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Judicial Inconsistency in Assessing Digital Photo and Video Evidence in Indonesian Civil Litigation: Authentication, Evidentiary Weight, and Legal Certainty

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Abstract

The rapid digitisation of evidence has intensified the use of photographs and videos as electronic evidence in Indonesian civil litigation. Although the Electronic Information and Transactions Law (UU ITE) substantively recognises such materials as valid evidence, the civil procedural codes (HIR/RBg) lack explicit rules on authentication, integrity verification, and evidentiary weight. This regulatory disharmony produces inconsistent judicial assessments, illustrated by Decision No. 11/Pdt.G/2020/PN Plw, which admitted the evidence as supplementary without digital forensic examination, and Decision No. 5/Pdt.G.S/2021/PN Rhl, which disregarded it entirely for the same reason. This study examines the legal status and evidentiary force of photographic and video evidence, analyses the inconsistency in judicial reasoning through a comparative reading of the two decisions, and evaluates the implications for legal certainty. Employing normative legal research with statute, case, and conceptual approaches, the analysis applies the principles of authenticity, integrity, and relevance, together with the doctrines of free evidentiary weight (vrij bewijskracht) and Radbruch's legal certainty. The findings reveal that divergent standards applied to substantially similar evidence undermine predictability and erode public confidence in civil adjudication, underscoring the urgent need for comprehensive procedural guidelines to bridge the gap between substantive recognition and formal verification of digital visual evidence.

Keywords: Electronic evidence, judicial inconsistency, civil litigation, evidentiary weight, legal certainty.

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INTRODUCTION

The rapid advancement of digital technology has precipitated significant changes across various aspects of life, including civil litigation practices. Digital transformation has revolutionized not only human communication and transactions but also the methods by which information is collected, stored, and presented as evidence in legal proceedings. Consequently, evidence, which was predominantly physical in the past, is now increasingly presented in digital formats. This includes photographs and videos, which are frequently submitted by litigating parties to corroborate their claims in court. The ubiquitous use of digital devices in daily life allows for various events to be captured in photographic and video formats, rendering them increasingly relevant as electronic evidence in civil proceedings.

Within the Indonesian legal system, the recognition of electronic evidence has been established through Law Number 11 of 2008 concerning Electronic Information and Transactions, most recently amended by Law Number 1 of 2024,[1] (hereinafter collectively referred to as the "EIT Law"). Article 5, paragraph (1) of the EIT Law recognizes Electronic Information and/or Electronic Documents, along with their printed versions, as valid legal evidence. Although photographs and videos are not explicitly specified, they can be classified as Electronic Information as stipulated in Article 1, point 1 of the EIT Law, which encompasses various forms of electronic data, including images and other visual formats. This categorization is predicated on the fact that photographs and videos are visual representations generated, stored, and transmitted as digital data. Thus, they substantively fulfill the elements of electronic information as defined by the statute.[2]

Furthermore, provided that the photographs and videos satisfy specific criteria, they may be classified as electronic documents pursuant to Article 1, point 4 of the EIT Law. Consequently, photographs and videos hold a normatively recognized status as electronic evidence, although their practical application in evidentiary proceedings still necessitates judicial interpretation regarding their prerequisites and probative value. Nevertheless, this normative recognition has not been uniformly implemented in civil litigation practices. The Indonesian civil procedural law, which remains grounded in the *Herziene Inlandsch Reglement* (HIR) and the *Rechtsreglement voor de Buitengewesten* (RBg), exclusively recognizes five types of evidence: documentary evidence, witness testimony, presumptions, confessions, and oaths. It has yet to explicitly regulate the mechanisms for examining and evaluating electronic evidence. Additionally, Supreme Court Regulation Number 1 of 2019 solely addresses the administrative aspects of electronic litigation

[1] Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik" (2008); Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 19 Tahun 2016 Tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2OO8 Tentang Informasi Dan Transaksi Elektronik" (2016); Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 1 Tahun 2024 Tentang Perubahan Kedua Atas Undang-Undang Republik Indonesia Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik" (2024).

[2] Disriani Latifah Soroinda and Anandri Annisa Rininta Soroinda Nasution, "Kekuatan Pembuktian Alat Bukti Elektronik Dalam Hukum Acara Perdata," *Hukum & Pembangunan* 52, no. 2 (2022), https://scholarhub.ui.ac.id/cgi/viewcontent.cgi?params=/context/jhp/article/1474/&path_info=4._Disriani_Latifah___Anandri_Annisa.pdf.

(e-court), thereby leaving a regulatory void concerning the substantive procedures for the admission and verification of electronic evidence.[3]

This condition creates a discrepancy between the substantive law (the EIT Law) and the conventional civil procedural law. This legal issue is reflected in two court decisions examined in this study, namely Decision No. 11/Pdt.G/2020/PN Plw[4] and Decision No. 5/Pdt.G.S/2021/PN Rhl.[5] Both decisions share a commonality in that they involve electronic evidence in the form of photographs and videos; however, they exhibit divergent outcomes in the judges' legal reasoning. In Decision No. 11/Pdt.G/2020/PN Plw, the judge admitted the submitted electronic evidence as supplementary evidence despite the absence of a digital forensic examination or expert/witness testimony. Conversely, in Decision No. 5/Pdt.G.S/2021/PN Rhl, the judge dismissed the electronic evidence on the grounds that it was not subjected to a digital forensic examination nor corroborated by expert or witness testimony. This disparity highlights an inconsistency in judicial reasoning when assessing the admissibility and probative value of photographs and videos in civil cases. Fundamentally, the EIT Law emphasizes the material requirements for the validity of electronic evidence without being complemented by adequate formal procedural regulations. Consequently, the quality of court decisions lacks uniformity, which potentially diminishes public trust in the judiciary and undermines legal certainty.[6]

