

The Usage of Forensic Computer Report on the Case of Baiq Nuril Maknun

Aris Hardianto
Faculty of Law
Universitas Trunojoyo
Madura, Indonesia
aris@trunojoyo.ac.id

Zumrotul Jannah
Faculty of Law
Universitas Trunojoyo
Madura, Indonesia
zumrotuljannah76@gmail.com

Abstract— Crime involve not only conventional media, but also modern ones. Internet is not a single medium to commit crime, electronic devices can mediate the practices as a result of information technology development. This research mainly focuses on Baiq Nuril Maknun case that recorded her conversation with the headmaster (from an educational institution) by using her handphone. The recording is invalid either transmitted and/or distributed by Baiq Nuril Maknun so that the verdict No. 265/Pid.Sus/2017/PN.MTR acquitted her. In regards with this, the public prosecutor did an effort of cassation law leading to verdict No 574 K/PID.SUS/2018 getting her guilty. Based on that decision, Baiq Nuril Maknun proposed a revision, but it fails. In the revision decision No. 83 PK/PID.SUS/2018, the Supreme Court rejected the Baiq Nuril Maknun's plea. This paper investigates the evidence of forensic computer report of handphone submitted on the trial. It has been a crucial issue, eventhough it is not classified as a cyber crime, since it involves a computerized device which directly associates with technology and information. This research applied a juridical method by legaslative approach. For that reason, construction relating to the actions allegedly performed by Baiq Nuril Maknun by using an electronic device was explained in detail. However, she is legally judged to be not guilty based on the result of the forensic computer investigation. So that there is a need to reconsider the given verdict based on the Law.

Keywords—forensic computer; evidence, Baiq Nuril Maknun;

I. INTRODUCTION

First article from Indonesia Criminal Code (ICC) has two points:

1. No act is punishable but on the basis of a statutory provision, in force at the time it was committed
2. Where a change has been made in the law subsequent to the time the offence was committed, the provisions of the law most favourable to the accused shall be applicable.

The word 'act' in this context is considered to include omissions. The words 'statutory provision' are considered to refer to a statue. The words 'on the basis of a statutory provision' imply that no conduct may be made punishable by provincial or municipal legislation or by the administration unless an act of parliament and president has

directly or indirectly empowered them to make such conduct punishable. Significant expressions of the principle of legality are the latin tags *lex scripta* (there must be a written legal provision that makes the conduct punishable), *lex certa* (the provision must be clear and unambiguous; this is also termed the requirement of certainty) and *lex stricta* (the provision must be narrowly interpreted). The principle of legality in criminal procedure law means that every case must be prosecuted by the public prosecutor. The prosecution logically and judicially must be based on the law of evidence of the criminal procedure code. In the to be discussed Baiq Nuril Maknun case, there was inconsistency between the evidence presented at the hearing and the prosecutor's indictment. Therefore, Baiq Nuril Maknun should be acquitted, both in the case of Cassation level and Re-examination level (strengthening the decision of the Mataram District Court that acquitted it). The evidence referred to here is in the form of a computer forensic report of several electronic devices related to the subject matter. The discrepancy between the devices used as the media to carry out the criminal acts with the charge has the consequence that there is no connection between the acts and the media to commit the criminal acts. The case of Baiq Nuril Maknun had been an Indonesian issue. It started on August 2012, the defendant Baiq Nuril Maknun was a contracted teacher at SMA 7 Mataram that was reported to the authority by the Headmaster, Haji Muslim, where she worked. Haji Muslim invited Baiq Nuril Maknun and Landriati to work extra time in Puri Saron Hotel, Senggigi. In the location, Haji Muslim aksed Baiq Nuril Maknun to play around at the hotel swimming with her child while at the same time, Haji Muslim and Landriati were back to the hotel room. In short, Baiq Nuril Maknun was back to the room where Haji Muslim and Landriati were in. Haji Muslim was regretful of it. In the following day, Haji Muslim gave Baiq Nuril Maknun a call and told him Haji Muslim's experiences having intercourse with Landriati in the hotel room. It is claimed that the conversation between Haji Muslim and Baiq Nuril Maknun was recorded by Baiq Nuril Maknun without Haji Muslim's permission. The recording is relevant to the transcription and audio translation from Language Office Nusa Tenggara Barat

Province No: 1485/G5.21/KP/2016 date 17 November Year 2016.

