

***POWER OF ELECTRONIC LETTERS AS EVIDENCE IN
PROOF CIVIL CASES (STUDY OF SUPREME COURT
RULING NO. 300K/PDT/2010)***

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ABSTRACT

Proof and evidence in the Civil Procedure Law are very important in order to seek truth and legal certainty regarding a case submitted by the plaintiff, if evidence cannot be found or the governing legal rules can be put forward, then law enforcement officials will have difficulty in enforce the civil rights of the parties. This research looks at the strength of electronic mail as evidence in proving civil cases in Supreme Court Decision No. 300K/PDT/2010. And to find out what is the basis of the judge's considerations in civil court cases in Supreme Court Decision No. 300K/PDT/2010. This research uses normative juridical methods, with a statutory-regulatory approach and a descriptive conceptual approach, secondary data sources in the form of primary legal materials in the form of the Civil Code, ITE Law, Supreme Court Decision Number 300K/PDT/2010. Secondary legal materials in the form of all legal publications regarding law which are not official documents. And tertiary law is in the form of legal materials that provide instructions or explanations in the form of understanding primary data and secondary data. Analysis uses qualitative. The results of the research show that (1) The strength of e-mail evidence as a proof process in conferences when linked to Article 164 HIR regarding valid evidence, then the strength of e-mail when printed is considered the same as an original letter and has the same strength as a deed authentic. The main requirement for electronic documents to be declared as valid evidence is the use of an electronic system that has received electronic certification from the government (Articles 13-16 of the ITE Law). (2) In the decisions of the District Court and the High Court, it was stated that Prita Mulyasari was guilty and had committed an unlawful act, but in the decision of the Supreme Court stated the reasons in exceptions 1,2,3 in the main case up to 23 and in the response that the reasons were This reason can be justified, the High Court judec facti has misapplied the law with the following considerations, one of which is that expressing feelings about what is experienced cannot be said to be an unlawful act, because the expression is only in the form of a complaint.

Keywords: Evidence, Electronic, Civil

INTRODUCTION

In law there is a legal system that regulates the complete unity of Orders consisting of parts or elements that are interconnected and closely related to each other. To achieve a goal This unity requires cooperation between parts or elements According to a certain plan and pattern. In the legal system there are two major legal systems, namely the continental European and Anglo Saxon legal systems. the main difference between the two systems lies in the source of law. European system continental is a legal system with various characteristics legal provisions are codified (collected) systematically which will interpreted further by the judge in its application. The system adopted by continental European countries based on Roman law are called as a civil law system. The Civil Law system has three characteristics, namely with codification, judges are not bound by precedents or laws Is the main source of law, and the judicial system is inquisitorial. Forms of legal sources in the formal sense in the Civil Law legal system in the form of statutory regulations, customs and jurisprudence.¹meanwhile, the Anglo Saxon system is a legal system based on jurisprudence, namely the decisions of previous and later judges form the basis for subsequent decisions by judges. Anglo Saxon legal system tend to prioritize customary law, law that operates dynamically in line with the dynamics of society, the sources of law in this legal system is the decision of the judge/court. In this legal system the roles are given to a judge is very broad.

Indonesia adheres to the continental European legal system or civil law. On in this system, court decisions are based on statutory reregulation applicable, for example UUD 45, MPR Decree, UU/Perpu, Government Regulation, presidential Decree/Presidential Decree, Supreme Court, Ministerial Decree and others. Court decision is flexible (changes) depending on the judge who decides based on existing facts/evidence.[2]In the dispute resolution process litigation is proof.

Proof and evidence in the Civil Procedure Law are important things very important in order to seek truth and legal certainty regarding a case filed by the plaintiff, so if there is no evidence can be found and/or the discovery of legal regulations governing, then law enforcement officials will have difficulty enforcing rights civil law for the parties. In civil procedural law there are principles proof, as stipulated in Article 163 Herziene Indonesische regulations (HIR) jo. Rechtsreglement Voor De Buitengewesten (RBg) jo. 1865 Book the Civil Procedure Law (KUHPer) which determines that: anyone who claims to have ownership of an item or designates an item events to confirm their rights, or deny the rights of others, then the person must prove it.[3] One of the processes in civil procedural law is proof. Where in the proof there are two elements hold that role. Namely the elements of evidence and the rules of evidence. The types of evidence according to Civil Law are written evidence, witness evidence, evidence allegations, confession evidence and oath evidence.

