongso Alias Jess.

Expansion of Evidence Regulations in Special Criminal Law in accordance with Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law)

The applicable procedural law (*Criminal Procedure*) is specific and deviates from general criminal procedural law (KUHP) and/or there are certain procedures or a combination of laws from both procedural laws or derogations from parts of the KUHP (Timbo Mangaranap Sirait, 2024).

Therefore, in special criminal law, Electronic Information and/or Electronic Documents and/or their printouts are valid legal evidence. Electronic Information and/or Electronic Documents and/or their printouts are an extension of valid evidence in accordance with the applicable Procedural Law in Indonesia. Electronic Information and/or Electronic Documents are declared valid if they use an Electronic System in accordance with the provisions stipulated in this Law. Provisions regarding Electronic Information and/or Electronic Documents do not apply if otherwise stipulated in the Law, (Republic of Indonesia, Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions, Article 5) and this must be complied with in order to create legal certainty in law enforcement in the Criminal Justice System.

Article 5(1) of the ITE Law states that electronic information and/or electronic documents and their printed copies are valid legal evidence. CCTV recordings have evidentiary value as long as they are obtained through lawful means, do not violate privacy rights, and meet the principles of data integrity and authenticity. Therefore, CCTV recordings can be categorised as documentary evidence or evidence as stipulated in the Criminal Procedure Code, depending on the form and manner of their presentation in court (Pribadi, 2018).

Law No. 11/2008 on Electronic Information and Transactions (ITE) and its amendment Law No. 19/2016 recognise that ‘electronic information and/or electronic documents and their printouts are valid legal evidence’. Article 5 paragraphs (1) and (2) of the ITE Law state that all forms of electronic data – including CCTV video recordings – are expanded as valid evidence in criminal procedure law. Thus, CCTV recordings can be categorised as electronic evidence. Indonesian criminal procedure law (KUHP) does not explicitly mention CCTV, but KUHP Article 184 paragraph (1) recognises evidence in the form of witness statements, expert testimony, letters, clues, and defendant statements. CCTV recordings that meet the criteria of authenticity and integrity can be positioned as circumstantial evidence or even electronic documents, because the ITE Law stipulates that printed electronic data is considered documentary evidence (Josua Sitompul, 2012). Thus, CCTV recordings that are procedurally valid are an extension of the evidence recognised in the KUHP.

Experts argue that the Criminal Procedure Code implicitly recognises electronic recordings as valid evidence as long as they are obtained in accordance with legal procedures. For example, Article 5(4) of the ITE Law requires that

electronic evidence must be obtained ‘by lawful means’, and if not, the judge must disregard it. Therefore, the validity of CCTV recordings depends on the fulfilment of formal (procedural) and material (content) requirements in order to be recognised in court. In addition, the concept of the principle of legality emphasises that the use of electronic evidence must be guided by the ITE Law and the Criminal Procedure Code. Insan Pribadi (2018) emphasises that the Criminal Procedure Code does not yet regulate electronic evidence in detail, so its legality is supported by the ITE Law (Articles 5 and 44) by requiring testing tools (digital forensics) to ensure compliance with formal and material requirements (Josua Sitompul, 2012).

Broadly speaking, the formal requirements and material requirements for electronic evidence according to the ITE Law are as follows: 1) Formal Requirements: Electronic evidence is not a mandatory written document and must be obtained legally. This means that CCTV recordings are not considered a type of document that must be written, and their collection must follow proper procedures (without violating rights or procedural law). If the seizure of recordings is carried out without court authorisation (illegally), the evidence loses its probative value. 2) Material Requirements: Recordings must be authentic, complete, and accountable. Articles 6, 15, and 16 of the ITE Law emphasise the guarantee of authenticity, integrity, and availability of electronic data. For example, the information in CCTV recordings must be accessible, playable, and unchanged since recording (not deleted or manipulated). To ensure this, digital forensic methods are often needed to verify the metadata of the recording (such as the timestamp) and ensure that the digital copy is identical to the original.

