

The Power of Proof of an Online *Arisan* Agreement in the Verdict of PKPU Number 10/Pdt-Sus-PKPU/2021/Pn.Smg in Accordance with the Theory of Legal Positivism and Justice



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ABSTRACT: This thesis is entitled "The Strength of Proof of Online Arisan Agreements in PKPU Decision Number 10/Pdt-Sus-PKPU/2021/PN.Smg Seen from the Theory of Legal Positivism and Justice". This thesis aims to find out and examine the strength of proof of online agreements via the WhatsApp application in terms of the theories of positivism and justice as well as to find out and examine procedural law reforms that are needed to accommodate the use of technological means as evidence in business/business relationships. This research is normative legal research with a conceptual approach and statutory regulations. The data source is secondary data consisting of primary legal materials and secondary legal materials, analyzed using legal analysis methods, namely qualitative methods. The results of the research show that there are disparities in the implementation of electronic evidence assessment because there is electronic evidence that is considered to have weak evidentiary strength even though they are supported by other evidence, there are also those that are considered to have decisive evidentiary strength in resolving cases in court so that they do not provide equitable justice. for society. The panel of judges in assessing electronic evidence should not only prioritize legal certainty but also justice which should be realized to protect the interests of the parties reform of procedural law in terms of implementing electronic evidence in Indonesian trials requires reform of three main pillars of law, namely legal substance, legal structure. and legal culture.

KEYWORDS: Strength of Proof; Electronic Evidence; Online Agreement.

INTRODUCTION

The industrial era 4.0 combines daily life with technology. Humans now make the internet the main support by integrating industrial production lines and the online world, such as WhatsApp, Facebook, and Instagram applications. More than that, the industrial era 4.0 has also allowed computers to be connected to communicate with each other without any involvement from humans, such as one of them in the world of justice in Indonesia. The evidentiary stage in court also often uses evidence in the form of electronic evidence at this time. One example of the use of electronic evidence is in the case of Postponement of Debt Payment Obligations or commonly abbreviated as PKPU. Other than that, there are now also many cases of Online Arisan through the WhatsApp social media application because it is supported by the ease of technology that exists today.¹

The most feared risk as a member of online arisan is the possibility that the online arisan manager does not pay the money collected at the agreed time. When this risk occurs, efforts will be made by members to get the rights as promised by the manager in accordance with the initial agreement that has been promised to run the online arisan. Efforts that are often made are reporting to the authorities, namely the police for alleged fraud and/or embezzlement. Another effort is to settle in a consensual basis, namely by conducting deliberations or negotiations related to payments that will be made by the online arisan manager.

Another effort that can be made by online arisan members is to apply for a postponement of debt payment obligations (PKPU). According to Article 222 of Law Number 37 Year 2004 on Bankruptcy and Postponement of Debt Payment Obligations, PKPU is an application that can be submitted by a debtor or creditor in the event that the debtor has more than 1 (one) creditor who cannot or estimates that it will not be able to continue paying its debts that are due and collectible. As an example of a case, the Commercial Court at the Semarang District Court has decided on a PKPU application filed by a creditor as the Applicant who is a member of an online arisan group located in Yogyakarta. The Panel of Judges of the Commercial Court at the Semarang District Court ruled on the case by rejecting the PKPU application filed by the PKPU Applicant who was also a member of an

¹ Uswah Sahal, 2022, "Penipuan Arisan Online Mareak Terjadi, Dosen Ekonomi: Jangan Mudah Percaya Investasi" https://www.um-surabaya.ac.id/homepage/news_article?slug=penipuan-arisan-online-marak-terjadi-dosen-ekonomi-jangan-mudah-percaya-investasi, diakses 11 Juni 2023.

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online arisan who did not get the proceeds from the arisan because the online arisan activity suddenly stopped in early 2021.

The PKPU application case in Case Number 10/Pdt-Sus-PKPU/2021/PN.Smg is interesting to discuss because in PKPU cases the principle of "Simple Proof" is known. The decision a quo was declared unacceptable by the judge based on one of the judge's considerations, namely that the agreement was carried out through the WhatsApp Group so that the proof was "not simple". The panel of judges rejected the strength of evidence of the online arisan agreement with considerations, including that the arisan activity was carried out through the WhatsApp application, there was no clear legal relationship between the parties, the proof was not simple, and more comprehensive proof was needed.