The presence of Law No.11 of 2008 concerning Information and Electronic Transactions (UU ITE) is expected to provide significant benefits useful for law enforcement officials, as well as to prevent acts unlawful acts committed via the internet. The existence of the ITE Law It is hoped that it can eradicate unlawful acts in information and technology field.

Evidence has a significant position in the process trial where this evidence becomes a tool that can be used for strengthen an argument in a court hearing. Therefore it is evidence this must not be left behind if someone wants to carry out and win a trial in court. Therefore, according to the HIR system, in civil procedure judges are bound by valid evidence, which means that the judge may only make a decision based on the evidence determined by law only.[4]

With the formation of the ITE Law, electronic evidence has been accepted as legal evidence in procedural law in Indonesia. The ITE Law recognizes information and electronic documents as valid legal evidence are regulated in Article 5 which reads:

1. Electronic information and/or electronic documents and/or printed results
Is valid legal evidence;
2. Electronic information and/or electronic documents and/or printed results
As intended in paragraph (1) is an extension of the evidence valid in accordance with applicable procedural law in Indonesia;
3. Electronic information and/or electronic documents are declared valid if use an electronic system in accordance with the provisions stipulated in this law;
4. Provisions regarding electronic information and/or electronic documents as intended in paragraph (1) does not apply to:
 - a) Letters which according to law must be made in writing; And
 - b) Letters and documents which according to law must be made in the form of a notarial deed or a deed made in the form of a notarial deed or a deed made by a deed-making official.

This has important meaning because all transactions, communications and agreements are made electronically. Examples of cases that would be discussed which is in sync with the explanations above is the case that happened to Prita Mulyasari, the case started with Prita Mulyasari he had his health checked at Omni International Hospital for complaints of fever and pain headache, nausea accompanied by vomiting, difficulty defecating, sore throat, to loss of appetite. By hospital doctor, Dr. Hengky Gosal SpPD and Dr. Grace Herza Yarlen Nela, Prita was diagnosed with dengue fever, or Typhus. After being treated for four days accompanied by a series of examinations as well as treatment, the initial symptoms complained of decreased but were found to be similar a virus that causes swelling of the neck.

So in practice, law in Indonesia is still very underdeveloped adapt to existing developments. In Indonesian Procedural Law the position of electronic evidence is valid, so the strength of the evidence electronic evidence is equated with written evidence in the form of ordinary letters. However, this explanation still requires appropriate legal regulations the power of electronic mail in legal evidence in civil cases in court.

This research has several references from previous research such as: In 2018, I Gusti Ayu Agung Ari Krisnawati conducted research on the Position and Strength of Electronic Letters as Evidence in Procedural Law civil law and drawing conclusions Electronic letters can be used as evidence in civil procedural law if it

meets the qualifications according to Article 6 of the ITE Law, namely written or original form, accessible, displayed, guaranteed to be intact, and can be accounted for. Meanwhile, in this research candidates who want to researched regarding the power of electronic mail as internal evidence evidence in civil cases, study of Supreme Court Decisions No. 300K/PDT/2010. Where prospective researchers do not only examine the power of law electronic mail as evidence in civil law only but researchers carry out research in the decision whether there is legal force in the letter electronically in the decision.[5]

Then in 2019, Trio Yusandy conducted research regarding the Position and Strength of Electronic Evidence in Procedural Law civil law and conclude that the position of electronic evidence based on Law Number 8 of 1997 concerning Company Documents, that company documents are data, notes, or information that is created and accepted by the company in the context of carrying out its activities, both in writing on paper. Meanwhile, the difference between this research candidate is that this researcher wants to research the strength of electronic evidence in Court Decisions Agung No. 300K/PDT/2010. The research used is normative research.[6]

Then in 2021, Mery Maryati, conducted research regarding the Power of E-mail as Evidence in the Civil Case Trial Process in Indonesia and produce conclusions based on the case trial criminal, civil or PTUN then the evidence in the form of e-mail can be used in court so there needs to be a clear understanding regarding evidence in the trial process. Meanwhile, there are differences in candidates this research is about the strength of electronic evidence in decisions supreme Court No. 300K/PDT/2010. And prospective researchers also want to research how the judge considered the decision.[7]

Based on the description above, this is the basis for the research with the title “The Power of Electronic Letters as Evidence in Proving Civil Cases (Study of Supreme Court Decision No. 300K/PDT/2010)” Based on the description above, this is the basis for the research with the title “The Power of Electronic Letters as Evidence in Proving Civil Cases (Study of Supreme Court Decision No. 300K/PDT/2010)”

1.1. RESEARCH METHODS

This research contains two problem formulations, namely what is strength electronic mail as evidence in proving civil cases supreme Court Decision No. 300K/PDT/2010?. And what is the basis? Judge’s considerations in civil dispute cases in Court Decisions Supreme No. 300K/PDT/2010?