The Probative Value of CCTV Evidence in General Criminal Cases Based on Constitutional Court Decision No. 20 PUU XIV/2016

The probative value of CCTV (Closed Circuit Television) evidence in general criminal cases based on Constitutional Court Decision No. 20/PUU-XIV/2016, related to the regulation of CCTV evidence in Indonesian legislation and The probative value of CCTV (Closed Circuit Television) in general criminal cases following Constitutional Court Decision No. 20/PUU-XIV/2016, where although Law No. 8 of 1981 on Criminal Procedure (KUHP) does not explicitly state that CCTV (Closed Circuit Television) is evidence, CCTV (Closed Circuit Television) recordings in a case can be considered as circumstantial or documentary evidence, provided they meet the requirements of authenticity and reliability in accordance with Law No. 1 of 2024 on the Second Amendment to Law No. 11 of 2008 on Electronic Information and Transactions (EIT Law).

Through the Decision of the Constitutional Court of the Republic of Indonesia No. 20/PUU-XIV/2016, legal certainty has been provided that CCTV (Closed Circuit Television) recordings can be accepted as valid evidence in criminal proceedings,

provided that the CCTV (Closed Circuit Television) recordings meet the requirements of the ITE Law. This ruling has strengthened the legitimacy of CCTV (Closed Circuit Television) recordings in the Indonesian criminal justice system, thereby further enhancing the effectiveness of law enforcement and ensuring the protection of individual rights.

Thus, CCTV recordings obtained and presented in accordance with procedures can serve as strong formal and material evidence. This is in accordance with Constitutional Court Decision No. 20/PUU-XIV/2016.

Evidence Process in Decision No. 777/Pid.B/2016/Pn.Jkt.Pst in conjunction with Appeal Decision No. 393/PID/2016/PT.DKI in conjunction with Cassation Decision No. 498/K/Pid/ 2018 in conjunction with PK Decision No. 69 PK/Pid/2018

Evidence is a term derived from the word ‘proof’, which refers to a situation or event and other things that can demonstrate that situation or event. During the evidence hearing, the presiding judge shows the defendant all the evidence and asks him whether he recognises the items. If necessary, the presiding judge also shows the items to the witnesses (Timbo Mangaranap Sirait, 2024).

Bambang Waluyo, as quoted by Timbo Mangaranap Sirait, said that the evidentiary process is one way to seek and find the truth regarding allegations of a criminal act. The purpose of evidence is to convince and provide certainty to the judge regarding the truth of the circumstances considered to be a criminal act (Timbo Mangaranap Sirait, 2024). Evidence must be obtained through ‘legal evidence’ as regulated by the Criminal Procedure Code (Timbo Mangaranap Sirait, 2024).

Sudikno further views evidence as a means of obtaining certainty, whether it be relative or absolute certainty. The process of proving or evidence contains the intention and effort to state the truth about an event, so that the truth of the event can be accepted by reason (Martiman Prodjohamidjojo, 1984). Thus, through this evidence, justice will be obtained in the Indonesian criminal justice system.

The Probative Value of CCTV Evidence in Murder Cases

In the Criminal Procedure Code (KUHP), it is explained that all evidence in criminal proceedings has the same probative value. Based on this similarity, judges are free and not bound to use the evidence presented in court if, in their opinion, the evidence has no probative value. Similarly, with electronic evidence, judges are free and not bound to use it in proving cases in court if it does not comply with the applicable laws. This again comes back to the parameters of proof, namely *bewijsvoering*, which relates to how evidence is obtained, collected, and presented in court (Eddy O.S. Hiarij., 2012).

However, such circumstantial evidence must be supplemented with other evidence in accordance with Article 188 of the Criminal Procedure Code. In this case,

CCTV recordings that are used as valid evidence, if the CCTV recordings are related to witness statements or the defendant's statements, then the judge can use the CCTV recordings as circumstantial evidence because they are related to the witness statements or the defendant's statements (Yoga Pratama Aditya, Ismawati Septiningsih, 2024).

The Process of Collecting and Seizing CCTV Recordings as Electronic Evidence as Indicative Evidence in Case Number 777/Pid.B/2016/Pn.Jkt.Pst Juncto Appeal Decision Number 393/PID/2016/PT.DKI Juncto Cassation Decision Number 498/K/Pid/2018 Juncto PK Decision Number 69 PK/Pid/2018

Chronology of the Collection and Seizure of CCTV Recordings as Indicia Evidence Based on Witness and Expert Testimony

For the sake of objectivity in the investigation of a criminal case, all evidence and material evidence, such as CCTV (Closed Circuit Television) footage, must be collected directly by the investigator.

