KRTHA BHAYANGKARA, Vol. 19, No. 1 (2025), pp. 285-301
ISSN 1978-8991 (print) | ISSN 2721-5784 (online)
Available online at: http://ejurnal.ubharajaya.ac.id/index.php/KRTHA

Law Enforcement Against the Criminal Acts of Forgery and or Placing False Information Into Authentic Deeds

Gatot Efrianto
Fakulty of Law
Universitas Bhayangkara Jakarta Raya
Email: gatot.efrianto@dsn.ubharajaya.ac.id,
**corresponding author*

Article info

Received: Jan 22, 2025	Revised: March 15, 2025	Accepted: April 29, 2025

DOI: https://doi.org/10.31599/krtha.v19i1.3746

Abstract : *The Republic of Indonesia is a state of law (rechtstaats), so anyone who commits a crime must be held accountable for their actions through the legal process. Law enforcement implies that a crime is an act that is prohibited by a rule of law, where the prohibition is accompanied by a threat (sanction) in the form of a certain criminal penalty as its responsibility. The concept of a state of law is one that truly upholds human rights and guarantees citizens with their positions in law and government without exception, while to guarantee obedience and compliance with the law is in the hands of all citizens. Authentic deed in English (authentic deed), in Dutch (authentieke akte van), the philosophical basis that an authentic deed is found in: Legal considerations of Law No. 2 of 2014 concerning amendments to Law No. 30 of 2004 concerning the Position of Notary and regulated in Article 1868 of the Civil Code (Civil Code) which states that "A deed made in the form determined by law by or before a public official authorized for that purpose at the place where the deed was made", meaning that if we examine the definition more deeply, there are elements of an authentic deed, namely: 1) Made in a certain form. 2) Before an official authorized for that purpose. 3) The place where the deed was made.*

Keywords : *Placing False Information Into an Authentic Deed.*

Abstrak : Negara Republik Indonesia adalah negara hukum (*rechtstaats*), maka setiap orang yang melakukan perbuatan tindak pidana harus mempertanggungjawabkan perbuatannya melalui proses hukum. Penegakan hukum mengandung makna bahwa tindak pidana adalah suatu perbuatan yang dilarang oleh suatu aturan hukum, dimana larangan tersebut disertai dengan ancaman (sanksi) yang berupa pidana tertentu sebagai pertanggungjawabannya. Konsep Negara hukum ini adalah yang benar-benar menjunjung tinggi hak asasi manusia serta menjamin warga negara bersama kedudukannya dalam hukum dan pemerintahan yang tidak ada kecualinya, sedangkan untuk menjamin ketaatan dan kepatuhan terhadap hukum adalah di tangan semua warga negara. Akta autentik dalam bahasa Inggris (*authentic deed*), dalam bahasa Belanda (*authentieke akte van*), landasan secara filosofis bahwa akta autentik terdapat dalam : Pertimbangan hukum atas Undang-undang No.2 tahun 2014 tentang perubahan atas Undang-undang No.30 tahun 2004 tentang Jabatan Notaris dan di atur dalam Pasal 1868 KUHPerdata (Kitab

Undang-undang Hukum Perdata) yang mengatakan bahwa "*Suatu akta yang dibuat dalam bentuk yang ditentukan undang-undang oleh atau di hadapan pejabat umum yang berwenang untuk itu di tempat akta itu dibuat"*, artinya bila kita kaji defini lebih dalam lagi maka terdapat unsur akta autentik yaitu : 1) Dibuat dalam bentuk tertentu. 2) Dihadapan pejabat yang berwenang untuk itu. 3) Tempat dibuatnya akta.

Kata kunci : Menempatkan Keterangan Palsu Ke Dalam Akta Otentik.

I. INTRODUCTION

The Republic of Indonesia is a country of law (*rechtstaats*), so anyone who commits a crime must be held accountable for their actions through the legal process. Law enforcement implies that a crime is an act that is prohibited by a legal rule, where the prohibition is accompanied by a threat (sanction) in the form of a certain criminal penalty as its responsibility. In this case, it is related to the principle of legality, where no act can be punished unless it has been regulated by law, so for anyone who violates the prohibition and the prohibition has been regulated by law, the perpetrators can be subject to sanctions or punishment, while the threat of criminal punishment is directed at the person who caused the incident, there is also a close relationship.[1]

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that: "*The State of Indonesia is a State of Law*". The concept of a state of law is one that truly upholds human rights and guarantees citizens their status under law and government without exception, while to guarantee obedience and compliance with the law is in the hands of all citizens. Criminal acts are one form of "*deviant behavior*" that is always inherent in society. Acts that can be punished are evil acts. The logic of good and evil is psychologically embedded in the subconscious of society, that to be called evil there must be good, there is no good if there is no evil. Good will exist if there is evil, meaning that evil can never be eliminated if all humans want goodness.[2] Crime is a term that is no longer foreign in social life, basically the term crime is given to a certain type of human action or behavior that can be considered as an evil act.

Authentic deed in English (authentic deed), in Dutch (*authentieke akte van*), the philosophical basis that authentic deeds are found in namely:[3]

1) Legal considerations regarding Law No. 2 of 2014 concerning amendments to Law No. 30 of 2004 concerning the Position of Notary which states that:
2) The Republic of Indonesia as a state of law based on Pancasila and the 1945 Constitution of the Republic of Indonesia which guarantees certainty, order and legal protection for all citizens.