The type of research used in this research is research type qualitative. Qualitative research is research that aims to understand phenomena about what is experienced by research subjects, for example behavior, perceptions, motivations and so on holistically and in a descriptive manner in the form of written and spoken words from other people who are observed.[8] This research using a statutory approach and Statute approach case approach case approach. A statutory approach is used to find out all the legal regulations.

The data source used in this research is materials primary law in the form of the Civil Code (KUHPerdata), Law no. 11 of 2008 concerning Information and Electronic Transactions, Supreme Court Decision (Number 300k/PDT/2010), then Legal materials Secondary is legal material that has a close relationship explains primary legal materials, namely draft laws, books, as well as the results of scientific work that is closely related to research, hereinafter Tertiary legal materials are legal materials that provide guidance or explanation in the form of understanding primary data and secondary data.

Then the data collection techniques in this research are limited to the use of library research, namely by collecting data in the form of a number of literature, books, legislation, and also methods collects data originating from the Supreme Court Decision (No 300K/PDT/2010) which can be used as support in research. Then study, review and study the relevant legal materials with the problem under study.

2. RESEARCH RESULTS AND DISCUSSION

A. THE POWER OF ELECTRONIC LETTERS AS EVIDENCE IN PROOF CIVIL CASES IN SUPREME COURT DECISION NO.300K/PDT/2010

1. Principles of Evidence and Regulations in UUIITE in Decisions Supreme Court No.300k/pdt/2010

Evidence is decisive during the course of a case, because of the outcome proof can be seen whether the claim is proven or different opinion. This means that if the plaintiff can prove the argument of the lawsuit, the judge will grant the claim from the plaintiff, and if the plaintiff does not, the evidence is decisive during the course of the case, because of the outcome Proof can be seen whether the claim is proven or different opinion. This means that if the plaintiff can prove the argument of the lawsuit, the judge will grant the claim from the plaintiff, and if the plaintiff cannot prove his arguments in the trial or argument where the defendant can prove his denial in answering or being two-faced, then the judge will reject the plaintiff's lawsuit. Gradually there are (2) elements which plays an important role in proof.

The importance of evidence in court is that it provides a valid legal basis for a claim or rebuttal, as specified in the principles proof of civil procedural law. Besides that, evidence must be used with valid evidence. As for evidence in civil procedural law and instruments evidence in criminal procedural law is as follows: as in procedural law Civil legal evidence is regulated in article 164 HIR jo. 1866 BW in the form of, writings or letters,witnesses, allegations, confessions, oaths. Whereas In criminal procedural law, valid evidence is regulated in Article 141 of the Criminal Procedure Code namely: witness statements, expert statements, letters, instructions, defendant's statements. Based on the settings above, it can be said that the order of mention is Evidence in the Criminal Procedure Code is different from the arrangement of various pieces of evidence in it civil procedural law. In criminal

procedural law, it is proven by use preferably evidence in the form of witnesses which means something of the crime below the legislature is only a witness who knows the crime instantly. At the same time, In civil procedural law, the best evidence is written or letter evidence means a civil legal relationship according to the legislators. The law can be prepared in advance by the parties by making an agreement in the form of writing or letter.

Furthermore, it is necessary to understand that in order to assess validity the use of evidence in criminal procedural law, there are the same principles both in Article 294 paragraph 1 HIR and Article 183 KUHP, which in principle set about: "*The judge may not impose a sentence on a person unless he does so at least two valid pieces of evidence he obtains confidence that a criminal act actually occurred and that the defendant is guilty do it*"

Meanwhile, in civil procedural law in the context of assessment the validity of the use of evidence does not contain the above provisions, and only recognize the principles of proof as specified in Article 163 HIR jo. 1865 BW which states that: "*Whoever claims to have rights over an item, or designate an event to confirm its rights, or denies another person's rights, then that person must prove it.*"

Based on the provisions in Article 1 number 2 of the ITE Law, what is meant with electronic transactions is a legal act carried out and using computers and/or other electronic media. In order to carry out such electronic transactions, the parties will always use an electronic document as a basis for them to carry out legal relations.[9]

