

Electronic Evidence and the Proof of Mens Rea in Corruption Crimes under Indonesian Law: A Normative Analysis of Abuse of Authority

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ABSTRACT

The increasing reliance on digital communication and electronic transactions has transformed the evidentiary landscape of corruption law enforcement. While electronic evidence has been normatively recognized within Indonesia's criminal justice system, its doctrinal function in proving mens rea, particularly in cases of abuse of authority, remains insufficiently articulated. This study addresses the central legal problem of how electronic evidence can be systematically employed to bridge the evidentiary gap between the material act (*actus reus*) and the subjective element of intent in corruption offenses. Employing normative legal research with a statutory, conceptual, and case-based analytical approach, this article examines the position of electronic evidence within Indonesian corruption law and evaluates its probative capacity in demonstrating intentional misuse of authority. The findings reveal that electronic evidence contributes to mens rea proof not merely as corroborative material, but as an inferential instrument capable of reconstructing decision-making processes, revealing patterns of deliberate conduct, and evidencing conscious deviation from lawful authority. However, judicial practice shows variability in evaluating such evidence, indicating unresolved tensions between evidentiary expansion and safeguards against speculative inference of intent. This study contributes to evidentiary theory by clarifying the analytical linkage between electronic evidence and mens rea in corruption cases, while highlighting the need for doctrinal guidance to ensure that digital evidence strengthens criminal accountability without undermining fair trial principles.

1. Introduction

Corruption constitutes a serious criminal offense that undermines not only state finances but also the integrity of public administration and the rule of law. In Indonesia, corruption has evolved into a systemic phenomenon, particularly within the exercise of public authority, where discretionary powers are frequently abused for personal or third-party interests (Rahmatullah, 2021). This form of corruption abuse of authority poses significant evidentiary challenges, as it is often carried out through non-physical actions, policy decisions, and administrative communications rather than overt criminal conduct. Consequently, proving the *mens rea* element in such cases becomes inherently complex. In contemporary corruption practices, the intention, awareness, and deliberateness of public officials are increasingly manifested through

electronic communications, digital transactions, and data records. Despite the growing reliance on electronic evidence in corruption prosecutions, Indonesian legal scholarship has yet to sufficiently examine how electronic evidence functions in establishing the *mens rea* element in abuse of authority cases, thereby revealing a critical gap in both doctrinal analysis and judicial practice.

In cases of corruption involving abuse of authority, proving the *mens rea* element presents a distinct legal and practical challenge. Unlike conventional corruption offenses that involve explicit acts such as bribery or embezzlement, abuse of authority is often carried out through formal decisions, administrative discretion, or policy implementation that outwardly appears lawful. As a result, the perpetrator's criminal intent cannot be readily inferred from the act itself, leading to ongoing debates in judicial practice regarding the threshold between maladministration and criminal conduct. Courts are frequently confronted with the difficulty of determining whether a public official acted with deliberate intent to misuse authority or merely exercised discretionary power in a flawed or negligent manner. This evidentiary complexity has resulted in inconsistent judicial reasoning and divergent standards in assessing intent, underscoring the need for more concrete indicators of *mens rea*. In this context, the emergence of electronic evidence such as digital communications, internal instructions, and electronic records becomes increasingly relevant as a means to reveal intent, awareness, and purposeful conduct behind seemingly lawful administrative actions

Abuse of authority is commonly understood as the misuse of legally granted power by deviating from its intended purpose for personal or third-party interests. However, legal doctrine and judicial practice do not uniformly characterize such conduct as exclusively deliberate. Ongoing debates persist regarding whether abuse of authority must always be accompanied by intentional misconduct (*dolus*), or whether certain forms of gross negligence or reckless disregard may also satisfy the culpability threshold in corruption cases (Ekasakti, 2025). While some scholars argue that a purposive deviation of authority inherently implies deliberate intent, others caution against equating administrative errors or policy misjudgments with criminal behavior without clear evidence of subjective intent. This doctrinal tension highlights the central evidentiary problem in abuse of authority cases: determining the perpetrator's mental state beyond the formal legality of the act. In this context, electronic evidence plays a crucial role in clarifying whether the diversion of authority was intentional, as digital communications, internal electronic directives, and transactional records may reveal prior planning, awareness of illegality, or coordination with third parties.

