Indonesian State Law Review (2023) **6(2),** 221-252
https://doi.org/10.15294/islrev.v6i1.68236

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ARTICLE

The Legitimacy of Letters as Evidence in the E-Litigation Proof System within the State Administrative Court

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Abstract

This study delves into the legitimacy of employing letters as evidence within the E-Litigation Proof System at the State Administrative Court (PTUN) against the backdrop of the digital 4.0 era's transformative influence. The Indonesian government's introduction of electronic justice (e-Litigation or e-Courts) marks a significant paradigm shift, fundamentally altering trial procedures at PTUN. Employing a juridical-normative research method with a qualitative nature, this investigation utilizes conceptual and historical approaches to scrutinize the implications of the e-Litigation system. Secondary data sources, encompassing regulations, literature, and relevant documents, form the basis for analyzing the profound changes in courtroom proceedings and their impact on validating documentary evidence. The findings underscore a pivotal transition from traditional to electronic trials, fostering the electronic submission and exchange of documents. However, the implementation of the e-Litigation evidentiary system has sparked discussions, particularly concerning the legitimacy and challenges associated with proving letters as evidence, particularly in the initial stages of the process. This exploration of the legitimacy of letters as evidence within the e-Litigation context contributes significantly to the ongoing discourse on the modernization of legal proceedings. It sheds light on the evolving nature of evidentiary practices in the digital age, specifically within the State Administrative Court. The study thus offers valuable insights into the intersection of technology and justice, providing a nuanced

understanding of the complexities surrounding the utilization of electronic evidence in contemporary legal systems.

Keywords
Evidence, E-Litigation, Validity, Letter
Submitted : April 12, 2023
Revised : June 19, 2023; September 22, 2023
Accepted : October 7, 2023
Published online : October 31, 2023

Introduction

A CONTEMPORARY interpretation of the rule of law is intrinsically intertwined with its pivotal role in the governmental framework, particularly in establishing a system of the separation of state powers. This system operates on the foundational principles of law, emphasizing the acknowledgment, preservation, and promotion of human values. The fundamental objective behind the implementation of the separation of state powers is to ensure that no singular authority attains absolute control, thereby mitigating unwarranted interference in ongoing legal processes. This, in turn, fulfills the aspirations of citizens who prioritize the paramount value of justice.[1]

In the current context, Indonesia adheres to a tripartite separation of powers, comprising the executive, legislative, and judicial branches. This institutional arrangement is meticulously designed to maintain a delicate equilibrium, preventing any single branch from exerting unchecked

[1] Phahlevy, Rifqi Ridlo, and Aidul Fitriciada Azhari. "Pergeseran Paradigma Peradilan Tata Usaha Negara di Indonesia dan Belanda." *Arena Hukum* 12, no. 3 (2019): 576-591. *See also* Carolan, Eoin. *The New Separation of Powers: A Theory for the Modern State*. (Oxford: OUP Oxford, 2009); Ackerman, Bruce. "The new separation of powers." In *The Rule of Law and the Separation of Powers*. (London: Routledge, 2017), pp. 395-490; Andriyani, Elisa Eka. "Analisis Pemberlakuan Pembagian dan Pemisahan Kewenangan di Indonesia (Studi Kepustakaan Terhadap Separated of Powers dan Division of Powers)." *SOSMANIORA: Jurnal Ilmu Sosial dan Humaniora* 1, no. 4 (2022): 534-540.

dominance. The underlying purpose is to safeguard the cherished principles of justice that hold profound significance for the citizenry. The separation of powers, as embodied in the three branches, serves as a mechanism to curtail absolutism and perpetuation of interference in legal proceedings. It stands as a testament to the commitment to justice and the recognition of the importance of distributive governance based on legal foundations.[2]

In upholding the principles of impartiality and independence within the judicial power structure, a separation of judicial power is meticulously maintained through distinct judicial bodies.[3] This structural arrangement finds its basis in the 4th amendment to Article 24, Paragraph (1) of the 1945 Constitution (UUD 1945). This constitutional provision explicitly emphasizes the application of an independent judiciary in Indonesia, endowing it with the autonomy to dispense justice autonomously and uphold the precepts of law and justice.[4]

The elucidation in Paragraph (2) further delineates the existence of 4 (four) distinct judicial bodies subordinate to and operating within the jurisdiction of the Supreme Court. These encompass the general judicial sphere, religious court jurisdiction, military court jurisdiction, and lastly, the State Administrative Court jurisdiction, commonly referred to as PTUN. This constitutional framework serves as the cornerstone for ensuring the autonomy

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[2] Gunadi, Ariawan, and Ibra Fulenzi Amri. "Komparasi Sistem Pemerintahan & Konstitusi Inggris, Republik Rakyat China (RRC) dan Indonesia." *Jurnal Serina Sosial Humaniora* 1, no. 1 (2023): 41-49. *See also* Budi, Mohammad Wahyu Adji Setio. "Indonesian State System Based on Pancasila and the 1945 Constitution: A Contemporary Developments." *Indonesian Journal of Pancasila and Global Constitutionalism* 1, no. 1 (2022): 1-16; Patra, Rommy. "Arrangement of Relationship between State Institutions through the Fifth Amendment of the 1945 Constitution in Indonesia." *Hasanuddin Law Review* 4, no. 1 (2018): 88-102.

[3] Jimly Asshiddiqie. *Pengantar Ilmu Hukum Tata Negara.* (Jakarta: Raja Grafindo Persada, 2019), pp. 310-311.

[4] *See* 4th Amendment to the 1945 Constitution, Article 24 Paragraph (1). *See also* Ataupah, Andrew Mario Ernesto. "How the Justice Power Post Constitution Amendment? A Review Book" Politik Hukum Kekuasaan Kehakiman Pasca Amandemen Undang-Undang Dasar 1945", Ma'shum Ahmad, Total Media Yogyakarta, 2017, 193 pages, ISBN: 979-1519-25-0." *Journal of Indonesian Legal Studies* 6, no. 1 (2021): 237-244.

and integrity of the judicial power, affirming Indonesia's commitment to an impartial and independent judicial system that administers justice across various legal domains.[5]

Fundamentally, the promotion of rule-of-law standards and their pragmatic realization within the judicial power hinges on the establishment of a robust administrative justice system, notably epitomized by the State Administrative Court (PTUN). The presence of PTUN is integral to fulfilling the fundamental requisites of a law-based nation, particularly within the framework of democratic governance. This underscores the state's commitment to upholding principles of governance, necessitating that the government and its administration operate strictly within the confines of legal authority. Moreover, it underscores their responsibility for addressing infringements of the law and violations of human rights.

