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Evidence of Contract Dispute Settlement in Electronic Trials in Indonesia in the Construction of the *Ius Constitutum* and *Ius Constituendum*

Faizal Kurniawan¹, Erni Agustin¹, Xavier Nugraha², Rahajeng Dzakiyya Ikbar², Stefania Arshanty Felicia²

¹ Department of Private Law, Faculty of Law, Universitas Airlangga, Indonesia

² Faculty of Law, Universitas Airlangga, Indonesia

faizal@fh.unair.ac.id, erni@fh.unair.ac.id, nugrahaxavier72@gmail.com, rahajeng.dzakiyya.ikbar-2019@fh.unair.ac.id, stefania.arshanty.felicia-2019@fh.unair.ac.id

Abstract

Trial mechanism in Indonesia has changed through the enactment of Supreme Court Regulations in 2018 and 2019, including electronic trial and evidence. However, it was problematic because the change was partial. Although Indonesia has started to implement the electronic trial, the legal principle of evidence is using conventional procedural law, including the settlement of contract disputes. This article aims to analyze and find the mechanism of examining the evidence of contract dispute resolution in electronic courts in Indonesia in the *ius constitutum* and *ius constituendum*. This article suggests a comprehensive construction *ius constituendum* of contract dispute settlement evidence in Indonesia electronic trials.

Keywords: Evidence, Contract Dispute Settlement, Electronic Trial.

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1.0 Introduction

Evidence plays an important role in the trial process (Rozi, 2018). If an event cannot be proven, even though the incident happened *de facto*, but the incident was *de jure* still considered not to have happened (Butarbutar, 2010). Moreover, in the matter of contract dispute resolution in civil law, which prioritizes the evidence, it seeks formal truth, or the truth is based on formal evidence (such as deeds, written agreements, etc.). The importance of evidence in contract disputes is also regulated in Article 1865 of the Indonesian Civil Code jo. Article 163 of the Indonesian Civil Procedure Code and also following the principle of *actori incumbit onus probandi*, *actore non probante, reus absolvitur* (the burden of evidence is on the plaintiff and if the plaintiff cannot prove, the defendant must be released from all such claims) (Roy, 2019).

As time goes by, the trial mechanism in Indonesia has changed from conventional to modern. By 2018, there are several changes to the enactment of Supreme Court Regulation Number 3 Year 2018 about Administration of Cases in Court and revised by Supreme Court Regulation Number 1 Year 2019 (Djarmiko, 2019). One of the changes from a conventional trial to an electronic trial is related to evidence, however it was a partial change only, hence it causes problems. For example, regarding documentary evidence, there is no verification mechanism and no mechanism for adding evidence when the parties want to add letter evidence after uploading the lawsuit and answers. Then related to the mechanism when there is a signal disturbance during an online trial of evidence by examining the testimony of witnesses and/or experts there is a signal disturbance or other technical disturbance.

Considering that, the formulations in this article are: First, how is the construction of the evidence of contract dispute resolution in electronic courts in Indonesia in the construction of the *ius constitutum*? Second, how is the construction of an evidence of contract

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dispute resolution in electronic courts in Indonesia in the construction of the *ius constituendum*. The purposes of this article are: First, to analyze the evidence of contract dispute resolution in electronic courts in Indonesia in the construction of the *ius constitutum* (current law) and second, to analyze and find the mechanism for proving the settlement of contract disputes in electronic courts in Indonesia on the construction of the *ius constituendum* (legal development, desired future).

1.0 Literature Review

Several articles are similar to this article, we will describe some of these similar articles and their differences to show the gap of the research, such as:

- 2.1 An article written by Dewa Gede Rudy and I Dewa Ayu Dwi Mayasari entitled: "The Validity of Letter Evidence in Civil Procedural Law Through Electronic Trials" published in the *Undiksha Citizenship Education Journal*, Volume 9, Number 1, 2021, the focus of the discussion is related to the validity of the documentary evidence in the electronic trial based on the Supreme Court Regulation Number 1 of 2019. The similarity of this article is on the discussion of electronic letter evidence. But, the focus on this article is only on contractual issues and the evidence analyzed is not only documentary evidence, but other evidence, such as witnesses, expert statements, evidence electronics, and so on (Rudy & Mayasari, 2021).
- 2.2 An article written by Khotib Iqbal Hidayat, Aris Priyadi, and Elly Kristen Purwendah entitled: "A Critical Study of the Dualism of Electronic (E-Court) and Conventional Courts" *Batulis Civil Law Review*, Volume 1, Number 1, 2021 whose focus is on analyzing the benefits and problems of implementing e-court in Indonesia. The similarity of this article is on the discussion of the conventional Civil Case Trial process. But, the focus on this article is on analyzing evidence of contract dispute resolution in electronic courts in Indonesia (Hidayat et al., 2020).