With the development of information and communication technology, electronic evidence has become an inseparable part of the criminal justice process. Digital information and data, such as recorded conversations, emails, instant messages (e.g., WhatsApp, Telegram), CCTV footage, and computer/server activity logs, have been used in numerous cases as tools to uncover crimes, including corruption. In the context of proving the *mens rea* element, electronic evidence is highly relevant because it can reveal intent, motives, or planning by the perpetrator before, during, and after the commission of the crime. In Indonesia, *mens rea* is a concept closely tied to

the element of culpability that must be proven in criminal cases (Ar & Rusbandi, 2024). Electronic evidence can help bridge the evidentiary gap that has often been difficult to close using only conventional forms of evidence such as witness testimony or written documents.

The legal basis for the use of electronic evidence in Indonesia's criminal justice system is regulated in several statutory provisions. One of them is Law Number 11 of 2008 on Electronic Information and Transactions (ITE Law), as amended by Law Number 19 of 2016. Article 5 paragraph (1) of the ITE Law affirms that: "Electronic Information and/or Electronic Documents and/or their printouts shall be legal evidence."

This is further reinforced by Article 44 paragraph (1), which states that electronic evidence can be used in legal proceedings in court (Pribadi, 2018). Additionally, in the context of corruption eradication, Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 on the Eradication of Corruption Crimes provides room for the use of non-conventional evidence, including electronic evidence, in proving corruption crimes. Article 26A of that law also introduces the concept of reverse burden of proof (Hukum et al., 2015), which law enforcement can utilize to assess the sufficiency of evidence regarding the *mens rea* of the perpetrator.

However, the use of electronic evidence to prove *mens rea* cannot be accepted absolutely without challenges. In practice, various issues arise technical, legal, and ethical. From a technical standpoint, the integrity and authenticity of electronic evidence are often questioned, especially if the evidence originates from personal devices that could be modified. It is not uncommon for defendants to reject digital evidence on the grounds that it was obtained without consent or through methods that violate privacy rights. Legally, the absence of technical guidelines and standardized evidentiary procedures on how electronic evidence should be used to demonstrate *mens rea* presents a significant hurdle. This leads to disparities in legal interpretation in court, which can undermine the principle of legal certainty.

Another problem is the balance between effective law enforcement and the protection of defendants' rights. In a criminal justice system guided by the presumption of innocence, every defendant has the right not to be treated as guilty until there is a final and binding court decision. Therefore, the use of electronic evidence must be done proportionately and must uphold the principle of due process of law. Misinterpretation of digital communications, for example, can lead to incorrect conclusions regarding the intent of the accused. Interpreting the context and meaning of digital messages is also not always objective, especially when not accompanied by additional explanations or supporting testimony.

In addition, challenges arise in the competence of law enforcement officers investigators, prosecutors, and judges in properly understanding and evaluating electronic evidence. Not all officials have an adequate understanding of digital technology, electronic forensics, and digital verification methods needed to assess the validity of such evidence. This limitation opens the door to mistakes in the evidentiary

process, which may ultimately harm law enforcement efforts or the rights of the accused.

Empirical observations from judicial decisions on corruption involving abuse of authority indicate that such offenses are frequently executed through administrative processes and informal coordination, leaving limited physical evidence. In these circumstances, electronic evidence often functions as a crucial though not exclusive source for reconstructing the perpetrator's mental state, particularly with respect to intent, awareness, and purposive conduct. Nevertheless, the probative value of electronic evidence in establishing mens rea remains contested, as courts differ in their approaches to assessing whether digital communications sufficiently demonstrate deliberate misuse of authority or merely reflect administrative interaction. This inconsistency reveals an unresolved legal question regarding the evidentiary threshold and analytical framework required to infer criminal intent from electronic data in abuse of authority cases.

Against this backdrop, existing scholarship has largely focused on the admissibility of electronic evidence or its formal recognition within criminal procedure, while paying limited attention to its substantive role in proving the mens rea element in corruption cases. This study seeks to fill that gap by examining how electronic evidence is evaluated in judicial reasoning to establish intent in abuse of authority cases, and by identifying the criteria used by courts to distinguish deliberate misconduct from non-criminal administrative actions. By doing so, the article aims to contribute to a more coherent doctrinal understanding of intent in corruption law and to offer a structured analytical framework for the judicial assessment of electronic evidence in proving mens rea, without undermining principles of legal certainty and due process.