Essentially, Indonesia instituted PTUN within the judicial power as an attributive entity accountable for conducting judicial reviews. This entails assessing the validity or appropriateness of administrative actions, thereby facilitating the enforcement of law and the administration of justice. The establishment of PTUN aligns with the state's commitment to fostering a system where legal authority prevails, ensuring accountability for administrative actions and promoting justice within the democratic framework.[6]

Since the enactment of Law of the Republic of Indonesia Number 5 of 1986 concerning PTUN, nearly 36 years have transpired, marked by two subsequent amendments. Initially amended by Law of the Republic of Indonesia Number 9 of 2004, addressing the First Amendment to Law Number 5 of 1986 concerning PTUN, and subsequently revised by Law Number 51 of 2009, governing the Second Amendment to Law Number 5 of 1986 concerning PTUN (hereinafter as PTUN Law). Upon scrutiny, PTUN's

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5 *See* 4th Amendment to the 1945 Constitution, Article 24 Paragraph (2)

6 Siboy, Ahmad. "The integration of the authority of judicial institutions in solving general election problems in Indonesia." *Legality: Jurnal Ilmiah Hukum* 29, no. 2 (2021): 237-255.

jurisdiction has undergone a substantive reform in terms of the breadth of objects within its purview.[7]

Furthermore, the clandestinely significant reform surfaced with the enactment of Law of the Republic of Indonesia Number 30 of 2014 concerning Government Administration (hereinafter as Law No 30/2014). This marked a pivotal moment in the evolution of PTUN's competence, ushering in a broader scope. This expansion aligns with a renewed commitment to the democratization process and underscores respect for human rights within the legal framework. The progressive changes in PTUN's competence, propelled by legislative amendments and a responsive approach to governance, underscore its pivotal role in adapting to contemporary legal and societal dynamics.[8]

Examining Article 1, Number 10 of the PTUN Law, a state administrative dispute is defined as a conflict arising within the realm of Administrative Law (TUN) between an individual or legal entity and a TUN agency or official. This conflict emerges from the issuance of a State Administrative Decree, referred to as KTUN.[9] Initially, PTUN's jurisdiction was exclusively designated as a court of first instance with the authority to examine, adjudicate, and decide on state administrative disputes. This authority was confined to scrutinizing government administrative actions manifested in written KTUNs, which were issued based on legal actions by a state administrative agency or official. These

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[7] Pamungkas, Yogo. "Pergeseran Kompetensi Peradilan Tata Usaha Negara." *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan* 3, no. 2 (2020): 339-359. *See also* Effendi, Maftuh. "Peradilan Tata Usaha Negara Indonesia Suatu Pemikiran Ke Arah Perluasan Kompetensi Pasca Amandemen Kedua Undang-Undang Peradilan Tata Usaha Negara." *Jurnal Hukum dan Peradilan* 3, no. 1 (2018): 25-36; Harjiyatni, Francisca Romana, and Suswoto Suswoto. "Implikasi Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan terhadap Fungsi Peradilan Tata Usaha Negara." *Jurnal Hukum Ius Quia Iustum* 24, no. 4 (2017): 601-624; Riza, Dola. "Keputusan Tata Usaha Negara Menurut Undang-Undang Peradilan Tata Usaha Negara dan Undang-Undang Admnistrasi Pemerintahan." *Jurnal Bina Mulia Hukum* 3, no. 1 (2018): 85-102.

[8] Iskatrinah, Iskatrinah. "Pergeseran Kompetensi Peradilan Tata Usaha Negara Pasca Diundangkan Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan." *Jurnal Media Komunikasi Pendidikan Pancasila dan Kewarganegaraan* 2, no. 1 (2020): 200-207.

[9] *See* Law on PTUN, Article 1 Number 10

actions had to be specific, individual, and conclusive, resulting in legal consequences for an individual or legal entity.

However, over the past decade, there has been a gradual expansion of the dispute's subject matter, as outlined in Article 1, Point 7, Article 1, Point 8, and Article 8 of the Law No 30/2014. This expansion is attributed to the broader scope of authority conferred upon PTUN by the Law No 30/2014, functioning as a substantive law within the PTUN's framework. The evolution in PTUN's jurisdiction signifies a response to the amplified scope delineated in the Law No 30/2014, marking a dynamic adaptation to the evolving legal landscape.[10]

Furthermore, entering the era of the industrial revolution disruption, marked by the advent of the industrial digital revolution 4.0 and the government's initiatives to enhance Ease of Doing Business (EoDB), there has been a compelling influence and demand for the reform of the justice system in Indonesia. This shift necessitates the adoption of innovative measures in digitalization, incorporating a relatively new technology known as Electronic Justice (e-Litigation or e-Court).[11] This strategic transition is essential to bolster the realization of the judiciary's principles, focusing on simplicity, expeditiousness, and cost-effectiveness in legal proceedings.[12]

Consequently, this transformative landscape has directly impacted the Supreme Court, propelling the establishment of electronic justice as stipulated in Supreme Court Regulation No. 3 of 2018 concerning Electronic

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[10] Muhammad Adiguna Bimasakti. *Hukum Administrasi dan Peradilan Tata Usaha Negara di Era Peradilan Elektronik.* (Bogor: Guepedia, 2019), pp. 204-205. *See also* Sudarsono, Sudarsono. "Konsep Peradilan Secara Elektronik di Lingkungan Peradilan Tata Usaha Negara." *Tanjungpura Law Journal* 3, no. 1 (2019): 42-64; Bimasakti, Muhammad Adiguna. "Pembaruan Undang-Undang Peradilan Tata Usaha Negara Pasca-Reformasi di Era Peradilan Elektronik." *Jurnal Hukum Peratun* 3, no. 2 (2020): 111-126.

[11] Muhammad Adiguna Bimasakti. *Apa itu Peradilan Elektronik?.* (Bogor: Guepedia, 2019), p. 143. *See also* Wahyudi, Johan. "Dokumen Elektronik Sebagai Alat Bukti Pada Pembuktian di Pengadilan." *Perspektif* 17, no. 2 (2012): 118-126.