Previous studies have attempted to examine electronic evidence within the Indonesian legal system from various perspectives. Several studies indicate that the admissibility and evaluation of electronic evidence in civil litigation still encounter significant obstacles, primarily due to the absence of standardized procedures for its collection and preservation.[7] Other studies exploring the admissibility and normative recognition of electronic evidence in legal transactions suggest that such recognition has not been followed by adequate procedural frameworks. Meanwhile, research within the realm of criminal law has progressed more extensively, encompassing both normative frameworks and evidentiary practices.[8] These existing studies generally address electronic evidence in a broad scope, with most adopting a normative approach. A prior study conducted by Maryam et al examined the inconsistency of judges' reasoning regarding electronic evidence in civil cases. That study identified the underlying factors contributing to the divergence in judicial considerations and proposed four basic assessment standards for judges' reasoning in a broader context. Utilizing two decisions from different jurisdictions—the Magelang District Court and the Lolak Religious Court—the study analyzed electronic evidence as a general

[3] Mahkamah Agung Republik Indonesia, "Peraturan Mahkamah Agung Republik Indonesia" (2019), https://peraturan.bpk.go.id/Details/206067/perma-no-1-tahun-2019.
[4] Pengadilan Negeri Pelalawan, Putusan Nomor 11/Pdt.G/2020/PN Plw (2020).
[5] Pengadilan Negeri Rokan Hilir, Putusan Nomor 5/Pdt.G.S/2021/PN Rhl (2021).
[6] Elvi Susanti Syam et al., "Disfungsi Pengawasan Dalam Eksekusi Putusan Pidana Dan Implikasinya Terhadap Kepastian Hukum," *Ilmiah Sosial, Hukum, Budaya* 26, no. 2 (2025): 119–28, https://doi.org/https://doi.org/10.31293/ddk.v26i2.9212.
[7] Fadhel Arjuna Adinda et al., "The Challenge of Admitting Electronic Evidence in Civil Procedure Law," *Jurnal IUS Kajian Hukum Dan Keadilan* 13, no. 3 (2025): 657–80, https://doi.org/https://doi.org/10.29303/ius.v13i3.1873.
[8] Dennis Fernando, Dini Dewi Heniarti, and Chepi Ali Firman Zakaria, "Transformasi Alat Bukti Elektronik Menggunakan Digital Forensik Dalam Pembaharuan Hukum Acara Pidana" 05, no. 01 (2025): 60–74, https://jurnal.unsur.ac.id/index.php/JJ/article/viewFile/5506/pdf.

concept without limiting it to specific types of evidence. Thus, it provided an overview of the inconsistency in judicial reasoning concerning the widespread use of electronic evidence.[9]

Diverging from previous literature, the current study specifically focuses on the application of legal provisions concerning photographic and video electronic evidence in civil cases, employing a comparative analysis of two District Court decisions issued between 2020 and 2021. The selection of photographs and videos as the objects of study is based on their unique characteristics: they visually represent events and are easily generated, stored, and exchanged in social activities, thus making them highly susceptible to being submitted as evidence in civil litigation.[10] Conversely, these characteristics pose challenges in ensuring their authenticity and integrity, as photographs and videos are vulnerable to alteration or manipulation, both in their visual content and their underlying metadata.[11] One major concern in this regard is the advent of deepfake technology, which enables sophisticated modifications of data embedded within photos and videos.[12] The temporal limitation to court decisions from 2020–2021 was chosen due to the close chronological proximity of the cases, ensuring that the applicable legal frameworks during those periods were relatively identical. Based on this focus, this study aims to analyze the legal regulations governing the status and probative value of electronic evidence in the form of photographs and videos within Indonesian civil litigation. Furthermore, it seeks to analyze the inconsistency in judicial reasoning when assessing such evidence by comparing Decision No. 11/Pdt.G/2020/PN Plw and Decision No. 5/Pdt.G.S/2021/PN Rhl, and to examine the implications of these judicial considerations for legal certainty in civil evidentiary practices.

To achieve these objectives, this study employs the *vrij bewijskracht* (free evaluation of evidence) theory and Gustav Radbruch's theory of legal certainty as theoretical frameworks to analyze judicial reasoning and its implications for legal certainty. Given the absence of specific and uniform procedural standards regulating the application of digital forensic examinations in civil litigation, this study utilizes three core principles: authenticity, integrity, and relevance. These three principles are applied to analyze the implementation of legal provisions in each court decision, identify the discrepancies and inconsistencies in the judges' assessment of electronic evidence, and examine their implications for probative value. Theoretically, this research is expected to enrich the academic discourse on electronic evidence in civil cases, particularly regarding the evaluation of its authenticity, integrity, and relevance. Practically, the findings are intended to serve as a reference for judges and legal practitioners in assessing electronic evidence more consistently. In an international context, this study offers insights from Indonesian judicial practice concerning the challenges of authenticating and determining the probative value of digital visual evidence in civil litigation.

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[9] Fitrah Maryam P.Z et al., "Inkonsistensi Pertimbangan Hakim Terhadap Alat Bukti Elektronik Dalam Perkara Perdata," *Integrasi Ilmu Sosial Dan Politik* 3, no. 1 (2026): 15–28, https://doi.org/https://doi.org/10.62383/sosial.v3i1.2901.

[10] Gresia Wulaning Rum, "Penggunaan Alat Bukti Elektronik Dalam Proses Peradilan Perdata," *Multidisiplin Ilmu Akademik* 2, no. 1 (2025): 61–68, https://doi.org/https://doi.org/10.61722/jmia.v2i1.3151.

[11] Fitrah Maryam P.Z et al., "Inkonsistensi Pertimbangan Hakim Terhadap Alat Bukti Elektronik Dalam Perkara Perdata," *Sosial Simbiosis : Jurnal Integrasi Ilmu Sosial Dan Politik* 3, no. 1 (2026): 15–28, https://doi.org/10.62383/sosial.v3i1.2901.