2. Method

This study adopts normative legal research with an analytical orientation, focusing on the interpretation of legal norms governing corruption offenses, electronic evidence (Haris Budiman, 2021) and the mens rea element in abuse of authority cases. The research applies a statutory approach to examine relevant legislation on corruption and electronic evidence, a conceptual approach to analyze doctrinal interpretations of criminal intent and abuse of authority, and a case-based approach to assess judicial reasoning in selected corruption cases. These approaches are used to identify how intent is legally constructed and evaluated within the framework of corruption law. The analysis is conducted through qualitative legal reasoning based on library research (Pahlevi et al., 2021) Primary legal materials include statutes and court decisions that explicitly address the use of electronic evidence in proving mens rea in abuse of authority cases, while secondary materials consist of scholarly books and peer-reviewed journal articles relevant to criminal intent and evidentiary standards. The selected materials are analyzed to evaluate the consistency, evidentiary thresholds, and judicial standards applied in inferring criminal intent from electronic evidence, thereby enabling a structured response to the research questions posed in this study.

3. Analysis & Results

3.1. The Position of Electronic Evidence in the Evidentiary System of Corruption Crimes in Indonesia

Indonesia's criminal evidentiary system is grounded in the negative formal proof system, requiring both the fulfillment of statutory evidentiary requirements and the judge's inner conviction (Article 183 KUHAP) (Susanti Ante, 2013). Within this framework, the proof of mens rea constitutes a decisive element in corruption cases, particularly those involving abuse of authority, where the unlawfulness of the act often lies not in its outward form but in the intention behind the exercise of discretion. This structural characteristic renders conventional evidence insufficient to directly capture the subjective dimension of the offense, necessitating a more nuanced evaluation of indirect forms of proof. (Karisa, 2020).

The recognition of electronic evidence under Article 5 paragraph (1) of the ITE Law and Article 26A of Law No. 20 of 2001 signifies a normative expansion of admissible evidence in corruption cases (Lalu Samsu Rizan, 2022). However, the mere admissibility of electronic evidence should not be conflated with its probative value. Procedural admissibility concerns whether electronic data meet formal requirements of legality, authenticity, and integrity, while probative value relates to the evidentiary weight of such data in establishing specific elements of a crime, particularly mens rea. In practice, courts have shown varying approaches in assessing whether electronic communications demonstrate deliberate abuse of authority or merely reflect administrative coordination devoid of criminal intent.

From a substantive evidentiary perspective, electronic evidence operates as an inferential tool rather than direct proof of intent. Messages, emails, call recordings, or digital transaction trails do not automatically establish mens rea; their probative force depends on contextual interpretation, such as timing, consistency with other actions, and linkage to unlawful outcomes. Judicial inconsistency emerges when courts differ in drawing inferences from similar types of electronic evidence, especially in distinguishing intentional misuse of authority from negligent or erroneous administrative conduct. This inconsistency highlights an unresolved doctrinal tension in corruption jurisprudence concerning the evidentiary threshold required to infer intent from digital traces.

The case of Benny Tjokrosaputro (Decision No. 29/Pid.Sus-TPK/2020/PN Jkt.Pst) illustrates how electronic evidence may substantively contribute to proving mens rea. In this case, digital fund flow records, electronic correspondence, and transactional data were not treated merely as procedural complements but were analytically connected by the court to demonstrate planning, awareness, and active control over the corrupt scheme. Although the case did not center on abuse of authority by a public official, the court's reasoning demonstrates how electronic evidence can bridge the gap between observable

conduct and subjective intent when evaluated within a coherent evidentiary narrative.

Nevertheless, the growing reliance on electronic evidence also raises critical concerns. Over-reliance on digital data risks evidentiary misinterpretation, particularly when electronic communications are fragmented, informal, or taken out of context. Moreover, electronic evidence may create an illusion of objectivity, masking interpretive biases in reconstructing intent. Issues of data manipulation, selective presentation, and unlawful acquisition further complicate the reliability of such evidence, underscoring the need for judicial caution and rigorous standards of evaluation. These concerns reinforce the argument that electronic evidence should function as corroborative and contextual proof rather than as a stand-alone determinant of *mens rea*.