[12] Gasa Bahar Putra. *Eksistensi Asas-Asas Umum Peradilan Yang Baik dalam Praktik Penerapan Persidangan Secara Elektronik di PTUN Makassar (Pasal 5 Ayat (1) Jo. Pasal 6 Ayat (1) dan Pasal 27 PERMA No. 1 Tahun 2019).* (Bogor: Guepedia, 2020), pp. 17-18.

Administration of Cases in Court. Subsequently, this regulation underwent further refinement, being encapsulated in Articles 19 to Article 28 of Supreme Court Regulation No. 1 of 2019 concerning Electronic Administration of Cases and Trials (PERMA No.1/2019). This regulatory framework represents a significant stride towards aligning the justice system with contemporary technological advancements, ensuring its efficacy and adaptability in the evolving legal landscape. The shift towards electronic justice underscores a concerted effort to embrace the benefits of digitalization and modern technology, shaping a judiciary that is responsive to the demands of the 21st century.[13]

The era of disruption has not only altered the traditional paradigm of courtroom proceedings but has ushered in a paradigm shift from conventional

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[13] *See* Republic of Indonesia. *Peraturan Mahkamah Agung Nomor 1 Tahun 2019 tentang Administrasi Perkara dan Persidangan di Pengadilan Secara Elektronik.* Available online at https://ecourt.mahkamahagung.go.id/PERMA_01_2019.pdf. Furthermore, it is emphasized that Supreme Court Regulation Number 1 of 2019 concerning Case Administration and Proceedings in Court Electronically, commonly known as PERMA No. 1/2019, represents a pivotal document in the Indonesian legal landscape. This regulation, issued by the Supreme Court, specifically addresses the administration of cases and the conduct of legal proceedings in the electronic realm. It signifies a significant step in aligning judicial processes with the advancements brought about by digitalization and electronic systems. The regulation encapsulates various aspects related to the electronic administration of cases, introducing measures to streamline and enhance the efficiency of legal proceedings. It encompasses provisions pertaining to electronic filing, case registration, and the use of electronic documents. Moreover, PERMA No. 1/2019 delineates procedures for electronic trials, encompassing the presentation of evidence, submissions, and other crucial aspects of the legal process. One of the notable features of this regulation is its focus on embracing technology to ensure the swift and effective dispensation of justice. By providing a comprehensive framework for electronic case management and proceedings, it reflects the Supreme Court's commitment to leveraging technological advancements for the benefit of the legal system. PERMA No. 1/2019 serves as a foundational document guiding the transition from traditional courtroom practices to a more technologically integrated and efficient legal environment. *See also* Retnaningsih, Sonyendah, et al. "Pelaksanaan E-Court Menurut Perma Nomor 3 Tahun 2018 Tentang Administrasi Perkara di Pengadilan Secara Elektronik dan E-Litigation Menurut Perma Nomor 1 Tahun 2019 Tentang Administrasi Perkara dan Persidangan di Pengadilan Secara Elektronik (Studi di Pengadilan Negeri di Indonesia)." *Jurnal Hukum & Pembangunan* 50, no. 1 (2020): 124-144; Berutu, Lisfer. "Mewujudkan Peradilan Sederhana, Cepat Dan Biaya Ringan Dengan e-Court." *Jurnal Ilmiah Dunia Hukum* 5, no. 1 (2020): 41-53.

trials, where physical presence in the courtroom was imperative, to electronic hearings conducted exclusively through the court information system. In this transformed approach, parties can engage in legal proceedings without the necessity of being physically present in the courtroom. This electronic hearing framework encapsulates the entire trial process, spanning from the initial submission of the lawsuit to the electronic pronouncement of the verdict.[14]

This evolution anticipates that the implementation of electronic justice, leveraging information technology, aligns seamlessly with the principles of expeditious, straightforward, and cost-effective justice. Simultaneously, it strives to enhance transparency, offering a system that is not only efficient but also accessible to the public. This shift underscores a commitment to modernize legal proceedings, ensuring that the justice system remains adaptive and in tune with the evolving demands of the digital age.[15]

To preempt any discordance between formal and material truth in resolving state administrative disputes, the process leading to the judge's

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[14] Putra, Dedi. "A Modern Judicial System in Indonesia: Legal Breakthrough of E-Court and E-Legal Proceeding." *Jurnal Hukum dan Peradilan* 9, no. 2 (2020): 275-297; Santiadi, Kukuh. "Expanding Access to Justice through E-Court in Indonesia." *Prophetic Law Review* 1, no. 1 (2019): 75-89.

[15] Habiby, M. Yusuf. "Penerapan Asas Peradilan Cepat Sederhana dan Biaya Ringan dalam Sistem Peradilan Indonesia." *Thesis.* (Mataram: Universitas Muhammadiyah Mataram, 2020). The principles of Simple, Fast, and Affordable Justice are crucial in upholding human rights. These principles ensure equal access to justice for all, aligning with the core tenets of human rights. The principles promote a legal system that is swift, accessible, and cost-effective, facilitating the realization of the right to a fair trial. In the context of human rights, it safeguards against arbitrary or prolonged detention, as a prompt legal process is integral to preventing violations of the right to liberty. Additionally, the efficiency of the principles contributed to a fair and effective judicial system, empowering judges to make informed decisions. This approach minimizes discrimination and inequality, ensuring that economic disparities do not hinder access to justice. By aligning with international human rights standards, the principles underscore the commitment to dignified and respectful legal proceedings. Ultimately, the implementation of these principles reflects a nation's dedication to fostering a legal environment that respects, protects, and fulfills the inherent human rights of its citizens. *See also* Meyrina, Susana Andi. "Perlindungan Hak Asasi Manusia bagi Masyarakat Miskin atas Penerapan Asas Peradilan Sederhana Cepat dan Biaya Ringan." *Jurnal HAM* 8, no. 1 (2017): 25-38; Jaspan, Mervyn Aubrey. "In quest of new law: the perplexity of legal syncretism in Indonesia." *Comparative Studies in Society and History* 7, no. 3 (1965): 252-266.

decision involves an evidentiary proceeding in court. This entails a meticulous examination and cross-referencing of evidence submitted by the involved parties, conducted directly by the Panel of Judges. The objective is to establish certainty and confidence for the judge regarding the presented arguments before reaching a verdict. The evidentiary process serves as a crucial benchmark for ascertaining material truth, guiding the Panel of Judges in rendering decisions in state administrative dispute cases.