[12] Nindia Rifdah Fakhirah, "Pengaruh Teknologi Artificial Intelligence Terhadap Keabsahan Alat Bukti Elektronik Dalam Pembuktian Perkara Pidana," *Jurnal Riset Multidisiplin Edukasi* 3 (2026): 999–1011, https://doi.org/https://doi.org/10.71282/jurmie.v3i6.2224.

METHOD

This research constitutes normative legal research employing a statutory approach, a case approach, and a conceptual approach. The statutory approach is conducted by systematically examining various normative frameworks governing the status and probative value of electronic evidence within the Indonesian legal system. This specifically includes the provisions within the Indonesian Civil Code (KUHPerdata), the *Herziene Inlandsch Reglement* (HIR), the *Rechtsreglement voor de Buitengewesten* (RBg), and Law Number 11 of 2008 concerning Electronic Information and Transactions along with its amendments, hereinafter referred to as the EIT Law. In this study, the referenced articles pertain to the provisions as enacted in Law Number 1 of 2024, the current second amendment, unless the historical context necessitates a specific reference to previous versions. The case approach is utilized to analyze the judicial reasoning in two civil decisions, namely Decision No. 11/Pdt.G/2020/PN Plw and Decision No. 5/Pdt.G.S/2021/PN Rhl. These decisions were selected because they exhibit divergent judicial approaches in assessing electronic evidence, particularly concerning the use of photographs and videos between 2020 and 2021, rendering them highly relevant for examining inconsistencies in the judges' *ratio decidendi*. Meanwhile, the conceptual approach is employed to examine legal concepts related to evidentiary theory, including probative value, admissibility of evidence, and the principles of evidentiary assessment in civil procedural law. The legal materials utilized consist of primary legal materials—comprising relevant statutes, regulations, and court decisions as the objects of study—and secondary legal materials, encompassing legal literature such as textbooks, scientific journals, and previous research findings relevant to the issue of electronic evidence. The analysis is conducted in a prescriptive-analytical manner through the evaluation and interpretation of positive legal norms, as well as the comparison of the *ratio decidendi* in both decisions as part of the case approach application.

RESULT AND DISCUSSION

This study examines the inconsistency in judicial reasoning when evaluating electronic evidence in the form of photographs and videos in Decision No. 11/Pdt.G/2020/PN Plw and Decision No. 5/Pdt.G.S/2021/PN Rhl. The analysis is conducted using three principles as analytical parameters: authenticity, integrity, and relevance. Decision No. 11/Pdt.G/2020/PN Plw considers that photographs and videos can be utilized as part of the evidentiary process, whereas Decision No. 5/Pdt.G.S/2021/PN Rhl emphasizes the absolute necessity of digital forensic verification. Unlike prior studies that generally focused on the status and recognition of electronic evidence, this research highlights critical issues in the application and assessment of electronic evidence within civil litigation practice. This condition has the potential to diminish legal certainty, thereby necessitating comprehensive reforms in the formal law governing electronic evidence.

Legal Framework Concerning the Status and Probative Value of Photographic and Video Electronic Evidence in Indonesian Civil Proceedings

In contemporary civil cases, photographs and videos are frequently employed as evidence by litigating parties to substantiate their legal claims. However, Article 1866 of the Indonesian Civil

Code,[13] Article 164 of the HIR,[14] and Article 284 of the RBg[15] explicitly recognize only five types of evidence: documentary evidence, witness testimony, presumptions, confessions, and oaths. This indicates that formal law, specifically civil procedural law, remains grounded in a classical, physical document-based evidentiary system and has yet to explicitly regulate electronically based evidence. The regulatory void in formal law regarding the explicit status of electronic evidence constitutes the primary issue for further examination.

Nevertheless, substantive law has evolved significantly; the recognition of electronic evidence is explicitly mandated in the Electronic Information and Transactions Law via Article 5 paragraph (2). This article stipulates that electronic evidence, comprising electronic information and/or electronic documents and their printed outputs, constitutes a valid expansion of legal evidence in accordance with prevailing procedural laws. Furthermore, Article 1 points (1) and (4) of the EIT Law define electronic information and electronic documents as data processed in various digital formats that possess meaning and are comprehensible.[16] Based on these provisions, photographs and videos can fundamentally be categorized as electronic information. However, if they are generated, transmitted, received, or stored within an electronic system such that they can be accessed and displayed subsequently, they can also be classified as electronic documents.

Furthermore, Article 6 asserts that electronic information and/or documents are deemed valid provided that the information contained therein is accessible, displayable, guaranteed in its integrity, and accountable. These four normative criteria within the EIT Law essentially elaborate on the fundamental principles of electronic evidence law: authenticity and integrity. In the study of electronic evidentiary law, authenticity relates to the ability to ensure that an electronic document originates from a trusted and recognized source, while integrity pertains to the guarantee that the document remains unaltered since its initial creation or transmission.[17] Therefore, normatively, electronic evidence—including photographs and videos—has obtained legitimacy within the Indonesian legal system through the EIT Law. However, from an evidentiary law perspective, the existence of electronic evidence concerns not only its formal recognition as valid evidence but also its probative value, which is determined by the authenticity, relevance, and legality of the embedded data[18].

Consequently, the provisions in Article 6 of the EIT Law fundamentally remain focused on substantive aspects and lack comprehensive regulation of formal aspects, particularly regarding digital authentication procedures, mechanisms for maintaining data integrity (*chain of custody*), and testing parameters via digital forensics to ensure the evidence's authenticity and integrity.