2.0 Methodology

According to Peter Mahmud Marzuki, law research is a process of finding the rule of law, legal principles, and legal doctrines in order to resolve legal challenges (Marzuki, 2017). Approaches used in this legal research are statute approach and conceptual approach. Main legal materials used in this research are in the form of primary laws and regulations, as well as secondary legal resources in the form of related publications. The legal materials were then studied in order to come up with conclusions that addressed the problem's formulation. Through analysis of the primary and secondary legal sources, the author will look at the evidence of contract dispute resolution in electronic courts in the *ius constitutum* then find the mechanism of examining the evidence of contract dispute resolution in electronic courts in Indonesia in the *ius constituendum*.

3.0 Findings

In the *ius constitutum*, or the current status quo law, according to the Indonesian Civil Procedure law, there are other evidence tools, such as the results of an examination of experts, called expert information (Jati, 2013). However, regarding the evidence, in the law of Indonesian electronic civil procedure in the construction of *Ius Constitutum* is not comprehensively regulated, even though the provisions of this evidence occupy a central position in the evidentiary agenda at trial, especially in proving the existence of contract dispute resolution. After the implementation of Article 25 of Supreme Court Regulation No.1 in 2019 which states that "The evidentiary trial is carried out following applicable event law.", it can be understood that if it is not specially regulated, then the evidence goes back to the applicable procedural law which was originally formulated in conventional trial construction. Hence, the *ius constituendum* or the law in the future that can be done is to reconstruct the law of civil events on electronic trials as explained in the discussion part of this article.

4.0 Discussion

4.1 Letter

The letter evidence in Article 1866 Indonesian Civil Code is placed as the first order of the evidence acknowledged by the law. Since letter is usually used in civil affairs or in the case of conducting a contract such as buying and selling, renting, exchanging; hence there will always be a form of evidence in written form of contract letter, which contract can be used later when there is a dispute against the will of the parties. Mertokusumo argues that the evidence of letters is everything that contains reading signs intended to pour out the contents of one's heart or to convey the fruit of one's thoughts and it is used as evidence (Mertokusumo, 2002).

Letters as a means of written evidence can be divided into two types, deeds and non-deeds letters. In this case, the deed is divided into two, the authentic deed and the non-authentic deed written under the hand. As the times progressed, photocopies of a letter or deed were also accepted as a means of evidence, but it must be accompanied by the original letter/ document and it without being corroborated by witness statements and other evidence as it can be seen in the Supreme Court Decision date April 14, 1976 Number 71 K/Sip/1974 (Mertokusumo, 2002).

In the trial of civil cases electronically, especially at the evidence stage, based on Article 22 of Supreme Court Regulation No.1 in 2019, it is regulated that letter evidence is done online by uploading documents or evidence in the form of letters on the E-Court application. Related to other arrangements regarding the evidence of letters at this electronic trial is not regulated in more detail, even though the position of the letter on the evidence of civil cases that prioritize the formal truth (truth based on documents) is certainly very essential.

The example of unregulated things related to the evidence of letters in Supreme Court Regulation No.1 in 2019, first, it is very important that related to the verification mechanism on the evidence of letters submitted in electronic form. If the evidence of the letter is attached in the lawsuit and answers, it should be regulated regarding the verification mechanism and the juridical consequences which arise. For instance, when the evidence attached online is an authentic deed, but when the actual trials conducted in the court happens, but the party who has the evidence only brings a scanned deed, that means that party cannot show the origin of the authentic deed. In the event of such a case, the evidence should be worthless as a means of evidence of the letter following the original, "*quod non*" if the party wants to make it as a means of evidence, then the evidence should be qualified as a scan of the original evidence of the same position as the photocopied evidence.