However, the advent of the e-Litigation system has significantly transformed the conventional norms of the evidentiary process in PTUN. The contemporary approach now involves the electronic substantiation of evidence, facilitated by the seamless uploading of evidence files. This shift reflects a departure from traditional practices, embracing a more efficient and technologically integrated method of presenting and validating evidence in state administrative disputes within the PTUN framework.

Concerning the evidentiary process in the context of state administrative disputes, as stipulated by Article 100 of the PTUN Law, various forms of evidence are recognized. These encompass: Letter or Writing, Member Description, Witness Statements, Acknowledgment of the Parties, and Judge's Knowledge. These designated types of evidence play a fundamental role in substantiating legal arguments and establishing the factual basis necessary for a thorough examination and resolution of state administrative disputes within the PTUN framework. Each category serves a unique purpose, contributing to the holistic understanding of the case and aiding the Panel of Judges in arriving at informed decisions. The delineation of these evidentiary elements in the PTUN Law underscores the meticulous approach and comprehensive nature of the legal processes involved in state administrative dispute resolution.[16]

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[16] *See* yanasmoro Aji, Anjas, and I. Nengah Laba. "Kajian Hukum Sistem Pembuktian dalam Peradilan Tata Usaha Negara." *WICAKSANA: Jurnal Lingkungan dan Pembangunan* 2, no. 2 (2018): 27-42; Ningrum, Valencia Prasetyo, Rasji Rasji, and Yuliya Safitri. "Sistem Pembuktian pada Hukum Acara Peradilan Tata Usaha Negara di Indonesia." *COMSERVA* 2, no. 8 (2022): 1357-1367; Panjaitan, Bernat. "Penyelesaian Sengketa Tata Usaha Negara (TUN) Pada Peradilan Tata Usaha Negara (PTUN)." *Jurnal Ilmiah Advokasi* 3, no. 2 (2015): 1-17.

The scope and significance of proof within the state administrative dispute resolution process are delineated by Article 107 of the PTUN Law. This provision grants judges the autonomy to determine the requisite proof, assign the burden of proof, and assess the evidence. According to the legal framework, the validity of evidence hinges on the judge's conviction, mandating a minimum of two pieces of evidence to substantiate the claims effectively.[17]

However, the introduction of the e-Litigation proof system has sparked considerable debate. Notably, challenges arise during the initial proof process, particularly with letter or writing evidence, as it encounters various obstacles, contributing to the ongoing discourse surrounding its efficacy and viability within the e-Litigation framework. The dynamic nature of this debate underscores the complexities involved in adapting traditional evidentiary norms to the technological advancements and procedural innovations introduced by the e-Litigation system in state administrative dispute resolution.

In the further, navigating the landscape of electronic evidence, especially letters, within the realm of e-litigation presents a nuanced challenge, demanding a delicate equilibrium between technological advancements and legal principles.[18] The integration of good governance principles in regulating the submission of letter evidence in e-litigation holds pivotal significance, ensuring responsiveness, effectiveness, and efficiency in the legal proceedings.[19] Authentication mechanisms, such as leveraging a network security audit system, emerge as crucial tools to bolster the admissibility of electronic evidence

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[17] *See* Weda, Ni Komang Dewi Novita Indriyani, I. Made Arjaya, and I. Putu Gede Seputra. "Penerapan Asas Hakim Aktif (Dominus Litis) dalam Persidangan di Pengadilan Tata Usaha Negara (Studi Kasus Putusan No. 1/G/2017/PTUN. DPS.)." *Jurnal Preferensi Hukum* 2, no. 1 (2021): 27-32; Cynthia, Caroline. "Kedudukan dan Kekuatan Pembuktian Sertifikat Ekektronik di Peradilan Tata Usaha Negara." *Thesis* (Bandung: Universitas Parahyangan, 2022).

[18] Anhelina Hvasaliia, "Electronic evidence as a means of evidence in commercial and administrative judicial procedure", *Economic Finance Law* 1, no. 12 (2021): 8-12

[19] Rizkiana, Rina Elsa, and Michael Gerry. "The Implementation of Good Governance Concept in Letter Evidence Submission Regulation for E-Litigation Cases." *Veteran Law Review* 6.1 (2023): 48-60.

in e-commerce litigation.[20] Furthermore, delving into the realm of e-mail forensics, encompassing the recovery of deleted e-mails, proves instrumental in furnishing digital evidence for e-litigation cases.[21]

The purpose of this study is to critically examine and analyze the multifaceted dimensions surrounding the use of electronic evidence, specifically letters, in the context of e-litigation. By scrutinizing the existing literature and drawing insights from relevant studies, the research aims to shed light on the intricacies, challenges, and potential solutions associated with incorporating electronic evidence, particularly letters, into the e-litigation landscape. This examination seeks to contribute valuable perspectives and recommendations for developing effective regulatory frameworks and authentication mechanisms, fostering a more seamless integration of electronic evidence in the evolving domain of legal proceedings.

Legitimacy and Challenges of Letter Evidence in State Administrative Court Proceedings

THE EVIDENTIARY process within the State Administrative Court (PTUN) trial assumes a critical role, demanding active engagement from the Panel of Judges to maintain equilibrium between the parties involved. Notably, the Defendant, typically a TUN Agency or Official, enjoys enhanced access to information compared to the Plaintiff, accentuating the need for the judges to ensure a balanced playing field. The Panel must diligently oversee the

[20] Sun, FuXiong, and Lili Zhou. "Study of Authentication Mechanism of E-evidence in the E-commerce Litigation." *2012 International Conference on Management of e-Commerce and e-Government*. IEEE, 2012.

[21] Tiwari, Lokendra Kumar, et al. "Evidentiary usage of e-mail forensics: Real life design of a case." *Proceedings of the First International Conference on Intelligent Interactive Technologies and Multimedia*. 2010.

evidentiary process to guarantee parity in the presentation of evidence, ensuring the establishment of robust legal foundations.[22]

Delving deeper into the PTUN evidentiary process, it operates within defined parameters of freedom. This freedom, however, is nuanced—it grants the judge the latitude to independently determine the facets that require substantiation and allocate the burden of proof to the involved parties. This autonomy enables the judge to freely decide the distribution of evidentiary responsibilities, ensuring that both parties possess equal authorization to present evidence supporting their factual contentions in the relevant dispute. This equilibrium in the evidentiary process is pivotal for upholding the principles of justice and fairness within the PTUN trial system.