[13] "Kitab Undang-Undang Hukum Perdata" (1847).
[14] "Herzien Inlandsch Reglement (H.I.R)" (1941).
[15] "Rechtsreglement Voor de Buitengewesten (RBg)" (1927).
[16] Indonesia, Undang-Undang Republik Indonesia Nomor 1 Tahun 2024 Tentang Perubahan Kedua Atas Undang-Undang Republik Indonesia Nomor 11 Tahun 2008 Tentang Informasi dan Transaksi Elektronik.
[17] Maryam P.Z et al., "Inkonsistensi Pertimbangan Hakim Terhadap Alat Bukti Elektronik Dalam Perkara Perdata."
[18] Nurmagrifah Ramadani, Muhammad Haidar, and Aulia Putri Setiono, "Efektivitas Penggunaan Bukti Digital Dalam Pembuktian Perkara Perdata: Analisis Terhadap Integrasi Electronic Evidence Dalam Hukum Acara Perdata Nasional," *Kajian Ilmu Hukum Dan Politik* 3, no. 1 (2025): 49–62, https://doi.org/https://doi.org/10.51903/j884b051.

This creates a disharmony between the substantive law, which acknowledges its existence, and the formal law, which has yet to regulate its evidentiary procedures and assessment standards.

This disharmony between substantive and formal law must be understood within the framework of the hierarchy of norms, which dictates that every statutory regulation must derive from and not contradict higher regulations. In this context, both the HIR/RBg and the EIT Law hold equivalent statutory standing; thus, normative conflicts between them can theoretically be resolved through the principle of *lex specialis derogat legi generali*, implying that the EIT Law, as a more specific regulation, can supersede the HIR/RBg in governing electronic evidence.[19]

However, the application of this principle in civil litigation practice is far from straightforward. The HIR/RBg, as civil procedural law, functions to regulate the entirety of trial mechanisms and procedures, whereas the EIT Law merely provides regulations on substantive aspects regarding the validity of electronic evidence without adequate procedural guidelines for its evidentiary process. Consequently, although normatively the EIT Law should function as *lex specialis*, its lack of formal regulations compels judges to revert to the HIR/RBg, which has not accommodated the existence of electronic evidence.[20] This situation ultimately engenders a procedural void that cannot be resolved solely through the application of legal principles. This condition implies that the EIT Law does not replace, but rather expands, the regime of electronic evidence not stipulated in procedural law[21]—a substantive expansion lacking its requisite formal procedural complements.

This void in formal regulation appears increasingly stark when contrasted with the development of formal regulations in criminal procedural law. In the criminal domain, electronic evidence has gained more comprehensive recognition; it not only acknowledges the substantive validity of electronic evidence but has also been accompanied by the development of more standardized evidentiary practices, including the more prevalent use of digital forensics as a verification instrument.[22] Conversely, in civil procedural law, there are currently no provisions specifically regulating the verification procedure for electronic evidence. Furthermore, Supreme Court Regulations have yet to explicitly address authentication standards for electronic evidence in civil cases. This constitutes a primary factor distinguishing the regulatory maturity between the two domains.

Upon deeper examination, the EIT Law does not regulate the hierarchical probative value of electronic evidence. This situation was addressed during a coordination meeting in 2019, which concluded that electronic evidence in the form of photographs and screenshots is classified as preliminary evidence. However, this conclusion was not formalized into a Supreme Court

[19] Shifa Arifatunnisa and Sidi Ahyar Wiraguna, "Kedudukan Bukti Elektronik Dalam Pembuktian Perkara Perdata Pasca Penerapan Peradilan Digital" 4, no. 1 (2025): 365–74, https://doi.org/https://doi.org/10.5281/zenodo.17865598.
[20] Fitrah Maryam P.Z et al., "Inkonsistensi Pertimbangan Hakim Terhadap Alat Bukti Elektronik Dalam Perkara Perdata."
[21] Arifatunnisa and Wiraguna, "Kedudukan Bukti Elektronik Dalam Pembuktian Perkara Perdata Pasca Penerapan Peradilan Digital."
[22] Yevi Mulyana Erawan et al., "Kedudukan Hukum Sistem Elektronik Dalam Digital Forensik Berdasarkan Undang-Undang Nomor 1 Tahun 2023 Tentang KUHP," *Al-Zayn : Jurnal Ilmu Sosial & Hukum* 4, no. 2 (2026): 3291–3304, https://doi.org/https://doi.org/10.61104/alz.v4i2.4827.

Circular (SEMA); therefore, it lacks binding legal force and cannot serve as a uniform reference for judges.[23]

Regarding evidentiary systems, civil procedure adheres to the *negatief wettelijk bewijstheorie* (negative statutory evidence theory), wherein judges are bound by evidence deemed valid by statute[24], However, because the EIT Law does not definitively establish the hierarchical probative value for electronic evidence, based on the *a contrario* concept—that whatever is not explicitly stipulated is free and non-binding[25]—the assessment of the evidentiary weight of photographs and videos remains discretionary and entirely dependent on judicial discretion without binding benchmarks.[26] Therefore, verification through digital forensics is necessary as a determining factor, despite currently lacking standardization. Digital forensics is conducted by collecting digital evidence, which may comprise electronic information and/or electronic documents, possessing strong probative value so that it can be utilized as evidence to prove claims in court.[27] This verification process encompasses five stages: identification, preservation, analysis, data filtering, and reporting. This verification is executed to ensure the authenticity and integrity of electronic evidence in accordance with the material requirements mandated by Article 6 of the EIT Law, thereby validating its use as evidence in court proceedings.[28] Currently, there are no provisions in civil procedural law that specifically mandate or standardize the use of digital forensics in examining electronic evidence. This condition results in the presence or absence of a digital forensic examination being considered differently by judges, leading to a lack of uniform legal consequences in the assessment of electronic evidence.