Indeed, related to verification, it was mentioned in technical guidance of the Supreme Court's Regulation, which is the Supreme Court Decision No. 129/KMA/SK/VIII/2019 About Technical Instructions for The Administration of Cases and Trials in The Court Electronically; containing the provisions of the obligation for the parties to upload documents of evidence of sealed letters in the Court Information System, but the provisions are very minimal. For example, related to verification mentioned that the document used as evidence, the original must be shown in front of the court, but it is not elaborated, the legal consequences if it is not done so. It needs to be emphasized that the regulation itself is created in a form of Supreme Court Decision regulation, which has no juridical consequences if the parties violated the rules, so this is only a technical instruction for judges, hence it's a *lex imperfecta*. Which is why it is necessary to regulate a verification mechanism on the letter evidence submitted in electronic form at the electronic *ius constituendum*.

Second, Supreme Court Regulation No.1 in 2019 doesn't regulate the mechanism of adding letter evidence during the trial. In practice, it is not determined precisely related to the time of submission of letter evidence, so there is a possibility of Plaintiff or Defendant providing additional letter evidence again, for example after the agenda of witnesses or experts. The addition of more letter evidence during the trials seems to be eliminated in Supreme Court Regulation No.1 in 2019. It can be seen from Article 9 paragraph (2) and Article 22 paragraph (2) which only regulates that the evidence of the letter must be attached along with submitting a lawsuit and answer. Based on the basis, it is necessary to set the mechanism of adding at the *ius constituendum* electronic trial.

Third, inzage is not regulated in Supreme Court Regulation No.1 in 2019. Inzage is a mechanism to check or to view the case file. This is done to ensure the evidence (usually evidence of letter) really belongs to the party. In the Supreme Court Regulation No.1 in 2019, it is not regulated at all related to them. Following the regulation in Article 25 of Supreme Court Regulation No.1 in 2019 it states that: "The evidentiary trial is carried out following applicable event law", which means that we should return to the usual mechanism; however, it is not possible, because the evidence in this electronic recording is the form of a *softcopy*, so it not possible to use the same inzage mechanism when the evidence is *hardcopy*. On that basis, it is necessary to regulate the inzage mechanism on the electronic *ius constituendum*.

Fourth thing that is not regulated by Supreme Court Regulation No.1 in 2019 is file format of the letter evidence tool submitted. Regarding the format of this letter, the evidence tool may seem unimportant, but in fact, it needs to be regulated to avoid technical problems, such as the unreadability of the file or damage to the file layout. The format of the evidence letter tool to avoid technical problems is Portable Document Format (PDF). The existence of provisions related to the format of the letter evidence to avoid this technical problem is also used in electronic trials in criminal case, as stipulated in Article 3 paragraph (1) of Supreme Court Regulation No.4 in 2020 about the Administration and Trial of Criminal Cases in Electronic Courts which states, that: "Every Electronic Document submitted by the Prosecutor, legal counsel, and the Accused must be in the form of portable document format (PDF)".

4.2 Witness

Witness evidence is regulated in Article 139 to Article 153 of the Civil Procedure Law on witness examination, Article 169 to Article 172 of the Civil Procedure Law, and Article 1895 jo. Article 1912 of the Indonesian Civil Code. This type of evidence will be used when there is no written letter evidence and/or if the written evidence is not sufficient to prove it. When this happens, there needs to be testimony from the witness. Witness testimony can be defined as a testimony given to the judge in trial about a factual event in dispute through a personal oral notification by someone who is not part of the dispute, and is called to be present in the trial (Mertokusumo, 2002).

Witness testimony is submitted orally in front of the trial and should not be written. As regulated by Article 140 paragraph (1) and Article 148 Indonesian Civil Procedure Law, if the witness is speechless then if giving witnesses will be accompanied by a translator. Witness testimony valued as free evidence, where the judgment is up to the judge. Testimony is only a notification from a person who directly knows about the event, so the testimony of witnesses who didn't directly experience the events cannot be counted

In *ius constitutum*, as seen in Article 24 paragraph (1) of Supreme Court Regulation No.1 in 2019 stipulates that "In the event agreed by the parties, the evidentiary hearing with the examination of witness and/or expert testimony can be carried out remotely through audiovisual communication media that allow all parties to participate in the trial". Hence, the examination of witnesses through audiovisual communication media is still optional with the condition that it must be agreed by all parties. Thus, when there is one party that does not agree to conduct the hearing remotely, then this mechanism cannot be implemented.