Evidence is the central point of examination of a case in court. The issue in proving a criminal act is the strength of the evidence or the probative value of a piece of evidence (Raden Fidela Raissa Ramadhanti., et al.,). Therefore, officials investigating information or police reports received from the public or obtained directly, and based on the investigation report at the scene of the crime or the suspect's investigation report, investigators have the authority to: (a) receive reports or complaints from individuals regarding criminal acts; (b) seek information and evidence; (c) to stop a suspect and question them and check their identification; and (d) to take other actions in accordance with the law (Timbo Mangaranap Sirait, Jeremy Nathanael Sirait, 2024).

To be considered valid evidence, CCTV recordings must be obtained through a lawful seizure or collection process in accordance with the Criminal Procedure Code and other implementing regulations. The legal basis for this is Article 38 of the Criminal Procedure Code on seizure, Article 39 on search, and subsequent provisions. In principle, investigators require a seizure warrant from the Head of the local District Court to obtain CCTV recordings belonging to third parties or located in certain locations. Article 38 paragraph (1) of the Criminal Procedure Code stipulates that seizure may only be carried out with the permission of the court. In very urgent circumstances where it is not possible to wait for permission, Article 38(2) allows investigators to seize movable property first, but they must then immediately report this to the court (Sumaidi, 2016).

In practice, the steps for obtaining CCTV footage are as follows: 1) Evidence Search: After a criminal incident, investigators identify relevant CCTV footage. Investigators request information about the location of CCTV cameras and their recording range, usually through clarification with the owner or initial witnesses.

Once the location of the CCTV cameras has been found (e.g., in shops, offices, public roads), investigators must plan a search or seizure. 2) Permission Request (Warrant): To access or extract recordings, investigators submit a search/seizure warrant to the Chief Magistrate. This permit gives investigators the legal authority to enter the location and collect electronic evidence (Article 39 of the Criminal Procedure Code on house/place searches). Based on case studies, judges often revoke electronic evidence if the seizure warrant is not procedural. With the issuance of the warrant, investigators are officially entitled to access the CCTV system. 3) Search and Seizure: Together with two witnesses (mandatory under the Criminal Procedure Code), investigators search the location where the CCTV is installed and seize the recordings or recording equipment. The results of the seizure are recorded in a *Seizure Report*, which contains a description of the device (e.g. DVR or recording storage computer), the date, time, and signatures of the investigator and witnesses. If physical recordings (e.g. CDs/DVDs) are found, they are immediately seized. If they are digital files on a device, the investigator takes a copy of the files. 4) Securing Electronic Evidence: Next, a copy of the CCTV recording is made by a competent officer. Best practice requires a digital forensics expert to copy and verify the authenticity of the data. The expert will examine the metadata and integrity of the recording files so that the digital copies are accountable. If there is no certified expert, at a minimum, copies must be made by officers assisted by witnesses, then stamped to ensure that no changes have been made. 5) Documentation of the Process: The entire process, from the request for permission, search, seizure, to the recording of copies, must be fully documented. The search/seizure report and the copy collection report must include the time of the action, witnesses, and a statement that the evidence has been kept intact. These records are important to prove the legality of the evidence collection procedure. If the investigator fails to follow the official procedure (e.g., does not bring witnesses, does not make a report), the recording may be formally invalidated. 6) Submission to the Investigating Officer: After collection, copies of the CCTV recordings are submitted to the investigating officer and included in the case file. The forensic laboratory officer or police forensic unit then analyses the recordings and prepares expert testimony for the trial. With the involvement of experts, the CCTV recordings can be explained technically before the judge (as part of the circumstantial evidence).

One of the pieces of evidence submitted by Prosecutor Number 19 in the criminal case of Defendant Jessica Kumala Alias Jessica Kumala Wongso Alias Jess in Case Number 777/Pid.B/2016/Pn.Jkt.Pst *Juncto* Appeal Decision Number 393/PID/2016/PT.DKI *Juncto* Cassation Decision Number 498/K/Pid/ 2018 *Juncto* PK Decision Number 69 PK/Pid/2018, is in the form of 1 (one) grey Toshiba 32 GB flash drive S/N 1430A7A412CAT containing CCTV (Closed Circuit Television) from the Olivier

West Mall Grand Indonesia restaurant (Central Jakarta District Court, Decision Number: 777/Pid.B/2016/PN.JKT.PST).