Related to the existence of electronic transactions in it Using electronic documents, in the ITE Law there is a principle that determines that every person who asserts a right, strengthens that right already exists, or deny the rights of others (The same principle is in Article 163 HIR jo. 1865 BW) based on the existence of electronic information and/or documents electronics must ensure that electronic information and/or documents The electronics in it come from an electronic system that meets the requirements Based on statutory regulations. As for the requirements specified in the ITE Law are the conditions for a transaction electronics and/or electronic documents are both the subject and the system already must be certified which is carried out by.[10]

First, the Reliability Certification Institute, which will perform the function administration, which can include: Registration, physical authentication of perpetrators business, Creation and management of reliability certificates, and Creating lists certificate that has been frozen. As specified in Article 10 of the ITE Law. Second, Electronic Certification Organizers, which carry out administrative functions which can include: Registration, physical authentication of the applicant; Creation and management of public keys and private keys, Management Electronic certificates, as well as a list of certificates that have been frozen. As specified in Article 13 and Article 14 of the ITE Law.[11]

Next, the author will discuss the basis of UUIE in the Decision Supreme Court No.300k/pdt/2010. For more details regarding this case With UUIE we can see the judge's considerations starting from District Court. The High Court up to the Supreme Court has in relation to electronic information, in this case Prita's e-mail Mulyasari which contains complaints about OMNI Hospital services INTERNATIONAL which is spread to various mailing lists. As for the level the Supreme Court takes into consideration in the decision Cassation No.300K/Pdt/2010 constitutes all the considerations in District Court and High Court levels along with the reasons Reasons submitted by the Applicant/Casationer/Defendant/Appellant/Appellee regarding the reasons in Exceptions 1,2,3 in the main cases 1 to 23 and in this response is closely related to electronic information because All of these considerations discuss information electronic, namely electronic mail or e-mail Prita Mulyasri.

2. The Power of Electronic Letters in Civil Case Law in Decisions Supreme Court No.300k/Pdt/2010

With the enactment of the ITE Law, there is a new regulation regarding electronic document evidence. Based on the provisions of Article 5 paragraph 1 of the ITE Law stipulates that electronic information and/or electronic documents and/or the printout is valid legal evidence. Next in Article 5 paragraph 2 of the ITE Law it is determined that electronic information or documents electronic and/or printed results as intended in paragraph 1 are expansion of legal evidence and in accordance with applicable procedural law in Indonesia. Thus, the ITE Law has determined that documents electronic and/or printed results are valid evidence and is an expansion of legal evidence in accordance with existing procedural law applies in Indonesia, so it can be used as evidence in advance trial. Furthermore, based on the provisions of Article 5 paragraph 3 of the ITE Law, it is determined that electronic information and/or electronic documents are declared valid if use an electronic system in accordance with the provisions is in the ITE Law.

Problems regarding the evidentiary power inherent in the tool further electronic evidence can be seen in the general explanation of the Law. Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE). The general explanation of the Law states that: "In activities e-commerce, among other things, is known for its electronic documents equivalent to documents created on paper". This, means that the evidentiary power of electronic documents in civil case practice equated with the strength of written evidence (letters). [12]

The strength of electronic mail evidence as an internal proof process trial when linked to Article 164 HIR regarding valid evidence, then the power of an electronic letter when printed is considered to be the same as the original letter and has the same power as an authentic deed. The main requirement is that electronic documents can be declared as valid evidence use of electronic systems that have received electronic certification from government (Articles 13-16 of the ITE Law). Other requirements must be added electronic signature, putting it in a standard electronic contract.

The position of a copy of an electronic document according to the general explanation Article 6 Law Number 11 of 2008 concerning Information and Transactions Electronics (ITE) states the principle of duplication of electronic systems resulting in the original information being indistinguishable from the copy, so that it is no longer relevant to differentiate. Regarding this matter, You can see the explanation of Article 6 of Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE) which reads as follows:

“So far, written form has been synonymous with information and/or documents stated only on paper, even though in essence it is information and/or Electronic documents can be contained in any media, including media electronic. Within the scope of electronic systems, the original information with copies It is no longer relevant to differentiate because the system is basically electronic operates by duplication which results in the original information being lost can be further distinguished from the copy”.[13]

Regarding the inherent evidentiary power of a sign electronic hand, can be seen in the provisions of Article 11 of the Law Electronic Information and Transactions (ITE) which contains an electronic signature has legal force and valid legal consequences as long as it is fulfilled following requirements:

- a. Electronic signature creation data relates only to the signer hand.
- b. Electronic signature creation data only exists during the process under the power of the signatory.
- c. Any changes to the electronic signature that occur after the signing time can be known.
- d. Any changes to electronic information related to the sign the electronic hand after the signing time can be known.
- e. There are certain methods used to identify who the signatory.
- f. There are certain ways to show that the signer has provide consent to related electronic information.[14]

The parties involved in signing the contract, throughout they fulfill the agreement without violating the provisions The principal of the currently applicable engagement law is Article 1320 of the Civil Code or which has not expired, this applies to a contact relationship.