Considering that *ius constitutum* requires all disputed parties to agree beforehand in order to conduct the hearing through audiovisual communication media, it seems to neglect the existence of technology present to eliminate place and time problems. Teleconference technology has already progressed time by time to allow someone to communicate whenever and wherever. It's quite ironic to know that this technology cannot be used without the agreements itself; as if the judiciary system is not modern and does not accommodate the development of technology. On that basis, the *ius constituendum* proposed is that the examination of witnesses through audiovisual communication media doesn't need the agreement of all parties. When there is one party who wants to present a witness, but the witness cannot come directly to the trial, then it can use teleconference technology, not even closing the possibility that in the future witness examination is not done in the courtroom, but can be anywhere.

Another problem related to the arrangement of witness examinations on the construction of *ius constitutum* at electronic trials in Indonesia related to this witness evidence is the lack of arrangements related to this witness. In the Supreme Court Regulation No. 1 of 2019, it can be seen that the arrangements related to this witness, only found in Article 24 when many things should be regulated in electronic trials related to this witness. For example, the mechanism of supervision of witnesses who conduct the examination. If the examination of the witness is carried out through teleconference technology, there exists a possibility that in the room there may be a third party/person who directs or helps the witness. This betrays the principle of a fair trial.

Another thing that needs to be regulated regarding the mechanism of examination of witnesses on the construction of *ius constitutum* electronic trials in Indonesia related to this witness evidence is the mechanism of witness oath. Under Article 147 of the Indonesian Civil Procedure Law, it is regulated that: "If not asked to resign, or if this refusal is considered unwarranted to give his testimony, then before the witness gives his testimony, he is first sworn in according to his religion." As for the legal consequences related to the witness evidence if not sworn, then the evidentiary value is only based on instructions (vide Supreme Court Decision No. 90 / K / SIP / 1973), can even be qualified as unauthorized evidence (vide Supreme Court Decision No. 14688 K / Sip / 1975). On this basis, it is important to regulate the mechanism of witness oath examined with electronic trial mechanisms. This for example can be seen in the arrangement at the electronic trial of criminal cases in Article 10 paragraph (1) and paragraph (2) of Supreme Court Regulation No. 4 of 2020 which states, that: "(1) Every Witness pronounces and Experts, oaths/promises and translators must first be to be in one with his religion and beliefs guided by the Judge / Panel of Judges. (2) If witnesses and experts give information from the prosecutor's office or from elsewhere, the swearing-in is guided by the judge/ judge with the help of the clergy who are in the office where the witness and expert give their testimony."

4.3 Presuppositions

Presuppositions evidence is regulated in Article 1915-1922 of the Indonesian Civil Law Code and the only Article in the Indonesian Civil Procedure Law is Article 173. This article only states that the presuppositions may be used as a means of evidence if the presuppositions is based on certain laws and directs the judge if the presuppositions is important, thorough, certain and there is conformity with each other, then the presuppositions can be used as a judge as a consideration in deciding the case.

Furthermore, according to Article 1915 of the Civil Code, presupposition is a conclusion by law or by the judge it is drawn from a famous event towards an unknown event. Regarding presuppositions, Subekti defines that presuppositions as a conclusion drawn from a famous event or that is considered proven to be in the direction of an unknown event, meaning before it is proven. Based on Article 1915 paragraph (2) of the Indonesian Civil Law, presuppositions are divided into two, namely presuppositions according to the law and presuppositions that are not based on the law. The suspicion based on the law is regulated in Article 1916 of the Civil Law Code, which is a presupposition based on a provision in the law, then associated with certain actions and or events.

The suspicion according to this law is also divided into two, namely presuppositions based on the law that allows the evidence of opponents and presuppositions that under the law will not be possible to prove opponents as stipulated in Article 1921 paragraph (2) of Indonesian Civil Code. A presupposition that is not based on the law or is usually called a presupposition based on the conviction of the judge, as regulated in Article 1922 BW. This presupposition is valued as free evidence, which means the judge is free to conclude his presuppositions based on belief and to use it or not use it based on the things proven in the case. Based on Article 1922 of the Indonesian Civil Code, judges should only pay attention to important, thorough, and certain interconnected presuppositions. This method of evidence must first be proven to be a reality that cannot be debated again through the evidence of letters and witnesses, then drawn conclusions that prove the things that were suspected earlier.