CCTV USB Evidence Taken by Unauthorised Witness

During the court proceedings, statements were obtained from witnesses who were presented in the criminal case before the court, and the witnesses gave their statements, stating, among other things, the following: (Central Jakarta District Court, Decision Number: 777/Pid.B/2016/PN.JKT.PST)

After the incident, witness Dermawan Salihin immediately went to Olivier Restaurant and took the CCTV USB, which was then confiscated by the police. Witness Dermawan Salihin only took a copy of the CCTV recording USB, while the original was kept by the investigator (Central Jakarta District Court, Decision Number: 777/Pid.B/2016/PN.JKT.PST). Witness Dermawan Salihin then filed a police report, and the witness's child's body was taken to Kramatjati Hospital for examination and stomach sample collection. The police explained that the witness's child had been poisoned with cyanide. then the witness opened the CCTV USB (Central Jakarta District Court, Decision Number: 777/Pid.B/2016/PN.JKT.PST).

Chronology of Criminal Incidents in CCTV (Closed Circuit Television)

According to the testimony of witnesses after viewing the CCTV footage, the following events occurred: (Central Jakarta District Court, Decision Number: 777/Pid.B/2016/PN.JKT.PST)

Furthermore, witness Boon Juwita alias HANIE stated that after watching the CCTV footage, she remembered and was able to explain that at that time she was sitting on the sofa at table 54 of the Olivier cafe and MIRNA was also sitting there. She saw a Vietnamese Iced Coffee on the table and Ms. MIRNA immediately asked whose drink it was, and JESSICA said it was for her. 'You said you wanted it,' then MIRNA said, 'Oh my goodness, why order it first? I meant to order it later when I arrived,' Then MIRNA said, 'Thank you for ordering it,' and MIRNA took the Vietnamese Iced Coffee, stirred the coffee briefly with the straw that was already in the glass, and drank it using the straw. The witness recalled that before MIRNA drank the coffee, the straw was already in the coffee glass. The witness confirmed the CCTV footage shown to him by the Public Prosecutor.

Next, Witness Agus Triono appeared before the court and gave testimony under oath, the main points of which are as follows. Witness Agus Triono confirmed that he had given a statement to the investigators and had signed the investigation report prepared by the investigators. Witness Agus Triono worked at Cafe Olivier for approximately 11 (eleven) months as a runner with the duties of delivering drinks and food and cleaning tables. When the Public Prosecutor showed the CCTV footage, the witness explained (Central Jakarta District Court, Decision Number:

777/Pid.B/2016/PN.JKT.PST) that Agus Triono had just received a tray containing a Vietnamese Ice Coffee order from Table 54 and was preparing to deliver it to that table at 16:23:20. The witness then walked from the barista (coffee-making area) towards Table 54 via the bar at 16:23:05. The witness walked to Session A near Table 51 at 16:24:10. The witness arrived at Table 54 and prepared to place the glass containing milk and ice cubes on the table at 16:24:17. The witness served/poured Vietnamese Ice Coffee from a teapot (stainless pot) into a glass at 16:24:33. The witness whispered to a friend named ROSSI about the colour change of the Vietnamese Ice Coffee at Table 54, which looked like turmeric juice, at 17:20:29. then shortly after whispering, ROSSI looked at Table 54 and saw JESSICA's friend, MIRNA, slumped on the sofa with her legs and arms stiff and appearing to be in pain. The witness and ROSSI then went to Table 54 to find out what had happened at 17:20:34. The witness obtained the glass of Vietnamese Ice Coffee from the witness's friend, SARI, and then handed the glass to the witness's friend, YOHANNIS, who was a bar tender; (Central Jakarta District Court, Decision Number: 777/Pid.B/2016/PN.JKT.PST)

Witness Rangga Dwi Saputro, who was present at the trial and gave testimony under oath, essentially confirmed that he had given testimony to investigators and had signed the investigation report prepared by the investigators. The witness worked at Cafe Olivier as a barista, specialising in coffee drinks, Cafe Olivier (Central Jakarta District Court, Decision Number: 777/Pid.B/2016/PN.JKT.PST). Witness Rangga Dwi Saputro explained the CCTV footage shown by the public prosecutor and explained that in the CCTV footage, the witness was making one glass of Vietnamese Ice Coffee (VIC). The witness has been working at Cafe Olivier since 9 June 2015 until now, currently working as a barista, which is a coffee drink mixer, at Cafe Olivier (Central Jakarta District Court, Decision Number: 777/Pid.B/2016/PN.JKT.PST). The witness explained that the CCTV footage shown by the public prosecutor and the witness showed that the witness was making one glass of Vietnamese Ice Coffee (VIC) (Central Jakarta District Court, Decision Number: 777/Pid.B/2016/PN.JKT.PST).