[1] Gatot Efrianto, Danu Rahmana, *Tindak Pidana Pemalsuan Dalam Akta Otentik,* Penerbit PT.Literasi Nusantara Abadi Graoup, Cetakan 1, Januari 2024, hal.1
[2] Tolib Effendi, *Dasar-Dasar Kriminologi*, Malang: Setara Press, 2017, hlm.2.
[3] Salim HS, *Teknik Pembuatan Akta Satu (Konsep Teoretis, Kewenangan Notaris, Bentuk dan Minuta Akta)*, Penerbit RajaGrafindo Persada, Jakarta, 2015, Hal.17-22

3) To guarantee certainty, order and legal protection, authentic written instruments are needed regarding acts, agreements, determinations and legal events made before or by authorized officials.

4) Notaries as public officials who carry out the profession of providing legal services to the community, need to receive protection and guarantees in order to achieve legal certainty.

1. It is regulated in Article 1868 of the Civil Code (Civil Code) which states that "*A deed made in a form determined by law by or before a public official authorized for that purpose at the place where the deed was made*". This means that if we examine the definition more deeply, there are elements of an authentic deed, namely:

    1) Made in a certain form.

    2) In front of the authorized official for that purpose.

    3) Place where the deed was made.

In this problem formulation, the author limits this writing to:

2. What are the factors that cause the occurrence of criminal acts of forgery and/or the placement of false information in authentic deeds?

3. How is the application of the law against criminal acts of forgery and/or the placement of false information in authentic deeds?

II. RESEARCH METHOD

Legal research is a research that has a legal object, either law as a science or dogmatic rules or law related to the behavior and life of society.[4] Legal research is basically a scientific activity based on certain methods, systematics, and thoughts that aim to study one or several specific legal phenomena by analyzing them unless an in-depth examination of legal facts is carried out and then attempts to solve the problems of the legal phenomena that are developing.[5]

1. Type of Research

The type of research method in compiling this research uses juridical-normative legal research. Juridical-normative, namely library research, this research uses analysing, researching and reviewing secondary data related to identity forgery by reading and studying various literature.

The nature of this thesis research method is descriptive analysis, namely research that is descriptive, examining, explaining and analysing a legal regulation.

1) Research Approach

[4] Jonaedi Efendi dan Johnny Ibrahim, *Metode Penelitian Hukum: Normatif dan Empiris,* 2016, Depok : Prenamedia Grup, hlm.16

[5] Sunggono Bambang, *Metode Penelitian Hukum*, Cetakan ketiga belas, Jakarta : PT.Raja Grafindo Persada, 2013, hlm.19

The approaches used in legal research are the statute approach, case approach, historical approach, comparative approach, and conceptual approach.[6] In compiling this thesis, the statutory approach and analytical approach are used.

The statutory approach is carried out by examining all laws and regulations related to the legal issue being handled. The statutory regulatory approach is carried out by examining all laws and regulations related to the issue to be discussed. The statutory approach has a use that will open up opportunities for researchers to study whether there is consistency and conformity between a law and other laws or a law and the Constitution. The results of this study are an argument to solve the problem at hand.[7]

The analytical approach is to know the meaning contained in the terms used in the laws and regulations conceptually, as well as to know the application in practice and legal decisions. This is done through two examinations. First, the researcher tries to obtain a new meaning contained in the relevant legal regulations. Second, to examine the legal terms in practice through analysis of legal decisions.[8]

2) Source of Legal Reference

In this study, the source of legal materials used is secondary legal materials, namely legal materials obtained from library research by reading, reviewing, and citing laws and regulations, documents, books, journals, dictionaries, and other literature relevant to the problems to be discussed.

3) Primary Legal Reference

The preparation of this research requires primary legal materials, namely:

a) Civil Code,

b) Criminal Code,

2. Secondary Legal Reference

The secondary legal materials used are various books, scientific publication journals, scientific works such as dissertations, previous research results, draft regulations, and all libraries containing laws on objects and digital objects such as e-books.

3. Tertiary Legal Reference

Tertiary legal materials are legal materials that provide explanations or instructions for primary legal materials and secondary legal materials. Tertiary legal materials, namely materials that provide information about primary legal materials and secondary legal materials, namely in the form of dictionaries or legal dictionaries.

[6] Salim HS dan Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Penelitian Tesis Dan Desertasi*, Jakarta: PT. Raja Grafindo Persada, 2013, hlm.13

[7] Dyah Ochtoria Susanti dan A'am Efendi, *Penelitian Hukum (Legal Research)*, Sinar Grafika, 2015, hlm.17

[8] Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, cetakan ke-6, Malang : Bayumedia Publishing, 2012, hal.310

4. Method of Collecting Legal Reference

In this study where the type of data used is secondary data obtained from library materials, then the appropriate data collection technique for this study uses a literature study of this library material research, namely:

1. Legislation related to authentic deeds, the Civil Code, the Criminal Code.
2. Identification of legal norms related to authentic deeds based on the laws that regulate them.
3. Reviewing the doctrines or opinions of experts related to authentic deeds and other books that are related to this study.