In this context, the term "*limited*" implies that the evaluation of evidence is constrained by the parameters set forth in Article 107 of the PTUN Law, which stipulates:

> *"The judge determines what must be proven (broad aspects of evidence), the burden of proof along with the evidentiary assessment and for the validity of proof at least two pieces of evidence are required* ***based on the judge's conviction.***"

Evidence stands as a pivotal component within the proof system, indispensable for unraveling material truths inherent in the subject matter of a TUN dispute. This differs markedly from the procedural law in the civil domain.[23] The multifaceted nature of evidence manifests in various forms, each serving the purpose of elucidating and substantiating the intricacies presented in a court case. In the realm of PTUN, governing the process of administrative dispute resolution, the array of acceptable forms and types of evidence is

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[22] *See* Gunawan, Andy, and I. Wayan Arthanaya. "Fungsi Asas-Asas Umum Pemerintahan yang Baik dalam Menyelesaikan Sengketa Hukum Acara Tata Usaha Negara." *Jurnal Analogi Hukum* 1, no. 1 (2019): 28-33; Bhakti, Teguh Satya. "Politik Hukum dalam Putusan Hakim." *Jurnal Hukum dan Peradilan* 5, no. 1 (2016): 53-72.

[23] Johansyah, Johansyah. "Pembuktian Dalam Sengketa Tata Usaha Negara." *Solusi* 17, no. 3 (2019): 336-357.

meticulously delineated in Articles 100 to Article 107 of the PTUN Law. The specificity in designating the admissible evidence within the PTUN framework holds profound significance, acting as a regulatory mechanism that circumscribes the judge's discretionary freedom in the proceedings.

Based on the above, the author can conclude that the PTUN Judge can process evidence can be authorized to:

1. Determine what must be proven;
2. Determine who should be burdened with proof to prove his propositions before a judge;
3. Determine which evidence tool is preferred to be used in proof; And
4. Decide the evidentiary strength of evidence that has been submitted by the litigant.

In the legal context, the term used for this concept is "*La Conviction Raisonnee*" in French, signifying the "*Reasonable Judge's Conviction.*"[24] In Dutch legal terminology, it is known as "*Vrije Bewijstheorie*," translated as the "*Free Proof*" theory.[25] The distinctive feature of the Indonesian proof system,

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[24] "*La Conviction Raisonnee*" is a French term that translates to "Reasoned Conviction" in English. In the context of legal terminology, especially in the French legal system, it refers to a judge's reasoned and thoughtful conviction or decision. The term reflects the idea that judicial decisions should be based on careful reasoning, logic, and a thorough analysis of the facts and applicable law. In legal proceedings, judges are expected to reach their conclusions through a reasoned process that involves evaluating evidence, interpreting relevant laws, and applying legal principles. A "*La Conviction Raisonnee*" emphasizes the importance of a judge's thoughtful and well-reasoned judgment rather than arbitrary or capricious decision-making. This concept underscores the significance of transparency, fairness, and adherence to legal principles in the judicial process. It aligns with the broader principles of the rule of law, where legal decisions should be based on rational and justifiable grounds to ensure justice, equity, and the protection of individual rights.

[25] "*Vrije Bewijstheorie*" is a Dutch legal term that can be translated to "Free Proof Theory" in English. In legal contexts, especially within the Dutch legal system, this term refers to a theory of evidence that grants judges a certain degree of freedom and discretion in determining what needs to be proven, the allocation of the burden of proof, and the assessment of evidence. The concept of "*Vrije Bewijstheorie*" implies that judges have flexibility in deciding how evidence should be presented and evaluated during legal proceedings. Unlike a strict and rigid system, where rules dictate specific evidence requirements, a free proof theory allows judges to exercise judgment and consider a variety of factors when determining the weight and validity of

particularly in the State Administrative Court (PTUN), is its adoption of a theory that combines freedom with limitations. Unlike a completely unrestricted system, the judge's conviction in deciding a state administrative dispute within PTUN must be substantiated by a minimum of two pieces of evidence. This differs from systems where evidence alone can shape the judge's conviction. Notably, among the types of evidence recognized in PTUN proceedings is the Judge's Knowledge, emphasizing the need for a symbiotic relationship between a judge's conviction and the supporting evidence. In essence, the judge's conviction must be mutually reinforced by the presence of both pieces of evidence.[26]

When discussing evidence in State Administrative Court (PTUN) proceedings, Article 100 of the PTUN Law designates letters as a form of legal evidence with considerable weight in the evidentiary process. Letters play a pivotal role in facilitating the proof process in court, particularly considering that the decisions subject to PTUN lawsuits are generally in written or letter form. A letter, as a written document expressing an individual's thoughts, serves as a valuable means of presenting evidence. Article 101 of the PTUN Law further categorizes letter evidence into three types, underscoring its significance in legal proceedings:

1. Authentic Deed Letter

In accordance with Article 1868 of the Civil Code, an authentic deed is a specific form of deed recognized by law and issued by or in the presence of a competent public official, such as a Notary Officer. This aligns with the legal

evidence. This theory reflects a balance between the need for legal standards and the recognition that each case is unique. It recognizes that legal proceedings involve complex situations, and a more flexible approach may be necessary to achieve a fair and just outcome.

[26] Putrijanti, Aju. "Prinsip Hakim Aktif (Domini Litis Principle) dalam Peradilan Tata Usaha Negara." *Masalah-Masalah Hukum* 42, no. 3 (2013): 320-328; Putra, FA Satria. "Problem Eksekutorial Putusan Hakim Pengadilan Tata Usaha Negara." *JUSTISI* 7, no. 1 (2021): 66-75; Pranoto, Edi. "Asas Keaktifan Hakim (Litis Domini) dalam Pemeriksaan Sengketa Tata Usaha Negara." *SPEKTRUM HUKUM* 16, no. 2 (2019): 90-101.

authority granted to Notary Officials, as specified in Article 1 of Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 30 of 2004 concerning Notary Positions, which states:

> *"Notary Officer is a general official who is authorized to take legal action in the form of pouring all deeds, agreements, and determinations desired by interested parties which are set forth in the form of authentic deeds and other authorities as referred to in this Law or under other Laws"*[27]