Next, witness Jukiah appeared before the court and gave testimony under oath, in which she essentially confirmed all the information contained in the investigation report prepared by the investigators. Witness JUKIAH has worked at Cafe Olivier since 23 February 2015 as a cashier. When the Public Prosecutor showed the CCTV footage, the witness explained that the defendant made a payment using cash, and in front of the cashier's desk there was a table for placing coffee, a bell, a coaster for coffee, a straw, a glass for tea, and a spoon. The witness was then confronted by witness Marlon Alex Napitupulu regarding the CCTV footage. Witness Marlon explained that while in front of the cashier, he had explained the cocktail promotion to the defendant. Witness Marlon did not accept the defendant's order to add something to the drink, and it was another witness who entered the defendant's order. Witness Marlon gave the bill to witness JUKIAH. Witness Marlon printed the

defendant's order and then gave it to Witness JUKIAH at the cashier (Central Jakarta District Court, Decision Number: 777/Pid.B/2016/PN.JKT.PST).

Meanwhile, witness Devi Chrisnawati Siagian appeared before the court and gave testimony under oath, which essentially confirmed all the information contained in the investigation report prepared by the investigator. Witness Devi Chrisnawati Siagian worked at Cafe Olivier as a Bar Manager whose duties and responsibilities included supervising bar operations, checking items in the bar area such as various types of drinks and drink ingredients, checking drink sales administration, and supervising bar cleanliness. The witness was responsible for all these tasks to the corporate bar manager, MUH SYARIFUDIN ASRI (Central Jakarta District Court, Judgment No.: 777/Pid.B/2016/PN.JKT.PST) After the incident, the witness reviewed the CCTV footage to observe all activities at table 54. Witness Devi Chrisnawati Siagian also reviewed the CCTV footage to determine who ordered and who prepared the *Vietnamese Iced Coffee*. The witness observed the defendant appearing restless in the CCTV footage. The witness checked the CCTV to find out why the coffee was not in accordance with the SOP (not standard) or not the same as the coffee we usually serve (it tasted like milk coffee). The witness could not swallow it because the colour was not too dark, it was yellowish, and it had a pungent smell (Central Jakarta District Court, Decision Number: 777/Pid.B/2016/PN.JKT.PST).

Expert Testimony Evidence Related to CCTV Footage as Indicative Evidence

To prove the validity of the indictment in the criminal case, in addition to presenting witnesses at the trial, expert testimony was also heard, as follows: (Central Jakarta District Court, Decision Number: 777/Pid.B/2016/PN.JKT.PST)

Expert Dr. Slamet Purnomo, SpF.DFM, a forensic specialist, gave his opinion based on his expertise before the court, which essentially showed CCTV footage of the process leading up to the death of WAYAN MIRAN SALIHIN after drinking coffee (Vietnamese Ice Coffee). The expert explained that the symptoms exhibited by WAYAN MIRNA SALIHIN were symptoms of poisoning, particularly due to cyanide, which can cause a burning sensation in the mouth and numbness (ba'al). Then, when the victim, WAYAN MIRNA SALIHIN, waved his hands in front of his mouth after drinking the Vietnamese Ice Coffee, it indicated that the cyanide had started to take effect, causing his mouth to feel hot and painful. Subsequently, the victim, WAYAN MIRNA SALIHIN, appeared to be convulsing (stiff) while leaning her head on the sofa, indicating that her brain had begun to lack oxygen and that the victim, WAYAN MIRNA SALIHIN, had lost consciousness (Central Jakarta District Court, Decision Number: 777/Pid.B/2016/PN.JKT.PST).