III. DISCUSSION.

Unlawful acts have a broader scope compared to criminal acts. Unlawful acts do not only include acts that are contrary to criminal law but also if the act is contrary to other laws and even to unwritten legal provisions. The statutory provisions of unlawful acts aim to protect and provide compensation to the injured party. "*Every criminal act is always formulated carefully in the law, so that its nature is limited. On the other hand, unlawful acts are not like that. The law only determines one general article, which provides legal consequences for unlawful acts*".

In *Memorie Van Toelichting* or the history of the formation of the Criminal Code in the Netherlands, it is not found what is meant by the word "*law*" in the phrase "*against the law*". If referring to the *postulate contra legem facit qui id facit quod lex prohibit; in fraudem vero qui, salvis verbis legis, sententiam ejus circumuenit*, then it can be interpreted that a person is declared to be against the law when the act committed is an act that is prohibited by law.[9]

The definition of unlawful itself, is stated by Simons as follows:[10] "What meaning should be given to the term unlawful in these provisions? Whereas according to the view of many people, the term is nothing other than without one's own rights. In my opinion, there is only one acceptable view regarding the existence of unlawful, namely that there is behavior that is contrary to the law. Without law has a different meaning than contrary to the law, and the term unlawful refers only to the latter meaning. The law intended by the act does not have to be a subjective right but can also be a right in general. Which is correct, depends on the nature of the criminal act and depends on the formulation of the legislator for the term".

One of the main elements of a crime that is objective is the unlawful nature. This is linked to the principle of legality implied in Article 1 paragraph 1 of the Criminal Code. In Dutch, unlawful is *wederrechtelijk* (*weder*: contrary to, against; *recht*: law). In determining whether an act can be punished, the legislators made the unlawful nature a written element. Without this element, the formulation of the law would be too broad. In addition, the nature that can be blamed is sometimes included in the formulation of the crime, namely in the formulation of the crime of culpa.[11]

[9] Eddy O.S Hiariej, *Prinsip-Prinsip Hukum Pidana*, Yogyakarta: Cahaya Atma Pustaka, 2016, hlm.232.
[10] *Ibid*, hlm.233.
[11] Teguh Prasetyo, *Hukum Pidana Edisi Revisi*, Depok: Rajawali Pers, 2017, hlm.67.

The doctrine of unlawful nature has an important position in criminal law in addition to the principle of legality. This doctrine consists of the teaching of formal and material unlawful nature. The teaching of material unlawful nature in Indonesian criminal law is an unwritten law, namely customary law. However, the recognition and application of the teaching of material unlawful nature was only carried out in 1965 and the further implication is that corruptors escape because they have paid the element of state losses in corruption cases. In its development, the teaching of the unlawful nature of this act was then formalized in legislation such as Law No. 31 of 1999 and the draft Criminal Code.

Definition of Forgery

Forgery is a type of violation of truth and trust, with the aim of gaining benefits for oneself or others. A regular social life in an advanced and orderly society cannot last long without a guarantee of the truth of some evidence of letters and other documents. Therefore, forgery is a threat to the survival of the society. Humans have been created to live in society, in the atmosphere of social life there is a feeling of interdependence on one another. In it there are demands of habits, aspirations, norms, values, needs and so on. All of this can run as it should if there is a balance of understanding of the social conditions of each individual. But this balance can be shaken if there is a threat in the society, one of which is the crime of forgery.

Forgery is a crime that contains elements of untruth or falsehood of something (object), which something appears from the outside as if it were true when in fact it is contrary to the truth. Forgery can be punished if there is a breach of guarantee or trust in which case:

a. The perpetrator has the intention or purpose to use something that is not true by describing the condition of the false item as if it were true or using something that is not genuine as if it were genuine, so that other people believe that the item is true and genuine and therefore other people are deceived.
b. The element of intention or purpose does not need to follow the element of benefiting oneself or others (in contrast to various types of fraudulent acts).
c. However, the act must cause a general danger that is specific to the forgery of writings or letters and so on is formulated by requiring "possible loss" to be related to the nature of the writing or letter.

Definition of a Letter

A letter is any kind of writing, whether handwritten, typed or printed using meaning. Although the Criminal Code does not provide a clear definition of what is meant by a letter, by paying attention to the formulation of Article 263 (1) of the Criminal Code, the definition of a letter can be known. The formulation of Article 263 (1) of the Criminal Code is as follows: "*Anyone who makes a fake letter or falsifies a letter, which can issue a right, an agreement (obligation) or a debt relief, or which may be used as information for an act, with the intention of using or ordering another person to use the letters as if the letter were genuine and not falsified, then if using it can cause a loss, he will be punished for falsifying a letter, with a maximum prison sentence of six years*".

The Criminal Code does not explain whether the letter is written on paper, cloth or stone, what is explained is only the type of writing, namely the letter is written by hand or printed using a printing machine. But by listening to the examples put forward by R. Soesilo, such as such letters, birth certificates, postal savings books, cash books, ship diaries, transportation letters, bonds. It can be concluded that what is meant by a letter in the Criminal Code is a writing written on paper and has a purpose that can create and eliminate rights.

Crime of Forgery of Letters

Forgery can be interpreted as an act that has the purpose of imitating, creating an object that is no longer original or making an object lose its validity. Similar to making a fake letter, forgery of a letter can occur to some or all of the contents of the letter, also to the signature of the person who made the letter.