The judge's consideration for the arisan participants as the Petitioner does not provide legal protection and injustice. The legal relationship between the Petitioner and the Respondent by the Panel of Judges is considered not convincing enough and electronic evidence in the form of screenshots of the WhatsApp application that proves the existence of online arisan agreement activities cannot be accepted on the grounds that activities carried out in the digital world can only be proven by electronic evidence itself. According to Andani, even though the arisan was carried out through electronic media in the form of WhatsApp without ever meeting face-to-face, there was still a legal relationship based on an agreement.²

Based on the matters described above, the author finds that there are two problems, namely the strength of proof of electronic evidence in the form of conversations through social media applications, namely WhatsApp in the settlement of cases at trial which are still considered less strong or weak evidence and future legal reforms on the use of electronic evidence in the settlement of civil cases. The author intends to examine and analyze the power of proof of online arisan agreements through the WhatsApp application with a study of PKPU Verdict Number 10/PDT-SUS-PKPU/2021/PN.SMG in terms of the Theory of Legal Positivism and Justice.

RESEARCH METHOD

This type of thesis research is normative legal research, which is research conducted by critically examining secondary data.³

The data sources of this research are secondary data in the form of primary legal materials and secondary legal materials as follows:

1. Primary Legal Materials.
 - a. Civil Code
 - b. Law of the Republic of Indonesia Number 8 of 1997 concerning Company Documents
 - c. Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.
 - d. Law of the Republic of Indonesia Number 11 of 2008 concerning Electronic Information and Transactions.
 - e. Law Number 19 of 2016 concerning Amendments to Law of the Republic of Indonesia Number 11 of 2008 concerning Electronic Information and Transactions.
 - f. Herzien Inlandisch Reglement (HIR).
 - g. PKPU Decision Number 10/Pdt-Sus-PKPU/2021/PN.Smg.
2. Secondary Legal Materials

Secondary law source is a legal opinion which were collected from references which describe about primary law source. The law sources were Indonesia Dictionary, books, websites, articles/paper, or experts' opinions.

RESULT AND DISCUSSION

A- The Power of Proof of Online Agreements Through WhatsApp Applications in View of the Theory of Positivism of Law and Justice.

PKPU Application Decision Number 10/Pdt-Sus-PKPU/2021/PN. Smg dated May 6, 2021 is a decision based on a petition filed by a private individual, Y, who is a member of Arisan Online X activity in Yogyakarta. This Online Arisan activity is an online arisan organized by an individual, N, as the person in charge of the online arisan activity assisted by three people as admins which is carried out through the social media Whatsapp Group solely for personal gain.

In the conversation through the WA Group, there are rights and obligations for members with the person in charge of the Arisan Online activity. The promises given by the person in charge to the members that he will be responsible for the risks that occur in the online arisan activities held. For both parties, there is an obligation to pay and receive the agreed amount of money on a mutually agreed date. All agreements made are carried out through the social media Whatsapp Group.

² Andani, dkk, 2023, "Pentingnya Memahami Arisan Online dalam Perspektif Hukum Perjanjian bagi Karang Taruna Unit Pedukuhan Kelipucang Yogyakarta", *Jurnal Pengabdian Hukum & Humaniora*, Vol. 3 No. 1, hlm. 11.

³ Soekanto Soerjono dan Sri Mamudji, 2013, *Penelitian Hukum Normatif. Suatu Tinjauan Singkat*, Jakarta, RajaGrafindo Persada, hlm. 16.

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Since the beginning of 2021, there have been payments of arisan results that have not been given to members who have matured in the amount of approximately Rp. 700,000,000.00 (seven hundred million rupiah) calculated by the members as creditors so that there are two members, namely K and J, which are due and collectible obligations that must be carried out by N.

This PKPU petition was rejected by the Panel of Judges with the following considerations:

- a. *That the relationship between the Applicant and the Respondent was connected through social media via the Whatsapp Group network,*
- b. *That when examined carefully the legal relationship between the Applicant and the Respondent does have a civil legal relationship but between them from the evidence presented there is no clear legal relationship as creditor and debtor because there is no clear agreement between the Applicant and the Respondent.,*
- c. *That the existence of several parties.....so that it is considered not simple still requires more comprehensive evidence regarding the existence of the PKPU Respondent's debt to the PKPU Applicant,*
- d. *That based on the facts and considerations, the Panel of Judges considers that the debt argued by the Applicant is not simple because it is still necessary to prove comprehensively the legal relationship and the existence of debt between the Applicant and the Respondent, thus without the need to consider other evidence of the Applicant and Respondent, it is legally reasonable....*

Based on the author's analysis in the a quo decision to determine the strength of electronic evidence in the a quo case, there are two things that need to be described first, first, electronic agreements and second, electronic evidence. Agreements are known so far among the public and are recognized in court in two forms, namely written agreements and oral agreements.