Furthermore, according to expert Slamet Purnomo, after reviewing the toxicology laboratory results and CCTV footage, the expert believes that the initial toxicology results of the first victim were normal after consuming the substance, but

symptoms subsequently appeared, including extreme heat in the mouth, severe pain, convulsions, followed by the victim fainting, losing consciousness, falling into a coma, and dying. According to the expert's knowledge, theoretically, cyanide poison in powder form will dissolve immediately within five seconds of being ingested by a human. Based on CCTV footage showing the victim fanning his mouth and then convulsing and gasping for breath, experts believe that cyanide prevents the oxygen in the blood from being absorbed by the organs, especially the brain, which requires a large amount of blood to function. The disruption of oxygen absorption into the brain causes irregular impulses, resulting in convulsions. and experience shortness of breath because the lungs cannot function without oxygen. Finally, the heart is attacked, causing the victim to fall into a coma or lose consciousness (Central Jakarta District Court, Decision Number: 777/Pid.B/2016/PN.JKT.PST).

According to the explanation from Commissioner Nur Samran Subandi, a toxicology expert, in the Examination Report, "the amount of sodium cyanide contained in the coffee consumed by Mirna was $0.14 \text{ g/ml} \times 2.0 \text{ ml} = 0.2$, and so on. According to the expert, this amount is far greater than the lethal dose, and the CCTV footage shows the process from when the victim began drinking until she collapsed. According to the expert's knowledge, the dose of poison that entered the victim's body was twice the usual lethal dose, which caused the death of WAYAN MIRNA SALIHIN to occur much more quickly. Therefore, the expert, together with the forensic team, concluded that the cause of death of WAYAN MIRNA SALIHIN was cyanide, especially since 0.2 mg/litre of cyanide was also found in her stomach. (Central Jakarta District Court, Decision Number: 777/Pid.B/2016/PN.JKT.PST).

Expert witness Muhammad Nuh Al Azhar, MSc, appeared before the court and gave his opinion accordingly. Expert witness Muhammad Nuh Al Azhar was a digital forensics expert in the case of the death of a person after drinking coffee at Cafe Oliver (Central Jakarta District Court, Decision Number: 777/Pid.B/2016/PN.JKT.PST). The expert examined one (1) grey Toshiba 32 GB flash drive with serial number: 1430A7A412CAT in accordance with digital forensics examination based on Standard Operating Procedure (SOP) 1 on Digital Forensic Examination Procedures and SOP 13 on Forensic Video Examination and Analysis, which refer to the Regulation of the Head of the Criminal Investigation Laboratory of the Indonesian National Police Number 1 of 2014 on Standard Operating Procedures for Digital Forensic Examination and Analysis, and the *Good Practice Guide for Digital Evidence from the Association of Chief Police Officers* (ACPO, UK, 2012 (Central Jakarta District Court, Decision Number: 777/Pid.B/2016/PN.JKT.PST). Upon receipt, the first step is to perform *forensic imaging* on the *flash disk* by *cloning* or duplicating the contents of the *flash disk* sector by sector into a single *image file*. So, for example, if the *flash disk* is 32 GB, we will obtain an *image file* that is exactly 32 GB, which is a duplicate of the original. For example, if there is a file A, we will duplicate it with file A as well, and it will be exactly the same.

We looked at the flash drive and found approximately 29 files, and in the discussion, we had to first ascertain whether these files had been changed or edited. In other words, we had to check whether the files had been tampered with.-file, four methodologies are carried out. The first is the analysis result, which means we test the integrity of a file or the authentication of a file. If there are changes, we can see them, such as if there is 1 frame missing, it will be visible. The second is the analysis of metadata. In fact, multimedia files have a header above them that stores data, so multimedia has three components, namely the file, the header above it, and then a footer below it. The header stores the metadata related to the video recording itself. If there are changes to the video data itself, they will also be recorded there, so we also check using metadata analysis (Central Jakarta District Court, Decision Number: 777/Pid.B/2016/PN.JKT.PST).

The results of the examination of evidence 1 (one) unit of a grey Toshiba 32 GB flash drive S/N: 1430A7A412CAT containing CCTV recordings, in accordance with the Criminalistics Laboratory Examination Report of Evidence No. LAB: 245/FKF/2016 dated 27 January 2016 issued by the Criminal Investigation Laboratory of the Indonesian National Police, the electronic evidence, namely one (1) grey Toshiba 32 GB flash drive with serial number 1430A7A412CAT, contained information related to the purpose of the examination in the form of seven (seven) video files in MP4 and AVI format, in which the moments captured in the videos are normal/ordinary, meaning that no insertion or deletion of frames was found throughout the frames. (Central Jakarta District Court, Decision No.: 777/Pid.B/2016/PN.JKT.PST). At the same time, Police Commissioner Dr. Nursamran Subandi, Msi, was called back to the courtroom to view the CCTV footage, and he essentially stated that 'the expert received the flash drive from the investigator, not from Olivier' (Central Jakarta District Court, Decision Number: 777/Pid.B/2016/PN.JKT.PST).