Analysis of Inconsistency in Judicial Reasoning Regarding the Evaluation of Photographic and Video Electronic Evidence in 2020-2021 Civil Court Decisions

This study examines two court decisions as the objects of research, both sharing a commonality: the submission and utilization of electronic evidence in the form of photographs and videos during the trial. However, the judges' decisions yielded different assessments of the submitted electronic evidence. The divergence lies not only in the resulting legal consequences but also in the judges' approaches to evaluating and interpreting the admissibility requirements and the probative value of photographic and video electronic evidence. This condition indicates

[23] Feriyanto, "Kekuatan Pembuktian Hasil Cetak Foto, Layanan Pesan Singkat/SMS, Dan Chatting Dalam Pemeriksaan Perkara," MARINews.mahkamahagung.go.id, 2025, https://marinews.mahkamahagung.go.id/artikel/kekuatan-pembuktian-hasil-cetak-foto-layanan-pesan-singkat-0Dt.

[24] Danialsyah, Muhammad Ridwan Lubis, and Gomgom T.P. Siregar, *HUKUM ACARA PERDATA Teori Dan Praktek*, 1st ed. (Medan: CV. Sentosa Deli Mandiri, 2023).

[25] Nafiatul Munawaroh, "Arti Penafsiran Hukum Argumentum A Contrario," hukumonline.com, 2023, https://www.hukumonline.com/klinik/a/arti-penafsiran-hukum-iargumentum-a-contrario-i-lt58b4df16aec3d/.

[26] Alzasyah Bachsin et al., "Kedudukan Dan Penilaian Hakim Terhadap Alat Bukti Elektronik Dalam Proses Pembuktian Perkara Perdata," *Al-Zayn : Jurnal Ilmu Sosial & Hukum* 3, no. 3 (2025): 2364–70, https://doi.org/https://doi.org/10.61104/alz.v3i3.1601.

[27] Nindya Dewi Anggana, "Forensik Digital: Definisi Dan Tujuan," widyasecurity.com, 2025, https://widyasecurity.com/2023/12/08/forensik-digital-definisi-dan-tujuan/.

[28] Stefania Kandida Sena Tiba, "Implikasi Penolakan Bukti Elektronik Tanpa Verifikasi Digital Forensik : Studi Putusan Dan Analisis Yuridis," *Media Hukum Indonesia* 4, no. 1 (2025): 865–68, https://ojs.daarulhuda.or.id/index.php/MHI/article/view/2868.

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that the underlying issue is the lack of uniformity in applying electronic evidentiary standards, thereby creating inconsistencies in judicial reasoning. Therefore, this study will conduct an in-depth analysis of these judicial inconsistencies through a comparison of the *ratio decidendi* to identify the discrepancies in the judges' evaluation of such evidence. Furthermore, it analyzes the admissibility of the submitted electronic evidence based on three parametric principles: authenticity, integrity, and relevance, in accordance with the provisions of the Electronic Information and Transactions Law.[29]

As a basis for analysis, a concise comparison of the two decisions is outlined below to illustrate the similarities and differences that serve as the foundation for examining the inconsistency in judicial reasoning:

Table 1. *Comparison of Two Civil Court Decisions*

Aspect of Comparison	**Decision No. 11/Pdt.G/2020/PN Plw**	**Decision No. 5/Pdt.G.S/2021/PN Rhl**
Type of Case	Ordinary Lawsuit (Divorce)	Small Claim Lawsuit (Breach of Contract)
Type of Electronic Evidence	Photographs and Videos	Photographs and Videos
Legal Basis	Article 5 Paragraph (1) and Article 6 of Law No. 11 of 2008	Article 5 Paragraph (1) of Law No. 11 of 2008; Articles 15 and 16 of Law No. 19 of 2016
Assessment Outcome	Evidence admitted as supplementary evidence despite the absence of digital forensics, expert testimony, or witness testimony.	Evidence entirely dismissed due to the absence of digital forensics or expert testimony.

Table 1 above presents a comparison of the judicial reasoning in Decision No. 11/Pdt.G/2020/PN Plw and Decision No. 5/Pdt.G.S/2021/PN Rhl based on several assessment categories regarding photographic and video electronic evidence. These divergent considerations are subsequently elaborated upon to discern the underlying bases and assessment patterns concerning the electronic evidence submitted in these cases.

Decision No. 11/Pdt.G/2020/PN Plw pertains to a civil divorce lawsuit examined and adjudicated by the Pelalawan District Court utilizing the ordinary lawsuit procedure. The Plaintiff filed a divorce lawsuit against the Defendant, incorporating electronic evidence in the form of printed photographs and video recordings to substantiate their legal claims. The Panel of Judges declared that the submitted electronic evidence could not serve as conclusive evidence (*volledig bewijs*); rather, it could only be utilized as supplementary evidence to clarify connections

[29] Prayudi Juni Alamsyah et al., "Peran Metode Pembuktian Elektronik Dan Digital Forensik Dalam Penegakan Hukum Pidana Modern Di Indonesia," *Jurnal Impresi Indonesia (JII)* 5, no. 3 (2026): 1028–38, https: //rivierapublishing.id/jii/index.php/.

with other valid legal evidence. The Panel's reasoning was predicated on the inability of the electronic evidence to stand alone, as its authenticity could not be definitively ascertained, thus necessitating corroboration from other evidence such as digital forensics, witness testimony, or additional documentary evidence. In this case, the Plaintiff presented neither digital forensics nor witnesses capable of validating the electronic evidence. Nevertheless, the judge still considered the electronic evidence as a supplement.