Based on the descriptions above, the power of electronic mail as a tool legal evidence in the Supreme Court decision no.300k/pdt/2010 can be seen in the Indonesian legal system, that the existence of a piece of evidence Electronic data such as electronic data, including e-mail can already be used as We can see this clearly in the case that happened A patient named Prita Mulyasari, in this case Prita

Mulyasari was sued by Omni International Hospital as a result of the contents of Prita's e-mail convey their complaints and responses regarding inadequate treatment. It was a good thing that Omni International Hospital gave him so that it spread various mailing lists. Then the e-mail spread widely making hospital officials feel compelled to refute the accusations which was told by Prita in print media and the hospital officials submitted civil lawsuit against Prita. Clearly on level The Tangerang District Court in the main case declared the defendant Prita Mulyasari was sentenced to death on the grounds that he had committed an act against the law against the plaintiff or Omni International Hospital, namely in writing. It is clear in point 2 in the main case that the plaintiff has committing defamation. And this e-mail or also known as a tool proof of electronic information as regulated in the ITE Law Article 5 paragraph 1 used as valid evidence in this case. It can be concluded that The ITE Law has emphasized the position of electronic information in this case, namely e-mail is an electronic document that can be used as a tool valid evidence in the Prita Mulyasari case. But the value of strength the proof does not yet have perfect evidentiary value.

B. Basic Considerations for Judges in Internal Civil Dispute Cases Supreme Court Decision No.300K/PDT/2010

1. Judge's Considerations in Civil Case Decisions in Decisions Supreme Court No. 300k/Pdt/2010

The judge's consideration is a stage where the panel of judges consider the facts revealed during the trial process taking place. The judge's consideration is one of the most important aspects in determine the realization of the value of a judge's decision that is fair and contains legal certainty, besides that it also contains benefits for the parties concerned so that the judge considers this must be addressed carefully, kindly and thoughtfully. If the judge's consideration is not thorough, good and careful, then the judge's decision comes from the judge's considerations will be annulled by the High Court/Supreme Court.[15]

Judges in examining a case also need to have proof, where the results of the proof can be used as material consideration by the judge in deciding the case. Proof is a stage the most important thing in the examination during the trial. Proof aims to obtain certainty that an event/fact has occurred submitted that it actually happened, in order to get the correct judge's decision and fair. The judge cannot make a decision before it is clear to him that the event/fact actually occurred, that is, it can be proven the truth, so that it appears that there is a legal relationship between the parties.[16]

In essence, the judge's considerations should also include matters such as: The following:

- a. The main issues and things that are acknowledged or the arguments that are not Denied

- b. There is a juridical analysis of the decision on all related aspects all facts/things proven in the trial.
- c. There are all parts of the plaintiff's petitum that must be consider/judicate one by one so that the judge can draw conclusions about whether it is proven or not and can whether or not the demand is granted in the decision. [17]

A judge is considered to know the law so he cannot refuse examine and adjudicate an incident submitted to him. This is regulated in article 16 paragraph (1) of Law no. 35 of 1999 jo. UU no. 48 of 2009, namely: "The court may not refuse to examine and try a case which is put forward with the argument that the law does not exist or is unclear, but rather submitted is obliged to examine and try it". An inner judge finding the law is permissible to reflect on jurisprudence and opinions of famous jurists (doctrine). Judge in giving a decision societ not only based on legal values, but also legal values live in society, as explained in Article 28 paragraph (1) of the Lawlaw no. 48 of 2009 which states: "Judges are obliged to explore, follow and Understand the legal values that live in society"