Essentially, the power of an authentic deed in the evidentiary process is both comprehensive and binding for the involved parties. Moreover, during the trial, the judge is obligated by the contents of the deed as long as it complies with the stipulated validity requirements outlined in Article 1868 of the Civil Code. The evidentiary power of authentic deeds can be categorized into three distinct values:

a. The value of the power of outward proof (*Uitwendige bewijskracht*) of an authentic deed

   The deed possesses inherent validity as an authentic document until proven otherwise. In essence, if there is no counteracting evidence demonstrating that the deed is not authentic, it must be regarded as such. Consequently,

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[27] *See* Law of the Republic of Indonesia Number 2 of 20014 concerning Amendments to Law of the Republic of Indonesia Number 30 of 2004 concerning Notary Positions, Article 1. *Also compare with some cases, see* Fatkhurochmah, Diyah Ayu, Dedy Nurjatmiko, and Gunarto Gunarto. "Responsibilities of Notaris on Making Authority to Sell Deed Which Contain Power Clause (Case Study of Decision Number 016/G/2014/PTUN. Semarang)." *Jurnal Akta* 5, no. 2 (2018): 567-572; Wulansari, Safitri Dwi. "Perlindungan Hukum Bagi Bank Selaku Kreditor Atas Jaminan Berupa Hak Milik Atas TanahYang Sertifikatnya DibatalkanOleh Pengadilan Tata Usaha Negara (Studi Kasus: Putusan Pengadilan Tata Usaha Negara Nomor 126/6/2013/PTUN.Surabaya)". *Thesis* (Malang: Universitas Brawijaya, 2017); Anrova, Yuda, Eman Suparman, and Hazar Kusmayanti. "Proof Power of Authentic Deed Transfer of Land Rights in Legal Perspective of Civil Procedures." *Jurnal Hukum Novelty* 12, no. 2 (2021): 237-247.

during court proceedings, any party disputing the authenticity of the deed bears the burden of presenting compelling evidence to substantiate their claim that the deed lacks authenticity.

b. The value of the formal evidentiary power (*formale bewijskracht*) of an authentic deed

   The submitted deed serves as an official demonstration, inherently validating the formality of the document based on the conditions stipulated in its issuance. This includes essential elements such as the accurate recording of the day, date, month, the precise time of the occurrence, and the authentic signatures of the involved parties. The deed also establishes the veracity of events observed, heard, and witnessed by the authorized officials involved. Consequently, should any party dispute the authenticity of the deed, they bear the obligation to present credible evidence contradicting its formalities. Until proven otherwise, the deed remains recognized as authentic, adhering to the formal requirements specified, including the substantiation of relevant details and adherence to proper procedures as outlined in the deed.

c. The value of the material evidentiary power (*materiele bewijskracht*) of an authentic deed

   The content of the deed itself carries inherent evidentiary weight, reflecting the truthfulness of all events conveyed by the involved parties to the notary. The information encapsulated within the deed is considered accurate and reliable unless proven otherwise. If discrepancies arise, the responsibility lies solely with the parties involved, and the notary remains unbound by any inaccuracies. Consequently, should an authentic deed fail to substantiate its truthfulness before a court, its evidentiary potency diminishes, retaining only the status of a written document under the hand of the parties involved.

d. The value of the binding strength of an authentic deed

   The deed, in this context, serves as proof that on the specified date, the involved parties or third parties conducted themselves in accordance with

the details outlined in the deed. This verification is crucial, as the deed was produced before an authorized official who directly elucidated its contents. Furthermore, if third parties are involved, the authentic deed holds the power to substantiate the veracity of the transactions or events it encapsulates.

2. Deed under hand

Unlike the deed under hand, the deed referred to in Article 101 letter b of the PTUN Law does not possess perfect force and can be crafted without the involvement of a public official. Although it lacks the requirement of being made before a general official, it still maintains a binding force as it is created and signed by the concerned parties. This type of deed contains information about legal events that are intentionally recorded for use as future evidence in unforeseen circumstances. The pivotal element in this type of deed lies in the signatures affixed by the involved parties.

The power of the deed under hand shares similarities with an authentic deed, retaining its proof value as long as it can be disproven or contested by its creator. To substantiate this, it is imperative to provide witnesses or other evidence that can attest to the frailty of the deed's strength. However, in a noteworthy development, the deed under hand can acquire enhanced evidentiary power if legalized before an authorized public official, thus enabling it to be utilized as exit evidence.[28]

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[28] *See also* Gunawan, Novia, and Tjempaka Tjempaka. "Perlindungan Hukum Bagi Pembeli Tanah Yang Kehilangan Hak Akibat Jual Beli Atas Tanah Yang Pernah Menjadi Objek Sengketa Pengadilan Tata Usaha Negara [Legal Protection for Land Buyers Who Lose Rights as a Result of the Sale and Purchase of Land That Was Once an Object of a Dispute in the State Administrative Court]." *Notary Journal* 1, no. 2 (2021): 116-132; Gunawan, Novia. "Perlindungan Hukum Bagi Pembeli Tanah Yang Kehilangan Hak Akibat Jual Beli Atas Tanah Yang Pernah Menjadi Objek Sengketa Pengadilan Tata Usaha Negara (Contoh Kasus: Putusan Mahkamah Agung Republik Indonesia Nomor 658 PK/PDT/2017)." *Indonesian Notary* 3, no. 2 (2021): 762-782.

3. Other letters that are not deed

Lastly, the category of "*other letters*" mentioned in Article 101 of the PTUN Law encompasses letter evidence that possesses discretionary evidentiary power. In this context, the panel of judges holds no obligation to automatically accept or believe in the validity of such evidence. The discretionary nature of this category allows the judges to exercise their judgment and scrutiny, deciding whether to acknowledge and consider the presented letter evidence based on its merits and relevance to the case at hand.