Baiq Nuril Maknun saved its recording in her handphone, Nokia and it was extended to her brother in law. Agus Rofi', as one of the Sanitary Agency officials in Mataram City who have worked more than one year. Later, Haji Imam, one of the SMA 7 Mataram officials asked Baiq Nuril Maknun to share the recording with when encountering in the school. Haji Imam persistently asked the recording every time they met for the reason that it will be reported to House of Representatives of Mataram. It aims to get Haji Muslim dismissed because he wants to have such leader. From December, 2014 to January, 2015, Baiq Nuril Maknun finally came to the Sanitary Agency, her brother in law's office, in Jalan Sandubaya, Mataram along with her son aged 3 years old and her office mates, Husnul Aini and Haji Imam Mudawin. In time, her son peed and cried and he got her son watered in the rest room. His wife accompanied Baiq Nuril Maknun to do so. While Baiq Nuril Maknun was not in the office, what happened was that there was an electronic document transfer that is the conversation recording between Haji Muslim and Baiq Nuril Maknun as demonstrated in the trial. For that reason, Baiq Nuril Maknun had no idea technically the ways and processes the electronic document transferred from her handphone to laptop. The recording then sent to a number of persons. Due to the fact of recording distribution, Haji Muslim felt ashamed and was dismissed as the headmaster of SMA 7 Mataram, so that Haji Muslim reported Baiq Nuril Maknun to police resort Mataram as stated in police report no: LP/K/216/2015/Polres Mataram, date 17 March 2015 by the conjecture of committing crime in the field of information and electronic transaction, that is intentionally and has no right to make the electronic information and or electronic document containing propriety contents accessible for public as regulated and threatened as a crime conduct mandated in Article 27 Verse (1) Law of the Republic Indonesia Number 11 of 2008 Concerning Electronic Information and Transaction or Article 310 Criminal Law Code (KUHP).

Based on the brief cronology above, the current research aims to investigate either the forensic computer report of Baiq Nuril Maknun's handphone has the electronic track of file transfer done by Baiq Nuril Maknun.

II. RESEARCH METHOD

This research employed juridical method by legislative approach. In other words, the legislation was utilized to analyze the existence and forensic computer reports.

III. RESULTS AND DISCUSSION

A. *Proof of law and evidence in Indonesian's criminal procedure law*

The proof of law basically has a number of theories. In indonesia, article 183 mandated in the criminal procedure

law (CPL) adheres the negative legislation proof system. It means that the judge in deciding on a case must not only rely on their belief but also a number of evidence, in this context refers to Article 184 CPL. Conventional evidences are witnesses' statement, experts' statement, letters, defendants' statement, and clues. The cases relating to technology and information explained in Law of The Republic Indonesia Number 11 of 2008 Concerning Electronic Information and Transaction jo. Law of The Republic Indonesia Number 19 of 2016 Concerning The Amendment of Law of The Republic Indonesia Number 11 of 2008 about the Electronic Information and Transaction (ITE), additional evidences are formulated. They are mandated in Article 5 entitled electronic evidence. Types or forms of electronic evidence refer to two forms: electronic information and electronic document. Article 5 Verse (1) and Verse (2) states that electronic evidence and the printed version resulted from its electronic evidence are legal before the law. The statement is also strenghten in article 6 Law regulating that electronic evidence is legal when it is accessible, displayed, guaranteed its wholeness, and be responsible comprehensively. The two articles reflect a number of norms pertaining to electronic evidences:

1. Electronic evidence is a new evidence that is different from and independent beyond as mandated in the CPL.
2. Electronic evidence consists of electronic information and electronic document.
3. The printed of the two is legal and is valued as valid evidence if the originality is maintained.