Next, the author will discuss the judge's decision on the case what happened to Prita Mulyasari where the decision was at the District Court level Tangerang, Banten District Court, to the Supreme Court. Decision The decision handed down by the judge does not clearly comply with the law ITE. We can clearly see in the judge's decision not the slightest bit touched on the ITE Law. For more details, the author will explain starting from the District Court, High Court, to the Supreme Court. Firstly, at the Tangerang District Court level, the decision was made dropped/decided and stated that the defendant had committed the act against the law against the plaintiffs as intended in the provisions of Article 1365 of the Civil Code which states "every act is against the law(onreclmatigedaad), which brings harm to others obliges the person whose fault it was to cause the loss, compensates for the loss." So at the first level the lawsuit was filed at the Tangerang District Court the plaintiff, namely OMNI INTERNATIONAL Hospital, was granted in part the lawsuit and the defendant, Prita Mulyasari, were given compensation loss amounting to Rp. 314,286,360,-(three hundred and four million two hundred and eighty six thousand three hundred and sixty rupiah). So in the decision at the court level Tangerang State with Case Number: 300/Pdt.G/ 2008/PN.TNG can It was said that the judge decided and accepted the basis of the plaintiff's claim that the contents of Prita Mulyasari's electronic letter were an act against law as intended in Article 1365 of the Civil Code.

Second, in the Banten High Court decision, Case Number 71/PDT/2009/PT.BTN Dated 8 September 2009 which has taken over From the consideration of the Tangerang District Court judge to be made its own considerations, but at the level of the Banten High Court does not provide any basis or reason for takingtransfer of these considerations, as considered on page 14 the decision of the Banten High Court aquo stated: "Considering that after carefully and thoroughly researching and studying the case files, trial minutes and official transcripts from the Tangerang District Court date 11 May 2009, Number: 300/PDT.G/2008/PN.TNG and Memorandum of Appeal and Contra Memorandum of Appeal submitted by the

parties to the case and all legal considerations of the Court of First Instance, then the Court of Instance The appeal agrees with the legal considerations of the Court of First Instance is taken over and used as legal consideration by the Court the Appellate Level itself is in adjudicating. This matter.” So on stage the level of appeal at the Banten High Court is for the appellees/appellants Previously the plaintiffs I, II, III were RS. OMNI INTERNATIONAL was granted and the defendant/appellant/appellant, namely Prita Mulyasari, was sentenced to compensation amounting to Rp.164,286,360,- (one hundred sixty four million two hundred and eighty six thousand three hundred and sixty rupiah).

In the Banten High Court judge's decision, the judge also said more dominantly considers the main arguments of the plaintiff's lawsuit which states Prita Mulyasari's actions were against the law as intended in Article 1365 of the Civil Code. Because of the Court Banten High Court Case Number 71/PDT/2009/PT.BTN dated 8 September 2009 which has taken over the consideration of the District Court's decision Tangerang Case Number 300/PDT/2009/PT.BTN to be made consideration, while the Banten High Court did not provide any basis or reason for taking over the consideration as stated on page 11 of the High Court decision Banten so that the Tangerang District Court judge's decision is Case Number 71/PDT/2009/PT.BTN strengthens the decision of the Tangerang District Court Number Case 300/PDT.G/2008/PN.TNG. So, from the analysis above the author is at stage The Banten High Court judge decided and granted the basis of the lawsuit the plaintiff stated that the contents of Prita Mulyasari's electronic letter were an act against the law as intended in Article 1365 of the Civil Code, that is emphasized because at the Banten High Court level, the judge takes over legal considerations of the Tangerang District Court without any basis or reason clear. However, the author concludes that the judge used article 5 paragraph (1), (2). (3), (4), Article 6 and Article 44 of the ITE Law regarding Electronic Information and Documents Electronic or printed results of Electronic Information and Electronic Documents recognized as valid evidence as the meaning of expanding evidence based on Civil Code.

At the cassation level, the Supreme Court decided to cancel it decision of the Banten High Court Case Number 71/PDT/2009/PT.BTN, date 8 September 2009 which revised the decision of the Tangerang District Court Case Number 300/PDT.G/2008/PN.TNG dated 11 May 2009, namely in favor of the cassation applicant, the defendant/appellant/appellant namely Prita Mulyasari. In its consideration, the Supreme Court opined regarding the reasons in exceptions 1, 2, and 3 in the main case until with 23 and in consideration that such reasons are justified, by the High Court/ Judex Facti has misapplied the law. Become a writer concluded that the judge decided the case at the District Court level and the high level court is not based on the ITE Law but is based on the judge decide the case based on interpretation.

2. Basic Considerations of Judges in Supreme Court Decisions No. 300K/Pdt/2010

In this case this is the subject highlighted in the considerations judges' considerations starting from the Tangerang District Court, the High Court Banten, up to the Supreme Court level are:

The judges' considerations start from the District Court, The High Court and up to the Supreme Court have a clear link with electronic information, namely Prita Mulyasari's e-mail containing complaints Prita Mulyasari regarding OMNI INTERNATIONAL Hospital services which are spread throughout various mailing lists so that OMNI INTERNATIONAL Hospital felt disadvantaged for Prita Mulyasari's actions which the hospital then filed civil lawsuit against Prita Mulyasari based on the lawsuit stated that Prita committed an unlawful act as follows intended in the provisions of Article 1365 of the Civil Code for his actions which clearly stated in the Plaintiff's lawsuit at the Tangerang District Court.