Challenges to Validating Letter Evidence in the e-Litigation Era: A Study of the State Administrative Court in Indonesia

AS THE ADAGE suggests, "*het recht hink achter de feiten aan,*" meaning that the law will inevitably lag behind the evolving realities in society.[29] Consequently, the law must function to serve the community by adapting to societal changes and fulfilling its evolving interests. To effectively achieve this, the law must embody a dynamic nature, capable of constant updates to reflect the changing needs of society. The current era witnesses the disruptive influence of technological advancements, particularly in electronic media. In today's context, people are increasingly entering the abstract and universal realm of cyberspace, transcending limitations of circumstance, place, and time. This

[29] "Het recht hinkt achter de feiten aan" is a Dutch proverb that can be translated to "the law limps behind the facts" in English. This proverb suggests that legal systems and regulations often lag behind or struggle to keep up with the rapid pace of societal changes and developments. The phrase conveys the idea that legal frameworks might not be as agile or responsive as the dynamic nature of society. It implies that laws and regulations may take time to adapt to new technologies, cultural shifts, or other changes, leading to a perceived lag or mismatch between legal standards and current realities. This proverb underscores the challenges that legal systems face in staying relevant and effective in a rapidly evolving world. It acknowledges that the law might encounter difficulties in addressing emerging issues promptly, resulting in a perceived gap between legal norms and the actual conditions of contemporary life.

transformative shift is reshaping the cultural fabric of communities, giving rise to new relationships that extend beyond traditional boundaries.[30]

Similarly, the proceedings within the PTUN system must adapt to the swift currents of the industrial revolution. The conventional judicial processes within the Supreme Court are being reshaped in response to the evolving needs of today's society. This transformation is evident in the gradual transition to a new procedural paradigm known as e-Litigation or electronic justice. As previously mentioned, the inception of the e-Litigation system, governed by Article 19 to Article 28 of PERMA No.1/2019, signifies the Indonesian government's commitment to orchestrating the orderly development and adaptation to the new era through legal frameworks. This legislative initiative aims to enhance and refine the existing national laws, ensuring their robustness in promoting justice and safeguarding human rights within the contemporary context.[31]

The advent of electronic justice has revolutionized the traditional trial proceedings outlined in the PTUN Law, fundamentally altering the mechanisms enshrined in procedural law. This transformation extends to the evidentiary process within the PTUN, where the traditional approach

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[30] Yani, Fitri, and Erni Damayanti. "Peranan Teknologi Informasi Terhadap Perkembangan Hukum di Indonesia." *Jurnal Lex Justitia* 3, no. 1 (2021): 36-51; Putra, Maharidawan. "Hukum dan Perubahan Sosial (Tinjauan Terhadap Modernisasi dari Aspek Kemajuan Teknologi)." *Morality: Jurnal Ilmu Hukum* 4, no. 1 (2018): 47-59; Riyanto, HR Benny. "Pembaruan Hukum Nasional Era 4.0." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 9, no. 2 (2020): 161-181.

[31] Djatmiko, Hary. "Implementasi Peradilan Elektronik (E-Court) Pasca Diundangkannya Perma Nomor 3 Tahun 2018 Tentang Administrasi Perkara di Pengadilan Secara Elektronik." *Jurnal Hukum Legalita* 1, no. 1 (2019): 22-32. *See also* Latifiani, Dian. "Human Attitude and Technology: Analyzing a Legal Culture on Electronic Court System in Indonesia (Case of Religious Court)." *Journal of Indonesian Legal Studies* 6, no. 1 (2021): 157-184; Pratiwi, Sahira Jati, Steven Steven, and Adinda Destaloka Putri Permatasari. "The Application of E-Court as an Effort to Modernize the Justice Administration in Indonesia: Challenges & Problems." *Indonesian Journal of Advocacy and Legal Services* 2, no. 1 (2020): 39-56; Rosida, Heni, et al. "The Effectiveness of The Implementation of the e-Court Justice System and The Impact on Administrative Court in Indonesia." *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal* 2, no. 2 (2022).

necessitated the parties bearing the burden of proof to present evidence directly in court for subsequent examination by the judge during the trial. However, the paradigm has shifted with the introduction of e-Litigation, allowing parties to electronically submit and exchange evidence. Unexpectedly, this shift to e-Litigation has presented several challenges in validating letter evidence, encountering obstacles during the examination of its validity. These challenges include:

1. The emergence of legal gaps and inefficiencies in the process of evidence verification by the Panel of Judges

The implementation of e-Litigation introduces a pre-trial electronic stage, allowing parties tasked with providing proof to upload letter evidence into e-Documents for preliminary assessment by the Panel of Judges. Subsequently, during the electronic trial, the parties are summoned to present the original letter evidence for comparison with the previously uploaded version in the e-document. However, the verification of letter evidence encounters obstacles due to an existing legal vacuum. PERMA No. 1/2019 does not adequately specify how this adjustment process should be conducted to ensure the validity of the evidence in court. Moreover, the procedural aspects of sending letter evidence via e-documents lack clear regulation. In cases where discrepancies arise between the submitted and presented letter evidence, parties are required to reupload, potentially leading to delays, increased costs, and logistical challenges, especially when dealing with voluminous evidence that may struggle to be accommodated within the e-Court system. Addressing these issues is crucial for the smooth and efficient functioning of the e-Litigation system.

The procedure for presenting letter evidence in the e-Litigation trial lacks proper regulation. Another concern arises when parties seek to submit

additional letter evidence during the trial process after both have independently uploaded their initial evidence. This poses a challenge, as in a conventional trial, parties are typically granted ample opportunities to present evidence as long as it adheres to procedural guidelines. The persistence of such issues suggests that the implementation of e-Litigation is not aligning seamlessly with its primary objectives, particularly the aspiration for swift, uncomplicated, and cost-effective trials. Addressing these procedural gaps is essential to achieving the intended efficiencies of the e-Litigation system.

2. The electronic scrutiny of mail evidence contradicts the provisions of Article 1888 of the Civil Code

In accordance with Article 1888 of the Civil Code, it is explicitly stated that the evidentiary power of a letter or written evidence lies in the original deed. Consequently, any photocopies of letter evidence must undergo scrutiny when compared to the original document. This requirement poses a distinct challenge in terms of determining how and when the verification process with the original should be conducted. This is particularly noteworthy since the letter evidence is typically uploaded during the initial registration of the lawsuit by the Plaintiff and also when the Defendant submits the response to the lawsuit. Traditionally, in conventional courts, the verification of letter evidence against the original document is commonly undertaken during the evidentiary proceedings at the trial.

The advent of e-Litigation introduces a significant shift in this process. The challenge emerges as to how the verification of the uploaded letter evidence with the original will be effectively managed, given that the traditional practice in conventional courts is to perform such verifications during the trial's evidentiary phase. The lack of clear guidelines and regulations within the current e-Litigation framework raises concerns about the timing and adequacy

of the verification process. This gap requires careful consideration and regulatory refinement to ensure a seamless and effective verification mechanism in the digital trial setting. Addressing this concern is crucial for upholding the integrity and reliability of letter evidence within the e-Litigation system.