The principle difference between the act of making a fake letter and forging a letter is that making a letter/faking a letter, before the act is carried out, there is no letter, then a letter is made whose contents are partly or wholly contrary to the truth or false. All the writing in the letter is produced by the act of making a fake letter. Such a letter is called a fake letter or a non-original letter.

Making a fake letter is a letter, either in its entirety or only its contents or signature, which depicts falsely as if it came from another person whose name is listed at the bottom at that time. Making a fake letter means that the letter did not exist at first, then it existed and the perpetrator made the contents untrue or perhaps the signature was untrue.

Types of Forgery of Letters

a) Types of forgery of letters included in several Articles in the Criminal Code, as follows: Forgery of letters in basic form.

b) Forgery of letters in basic form is regulated in Article 263 of the Criminal Code, in general, forgery of letters referred to in the article is the making of fake letters/forging letters using fake or forged letters. The letters referred to are :

    1) Which can issue a right (for example a diploma, entrance ticket, share letter, etc.)

    2) Which can issue an agreement (for example a letter of credit agreement, lease agreement, sale and purchase agreement)

    3) Which can issue a debt release (for example a receipt or similar letter)

    4) Which can be used as information for an act or event (for example a birth certificate, postal savings book, cash book, ship's diary, transportation letter, bond, etc.)

Forgery of Special Letters

Forgery of special letters is regulated in Article 264 of the Criminal Code, a person who can be punished according to this article is a person who makes a fake letter or who falsifies it, the following is the formulation of R. Soesilo in the Criminal Code, as follows:

a) Regarding authentic letters, regarding debt letters or debt certificates (certificaat)

b) Regarding shares (*aandeel*) or debt certificates or associations, halls, corporations, or airlines).

c) Regarding talon or certificates of profit and loss (dividend) or interest from a letter described in letters (b) and (c) or regarding a certificate issued as a replacement for the letter.

d) Regarding debt letters or business letters. Acts that are subject to punishment in this Article must contain all the elements contained in Article 263 plus the condition that the forged letter consists of an authentic letter, etc. The penalty in this article is heavier than forging ordinary letters.

Criminal Act of Forgery of Letters in the Criminal Code

Forgery of letters is regulated in Chapter XII Book II of the Criminal Code, from Article 263 of the Criminal Code to Article 276 of the Criminal Code, which can be divided into seven types of crimes of forgery of letters, namely:

1) Forgery of letters in general: the main form of forgery of letters (Article 263 of the Criminal Code)

2) Aggravated forgery of letters (Article 264 of the Criminal Code)

3) Ordering to insert false information into an authentic deed (Article 266 of the Criminal Code).

4) Forgery of a doctor's certificate (Article 267 and Article 268 of the Criminal Code).

5) Forgery of certain letters (Articles 269, 270, 271 of the Criminal Code).

6) Forgery of Official certificates regarding ownership rights (Article 274 of the Criminal Code).

7) Storing materials or objects for forgery of letters (Article 275 of the Criminal Code).[12]

The crime of forgery of letters is generally a sheet of paper on which there is writing consisting of sentences and letters including numbers that can contain or contain certain thoughts or meanings, which can be written by hand, with a typewriter, computer printer, with a printing machine and with any tool and method.[13]

Elements of unlawful acts in criminal cases include:

1. Mistakes in Criminal Law

A person intentionally does something that causes harm to another person, then the active nature of the term resist is clearly visible. On the other hand, if someone intentionally does not do something or remains silent even though they know that they should actually do something to not harm another person or in other words, they are passive, even reluctant to harm another person, then they have "resisted" without having to move their body. This is the passive nature of the term resist.[14]

[12] Adami Chazawi dan Ardi Ferdian, *Tindak Pidana Pemalsuan*, Jakarta : PT.Raja Grafindo Persada, 2014, hlm. 208.
[13] *Ibid*, *Tindak Pidana Pemalsuan,* hlm. 209.
[14] Moegni Djojodirjo, *Perbuatan Melawan Hukum, Jakarta*:Pradnya Paramita, 1982, hlm. 13.

In criminal law, the principle of not being punished without fault has been accepted. Meanwhile, in civil law, this principle can be explained: there is no responsibility for the consequences of legal acts without fault.[15] Fault is used to state that a person is declared responsible for the detrimental consequences that occur from his wrongful actions. The perpetrator is responsible for the loss if the unlawful act committed and the loss caused can be accounted for to him.

The conditions for this fault can be measured objectively and subjectively. Objectively, it must be proven that in such circumstances a normal person can predict the possibility of consequences and this possibility will prevent a good person from doing or not doing something. Subjectively, it must be examined whether the perpetrator based on his expertise can predict the consequences of his actions.[16]

In some criminal law literature, the definition of error from several experts has differences, but there are several experts who have relevant views to define error as an element that forms criminal responsibility. Error in Simmons' view states that "*van hem neemt de weetgever aan, dat hij met schuld kan handelen, van hem mag worden aangenoment, dat hij in staat is het onrenmatige van zijn handelen in te zien en in overeensteeming daarmede zijn wil te bappelen*" (a person who according to the legislator is considered to have done wrong, if he realizes that his actions are against the law and in accordance with that he determines the will of his actions).[17]