Decision No. 5/Pdt.G.S/2021/PN Rhl involves a civil breach of contract (*wanprestasi*) case examined and adjudicated by the Rokan Hilir District Court, employing the small claims lawsuit procedure. In this case, the Plaintiff filed a breach of contract lawsuit against the Defendant, attaching electronic evidence in the form of messenger chat screenshot photographs and video recordings to corroborate their claims. This electronic evidence was submitted by the Plaintiff as a means to prove the principal argument of the breach of contract and was formally presented as evidence during the trial. The Panel of Judges determined that the electronic evidence submitted by the Plaintiff must be dismissed. This dismissal was grounded in the fact that the electronic evidence failed to fulfill the material requirements—namely, that its availability, integrity, and authenticity must be guaranteed as stipulated in Article 5 Paragraph (3) of the EIT Law. Such guarantees could be established through digital forensics or expert testimony regarding the submitted evidence. During the proceedings, the Plaintiff failed to submit supplementary evidence in the form of digital forensics or present an expert to testify regarding the electronic evidence. Furthermore, the electronic evidence in the form of messenger chat screenshots, initially submitted as documentary evidence, was also dismissed for failing to meet the material requirements. This elucidates that in this case, the electronic evidence lacked material validity and was thereby devoid of any probative value.

Both decisions share a similarity in utilizing identical types of electronic evidence, namely photographs and videos, and both explicitly acknowledge the relevance of digital forensics as an instrument to assess the admissibility of electronic evidence. The judge in Decision No. 11/Pdt.G/2020/PN Plw stated the necessity for examination via digital forensics and/or expert or witness testimony as a prerequisite for electronic evidence to be considered in court. Similarly, the judge in Decision No. 5/Pdt.G.S/2021/PN Rhl noted the necessity of digital forensic examination and/or expert testimony to ascertain the authenticity of the electronic evidence. This shared acknowledgment indicates that both judges were fundamentally guided by the same normative understanding regarding the importance of technical verification in evaluating electronic evidence.

It is noteworthy that both judges, presiding in different judicial jurisdictions, independently referenced the same verification instrument—digital forensics—even though the two cases were examined under different procedural law regimes and lacked explicit guidelines mandating the use of such a verification instrument. Theoretically, this phenomenon can be explained by two factors. First, the principle of *ius curia novit*, which obligates judges to know and apply the law accurately in examining and deciding cases.[30] In the context of electronic evidence, this authority becomes relevant when positive law has not yet provided specific procedural guidelines

[30] M. Yahya Harahap, *Hukum Acara Perdata*, ed. Tarmizi, 2nd ed. (Jakarta: Sinar Grafika, 2017).

regulating the technical verification mechanisms for electronic evidence. Based on Article 6 of the EIT Law, which mandates that the integrity of electronic information and/or documents must be guaranteed and accountable, digital forensics serves as a method to verify the fulfillment of these requirements. Thus, both judges arrived at the same conclusion despite the absence of an explicit directing norm. Second, it cannot be overlooked that the utilization of digital forensics has evolved and become more standardized within criminal evidentiary practices. In the context of civil procedural law, which lacks similar technical guidelines, both judges appear to have drawn upon a shared logic of technical verification: that electronic evidence requires specific examinations to ensure its authenticity and integrity—attributes that cannot always be assessed visually. If both judges possessed the same understanding regarding the importance of digital forensics as a verification instrument, there ideally should have been a consistent assessment standard in determining the status and probative value of such evidence. However, in reality, despite utilizing similar types of electronic evidence, originating from different courts, and being decided within a proximate timeframe, the two judges ultimately rendered disparate evaluations of the photographic and video evidence.

To identify the underlying rationale for this divergence in assessment, the judicial reasoning in both decisions is subsequently analyzed using three principles as analytical parameters: authenticity, integrity, and relevance.[31] The principles of authenticity and integrity correspond explicitly with the material requirements stipulated in Articles 6, 15, and 16 of the EIT Law, which mandate that the integrity of electronic information and/or documents must be guaranteed and accountable, thereby elucidating a legal event.[32] Furthermore, the principle of relevance aligns with civil procedural law doctrine as articulated by M. Yahya Harahap, positing that evidence is intended to support and justify the events alleged within the litigated legal relationship. Consequently, evidence unrelated to the subject matter of the dispute lacks probative value, even if it fulfills the requirements of authenticity and integrity.[33] hese three parameters are subsequently applied consistently to evaluate how the judges' reasoning in each decision assessed the submitted electronic evidence, as well as to identify similarities and differences in their application across both decisions.

In Decision No. 11/Pdt.G/2020/PN Plw, the judge ruled to admit the electronic evidence as supplementary evidence. However, the decision elucidates that this evidence was admitted without accompanying digital forensics or witness/expert testimony. Moreover, the decision does not explicitly state the legal basis utilized by the judge to admit the electronic evidence as supplementary. This condition indicates an issue regarding the basis for admitting electronic evidence as mandated by Article 6 of the EIT Law. When analyzed through the principles of authenticity and integrity, the absence of digital forensics, witness/expert testimony, or other corroborative evidence results in a lack of solid grounding to ensure that the electronic evidence's integrity is guaranteed, free from alteration or manipulation, and originates from the source

[31] Alamsyah et al., "Peran Metode Pembuktian Elektronik Dan Digital Forensik Dalam Penegakan Hukum Pidana Modern Di Indonesia."
[32] Indonesia, Undang-Undang Republik Indonesia Nomor 11 Tahun 2008 Tentang Informasi dan Transaksi Elektronik.
[33] Harahap, *Hukum Acara Perdata*.

claimed by the submitting party.[34] Consequently, the authenticity and integrity of the electronic evidence cannot be adequately ascertained in accordance with the material requirements of Article 6 of the EIT Law. Under these circumstances, the electronic evidence ideally should not have been granted the status of valid evidence, even in a supplementary capacity. Nonetheless, the judge admitted it as supplementary evidence without providing a rationale explaining how its authenticity and integrity were verified.