3. The concept of proving letters is inconsistent with the principles outlined in Article 5 of the ITE Law

Article 5 of the Information and Electronic Transactions (ITE) Law explicitly addresses the proof of a letter in electronic document evidence, specifying that it pertains to a letter created in written form with the outcomes of such a letter being printed. Despite the recognition of the printout as valid evidence under this provision, it is essential to note that a printed document differs from its electronic counterpart. The law acknowledges the validity of the printed version, particularly those uploaded by the involved parties into an e-Document within the e-Litigation system. However, this acknowledgment does not imply equivalence between the printed and electronic forms.

In similar context, the ITE Law underscores the importance of a meticulous verification process, emphasizing that both printed and electronic evidence of a letter must undergo scrutiny in accordance with established procedural law. This means that even though a party uploads a letter into the e-Litigation system, the subsequent printout must be cross-referenced with the electronic version. The intent is to ensure consistency, accuracy, and compliance with procedural norms, reinforcing the credibility and reliability of the letter evidence within the digital legal framework.

The distinction between the printout and the electronic version highlights the evolving nature of evidence in the digital age. This necessitates a comprehensive approach to verification, acknowledging the unique characteristics of electronic documents while upholding the principles of legal

proceedings. Clear regulations and guidelines should be in place to govern the verification process, aligning it with the goals of e-Litigation, such as efficiency, simplicity, and adherence to legal standards. This careful consideration is paramount to maintaining the integrity of the legal system as it adapts to technological advancements.

4. Validity of presenting letters with Electronic Signatures (Digital Signatures) and Electronic Stamps in Court

An additional challenge arises in the context of proving letters submitted using a digital signature, also known as an electronic signature, which has redefined its function and position in comparison to conventional signatures. A digital signature is comprised of Electronic Information embedded, associated, or linked with other Electronic Information, serving as a means of verification and authentication. While the use of a digital signature holds the potential to establish valid evidence and bears legal consequences in e-Litigation hearings, its efficacy is contingent upon the acknowledgment of its authenticity by the legal institution overseeing digital signature certification.

In accordance with Article 1 number 21 of Government Regulation Number 1 of 2019 concerning the Implementation of Electronic Systems and Transactions (hereinafter as PP PPTE), a verified digital signature is later referred to as the E-SEAL electronic seal. The government-verified digital signature, accompanied by the E-SEAL electronic seal, is integral to ensuring the legality of evidence within the e-Litigation process. However, a notable challenge emerges when the evidence of letters uploaded in the e-Court system is not clearly visible, raising concerns about its validity and accountability.

This visibility issue introduces uncertainty regarding the clarity and responsibility associated with evidence that may lack transparency in the e-Litigation system. It underscores the importance of addressing and regulating

the presentation and verification of digital signatures in a manner that ensures their visibility, validity, and adherence to legal standards. Clear guidelines and mechanisms for verifying digital signatures are crucial to instill confidence in the e-Litigation process and the evidentiary value of electronically signed documents.

Initially, the proof of a letter necessitated the affixing of stamp duty, as mandated by Article 2 Paragraph (3) of Law Number 13 of 1986 concerning Stamp Duty (hereinafter referred to as the "Stamp Duty Law"). Stamp duty, serving as a fiscal imprint on a document, played a crucial role in facilitating the payment of taxes related to document creation. The letter's proof was contingent upon being a deed adorned with a stamp, which has evolved to include even a post-it stamp with a nominal value of Rp 10,000.00 (ten thousand rupiah).

However, the digitalization wave in this era of disruption has led to a transformation in the use of stamp duty, transitioning from traditional stamping to electronic stamp duty (e-stamp). This shift is governed by Law Number 1 of 2020 concerning Stamp Duty, replacing the previous Stamp Duty Law. The introduction of e-stamp introduces complexities related to its proof in court, particularly concerning the synchronization between an uploaded letter affixed with an e-stamp and the original printed letter evidence.

The challenge lies in determining whether the original printed letter evidence must undergo a re-affixing process with a post-it stamp, especially considering the hurdles associated with affixing e-stamps. The difficulties arise from system failures hindering the seamless application of e-stamps, thereby complicating the process of substantiating the value and validity of e-stamped letters in a legal context. Addressing these challenges is imperative to ensure a smooth transition to e-stamps and foster confidence in their efficacy within the legal framework.

Conclusion

THIS STUDY highlighted and concluded that the validation of letter evidence is intricately regulated within the confines of Article 100 of the PTUN Law, signifying its pivotal role as a legal cornerstone in the evidentiary process of State Administrative Court (PTUN) proceedings. Letters, being a potent form of evidence, streamline the proof dynamics in the trial of state administrative disputes. However, the evidentiary process within administrative disputes is tethered to a measured freedom, constrained by the boundaries set forth in Article 107 of the PTUN Law, which circumscribes the discretion of the Judge Council. In addition, the categorization of letter evidence, as delineated in Article 101 of the PTUN Law, encompasses three distinct types: Authentic Deeds, Deeds Under Hand, and Letters not included in the Deed. The advent of electronic courts has ushered in a plethora of inquiries concerning the validity of proving letter evidence in PTUN proceedings. The challenges lie in the persisting obstacles within the e-Litigation framework, including legal vacuums and inefficiencies in the evidence verification mechanism wielded by the Panel of Judges. Additionally, the electronic scrutiny of letter evidence appears at odds with the stipulations of Article 1888 of the Civil Code, and the conceptual misalignment between letter evidence in PTUN and the IT Law further compounds the issues. Obstacles persist in validating letter evidence filed before the Court using Electronic Signatures and Electronic Seals, adding layers of complexity to the evolving landscape of e-Litigation. This intricate terrain necessitates thorough examination and reformulation to align with the principles of justice, efficacy, and legal coherence.

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Acknowledgment
None

Funding Information
None

Conflicting Interest Statement
There is no conflict of interest in the publication of this article.

Publishing Ethical and Originality Statement
All authors declared that this work is original and has never been published in any form and in any media, nor is it under consideration for publication in any journal, and all sources cited in this work refer to the basic standards of scientific citation.