To investigate the originality of the electronic information and electronic document, it is required a procedure called a forensic computer. Basically, the forensic computer is sub-field in criminal procedure law as practiced in forensic medicine, in association with track and evidence investigation to be submitted in the trial.[1] If the examination result *Visum et Repertum* is categorized as a letter, it is the same with the investigation report of forensic computer. The character of electronic that is the originality of electronic information and electronic document easily changes needs special procedure or special threatment, so that the duplication of data is not carelessly done. This is because the practice is associated with the safety of information so that the originality of document is maintained.[2] It means that every single case relating to the use of information technology in which the existence of electronic evidence becomes crucial, must be firstly examined by using forensic computer before the analysis on the device examined is undertaken. Not only physical but also electronic devices that can be examined by taking advantage of forensic computer. Today, computing cloud can also be studied through forensic computer.[3]

B. The Report of Forensic Computer as Evidence in Baiq Nuril Maknun's Case

Based on the cronology of case and indicment to Baiq Nuril Maknun, it informs that he is regarded to break up Article 27 Verse (1) jo. 45 Verse (1) Law of Information and Electronic Transaction. There is thus a need to explain the elements of deeds further. Those elements of deeds accused to Baiq Nuril Maknun are distributing or transmitting or making electronic information and or electronic document accessible. Those elements include the action "distributing" and or "transmitting" and or "making the electronic information and or electronic document accessible". That action is alternative-cumulative. Alternative means enough that one action is met and cumulative means that three elements of deeds, distributing, transmitting, and making the electronic information and electronic document accessible are met at the same time. It indicates that the action done by Baiq Nuril Maknun must be met in one when doing three actions.

The crime relating to the use of technology done by the subject must be investigated and proven. Even if the subject is regarded to break the law up about the prohibited acts, the track where the action made must be examined. Different from conventional crime, the crime involves technological devices, the track of the actions embedded in the used technological device in the form of electronic report of device usage. The report of electronic use in handphone show the information of data traffic, access, and all performance types to the owner. What has to be proven in Baiq Nuril Maknun was Baiq Nuril Maknun's action in transmitting electronic information and or electronic document. If it has no evidence, the action as stated in Article 27 Verse (1) is not proven. This is because the evidence of electronic information traffic and electronic document in Baiq Nuril Maknun's handphone is not found. The examination of forensic computer is done to electronic device as ordered below:

1. 220-XX-2016-CYBER_01: 1 (one) memory card V-Gen with 2GB capacity.
2. 220-XX-2016-CYBER_02: 1 (one) memory card V-Gen with 2 GB capacity
3. 220-XX-2016-CYBER_03: 1 (one) Laptop Toshiba brown size 10 inch serial number 5C115626K
4. 220-XX-2016-CYBER_04: 1 (one) HP Nokia black silver Type RM-578, Code 059C0R4, IMEI 354870/04/771208/6 in broken condition.
5. 220-XX-2016-CYBER_05: 1 (one) HP Samsung Champ Model GT-C3312, IMEI 356785/05006493/6, IMEI 356786/05006493/4 type two SIM cards.