From the opinion above, it does not explain what a mistake is but provides an explanation of the conditions that can be categorized as a mistake, namely the existence of a will within a person and the awareness that the act committed by him is an unlawful act. Further mistakes are put forward by Jan Remelink defining mistakes as a reproach shown by society that applies ethical standards that apply at a certain time, towards humans who carry out deviant behavior, which can actually be avoided. This is then clarified in Mezger's view by stating that mistakes are the whole of the conditions that provide the basis for reproaching the perpetrator of a criminal act. Mistakes are always attached to someone who does wrong. Thus it can be understood that mistakes are related to two things, namely the nature of the blameworthy act and the nature of the avoidable act. Some views state that mistakes are always associated with the unlawful nature of an act that mistakes are directly related to acts that have an unlawful nature and consciously the act is an act that can be avoided and the risk of an act that is done is known.

From the view above, it can be seen that the assessment of a mistake in determining a criminal act is always stated as an element that arises from a person's personality which is reviewed from a psychological aspect or what is called a subjective element. In relation to this, in the Principles of Criminal Law, Eddy O.S Hiariej states that in the psychological sense, what is meant by error is an inner relationship with someone who commits a crime. If an act is done is desired by someone who commits an act, then the perpetrator does the act intentionally, conversely if the act is done unintentionally, then the perpetrator does the act because of negligence. Thus, it can be understood that the definition of error

[15] Rachmat Setiawan, *Tinjauan Elementer Perbuatan Melawan Hukum, Op. Cit.*, hlm. 15.
[16] Rachmat Setiawan, *Pokok-Pokok Hukum Perikatan, Bandung:* Putra Abardin, 1999, hlm. 65.
[17] Eddy O.S Hiariej, *Prinsip-Prinsip Hukum Pidana, Op. Cit.*, hlm. 155.

in a psychological perspective is the inner attitude of the perpetrator who commits a crime towards the act or object of his act. Different from normative error in the sense, which is an assessment using normative measures or standards as a benchmark in an act whether it is an act that can be sanctioned or not.[18]

2. Negligence

Negligence, negligence, carelessness and carelessness are part of the error (*imeritia culpae annumeratur*) which means negligence is part of the error. The difference between the threat of criminal penalties for crimes committed intentionally is more severe when compared to crimes that occur due to negligence. It does not mean that negligence is a lighter intention. In negligence there is no will as in intention. The most important thing to know whether someone did it intentionally or negligently. Sudarto stated that: First, the negligence of the person must be proven normatively and not psychologically or physically. It is impossible to know how a person's mental attitude is, so we must take the mental attitude of people in general when committing an act or when a legal event occurs. Second, "people in general" means that they are not experts, the most careful people, but ordinary people. Third, to know the benchmark of the negligence of a perpetrator of a crime, it must be known whether there is an obligation to carry out other actions.[19]

In criminal law, negligence, error, carelessness, or negligence is called Culpa. Culpa is a "general error", but in legal science it has a technical meaning, namely a type of error by the perpetrator of a criminal act that is not as serious as intent, namely being careless so that unintentional consequences occur. An example of this criminal act of negligence is a traffic accident which causes the death of another person. A person can only be blamed for committing a crime of culpa if they meet two conditions, namely, the act was carried out carelessly and the emergence of the consequences must have been predicted by him in advance.

3. Intention

Intention in theory, if traced in the course of history, was first put forward by Von Hippel by stating that intention is the result of what the perpetrator wants as imagined as a goal. While Frank stated the opposite that intention can be seen from a result of an act that has been known and behavior that is followed from what is known or based on knowledge. Likewise, Moeljatno has the same view and agrees more on errors as a result of actions that have been known based on knowledge of it. Intention can occur or be done by someone due to error. First, *feitelijke dwaling* is an intentional act that is done unintentionally leading to an element of a criminal act. Second, legal error or *rechtdwaling*, which is an act with the assumption that the act is contrary to or not by law. Third, *error in persona*, namely an error that occurs to the subject who is the target of the act. Error in percona is meant in *error invicibilis* or an error that cannot be overcome. Fourth, *error in objecto* or misunderstanding of the error related to the object that is the target in committing a criminal act.

---

[19] Romli Atmasasmita, *Rekonstruksi asas tiada pidana tanpa kesalahan (Geen straf zonder schuld)*, Jakarta: Gramedia Pustaka, 2017, hlm.141.

Criminal Responsibility for the Crime of Forgery of Documents

The concept of criminal responsibility actually does not only concern legal matters but also concerns moral values or general morality adopted by a society or groups in society, this is done so that criminal responsibility can fulfill justice.[20] Criminal responsibility is a form to determine whether a suspect or defendant is held responsible for a crime that has occurred. Thus, criminal responsibility is a form that can determine whether a person in committing a crime can be legally acquitted or legally punished.

Roeslan Saleh explained regarding criminal responsibility which can be interpreted as the continuation of objective blame on a person who commits a criminal act and subjectively meets the requirements to be punished for his actions. What is meant by objective blame is a person who commits the act is an act that is prohibited, what is meant by a prohibited act is an act that is prohibited by law, both in formal law and material law. Furthermore, what is meant by subjective blame refers to a person who commits the criminal act, in other words, subjective blame is a person who commits an act that is contrary to or prohibited by law. However, if an act that is contrary to or prohibited by law is committed by a person who commits the act and there are several errors that make the person unable to be held responsible, then criminal responsibility is not possible.[21]

The burden of responsibility in criminal liability is imposed on a person who commits a violation of a criminal act related to the consideration of the basis for imposing criminal sanctions. A person who has committed a criminal act will have the nature of criminal responsibility for the act that has been committed by that person which is against the law, however a person can lose his/her responsible nature if in that person is found and there is an element that can cause the loss of the nature of responsibility for the act committed.