Civil Code Article 1320, the conditions for the validity of an agreement are 1) agreement; 2) legal capacity; 3) a certain thing and 4) a lawful cause. Based on this article, there is no provision that the agreement must be made in writing or in a certain form and form of agreement because this includes the freedom of contract owned by the parties making the agreement so that in its development, the current agreement also has an electronic form of agreement. An online contract is a contract that will be made by the parties, both from the bidding process, acceptance, contract signature, and contract execution carried out online.

Electronic agreements in practice are carried out as well as having conversations through social media applications where two or more people agree on a certain matter which then binds all parties involved in the conversation. According to Pragadeeswaran and Aswathy Rajan, there are 7 (seven) essential elements in electronic contracts, namely:

1. *Offer;*
2. *Acceptance;*
3. *There must be a lawful object;*
4. *There must be free and unaffected consent;*
5. *Intention to create legal relationship;*
6. *Capacity of parties;*
7. *Possibility of performance.*

Referring to the seven elements above, the author analyzes the basis for the existence of a legal relationship between the parties in the case of the Decision a quo. First, there is an offer. The offer made by the PKPU Respondent (N), as the person in charge of the arisan with an online system through Whatsapp called Arisan X, to the PKPU Applicant (Y) was the profit obtained by the arisan members in accordance with the deposits given by the arisan members and N also stated that he would guarantee and be responsible for all payment risks. Based on these facts, the element of an electronic offer made via WhatsApp has been fulfilled.

Second, there is acceptance. Acceptance by Y is done by filling out the form electronically through the WhatsApp application for slot offers from N and followed by the payment of deposits in accordance with what has been agreed between Y and N. Acceptance of the offer can be done in 3 (three) ways, namely via e-mail, submitting a form available on the electronic platform or clicking "I accept" or "I agree".⁴

Third, the existence of a legal agreement object. The object of a legal agreement means that the things agreed by the parties are not something that violates the laws and regulations that apply in the area where the agreement is made and does not violate the values prevailing in the community. Arisan activity, is one of the activities carried out together in a community group followed by activities to collect funds in a predetermined period and who will get the funds will be drawn.⁵

⁴ *Ibid*, hlm. 35.

⁵ Arum Rifda, <https://www.gamedia.com/best-seller/fungsi-mengikuti-arisannya/>, diakses pada tanggal 18 November 2023.

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Fourth, consent and agreements are made freely and without any coercion. This element is also related to the fifth element, namely the will of the parties. In the bargaining process or before an agreement occurs, both the offer made by N to Y and when Y responds to N's offer, these actions are carried out without being asked by another person or are carried out when under threat which causes the parties not to agree. have no choice but to follow the wishes of one party.

Sixth, the legal skills of the parties. At the time of the bargaining for social gathering activity 33 years old and Y is 27 years old. Based on the age of the two parties in the a quo case, both are legal subjects who are capable of taking legal action and in the a quo case there is no evidence to show that N and Y's condition must be under someone's custody because they are both taking legal action for and against own name and are able to take responsibility for their respective rights and obligations, then the element of legal competence has been fulfilled.

Lastly, the agreement can definitely be implemented by the parties. The certainty of an agreement so that it can be implemented means that the agreement between the parties must be definite, not vague and certain that it can be implemented by the parties so that it does not cause conflict. The agreement agreed upon by N and Y is an agreement regarding the online arisan activity where Y, in this case, has received information about how the arisan activity will be carried out, the online arisan activity has other members and the monetary amounts and deadlines for the online arisan activity have been It is known to all parties involved in the WhatsApp conversation so that the social gathering activity has created an agreement that can be implemented by the parties.

Based on the descriptions above, the author is of the opinion that a valid legal relationship has occurred in an online social gathering activity called Both of these agreements occurred via WhatsApp social media and were known to all members of the social gathering in the WhatsApp Group.

In the a quo case, most of the evidence submitted by Y was a printout of screenshots of conversations via the WhatsApp application between Y and N and other members of the social gathering and was also supported by printouts of proof of transfer from Y's mobile banking application. submitted by Y is categorized as electronic evidence. Based on Law Number 11 of 2008 Article 5 paragraph 2 which has been amended by Law Number 19 of 2016 concerning Electronic Information and Transactions, it is stated that "Electronic Information and/or Electronic Documents and/or their printouts as intended in paragraph (1) is an extension of legal evidence in accordance with the procedural law in force in Indonesia."