Presupposition is not regulated at all in The Supreme Court Regulation No. 1 in 2019, even in the Supreme Court Decision No. 129 / KMA / SK / VIII / 2019; considering when there should technically explained that the presuppositions can be obtained from evidence from the electronic trial presented by the parties, but does not meet the formal requirements, such as the results of the scan of the letter evidence, but cannot present the original, witnesses examined through teleconference, but not sworn, and so on. With no regulation at all related to electronic trials is a question related to the validity of the evidence derived from electronic trials. For example, when the letter evidence is attached during the lawsuit, but cannot be shown during the trial. On that basis, it needs to be regulated related to the presuppositions work as a means of evidence on the construction of *ius constituendum* at electronic trials in Indonesia.

4.4 Confession

Confession (*bekentenis confession*) is the fourth-order of evidence recognized in Article 164 of the Civil Procedure Law jo. Article 1866 of the Civil Code. More details, the proof of confession is regulated in Article 174 to Article 176 of the Civil Procedure Law, as well as Article 1923 to Article 1928 of the Civil Law Code to complete provisions that are not regulated in the Civil Procedure Law (Harahap, 2017). The confession in question can be interpreted as a statement, either in writing or orally, delivered by one of the litigating parties, whose contents justify some or all of the opponent's propositions (Saleh & Mulyadi, 2012). Confessions can be found in the trial file, such as answers, *replik*, *duplik*, or conclusions; or delivered directly in the trial and recorded in the news of the trial event (Harahap, 2017). There are two views on the power of proof of confession. First, the power of proof of perfect recognition is carried out directly in front of the judge in the trial, as mandated in Article 174 of the Civil Procedure Law, and Article 1925 of the Civil Law Code (Saleh & Mulyadi, 2012). Second, the power of proof of confession outside the court depends on its form. When it takes the form of writing, then the power of proof is calculated as free evidence. However, oral confessions delivered outside the trial have no evidentiary power unless someone hears the confession and is presented as a witness in the trial, and becomes the judge's judgment to determine the strength of his proof (Harahap, 2017). Both of these views demonstrate the important role of the Judge in considering the evidentiary power of confession.

Thus, in its position as a means of evidence, the confession presented before the judge is binding for the Judge, considering that the Judge following the legal principle of civil procedure can seek the truth *formil* only, and cannot question the confession made in the form

of an opinion (Harahap, 2017). This causes debate in recognizing confession as a means of evidence, because it shows the existence of conditions that are free from proof of the proposition that has been recognized, considering that the confession must be considered true, even if the parties have admitted the truth, then it does not need to be proven again (Juanda, 2016).

In its development, the matter of proof in *the e-court* does not regulate related to the evidence of confession. When reviewing the provisions of Article 25 Supreme Court rule No. 1 in 2019, in essence, return the implementation of the evidentiary trial following applicable event law. As for the Supreme Court Decision No. 129 / KMA / SK / VIII / 2019, the point of proof also does not include the evidence of confession. It is very important to also regulate how the mechanism of proof of confession in the context of *e-court* for consistency with other evidence tools that have been regulated in *e-court regulations*.

First, *the e-court* should be able to accommodate the *formil* requirement in determining the validity of the proof of confession, which is presented in front of the judge in the trial process, as in Article 1926 of the Civil Law Code jo. Article 175 of the Civil Procedure Law. Given that there are no rules for conveying oral confessions in *e-court* regulations, the reference to the usable law reuses the provisions in the Civil Law Code and the Civil Procedure Law Code. However, to support technological advances in optimal dispute resolution, it is necessary to assert the definition 'in front of the judge in court'.

Second, confessions submitted outside the trial require witnesses *de auditu* to corroborate the value of the relevant evidence (see Supreme Court Decision No. 818 / K / Sip / 1983) or a written confession equivalent to an authentic deed as long as the signature and contents are recognized (Harahap, 2017); so, it needs to be affirmed in *e-court* regulation because it is submitted through letter evidence and witness. So far, the arrangement of the number 5 letter a Supreme Court Decision No. 129 / KMA / SK / VIII / 2019 requires the upload of stamped documents to the Court Information System. In addition, witness testimony can also be carried out remotely following the provisions of Article 24 paragraph (1) No. 1 in 2019 jo. Number 5 letter c Supreme Court Decision No. 129/KMA/SK/VIII/2019. On that basis, it needs to be regulated related to recognition as a means of evidence on the construction of *ius constituendum* at electronic trials in Indonesia.