Accordingly, the strategic value of electronic evidence in corruption cases lies not in its technological nature, but in its analytical integration with other forms of evidence. When combined with witness testimony, expert analysis, and documentary proof, electronic evidence can illuminate patterns of intent, coordination, and deliberate deviation from lawful authority that would otherwise remain concealed. Within Indonesia's evidentiary system, electronic evidence thus occupies a hybrid position: procedurally admissible as an independent form of proof, yet substantively effective only when subjected to careful judicial reasoning aimed at reconstructing the subjective dimension of corruption offenses (Hamzah, 2022).

3.2. The Role of Electronic Evidence in Proving the *Mens Rea* (Criminal Intent) Element in Corruption Crimes Involving Abuse of Authority

In corruption crimes involving abuse of authority, the establishment of *mens rea* remains one of the most contested aspects of criminal liability. While criminal law doctrine traditionally requires the concurrence of *actus reus* and *mens rea* to impose punishment (R. Soesilo, 1996), abuse of authority cases challenge this framework because the outward exercise of power often conforms formally to legal procedures. This has generated doctrinal debate regarding whether criminal intent must be demonstrated as deliberate misuse (*dolus*) or whether serious deviations from administrative standards may suffice. Within this debate, the evidentiary function of electronic evidence becomes critical, yet also problematic, as it operates through inference rather than direct manifestation of intent.

The probative value of electronic evidence in proving *mens rea* does not lie in its technological form, but in its capacity to reveal patterns of intention, coordination, and awareness when interpreted contextually. Digital communications such as messages, emails, or transaction records may indicate intentional conduct only when linked to surrounding circumstances, timing, and subsequent actions (Barda Nawawi Arief, 2014). Without such contextualization, electronic evidence risks being reduced to mere administrative correspondence or routine communication. Consequently, electronic evidence does not

automatically prove intent; rather, it functions as circumstantial evidence that requires judicial interpretation to bridge the gap between observable conduct and subjective intent.

Judicial practice demonstrates divergent approaches in assessing the evidentiary weight of electronic data. In Decision No. 126/Pid.Sus-TPK/2019/PN Jkt.Pst (Bowo Sidik Pangarso), the court treated instant messaging communications as substantive proof of mens rea after establishing their coherence with witness testimony and the material flow of bribery. The judges did not rely solely on the existence of digital messages but emphasized their content, sequencing, and correlation with unlawful outcomes to infer conscious approval and intentional participation. This reasoning reflects a higher evidentiary threshold, where electronic evidence is evaluated not as isolated proof but as part of an integrated evidentiary structure.

Conversely, other corruption cases reveal judicial hesitation in attributing intent based on electronic communications alone, particularly when messages are ambiguous or lack explicit reference to unlawful objectives. Such cases underscore the inherent risk of misinterpretation, as informal language, coded expressions, or fragmented conversations may be construed differently depending on prosecutorial framing. This variability indicates that the probative strength of electronic evidence in proving mens rea remains contingent upon judicial methodology rather than technological certainty.

From an institutional perspective, law enforcement practice particularly that of the Corruption Eradication Commission (KPK) often emphasizes electronic evidence as a central investigative tool. While wiretaps, digital forensics, and transaction tracking have enhanced the capacity to uncover hidden coordination, their effectiveness in court depends on adherence to procedural legality and forensic reliability (Setiawan & Arista, 2018). The assumption that electronic evidence inherently strengthens proof of intent overlooks situations where unlawful acquisition, incomplete data extraction, or insufficient expert explanation diminishes its evidentiary value. Thus, the strategic use of electronic evidence by investigators does not necessarily translate into persuasive proof of mens rea at the adjudicative stage.

Authenticity and legality concerns further complicate the role of electronic evidence in proving criminal intent. Evidence obtained through unauthorized surveillance or without proper chain-of-custody documentation risks exclusion, regardless of its apparent relevance. More critically, even lawfully obtained electronic evidence may fail to meet the substantive evidentiary threshold if it does not convincingly demonstrate intentional misuse of authority rather than coincidental or negligent conduct. This distinction is central to maintaining the boundary between administrative liability and criminal culpability.