Weight of Evidence of the Public Prosecutor and Defendant/Legal Counsel

Meanwhile, according to Edward Omar Sharif Hiariej, a criminal law expert, CCTV recordings, in this day and age, were shown in court. According to the expert's opinion based on the Electronic Information and Transactions Law (UUITE), they can be used as electronic evidence, but according to the Criminal Procedure Code (KUHAP), CCTV recordings are actually physical evidence. If we want to include it in the context of Article 184 of the Criminal Procedure Code, it falls into the category of circumstantial evidence, unless the electronic evidence is in the form of a printout or computer data, in which case it can be included as documentary evidence (Central Jakarta District Court, Decision Number: 777/Pid.B/2016/PN.JKT.PST).

Regarding CCTV, there are facts of the incident during the trial, both according to the flash drive or video and from the prosecutors and experts who were presented. From the events that were played, it was obtained that the CCTV depicted

real events. Can you explain the extent of the evidentiary value of the CCTV, where according to the opinion of the first expert in the Criminal Procedure Code, there is no mention of electronic evidence, but if we refer to the ITE Law, the existence of electronic evidence includes CCTV recordings, which are still considered electronic evidence. Secondly, when asked about the strength of the evidence, as long as the CCTV footage has not been tampered with and shows the actual events, it can be said that the CCTV has full evidentiary strength, i.e., strong and irrefutable evidence (Central Jakarta District Court, Decision Number: 777/Pid.B/2016/PN.JKT.PST).

In Article 184 paragraph 1 of the Criminal Procedure Code, the fifth piece of evidence, if one of the five pieces of evidence does not acknowledge the actions as stated by the other pieces of evidence, the strength of the evidence, and how the judge makes a decision, according to the expert's opinion, there are two things that need to be answered, namely, first, the defendant has the right to deny, the defendant may deny any allegations or charges against him, and this is the defendant's right and must be recognised in order to guarantee the objectivity of the trial.

The next question is whether what is denied is proven or not, and then the second question: if there is witness evidence, expert evidence, documentary evidence, plus clues arising from the documents or witness statements, and the defendant denies everything, this falls within the context of the theory of the weight of evidence. when the judge imposes a sentence, the judge believes that the weight of evidence against the defendant far outweighs the mitigating factors. Conversely, when the judge acquits or releases the defendant from all legal charges, the weight of evidence from the legal counsel or that presented in court by the judge outweighs the weight of evidence against the defendant. So, the issue of the weight of evidence, as the expert said, when it comes to the strength of the evidence, depends entirely on the judge (Central Jakarta District Court, Decision Number: 777/Pid.B/2016/PN.JKT.PST).

Meanwhile, according to the testimony of expert Rismon Hasiholan Sianipar, who testified before the court, the expert analysed the video submitted by the public prosecutor. According to the expert, the video shown by the public prosecutor's expert contained evidence of *tempering*. *Tempering* is the illegal modification of evidence for malicious purposes.

The methods used to perform *tampering* are as follows: (a) Brightening one or more pixel intensities to create a movement effect in the video; manually brightened pixels will have a nearly uniform intensity distribution, and the texture (pattern) of the object will no longer match the inherent texture of similar objects in the video; (b) Changing the frame rate and inserting frames to create an object repetition effect, (c) Changing/deleting the texture (pattern) colour, size, and/or orientation of the object.

The inconsistency and disproportionate nature of Jessica's index finger is evident in the video with the intensity distribution in the frame. The contour of the finger is too long when scratching the hand, the length of all fingers is almost the same, and the pixel movement during scratching is compact, as if it were the result of tempering; (Central Jakarta District Court, Decision Number: 777/Pid.B/2016/PN.JKT.PST)

Interpretation of the Validity of CCTV Footage as Evidence in the Jessica Wongso Criminal Case outside of Criminal Court

Munir Fuady: The law of evidence is a process, both in civil proceedings, criminal proceedings, or other proceedings, where, using valid evidence, special procedures are carried out to determine whether a fact or statement, particularly a fact or statement disputed in court, which is submitted and declared by one of the parties in the court proceedings, is true or not as stated (Munir Fuady, 2012). Apart from general criminal cases, the use of electronic evidence in various cases has indeed been supplemented with electronic evidence, such as in cases of ITE criminal acts, tax crimes, and also as stated in the Supreme Court Circular Letter No. 4 of 2016, Evidence; Evidence, evidence regulated in Article 100 of the Administrative Court Law, coupled with electronic evidence in the Information and Electronic Transactions Law (ITE Law), can be used as evidence in administrative court proceedings.