Chairul Huda explained that the basis for the existence of a criminal act is the principle of legality, while the perpetrator can be punished because of the basis of error, related to that, criminal liability will exist if a person in his/her actions has done something wrong or prohibited and is contrary to applicable regulations or laws. Criminal liability is essentially a form of mechanism created for the consequences of certain acts or errors that have been violated that have been agreed upon.[22]

Notary as an Official Making Deeds

The term *Notarius* by the Roman community was given to those who did writing work, where the function of the *Notarius* himself at that time was not the same as the function of the notary today.[23] Meanwhile, the term Public Official in the *Burgelijk Wetboek* is translated by Subekti and Tjitrosudibio as Public Official.[24] *Ambtenaren* if translated is an

[20] Hanafi, Mahrus, *Sistem Pertanggung Jawaban Pidana*, Cetakan pertama, Jakarta: Rajawali Pers, 2015, hlm.16.
[21] Roeslan Saleh, *Pikiran-Pikiran Tentang Pertanggung Jawaban Pidana,* Cetakan Pertama, Jakarta: Ghalia Indonesia, 2017, hlm.33.
[22] Chairul Huda, *Dari Tindak Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggung jawab Pidana Tanpa Kesalahan*, Cetakan ke-2, Jakarta: Kencana, 2006, hlm.68.
[23] Abdul Ghofur Anshori, *Lembaga Kenotariatan Indonesia Perspektif Hukum dan Etika,* Cetakan kedua, Yogyakarta: UII Press, 2010, hlm.8.
[24] R.Subekti & R. Tjitrosudibio, *Kitab Undang-Undang Hukum Perdata*, Jakarta: Pradnya Paramita, 2004, hlm.12.

official,[25] while *Openbare* is general or public,[26] thus *Openbare Ambtenaren* can be said to be a Public Official.

So what is the meaning of a public official? If viewed from the etymology of language, it can be interpreted that a Public Official is an official appointed by the government and has certain authorities in a permanent work environment (because they hold a position) related to service to the community. Is it the same as a Civil Servant because both are appointed by the government. This does not make the Notary Position the same as a Civil Servant, because in addition to being regulated or subject to different regulations, the characteristics of a Notary are also independent, impartial, independent of anyone, which means that in carrying out their duties they cannot be interfered with by other parties including the party that appointed them.

In Indonesia, the origin of the regulation regarding Notaries is in the *OrdonnantieStb*. 1860 Number 3 with the title "*Reglement Op Het Notaris Ambt in Indonesia*", which came into effect on July 1, 1860 (in Indonesia it is better known as the Notary Office Law). Article 1 of the Notary Office Regulation provides the following definition of a Notary:

"*A notary is a public official who is the only one authorized to make authentic deeds regarding all acts, agreements and stipulations required by a general regulation or by the interested party desired to be stated in an authentic deed, guarantee the certainty of the date, keep the deed, all as long as the making of the deed by a general regulation is not also assigned or excluded to another official or other person*".

Based on the definition of a Notary above, several elements can be stated in it, namely:

a. A notary is a public official.

b. A notary is the only official authorized to make authentic deeds.

c. Deeds related to acts, agreements and stipulations required by a general regulation or desired by the interested party to be stated in an authentic deed.

a. here is an obligation to guarantee the certainty of the date, keep the deed, provide a groose, a copy and an excerpt.

b. The making of the deeds is not also confirmed or excluded by a general regulation to another official or person.

The Notary profession is a job with special expertise that requires extensive knowledge, as well as heavy responsibility to serve the public interest and the core of the notary's task is to regulate in writing and authentically the legal relations between the parties who mutually request the services of a notary. Notaries need to pay attention to what is called professional behavior which has the following elements: 1) Have strong moral integrity; 2) Must be honest with clients and themselves; 3) Be aware of the limits of their authority; 4) Not solely based on monetary considerations.

Notaries may not make a Deed if not requested. Notarial Deeds must be written and readable and must comply with the provisions of applicable laws. Even to protect notarial deeds from being easily forged in order to guarantee legal certainty, the form of a Notarial

[25] Marjanne Termoshuizen, *Kamus Hukum Belanda-Indonesia*, Jakarta: Djambatan, 2002, hlm. 21.
[26] Habib Adjie, *Hukum Notaris Indonesia*, Bandung: Refika Aditama, 2008, hlm.16.

Deed has been expressly determined as regulated in Articles 42, 43, 48, 49 and 50 of the UUJN (Notary Position Law).

Criminal acts of forgery of letters and inserting false information into authentic deeds

Article 263 of the Criminal Code

(1) Anyone who makes a false letter or falsifies a letter that can give rise to a right, obligation or release of debt, or which is intended as evidence of something with the intention of using or ordering another person to use the letter as if its contents were true and not fake, is threatened if the use can cause a loss, due to forgery of the letter, with a maximum imprisonment of 6 (six) years.