In addition, based on the principle of relevance, the decision states that the submitted electronic evidence failed to demonstrate a direct correlation with the alleged legal events and did not meaningfully contribute to establishing the judge's conviction regarding the lawsuit's claims. This is evidenced by the judge's decision to dismiss the plaintiff's lawsuit in its entirety. Therefore, although the evidence might have been tangentially relevant to the lawsuit's claims, its status solely as supplementary evidence, unsupported by other primary evidence, meant that the minimum evidentiary threshold (*unus testis nullus testis*) was not met, ultimately leading to the rejection of the lawsuit. Evaluated against these three principles, the admission of electronic evidence in Decision No. 11/Pdt.G/2020/PN Plw highlights a discrepancy between the normative provisions of Article 6 of the EIT Law and their application in judicial reasoning.

Conversely, in Decision No. 5/Pdt.G.S/2021/PN Rhl, the judge dismissed the electronic evidence due to the absence of digital forensics.[35] The judge determined that the electronic evidence, comprising photographs and videos, lacked admissibility as evidence in court and was thus set aside. This reasoning demonstrates that the judge applied the precautionary principle, ensuring that the aspects of authenticity and integrity were fulfilled prior to assessing the existence of the electronic evidence. Such judicial reasoning can be perceived as an alignment between normative provisions and their practical application. However, the judge's consideration did not encompass the principle of relevance. Upon dismissing the electronic evidence for failing to meet the verification basis for authenticity and integrity, the judge provided no consideration regarding whether the evidence possessed any connection to the alleged legal events. Consequently, the judicial analysis in this decision focused exclusively on authenticity and integrity, without demonstrating the extent to which the evidence was relevant to the case.

The analysis of the two decisions reveals a divergence in how judges handle photographic and video electronic evidence. The judge in Decision No. 11/Pdt.G/2020/PN Plw opted to admit the electronic evidence as supplementary evidence to clarify the connection between the claims and other valid evidence, despite the absence of digital forensics, expert testimony, or witness testimony. In contrast, the judge in Decision No. 5/Pdt.G.S/2021/PN Rhl adopted a more formalistic approach by entirely dismissing the submitted electronic evidence because the parties failed to include digital forensics and/or expert testimony. This disparity demonstrates that for electronic evidence possessing relatively similar characteristics, the judges in both decisions applied differing standards in determining its evidentiary status.

[34] Pengadilan Negeri Pelalawan, Putusan Nomor 11/Pdt.G/2020/PN Plw.
[35] Hilir, Putusan Nomor 5/Pdt.G.S/2021/PN Rhl.

This divergence in application has implications for the probative value attached to the electronic evidence in each respective case. Referring to the classification of probative value proposed by M. Natsir Asnawi, the electronic evidence submitted in Decision No. 11/Pdt.G/2020/PN Plw acquired a free probative value (*vrij bewijskracht*) as its evaluation was entirely relinquished to the judge's discretion, who subsequently utilized it as supplementary evidence to clarify the relationship between the claims and other valid evidence. Conversely, in Decision No. 5/Pdt.G.S/2021/PN Rhl, the judge dismissed the electronic evidence, resulting in it possessing no probative value whatsoever.[36] This disparity underscores an inconsistency in the evaluation of electronic evidence with similar characteristics, particularly concerning the determination of requirements and the treatment of its authenticity and integrity. Although both judges encountered electronic evidence with relatively similar characteristics, their respective decisions applied markedly different approaches.

Such differences highlight the inconsistency of judicial reasoning in evaluating electronic evidence. This inconsistency is evident not only in the divergent assessment outcomes but also in the disparate standards applied to electronic evidence sharing similar characteristics. The inconsistency in determining probative value stems from several structural factors. First, civil procedural law lacks specific and comprehensive regulations regarding the mechanisms for examining and evaluating electronic evidence, particularly concerning its authentication, integrity, and probative value. This condition leaves judges without specific procedural law provisions to serve as a reference in determining the examination and assessment mechanisms for electronic evidence during trials. Second, the provisions within the Electronic Information and Transactions Law are largely normative and have yet to regulate the evidentiary mechanisms necessary to ensure the integrity and authenticity of electronic information. Consequently, judges are forced to fill this regulatory void independently based on their individual convictions, without uniform parameters. Third, there is an absence of judicial guidelines that specifically and uniformly direct judges in applying provisions concerning electronic evidence in civil cases. A Supreme Court Regulation explicitly governing the procedures for evaluating electronic evidence in civil litigation could serve as the most operational instrument to standardize evidentiary practices at the trial level. The lack of clear guidelines affords judges excessively broad interpretative latitude, which ultimately engenders the potential for disparity in evaluating substantially similar evidence. If this condition is not promptly addressed through the establishment of clearer and uniform procedural regulations, it will inevitably result in legal uncertainty for the litigating parties.

The Implications of Such Inconsistency for Legal Certainty in Civil Evidentiary Proceedings

Based on the preceding analysis, the inconsistency in evaluating electronic evidence arises from the absence of specific regulations governing the assessment standards and the probative value of electronic evidence within civil procedural law. This normative void compels judges to evaluate electronic evidence based on their individual judicial discretion, as they are not guided

[36] M.Natsir Asnawi, *Hukum Pembuktian Perkara Perdata Indonesia* (Yogyakarta: UII Press, 2013).

by uniform and binding normative parameters, even when their decisions are accompanied by rational considerations.