As described above, the CCTV footage was taken by an unauthorised person, whereby after the incident, the witness Dermawan Salihin immediately went to Olivier Restaurant and took the CCTV USB, after which it was confiscated by the police. Witness Dermawan Salihin then took a copy of the CCTV recording USB, while the original remained with the investigators. Dermawan Salihin then filed a police report and the witness's child's body was taken to Kramatjati Hospital for examination and a stomach sample was taken. The police explained that the witness's child had been poisoned with cyanide, and the witness then opened the CCTV USB.

The judge cannot use evidence that contradicts the law, because the truth of a verdict must be tested with the evidence found (Johan Wahyudi, 2012). Thus, in general criminal cases, because they concern the protection of human rights, and also in the criminal procedural evidence system which adheres to the *stelsel negatief wettelijk*, where only evidence that is valid according to the law can be used for proof, and the collection of evidence must be carried out legally, then because during the trial process in court, information was obtained from witnesses who were presented in the criminal case that the CCTV footage was taken by someone who was not authorised to do so, it can be interpreted legally that the CCTV footage cannot be used as evidence or as circumstantial evidence.

Conclusion

Based on the above descriptions, the researcher concludes this study as follows:

First, that the regulation of the use of CCTV (Closed Circuit Television) recordings, which are electronic evidence as circumstantial evidence in criminal law enforcement, as stipulated in Law Number 8 of 1981 concerning Criminal Procedure Law (KUHP) Article 188 paragraph (1), where circumstantial evidence is an act, event or circumstance which, due to its consistency, either between one another or with the criminal act itself, indicates that a criminal act has occurred and who the perpetrator is. However, because evidence can only be obtained from witness statements, letters, and statements from the accused, the Indonesian Criminal Justice System adheres to the *stelsel negatief wettelijk*, whereby only evidence that is valid according to the law can be used for proof. This means that outside of these provisions, CCTV (Closed Circuit Television) cannot be used as valid evidence in such cases.

Second, that in terms of legal interpretation, CCTV (Closed Circuit Television) recordings, which are electronic evidence, are circumstantial evidence in Case Number 777/Pid.B/2016/Pn.Jkt.Pst *Juncto* Appeal Decision Number 393/PID/2016/PT.DKI *Juncto* Cassation Decision Number 498/K/Pid/ 2018 *Juncto* PK Decision Number 69 PK/Pid/2018, because the CCTV (Closed Circuit Television) was not taken directly by the investigator, but by an unauthorised person, witness Dermawan Salihin, who went directly to Olivier Restaurant and took the CCTV USB (Closed Circuit Television), which was then seized by the police, the electronic evidence was not obtained lawfully. Furthermore, in criminal cases, because the Indonesian criminal procedural law system adopts the *Stelsel negatief wettelijk* system, where only evidence that is lawful according to the law can be used for proof, and the collection of evidence must be done lawfully, then because during the trial process, information was obtained from witnesses who were presented in the criminal case that the CCTV footage was taken by someone who was not authorised to do so, it can be legally interpreted that the CCTV footage cannot be used as evidence or as circumstantial evidence.

Recommendations

Based on the above conclusions, the researcher can provide the following suggestions or recommendations:

First, the researcher suggests that CCTV be used as electronic evidence in general criminal cases. It is recommended that lawmakers, in this case the government and the House of Representatives, immediately include this in the upcoming Criminal Procedure Code Bill (RUU-KUHAP). (*Ius Constituendum*)

Second, the researcher recommends that Indonesia, as an adherent to *Stelsel negatief wettelijk*, law enforcement officials must be consistent in that only evidence that is valid according to the law can be used for proof, and the collection of evidence must be carried out legally in law enforcement in the Indonesian Criminal Justice System.

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