It is further regulated in Article 5 paragraph (3) "Electronic Information and/or Electronic Documents are declared valid if they use an Electronic System in accordance with the provisions regulated in this Law." What is meant by an electronic system is a series of electronic devices and procedures that function to prepare, collect, process, analyze, store, display, announce, transmit and/or disseminate electronic information.

Based on the description above, the author is of the opinion that the judge's consideration which stated that no clear legal relationship was found between N and Y as debtor and creditor has shown that the panel of judges in deciding cases still only refers to agreements made conventionally, not keeping up with current developments. where law is actually a science that follows the dynamics of society and is oriented towards legal goals.

Referring to laws and regulations in Indonesia, electronic evidence or screenshots have been recognized as regulated in Law Number 11 of 2008 concerning Electronic Information and Transactions Article 5 paragraph (2) which reads "Electronic Information and/or Electronic Documents and/ or the printout as intended in paragraph (1) is an extension of valid evidence in accordance with the procedural law in force in Indonesia." This article is an article that provides a legal umbrella for electronic information/electronic documents that can be used as evidence in proving a case in Indonesia. In civil cases, this article means an expansion of the evidence regulated in the Civil Code Article 1866.

The Panel of Judges in deciding the a quo case did not ignore the applicable laws and regulations, but instead applied Article 5 paragraph (4) of Law Number 11 of 2008 concerning Information and Electronic Transactions as the basis so that the legal relationship that existed between the PKPU Petitioner and the PKPU Respondent was deemed to be ineffective. This is proven because the debt and receivable agreement is assessed from a notarial deed or a deed written directly, not from a conversation via the WhatsApp application. As previously explained, the Panel of Judges rejected the PKPU application because the evidence provided could not be used as a basis for the existence of an agreement or, more precisely, further proof of the strength of the agreement submitted as evidence was required, proven by the existence of a written statement or an agreement that had been affixed. signature of the parties.

After knowing the considerations and conformity with the statutory regulations related to the a quo case, it can be seen that the Panel of Judges in deciding the case acts as a mouthpiece for the statutory regulations. The panel of judges prioritized compliance with applicable regulations and followed the confidence of the Panel of Judges so they rejected the application. From these three considerations, the author views that the case examining judge focuses on the juridical point of view, namely the application of Law Number 11 of 2008 concerning Information and Electronic Transactions relating to electronic evidence submitted by the parties. The juridical point of view is a manifestation of the flow of legal positivism. Legal positivism is a concept which means that law is a law made by humans, as a human order, made by an authorized

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body. According to Cotterrell, the weakness of this legal positivism school is that it cannot show a dynamic representation of legal phenomena. The law will change along with changes in society so that if changes in society are not followed by changes in the law, it will cause injustice and benefit society.

Judges as law enforcement officers must use a progressive legal view. The Supreme Court as a judicial body whose role is to provide justice to society should realize progressive justice and not be solely focused on things that have been regulated in statutory regulations. The realization of progressive justice prioritizes the substance of a matter that results in a legal act so that the judge's assessment will look more closely at the relevance of evidence that proves a legal act. By applying the law to electronic evidence submitted in the a quo case, the justice that is achieved is procedural justice or formal justice, which prioritizes procedural requirements.

The panel of judges considered that the type of valid agreement was a conventional agreement made in written form. The agreement is written on paper and is in the form of a contract and/or made between the parties and then ratified before a notary. This then became the basis for the panel of judges examining the a quo case to assess the electronic evidence submitted by Y which was then considered as evidence that had weak evidentiary strength.

The author is of the opinion that the panel of judges in the a quo case adhered to the ideology of strong positivism. The panel of judges considered that there were no written provisions governing the assessment of evidence to date. The strict positivism adopted by the panel of judges in the a quo case certainly prioritizes the existence of written sources of law and someone must regulate them first so that every legal act carried out can be subject to consequences or arise as legal consequences from the written provisions. To date, there are no provisions that regulate and determine standards regarding the assessment of the evidentiary strength of evidence, especially in this case electronic evidence, whether in the form of Laws, Supreme Court Regulations, or Supreme Court Circulars.

The strong positivist ideology adopted by the panel of judges certainly clashes with existing theories of justice. The justice that the entire community longs for must be dashed just because of a provision that should exist but does not yet exist in written form. The public must become victims of the unpreparedness of legal regulations that do not yet regulate events or legal actions that have occurred a lot. Based on this, the urgency of the need for regulation regarding standards for the strength of assessment of evidence, in this case electronic evidence, is very urgent. Justice must be upheld and do not let the very positive understanding of the judges in court or adhere to strict positivism actually override the values of justice that everyone in Indonesia strives for.