Firstly, considerations at the first or judicial level District Court, namely the consideration of the Upper Tangerang District Court Judge Prita Mulyasari's case is related to electronic information as follows;

Tangerang District Court judge's considerations, judge consider the relevant documents, namely the plaintiff's lawsuit and defendant's exception. In the plaintiff's lawsuit, there are close arguments The connection with electronic information is in the form of electronic mail or e-mail Prita Mulyasari which contains Prita Mulyasari's complaints about hospital services OMNI INTERNATIONAL where the electronic mail or e-mail is distributed to various mailing lists thus creating the OMNI INTERNATIONAL Hospital felt aggrieved by Prita Mulyasari's actions. Thus, the RS OMNI INTERNATIONAL filed a civil lawsuit against the Tangerang District Court Prita's actions, with the core argument of the lawsuit being that Prita did it unlawful acts regarding the contents of Prita's electronic mail or e-mail Mulyasari is as intended in the provisions of article 1365 of the Civil Code. This can clearly be seen in the points of argument of the lawsuit by OMNI Hospital INTERNATIONAL written in points 13, 14, 15, 16, 17, and 18 is electronic information, namely electronic mail or e-mail Prita Mulyasari Yang according to RS OMNI INTERNATIONAL, it can be qualified as an act against the law. Meanwhile, the judge's consideration will be the arguments for the exception defendant where several important points of the argument are:

1. The plaintiff's lawsuit is premature.
2. The lawsuit lacks parties/is incomplete (Exception Plurium Litis Consortium) and complete with points, but the judge paid little attention exceptions from the defendant and further consider the arguments of the lawsuit from the plaintiff and justify the basis of the plaintiff's claim stated that Prita Mulyasari had committed an unlawful act based on Article 1365 of the Civil Code.

Thus, in the consideration of the judge at the Tangerang District Court, it can be It was concluded that the judge was more dominant in considering the plaintiff's claim and tend to ignore the defendant's exceptions, we can see this from the

decision The judge granted part of the plaintiff's lawsuit and confirmed it The basis of the plaintiff's lawsuit is Article 1365 of the Civil Code, namely an act of tort law.

So the Tangerang District Court judge decided in favor of the party The plaintiff is OMNI INTERNATIONAL Hospital and imposed a replacement sanction loss to Prita Mulyasari amounting to IDR 314,286,360 (three hundred and fourteen million two hundred eighty six thousand three hundred and sixty rupiah). So you can concluded the judge's considerations at the Tangerang District Court regarding the Prita case Mulyasari has a clear connection with electronic information. Then the considerations at the High Court level are: Banten State High Court Judge's Consideration of the Prita Mulyasari Case Related to Electronic Information are the judge's considerations Banten High Court with Case Number 71/PDT/2009/PT.BTN dated 8 September 2009 took over the consideration of the Tangerang High Court with Case Number 300/PDT.G/2008/PN.TNG to be made its own consideration, where the Banten High Court did not provide any basis and reason for taking over the consideration the,as considered on page 14 of the High Court Decision Banten Aqua which stated: "Considering, that after researching and study carefully and thoroughly the case files, trial minutes and the official derivative of the Tangerang District Court dated 11 May 2009, Number: 300/PDT.G/2008/PN.TNG as well as Appeal and Contra Memory Appeals submitted by the litigants and all parties legal considerations of the Court of First Instance, then the Court of Instance The appeal agrees with the legal considerations of the Court of First Instance Is taken over and used as legal consideration by the Court The Appellate Level alone is in adjudicating this case." With consideration in The Banten High Court Number 71/PDT/2009/PTBTN confirmed the decision Tangerang District Court dated 11 2009 Number 300/PDT.G/2008/PN.TNG with the contents of the decision in favor of the plaintiff, namely OMNI Hospital INTERNATIONAL and imposed a compensation sanction with repairs amounting to Rp 164,284,360,- (one hundred sixty four million two hundred eighty four thousand three hundred and sixty rupiah)

Finally, considerations at the Supreme Court level are: Supreme Court Judge's Considerations on the Prita Mulyasari Case considerations-considerations of Supreme Court judges in decision number 300 K/PDT/2010 which is contained from page 1 to page 9, Supreme Court believes there are sufficient reasons to grant the cassation request from Cassation applicant: Prita Mulyasari and cancel the decision of the High Court Banten Number 71/PDT/2009/PT.BTN Dated September 8 2009 which Amend the decision of the Tangerang High Court Number 300/PDT.G/2008/PN.TNG dated 11 May 2009. Therefore at the cassation level The Supreme Court ruled in favor of the former cassation applicant, defendant/appelliff/ the appellee is Prita Mulyasari.