Judicial comprehension of digital evidence also plays a decisive role in mens rea assessment. Courts frequently depend on digital forensic experts to interpret

technical data, yet the translation of forensic findings into legal conclusions about intent remains a judicial responsibility. Inadequate engagement with forensic explanations may result in either overvaluation or undervaluation of electronic evidence, thereby affecting the accuracy of mens rea determination. This highlights the need for a consistent analytical framework guiding judges in assessing how electronic evidence supports inferences of intent.

In analytical terms, electronic evidence should be positioned neither as conclusive proof of mens rea nor as mere supplementary material. Its evidentiary function lies in its ability to substantiate intentionality through coherence, continuity, and convergence with other forms of evidence. Therefore, the evidentiary threshold for establishing mens rea in abuse of authority cases requires electronic evidence to demonstrate: (1) awareness of illegality, (2) purposive direction or control, and (3) causal linkage between digital communication and unlawful outcomes. Without meeting these criteria, electronic evidence risks reinforcing assumptions rather than establishing criminal intent beyond reasonable doubt.

4. Conclusion

This study demonstrates that electronic evidence occupies a legally recognized yet analytically contingent position within Indonesia's criminal evidentiary system. While statutory frameworks such as the ITE Law and the Anti-Corruption Law formally place electronic evidence alongside conventional forms of proof, judicial practice reveals that its evidentiary weight is neither automatic nor uniform. Courts do not treat electronic evidence as inherently conclusive; rather, its probative value depends on authenticity, contextual coherence, and its integration with other evidentiary elements. This variability indicates that the equivalence of electronic evidence to traditional evidence operates at the level of admissibility, not necessarily at the level of persuasive proof.

With regard to proving mens rea in corruption crimes involving abuse of authority, the findings of this research indicate that electronic evidence functions primarily as an inferential mechanism rather than direct proof of intent. Digital communications, transaction records, and electronic documents contribute to the reconstruction of subjective intent only when they collectively demonstrate awareness of illegality, purposive control over the misuse of authority, and a causal link between communication and unlawful outcomes. The analysis shows that courts tend to accept electronic evidence as indicative of mens rea when it forms part of a coherent evidentiary narrative, while isolated or ambiguous digital data are insufficient to meet the criminal standard of proof.

The doctrinal contribution of this study lies in clarifying the distinction between the procedural admissibility and the substantive probative function of electronic evidence in establishing criminal intent. By articulating an evidentiary threshold for inferring mens rea from electronic data, this research contributes to a more structured understanding of how subjective elements of corruption offenses

should be proven, particularly in cases where abuse of authority blurs the line between administrative discretion and criminal liability. At the same time, unresolved tensions remain regarding the risks of evidentiary misinterpretation, judicial dependence on digital forensics, and uneven application of standards across courts. These limitations underscore the need for further doctrinal refinement and consistent judicial guidance to ensure that electronic evidence strengthens, rather than distorts, the integrity of mens rea assessment in corruption adjudication.

Suggestion

1. Judicial institutions, particularly corruption courts, should develop interpretative benchmarks for assessing electronic evidence specifically in relation to the proof of mens rea in abuse of authority cases. This recommendation is derived from the study's finding that electronic evidence is often treated as corroborative material without a clear analytical framework linking digital data to intentional misuse of authority. Clear judicial guidelines are therefore needed to distinguish electronic evidence that merely indicates administrative irregularities from evidence capable of demonstrating deliberate deviation of authority, awareness of illegality, and purposive conduct.
2. Law enforcement agencies and public prosecutors should prioritize methodological standards in collecting and presenting electronic evidence that explicitly address the element of intent rather than focusing predominantly on material loss or procedural violations. The research demonstrates that weaknesses in mens rea proof frequently stem from the failure to contextualize electronic communications within decision-making processes and chains of authority. Accordingly, targeted professional training should emphasize evidentiary construction of intent such as sequencing digital evidence, linking communications to formal authority, and demonstrating conscious risk-taking rather than general digital literacy alone.
3. Legislators and policy-makers should consider refining statutory provisions governing electronic evidence to ensure proportional safeguards when such evidence is used to infer criminal intent. This suggestion follows from the study's observation that the expansion of electronic evidence, while beneficial, carries interpretative risks when intent is inferred without adequate doctrinal limits. Legislative clarification is therefore necessary to prevent overcriminalization based on ambiguous digital traces, while maintaining effective prosecution of corruption crimes grounded in demonstrable mens rea.

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