Indonesian Republic Police (Polri) has standardized procedures to examine the electronic device in which the crime involves the electronic media. The forensic computer report submitted in this case has been checked by the Digital Forensic Examination Team Sub Directorate Information

Technology and Cyber Crime of Criminal Investigation of Polri.[4] In regards with the deeds considered to break the law about electronic and technological information (ITE) and the examination results, if there is electronic information and or electronic document transferred from one device to the next, the notes of data traffic must be included in examination reports. This is to prove either data transfer activities occur or not. The examination results to 5 (five) evidences stated in the report 220-XX-2016-CYBER. To uncover the occurrence of data transmission in an electronic device so that it meets the act criteria stated in Article 27 Verse (1) Law about ITE, there must have been correlation between the forensic computer report and indictment ordered by the public prosecutor. This is because the forensic computer report is used to verify the validity of electronic information and or electronic document to be made as evidence as mandated in Law ITE. If there is no correlation between electronic devices and the examination results, while the technological devices and information are strong evidence in crime using technological devices, logically there is no strong evidence that someone breaks the law up. Baiq Nuril Maknun's device is Handphone Nokia as stated in report 220-XX-2016-CYBER_04.

The examination report on Baiq Nuril Maknun's handphone 220-XX-2016-CYBER_04 in a complete report 220-XX-2016-CYBER, as quoted again as the consideration of the jury to the verdict, it shows that it is not found the data directly indicating the crime committed intentionally and with no right to distribute and or transmit and or make the electronic information and or electronic document accessible that break the propriety.[5] Consequently, it causes that the conjecture addressed to Baiq Nuril Maknun is unproven. Therefore, Baiq Nuril Maknun is right to be released from District Court, Mataram because he did not do such acts as accused. However, the Supreme Court in the decision of cassation No. 574 K/Pid.Sus/2018 criminalized Baiq Nuril Maknun. Oddly enough that the Supreme Court made its own construction that Haji Imam Mudawin has trasmitted the recorded inforantion between Haji Muslim and Baiq Nuril Maknun. According to Supreme Court. Haji Imam Mudawi plugged the cable from the laptop to handphone belonging to Baiq Nuril Maknun and then transfer the data in the handphone into the laptop. The Supreme Court, however, stands on its stance the provision mandated in Article 27 Verse (1) Law about ITE has been proven to be committed by Baiq Nuril Maknun.[6] The other odd thing was that the examinantion results of forensic computer report was not considered meanwhile they are crucial in crime involving information technology. They are also not considered in the reconsideration decision No. 83 PK/Pid.Sus/2019.[7] Therefore, based on the forensic computer report issued by Polri, Baiq Nuril Maknun did not commit the act of distributing, transmitting, and making the electronic information and electronic document accessible which containing such propriety content; no evidence to

show the occurrence of content transfer in the Baiq Nuril Maknun's handphone.

IV. CONCLUSIONS AND SUGGESTIONS

Based on the evidence above, we can conclude that track of data transfer is not found in the device belongs to Baiq Nuril Maknun so that the distribution, transmission, and actions making the electronic information and or electronic document accessible are legally unproven due to the absence of the strong foundation.

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REFERENCES

- [1] C. Sun, "Study on Investigation and Forensics by Computer under Cloud Computing Environment," no. Mcei, pp. 110–112, 2015.
- [2] L. Tang, "The Study of Computer Forensics Based on the Course Construction and Reform," vol. 2013, no. 11, pp. 199–202, 2014.
- [3] N. Dwi, W. Cahyani, B. Martini, K. R. Choo, and A. M. N. Al-azhar, "Forensic Data Acquisition from Cloud of Things Devices: Windows Smartphones as A Case Study," *Concurr. Comput. Pract. Exp.*, vol. 29, no. 14, 2016.
- [4] "Laporan Pemeriksaan Barang Bukti Elektronik 220-XX-2016-CYBER," 2016.
- [5] *Putusan No. 265/Pid.Sus/2017/PN.MTR.* 2017, p. 32.
- [6] D. Putusan, M. Agung, R. Indonesia, P. Umum, and N. Mataram, *Putusan No. 574 K/Pid.Sus/2018.* 2018, p. 7.
- [7] D. Putusan, M. Agung, and R. Indonesia, *Putusan No. 83 PK/Pid.Sus/2019.* 2019, pp. 6–7.