

Case Study of Supreme Court Decision Number 418 K / Pid / 2016 Against Criminal Perpetrators Participating in Making Fake Letters

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Article Info

Article history:

Received: 12 June 2024

Published: 1 September 2024

Keywords:

Medepleger;

Fake Letter;

Crime;

Participation.

Abstract

The problem that arises with medepleger in the crime of document forgery is that its application is not explicitly regulated in the Criminal Code regarding its punishment. Then a gap emerged between das sollen (the Criminal Code does not explicitly regulate the criminal offense of participating in making fake letters) and das sein (many people who commit crimes taking part in making fake letters), as in Supreme Court Decision Number 418 K/Pid /2016. This research aims to determine the regulation of the criminal act of forgery of letters in the Criminal Code and to determine the imposition of criminal sanctions against perpetrators of criminal acts who participate in the continuous production of fake letters. This research is a type of normative juridical research, with a statutory approach and a case approach. Research data relies on primary data in the form of statutory regulations and binding decisions and secondary data, namely library sources. As for the research results: the legal arrangements for inclusion in the Criminal Code are regulated in 55 paragraph 1 of the Criminal Code. Regulations for the act of falsifying letters are regulated in Chapter Overall, what is at the core of all forms of criminal acts of letter forgery are making fake letters, falsifying letters and using fake letters or forged letters. what is formulated in the Articles on falsification of letters is the action on the object or form of the letter. The imposition of criminal sanctions against perpetrators of criminal acts who participated in making fake letters which is carried out continuously in the Supreme Court Decision Number 418K / PID / 2016 is based on legal facts, whether through witness statements, defendant statements, or evidence, mitigating and aggravating matters. the defendant and based on juridical considerations. In this case the defendant committed the act by means of participation. With the fulfillment of the elements in article 263 paragraph 2 of the Criminal Code jo. Article 55 paragraph 1 of the Criminal Code means that the criminal act charged is legally and convincingly proven according to the law.

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1. INTRODUCTION

As a form of criminal act, the crime of forgery of documents is regulated in chapter XII of the second book in the criminal code (KUHP) which consists of 13 articles (Articles 263-276 of the Criminal Code). Forgery itself will cause a party to feel disadvantaged. This is what makes counterfeiting regulated and included as a crime in criminal law. The crime of forgery of documents is generally regulated in Article 263 of the Criminal Code where it is stated that:[1]

- a. Any person who makes a fake document or falsifies a letter which can give rise to a right, obligation or discharge of debt or which is intended as proof of something with the intention of using or ordering another person to use the document as if its contents were true and not falsified, shall be threatened if such use could causing loss, due to forgery of documents, with a maximum prison sentence of six years.
- b. The same criminal penalty is imposed on anyone who deliberately uses a fake or falsified document as if it were genuine, if the use of the document could cause harm.

Article 263 of this crime is called (qualification) forgery of documents (valscheid in

geschrift) and is punishable by a maximum sentence of six years in prison.[2]. Even though the act of forgery of letters is designated as a criminal offense and the criminal sanctions have also been regulated, acts of forgery of letters carried out personally or by participating in them continue to be carried out. According to data quoted from the National Police's Pusiknas page, there were 241 reported cases of criminal acts of forgery of documents and letters throughout Indonesia throughout September 2021[3]. As for data from the Police Criminal Investigation Agency's Robinopsnal data, during January 1-12 there were 95 cases with an average of 7 cases of falsification of letters and documents every day by the Police.[4]. This data shows the empirical fact that criminal acts of making fake letters are always carried out.

The crime of forgery of letters can be carried out individually or in groups, in other words, together, if it is carried out together, it indicates that the crime of forgery of letters is carried out in a structured and systematic manner. In criminal law, criminal acts carried out jointly involving several people with their respective roles are referred to as participation (*deelneming*). Inclusion according to the Criminal Code is regulated in articles 55 and 56 of the Criminal Code, the formulation of which is as follows

Article 55 of the Criminal Code

1. Sentenced as a person who committed a criminal offense:
 - a. The person who does it, orders it to do it or participates in doing it.
 - b. People, by means of gifts, agreements, wrongful use of power or influence, violence, threats or deception, or by providing opportunities, efforts or information, deliberately persuade people to do something.
2. Regarding the people mentioned in sub-2, the only things that can be held responsible are the actions that they deliberately induced and their consequences.