(2) Threatened with the same crime, anyone who intentionally uses a false or falsified letter as if it were genuine, if the use of the letter can cause a loss.true or not forged, if the use of the letter can cause a loss..

Article 266 of the Criminal Code

(1) Anyone who orders to place false information into an authentic deed about an event whose truth must be stated by the deed, with the intention of using or ordering someone else to use the deed as if the information matches the actual situation, then if in using it it can cause harm, is punished with imprisonment for a maximum of 7 (seven) years.

(2) With the same punishment is also punished anyone who intentionally uses the deed as if its contents match the actual situation if the use of the document can cause harm..

The author's opinion as a criminal expert in an affidevit before the Panel of Judges at the Tangerang District Court on October 3, 2023.

1. That in Article 242 of the Criminal Code it is stated::

Paragraph 1: Anyone who in cases where the law determines to provide the above information, or to have legal consequences for such information, intentionally provides false information under oath, either orally or in writing, by himself or by his attorney specifically designated for that purpose, shall be subject to a maximum imprisonment of seven years.

Paragraph 2: If false information under oath is given in a criminal case and is detrimental to the defendant or suspect who is guilty, he shall be subject to a maximum imprisonment of nine years.

Paragraph 3: Equated with an oath is a promise or reinforcement that is required according to general rules or which is a substitute for an oath.

Paragraph 4: The criminal penalty for revocation of the rights in Article 35 paragraph 1 no. 1-4 can be imposed..

So the elements of a criminal act as referred to in Article 242 of the Criminal Code concerning perjury and false statements are as follows:

1) There is a legal subject or person who does it;

2) Committing an act of providing false information;

3) The act is done intentionally;

4) The statement is made under oath based on the law or promise or reinforcement required by general rules or which is a substitute for an oath;

5) Done verbally or in writing, either personally or by a special attorney appointed for the matter.

In Article 10 of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims, it states:

Paragraph 1: Witnesses, victims, perpetrator witnesses and/or reporters cannot be prosecuted, either criminally or civilly, for testimony and/or reports that will be, are being or have been given, unless the testimony or report is not given in good faith.

Paragraph 2: In the event of a lawsuit against a witness, victim, perpetrator witness and/or reporter for testimony and/or reports that will, are being or have been given, the lawsuit must be postponed until the case he/she reported or gave testimony about has been decided by the court and has obtained legal force.

That the elements of a criminal act as referred to in Article 242 of the Criminal Code, however, the Expert will first explain the definition of a witness under oath as follows:

A witness is a person who can provide true information for the purposes of investigation, prosecution and trial regarding a criminal case that he/she **heard himself/herself, saw himself/herself and experienced himself/herself.**

While an oath is an ability that must be uttered from the deepest part of the heart to obey the obligation or not to carry out the prohibition determined according to religion or belief in God Almighty.

So, a statement under oath is a person who has given a statement under oath in accordance with his religion and beliefs which is based on what he himself heard, saw and experienced and as has also been explained in Article 1 number 27 of the Criminal Code which states that witness testimony is one of the means of evidence in a criminal case in the form of witness testimony regarding a criminal event that he himself heard, saw and experienced by stating the reasons for his knowledge.

And the definition of Jurisprudence is a previous judge's decision that has permanent legal force (*Ikrah*) and is followed by other judges in the same or similar legal events, such as in court decisions:

1. Semarang High Court Decision Number: 304 / Pdt / 2017 / PT SMG.
2. Supreme Court Decision Number: 1256 K / PID / 2009.
3. Supreme Court Decision Number: 2505 K / Pdt / 2017.

2. That NOP (Tax Object Number) is a tax object identity number as a means related to tax administration in accordance with applicable terms and regulations, and this Tax Object Number is not an ownership right but a right that is insured and must be paid to the state or in other words when we make a sale and purchase there is a tax that must be charged to the parties in the sale and purchase to the state, and so the tax object number

cannot be used as a basis for knowing the location of the land and land boundaries and to obtain a tax object number one of the requirements is to have or have land ownership rights such as girik, sale and purchase deeds and certificates, and this ownership right is issued by an authorized official such as girik made and issued by the village head or sub-district head, the sale and purchase deed can be made and issued by the PPAT sub-district head and notary, while the certificate can be made and issued by the State Land Agency (BPN).

That based on the evidence and chronology of the legal events that occurred and the description in Article 242 of the Criminal Code contains elements of a criminal act, namely:

1) The existence of a legal subject or person who commits.
2) Committing an act of providing false information.
3) The act is done intentionally.
4) The statement is made under oath based on the law or promise or reinforcement required by general rules or which is a substitute for an oath.
5) Done verbally or in writing, either personally or by a power of attorney specifically appointed for the matter.

IV. CONCLUSION

1. The factors causing the occurrence of criminal acts of forgery or the placement of false information in authentic deeds are no longer a public secret that the high price of land in big cities is the work of land mafia. Quoted in the Technical Guidelines for the Prevention and Eradication of Land Mafia, it is stated that land mafia are individuals, groups and/or legal entities who deliberately carry out actions to commit crimes that can cause and hinder the implementation of land case handling. The existence of land mafia is a problem that has been very disturbing to the community. Until now there have been many reports of development and social problems triggered by the actions of land mafia which have made land cases endless.
2. It is not commonplace, in fact it is extraordinary now that officials can make and legalize an authentic deed that is not based on the requirements stipulated by law because of friendship, kinship, brotherhood, tempted by high costs, then officials can include false information in an authentic deed so that the authentic deed appears to be true.