B. Procedural Law Reforms Required to Accommodate the Use of Technological Facilities as Evidence in Business/Business Relations

Case number 279/Pdt.G/2023/PA. Mn, the Petitioner in the a quo case submitted electronic evidence, namely a conversation in the WhatsApp application which showed that an argument had occurred between the Petitioner and the Respondent. Regarding this electronic evidence, the panel of judges assessed that this evidence had decisive evidentiary power or *beslissende bewijskracht* after being assessed as preliminary evidence which was supported by other evidence, namely the statements of two witnesses and whose authenticity was not disputed by the Respondent.

Next, case number 307/Pdt.G/2023/PA. Mn, also in the divorce case filed by the husband, the Respondent also submitted electronic evidence in the form of tracking evidence of the Petitioner's device and evidence of conversations. Even though there was no rebuttal or response from the opposing party, the Respondent was unable to show the original of the evidence so the panel of judges considered the evidence to be weak and incomplete (*onvolledig bewijskracht*) so the panel of judges set aside the evidence in deciding the case a quo.

Meanwhile, in the PKPU case analyzed by the author in this legal writing, the panel of judges considered that electronic evidence was preliminary evidence but not strong enough to prove the legal relationship between the PKPU Petitioner and the PKPU Respondent even though this evidence was not refuted by the PKPU Respondent and was also supported by the presence of statements from witnesses and other creditors. The author believes that the panel of judges only assessed the formality of the electronic evidence submitted by the PKPU Petitioner, whether it complied with the provisions of Law Number 11 of 2008 concerning Electronic Information and Transactions or not. This resulted in that even though the evidence was materially relevant, decisive in the a quo case and acknowledged by the opposing party, the panel of judges did not assess the material of the electronic evidence.

From the three cases described by the author above, it can be seen that there is a lack of uniformity in law enforcement in Indonesia in assessing electronic evidence and the main problem is the assessment of the authentication of electronic evidence submitted by the litigants. In fact, not all judges in Indonesia have the same assessment and standardization of electronic evidence, so there are disparities between case decisions, both criminal and civil, general or specific. This is because, firstly, there are no regulations that regulate either in the form of Supreme Court Regulations or Supreme Court Circulars regarding the assessment of electronic evidence.

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The importance of knowledge about electronic evidence does not only need to be mastered by judges but also all law enforcement officials and especially in civil cases where assessing the formality of the evidence submitted is prioritized and then assessing the relevance of the evidence. On the one hand, this needs to be put forward and socialized more widely, especially to litigants such as lawyers. The weakness of implementing electronic evidence in civil cases is that parties who do not use the services of advocates and legal laypeople will find it difficult to strengthen the electronic evidence they submit for consideration by the judge because they cannot test its authentication and, moreover, do not have knowledge regarding electronic evidence authentication tests. so it is difficult for them to get justice for the cases they have experienced.

Based on the description above, the author believes that reform of procedural law in terms of implementing electronic evidence in Indonesian trials requires reform of three main legal milestones, namely legal substance, legal structure and legal culture. The existence of electronic evidence in trials, especially when used in electronic trials, is to realize the resolution of cases in a simple, fast and low cost (efficient) so that both in terms of regulations, law enforcement officers and the legal community in Indonesia must also be able to keep up with the desired technological developments.

CONCLUSION

Based on the results of the research and discussion described by the author in the previous chapter, the author draws the following conclusions:

1. In resolving the case with PKPU Case Decision Number 10/Pdt-sus/2021/PN. However, there was electronic evidence used by the parties to prove the arguments in their petition, but the Panel of Judges set aside this electronic evidence because procedurally it required further proof. This reflects the role of the Panel of Judges in deciding the case as a mouthpiece for statutory regulations. Facts on the ground show that there are disparities in the implementation of electronic evidence assessment so that it does not provide equal justice for the community. The panel of judges in assessing electronic evidence should not only prioritize legal certainty, but also pay attention to aspects such as the social and economic aspects of the parties. According to the author, in the a quo case decision the panel of judges did not pay attention to justice which should be realized to protect the interests of the parties and only prioritized legal certainty.
2. Reform of procedural law in terms of implementing electronic evidence in Indonesian trials requires reform of three main legal milestones, namely legal substance, legal structure and legal culture. The existence of electronic evidence in trials, especially when used in electronic trials, is to realize the resolution of cases in a simple, fast and low cost (efficient) so that both in terms of regulations, law enforcement officers and the legal community in Indonesia must also be able to keep up with the desired technological developments. desire.

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