4.5 Oath

Oath as a means of evidence in civil event law is placed in the last position according to Article 164 of the Indonesian Civil Procedure Law jo. Article 1866 of the Indonesian Civil Code. This is actually because the evidence of oath is used as a last resort when all other forms of evidence have existed yet not enough to prove something (Juanda, 2016). In detail, the evidence of oath is regulated in Article 155 to Article 158 and Article 177 of the Indonesian Civil Procedure Law, as well as Article 1929 to Article 1945 of the Indonesian Civil Law Code to complete the provisions following the provisions in Article 1929 of the Indonesian Civil Law Code, there are three types of oaths. First, the oath of the breaker (*decisoir eed*) is an oath that decides the case or ends the dispute by the parties. Second, an additional oath (*suppletoir eed*) ordered by the Judge. Third, the oath of the assessor (*aestimatoire eed*) to estimate the amount of compensation (Harahap, 2017). These three oaths can only have the power of evidence if they meet the formal requirements. Regarding the formal requirements of the evidence of oath, four criteria must be met to ensure a perfect and binding power of evidence (Harahap, 2017). First, the oath must be spoken orally before the judge in the trial, especially in the District Court following Article 158 paragraph (1) of the Civil Procedure Law. Second, according to article 165 paragraph (1) of the Civil Procedure Law jis. 1930 paragraph (2) and Article 1941 in the Civil Code, the instrument of evidence of oath is used when there is no other means of evidence capable of proving something. Third, the oath must be carried out in front of the opponent party following Article 158 paragraph (2) of the Indonesian Civil Procedure Law jo. Article 1945 paragraph (4) of the Indonesian Civil Code. Thus, if associated with the context of *e-court* in Indonesia, there is a legal loophole that makes the oath evidence more flexible to accommodate teleconference than evidence of confession. This is indicated by the provisions in Article 158 paragraph (1) of the Indonesian Civil Procedure Law that allows the oath to be carried out elsewhere, such as the house in question, place of worship, or other District Court, as long as there is a strong reason. Because of the provisions of Article 25 Supreme Court Regulation No. 1 in 2019 to return the implementation of the evidentiary trial following applicable event law, then the regulation of Article 158 paragraph (1) of the Civil Procedure Law Code provides space for oath through teleconference, but to avoid the potential for multi-interpretation, it should be regulated expressly. On that basis, it needs to be regulated related to the oath as a means of evidence on the construction of the *ius constituendum* at the electronic trial.

4.6 Expert's Testimony

Expert information (*deskundigenbericht*), as stipulated in Article 154 of the Indonesian Civil Procedure Law, but not specifically mentioned as part of evidence in civil law as mentioned in Article 164 of the Indonesian Civil Procedure Law jo. Article 1866 of the Indonesian Civil Code. However, expert information is another element that is generally done by judges to support consideration of the evidence of civil cases. In principle, expert information lists expert opinions on the things asked of him related to a matter following his expertise, so that the case becomes clear (Saleh & Mulyadi, 2012). According to Article 154 paragraph (1) of the Civil Procedure Law, experts are appointed by the judge *ex officio* or at the request of one of the parties.

In principle, some legal experts think that expert information is not evidence that has the value of evidence power (Harahap, 2017). However, when there is uncertainty, so that the only way to clarify the matter is only with expert information, then that's when expert information comes in. Expert information can be submitted in the form of oral or written reports, or can also be strengthened by oath in the trial. Thus, in essence, the Judge, following article 154 paragraph (2) of the Indonesian Civil Procedure Law, is given the freedom to follow expert opinions only if the opinion does not contradict beliefs as a Judge; as long as the information does not stand-alone as evidence and only adds to the function and quality of other evidence tools.