BIBLIOGRAPHY

Books

Abdul Anshori Ghofur, *Lembaga Kenotariatan Indonesia Perspektif Hukum dan Etika, Cetakan kedua*. Yogyakarta: UII Press, 2010.

Chairul Huda, *Dari Tindak Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawab Pidana Tanpa Kesalahan, Cetakan ke-2,* Jakarta : Kencana, 2006.

Dyah Ochtoria Susanti dan A'am Efendi, *Penelitian Hukum (Legal Research*), Sinar Grafika, 2015.

Eddy Hiariej O.S. *Prinsip-Prinsip Hukum Pidana,* Yogyakarta : Cahaya Atma Pustaka, 2016.

Gatot Efrianto, Danu Rahmana, *Tindak Pidana Pemalsuan Dalam Akta Otentik*, PT.Literasi Nusantara Abadi Group, Cetakan I, Januari 2023.

Habib Adjie, *Hukum Notaris Indonesia*. Bandung: Refika Aditama, 2008.

Hanafi Mahrus, *Sistem Pertanggungjawaban Pidana, Cetakan pertama*. Jakarta : Rajawali Pers, 2015.

Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, cetakan ke-6, Malang : Bayumedia Publishing, 2012.

Jonaedi Efendi dan Johnny Ibrahim, *Metode Penelitian Hukum: Normatif dan Empiris*, Depok : Prenamedia Grup, 2016.

Marjanne Termoshuizen, *Kamus Hukum Belanda-Indonesia.* Jakarta: Djambatan, 2002.

Moeljatno, *KUHP (Kitab Undang-Undang Hukum Pidana), Cet. Ke-20*. Jakarta : PT. Bumi Aksara, 2007.

Mulyoto, *Perjanjian: Teknik, Cara Membuat, dan Hukum Perjanjian yang Harus Dikuasai*. Yogyakarta: Cakrawala Media, 2012.

Romli Atmasasmita, *Sistem Peradilan Pidana Kontemporer*, Jakarta : Kencana, 2011.

----------, *Rekonstruksi asas tiada pidana tanpa kesalahan (Geen straf zonder schuld),* Jakarta: Gramedia Pustaka, 2017.

R.Tjitrosudibio & R.Subekti, *Kitab Undang-Undang Hukum Perdata*, Jakarta: Pradnya Paramita, 2004.

Roeslan Saleh, *Pikiran-Pikiran Tentang PertanggungJawaban Pidana,* Cetakan Pertama. Jakarta : Ghalia Indonesia, 2017.

Salim HS, *Teknik Pembuatan Akta Satu (Konsep Teoretis, Kewenangan Notaris, Bentuk dan Minuta Akta)*, Penerbit RajaGrafindo Persada, Jakarta, 2015.

----------, *Teknik Pembuatan Akta Satu (Konsep Teoretis, Pengertian, Kewenangan Notaris, Bentuk dan Minuta Akta)*, Jakarta: RajaGrafindo Persada, 2015.

Soemardi, *Teori Umum Hukum Dan Negara, Dasar-Dasar Ilmu Hukum Normatif Sebagai Ilmu Hukum Deskriptif-Empirik,* Jakarta: BEE Media Indonesia, 2007.

Teguh Prasetyo, *Hukum Pidana, Edisi Revisi,* Depok : Rajawali Pers, 2017.

Titis Anindyajati, Irfan Nur Rachman, Anak Agung Dian Onita. "*Konstitusionalitas Norma Sanksi Pidana sebagai Ultimum Remedium dalam Pembentukan Perundang-undangan."* Peneliti pada Pusat Penelitian dan Pengkajian Perkara, Pengelolaan Teknologi Informasi Komunikasi Mahkamah Konstitusi Republik Indonesia.

Tolib Effendi, *Dasar-Dasar Kriminologi.* Malang: Setara Press. 2017.

Law

Kitab Undang-Undang Hukum Pidana (KUHPid).

Kitab Undang-Undang Hukum Perdata (KUHPer).

Mahkamah Agung RI., Putusan No.702 K/Sip/1973 yurisprudensi, judex factie dalam Amar Putusan membatalkan Akta Notaris.

Journal

Ibrahim, Balikpapan, *Palsukan Akta, Notaris dan Pengusaha Ditahan.* Diakses darihttp://balikpapan.prokal.co/berita/2016/03.htm.

Jamil. M. *Pemalsuan Tanda Tangan Dalam Akta Otentik.* Diakses darihttp://fenomenanews.com/2018/04.htm.

Persatuan Advokat, *Teori equality before the law.* Diakses dari https://www.hukumonline.com/teori.advokat.htm.

Pradipa, Yoedhanegara, *Asas Perundang-undangan di Indonesia.* Diakses dari https://www.obsessionnews.com/Pradipa.htm.

Note

Gatot Efrianto, *Affidevit dihadapan Majelis Hakim Pengadilan Negeri Tangerang pada tanggal 3 Oktober 2023.*