Gustav Radbruch posits that the law must fulfill three fundamental values: legal certainty (*Rechtssicherheit*), justice (*Gerechtigkeit*), and utility (*Zweckmäßigkeit*)[37] These three values constitute an integral whole; the absence of any one would undermine the overall legitimacy of the law. Furthermore, Lon L. Fuller, in *The Morality of Law*, asserts that a fundamental requisite for a legal system to function is the "congruence between official action and declared rule"—namely, the alignment between the actions of legal officials, including judges, and established rules.[38] When judges evaluate substantially similar evidence in disparate ways, this prerequisite remains unfulfilled, causing the legal system to lose one of its foundational pillars. In a broader context, Joseph Raz emphasizes that the law must be open, stable, clear, and general to function as a reliable guide for society.[39] The inconsistency of judicial reasoning in assessing electronic evidence contradicts the principles of stability and clarity proposed by Raz. The decisions rendered by the judges in the two aforementioned cases did not yield identical outcomes; rather, these variable outcomes hinged entirely upon the individual judge examining and evaluating the electronic evidence presented at trial.

Such conditions generate significant juridical implications for litigating parties, particularly in cases where the evidentiary process relies heavily on electronic evidence. The ambiguity of regulations regarding the validity parameters and the probative value of electronic evidence results in legal uncertainty for the parties, thereby leaving justice unfulfilled. Consequently, electronic evidence that is substantively capable of proving the parties' claims may be deemed to lack adequate probative value merely due to divergent judicial interpretations and approaches in evaluating said evidence. This parametric ambiguity also complicates the parties' efforts to devise evidentiary strategies from the outset of the litigation, as there is no certainty regarding the standards the judge will employ to evaluate their submitted electronic evidence. This condition directly contradicts the value of legal certainty (*Rechtssicherheit*) in Radbruch's view, which dictates that the law must be predictable and reliable for every legal subject bound by it.

This inconsistency affects not only the litigating parties but also has profound implications for the judges themselves. Without binding normative standards, disparate assessments by different judges regarding similar electronic evidence possess the potential to spawn disparities in court decisions that are juridically difficult to justify. Such unjustifiable disparities can breed public doubt toward the judiciary. If legal certainty is not established during the evidentiary process—particularly in evaluating the electronic evidence submitted by the parties—the litigating parties

[37] Hemmalika Alyanti Anisyaniawati; Kusuma, Fauzan Naufal; Zanati, Haifa; Chandra, "Konsep Hukum Dan Keadilan Dalam Pemikiran Gustav Radbruch," *Filsafat Terapan* 2, no. 1 (2025): 1–14, https://journal.forikami.com/index.php/praxis/article/view/954.

[38] Barry Macleod-Cullinane, *Lon L. Fuller and the Enterprise of Law* (London: Libertarian Alliance, 1995), https://libertarianism.uk/wp-content/uploads/2022/03/legan022.pdf.

[39] Joseph Raz, *The Authority of Law: Essays on Law and Morality* (New York: Oxford University Press, 2009), https://books.google.co.id/books?hl=id&lr=&id=ObSH22v3984C&oi=fnd&pg=PR15&dq=The+Authority+of+Law,+Joseph+Raz&ots=qmQnK0o1VN&sig=pJL-82Oz9hTATq7H6_bvQQa0vGw&redir_esc=y#v=onepage&q=The Authority of Law%2C Joseph Raz&f=false.

fail to derive any utility from the judiciary as an effective, fair, and reliable dispute resolution forum.

If this condition is not promptly rectified through the formulation of comprehensive procedural regulations, the ensuing legal uncertainty will not only prejudice the parties individually but will also undermine legal authority and result in a decline in public trust regarding the legal reasoning and decisions applied to their cases.[40] Society loses the guarantee that the law operates consistently, predictably, and justly. Therefore, the formulation of procedural regulations specifically governing the assessment standards for electronic evidence in civil procedural law has become an urgent necessity that cannot be overlooked. These procedural regulations must encompass three key elements: the authentication standards for photographic and video electronic evidence, the qualifications of digital forensic experts permissible to testify in court, and the hierarchical probative value of electronic evidence in civil proceedings.

CONCLUSION

Basically, this study affirms that the inconsistency in judicial reasoning concerning electronic evidence in the form of photographs and videos in Decision No. 11/Pdt.G/2020/PN Plw and Decision No. 5/Pdt.G.S/2021/PN Rhl stems from the disharmony between the substantive recognition afforded by the Electronic Information and Transactions Law (UU ITE) and the procedural regulatory vacuum in the HIR/RBg. Analysis through the parameters of authenticity, integrity, and relevance demonstrates that, although both panels of judges acknowledged the importance of digital forensic verification, the application of divergent standards produced non-uniform evidentiary status—one treating the evidence as supplementary with free evidentiary weight, and the other disregarding it entirely. Theoretically, these findings strengthen the argument that the absence of binding procedural guidelines violates Fuller's principle of congruence between official action and declared rule, while challenging Radbruch's value of legal certainty (*Rechtssicherheit*) and Raz's requirements of stability and clarity in law. Practically, this condition generates uncertainty for litigants in formulating evidentiary strategies and risks undermining the legitimacy of civil court decisions that rely on electronic evidence.

The study is limited by its narrow scope, which encompasses only two decisions from different judicial districts within the 2020–2021 period; consequently, broader generalisation to national practice requires more extensive longitudinal and multi-jurisdictional research. It is therefore recommended that the Supreme Court promptly issue a Supreme Court Regulation comprehensively governing the authentication standards for electronic evidence—including digital forensic parameters, expert qualifications, chain of custody, and the hierarchy of evidentiary weight—within civil procedural law, while simultaneously promoting the integration of technical verification mechanisms into the reform of the HIR/RBg, so that the gap between substantive and formal law may be systematically addressed and greater legal predictability achieved.

[40] Himliah Hasibuan, "Kepastian Hukum Dalam Putusan Hakim: Studi Terhadap Inkonsistensi Yurisprudensi Mahkamah Agung," *Jurnal Yurisprudensi, Hukum Dan Peradilan* 2, no. 3 (2024): 76–84, https://doi.org/https://doi.org/10.59966/yudhistira.v2i3.1670.

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