On the bright side, in the context of *e-court*, expert information has been firmly regulated in Article 24 Supreme Court Regulation No. 1 in 2019, and clarified in the Supreme Court Decision No. 129 / KMA / SK / VIII / 2019. This provision stipulates that the evidentiary

hearing in the examination of expert information can be carried out remotely using audiovisual communication media, using the court's infrastructure, as long as there is an agreement between the parties. Thus, when referring to this provision, experts who give oral information must still be physically present in court, because the number 5 letter e of the Supreme Court Decision No. 129 / KMA / SK / VIII / 2019 requires that the information be submitted before the Judge and Substitute Court Clerk.

There are two things that need to be analyzed toward this provision, firstly about the optimization of technology in the e-court and secondly about how to submit written forms of expert information. First, using remote audio-visual communication media, although it should be delivered in court, is not quite effective, considering the aims to create a flexible form of electronic court. Since the Expert remains obliged to be in court, they cannot hold a teleconference with Experts who are in separate places outside the court. So, there must be a possibility to regulate allowing the expert giving the information through teleconference outside the court. Second, when expert information is delivered in written form, it is unclear how the document uploading system in the Court Information System works. Given that expert information in the form of writing is not officially counted as evidence in e-court regulation, there is a legal vacuum because the information does not have the power of evidence as a letter. Even if we can count that a written expert information can be accommodated by Supreme Court Decision No. 129 / KMA / SK / VIII / 2019, there needs to be an affirmation that the expert information is indeed a means of evidence.

4.7 Local Examination

This local examination (*descente / gerechtelijke plaatsopneming / site visit investigation*) is an examination conducted directly by the judge to see the land that is the object of the dispute (Izzatil & Jaya, 2012). This is done by the judge to clarify the land that is the object of the dispute. This is to avoid the possibility that the land in dispute is not owned by the parties, or the land in dispute factually does not exist. The legal basis of this local examination can be found in Article 153 Indonesian Civil Procedure Law jo. Supreme Court Circular Letter No. 7 of 2001 (SEMA 7/2001) concerning Local Examinations (Dirgantara et al., 2020).

This local examination is not qualified into the evidence as stipulated in Article 1866 of the Indonesian Civil Code jo. Article 164 of the Indonesian Civil Procedure Law, but in its practicalities in cases when the dispute object is land, then the judge will use local examinations. The position of this local examination is based on the Supreme Court Circular Letter No. 3 in 2018 Number 6 in the circular stating: "The lawsuit regarding land and or buildings that have not been registered that have outlined the location, size, and boundaries, but there is a difference in the data of the object of the dispute in the lawsuit with the results of the local examination (*descente*), then what is used is the physical data resulted from the local examination (*descente*)". It is understood that the data from this local inspection is evidence of the location of the land. Thus, it can be said indirectly that this local examination is one type of evidence, especially to prove the ownership of one's land.

In the construction of electronic trials on *ius constitutum*, it can be understood that this local examination is based on Supreme Court Decision No. 129 / KMA / SK / VIII / 2019 regulated that local examinations are carried out following the applicable Event Law. This shows that in the *ius constitutum*, local examinations are still carried out conventionally. In the construction of the *ius constituendum* at the electronic trial, it should begin to be possible, that local examinations are carried out through existing technology, for example through live view through google maps, using teleconference to connect with the surrounding residents (*in casu*: witnesses), so that in the future it can be possible for judges and parties not to need to object directly.

5.0 Conclusion & Recommendations

In Indonesia, although it has begun to implement electronic trials, it turns out that in principle the evidence is still using conventional procedural law, including those related to contract dispute resolution. Although there are several arrangements related to electronic evidence, such as electronic submission of evidence, it is possible to examine witness statements and/or expert knowledge can be carried out remotely through audio-visual communication media, but there are no detailed technical arrangements regarding this matter, and there is no electronic mechanism for other evidence, such as suspicions, confessions, oaths, and other electronic evidence. Hence, in the future, there needs to be regulation for updated Indonesian civil procedural law that can ensure the validity and legal certainty of evidence used in electronic court, especially in the case of contractual dispute. It is noteworthy that this research is limited to a normative legal research, hence it needs an empirical approach to complement it in future research.

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Paper Contribution to Related Field of Study

This study serves as a wake-up call for the mechanism in terms of examining the evidence in contract dispute resolution through electronic courts in Indonesia in the construction of the *ius constituendum* (the aspired future legal development).

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