This Supreme Court decision is very interesting to see. On the one hand, the verdict granted Prita's cassation request, but on the other hand, did not "punish" RSOmni et al. You could say, like a football game, the case process ends draw 0 points. This score can be explained by the actions taken by Prita (writing complaint letter is considered unlawful by Omni Hospital) and action Omni Hospital (provides

various media services. This is also considered against the law by Prita), therefore the panel of judges is equally oriented as a general specific action.

Based on the judge's decision, what the author feels is The decision in the Prita Mulyasari case is an interesting case to consider thorough both from a legal perspective and from a justice perspective. Someone like Prita, in one sisi should be charged with defamation and insult because is considered to have defamed the good name of Omni Hospital and its doctors. However on the other hand, Prita only expresses or only shares experiences he suffered from his friend. If the expression gathered and argued prita considered an insult or defamation. So this is clear is a violation of the provisions of Article 28 of the Law The 1945 Constitution stated: "Freedom of association, freedom of thought verbally and in writing and so on, stipulated by law." In terms of Article 27 paragraph 3 and Article 45 paragraph 1 of the ITE Law, no there is a clear definition of what is meant by insult or defamation. Because to find out clearly what is in The meaning of insult or defamation must refer to provisions of Article 310 paragraph 1 (KUHP) regarding verbal pollution (Smaad), Article 310 paragraph 2 concerning written pollution (smaadscriff), and Article 310 paragraph 3 as abolition of criminal penalties (for the public interest and forced defense). If Prita's email is entitled "Omni Hospital International Has Committed Fraud" is considered as pollution good name (insult) for doctors and hospitals, as determined Article 27 paragraph 3 of the ITE Law, please remember that Prita's email is private and only shown only to his closest friends. This means that Prita has no intention spread the accusations to the public.

Prita's actions in sending the email may have been without deliberate motive defame. It is only a personal complaint, Article 27 paragraph 3 of the ITE Law this is quite difficult to prove, because the person who violates it must proven to have a motive to intentionally defame. If only nature personal complaints, cannot be categorized as a violation of the law. If seen from another perspective, it is actually a case of conveying this opinion too protected by other laws, including those concerning the right to freedom believes that this is basically regulated in Article 28 E Paragraph 3 of the 1945 Constitution which states that: "everyone has the right to freedom associate, gather and express opinions." Prita's civil case Mulyasari against RS. Omni International about electronic mail containing patient complaints, in the decisions of the District Court and High Court (Judex Factie) stated that Prita was guilty and had committed an unlawful act. According to the author, the decisions of the District Court and High Court are incorrect or have made a mistake in passing a decision because the act was not fulfills the elements of an unlawful act and is something that reasonable.

3. CONCLUSION

Based on the entire description above, it can be given suggestions as follows: The strength of e-mail evidence as a proof process in a trial when linked to Article 164 HIR regarding evidence valid, then the power of the e-mail when printed is considered the same as the original letter and has the same power as an authentic deed. The main requirement is that electronic documents can be declared as valid

evidence use of electronic systems that have received electronic certification from government (Articles 13-16 of the ITE Law). In the decisions of the District Court and Trial Court Tinggi stated that Prita Mulyasari was guilty and had committed an act against the law, but in the Supreme Court's decision it was of the opinion regarding reasons in exceptions 1,2,3 in the main case up to 23 and in response that these reasons are justifiable, by the High Court *judex facti* has misapplied the law with considerations as follows:- That the expression of a feeling about what what was experienced cannot be said to be a legal act, because of that expression only in the form of a complaint. – That the news was sent by the defendant via email to his friends cannot be categorized as an intention to insulting, because this was only the defendant's complaint to his friends his friend.-That based on the facts, the applicant for the cassation was hospitalized at Omni international Hospital from 7 August 2008 to 12 August 2008 with complaints of high fever and headaches. And others.

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Civil Law (Civil Code)

Law No.11 of 2008 concerning Information and Electronic Transactions