According to JE Sahetapy to include the elements of article 55 paragraph 1 to -1 The Criminal Code must explain the role of each of these criminal acts. Chapter 55 explains each perpetrator of the criminal act, then it will be possible to see the role and level of crimes committed by each perpetrator of the criminal act. Without explaining their respective roles, this will result in the accusations and demands being vague and unclear[5]. Article 56 of the Criminal Code regulates as follows: "To be punished as a person who helps commit a crime:

1. Anyone who intentionally helps commit the crime.
2. Anyone who deliberately provides an opportunity, effort or information to commit a crime.[6]

The inclusion of this criminal act gives rise to various types of punishment applied to each perpetrator of a criminal act. People who participate in criminal acts can receive their respective types of punishment, as stated in the Criminal Code, namely between the person who commits and the person who assists in committing the criminal act. A person's involvement in a criminal incident can be psychological or physical, so accountability must be sought for each person involved in the criminal incident.[7].

The problem that arises with *medepleger* in the crime of document forgery is that its application is not explicitly regulated in the Criminal Code regarding its punishment, but its application and interpretation can be studied based on the elements contained in the relevant article. Supreme Court Decision Number 418 K/Pid/2016 is one of the decisions regarding the crime of participating in making fake letters. For this reason, the author is interested in conducting research on this because there is a gap between *das sollen* (the Criminal Code does not explicitly regulate the punishment for the crime of participating in making fake letters) and *das sein* (the large number of people who commit crimes taking part in making fake letters), such as In the Supreme Court Decision Number 418 K/Pid/2016, as well as other empirical cases that occurred in the community, many cases

of participating in making fake letters were found so that the criminal provisions were unclear.

Based on the description above, the urgency of this research is aimed at the public to avoid all forms of acts of making fake letters even if they are only participating parties because this research will examine the legal regulations for the criminal act of participating in making fake letters which is not found in the Criminal Code. his punishment. Based on the description above, the author is interested in studying further regarding the inclusion of criminal acts of forgery of letters entitled: Case Study of Supreme Court Decision Number 418 K/Pid/2016 Concerning Perpetrators of Crimes Participating in Making Fake Letters

The aim of this research is to find out the application of material criminal law in the criminal offense of document forgery as regulated in the Criminal Code? and to find out the imposition of criminal sanctions against perpetrators of criminal acts who participated in making fake letters. There are several previous studies that also discussed similar issues, namely research conducted by Muhammad Alfiandy Gunawan (thesis) with the research title "Imposing Criminal Sanctions Against Participants (Medepleger) in the Crime of Letter Forgery (Case Study of Decision 248/Pid.B/2022/PN.Jkt.Brt)" Hasanuddin University Makassar, 2023[8]. Research conducted by Muh Grady Muttaqien (thesis) with the research title "Judicial Review of Participation in the Crime of Forgery of Motor Vehicle Ownership Books (Case Study Decision Number: 1892/PID.B/2016/PN.MKS)". Hasanuddin University Makassar, 2017[9]. And research conducted by Ardi Bonatua (thesis) with the research title "Analysis of the Crime of Forgery of Rental Agreement Documents (Case Study of Decision Number 880 K/Pid/2019)". Jayabaya University Jakarta, 2021[10].

2. RESEARCH METHOD

This type of research is normative or juridical normative research. Normative research is research conducted to test applicable norms or provisions or can be said to be research by examining library materials or secondary data.[11]. Therefore, the source of data for normative legal research is only secondary data (library material).[12]. Based on the type of research, namely normative juridical, this research refers to various legal norms that are in harmony with or that are related to criminal acts of participating in making fake letters. The approach used to study each problem; the approach used includes the statutory approach (Statute Approach). and Case approach.

Data is the most important element in research. It is said to be important because all research must contain data. It can even be said that without data, research will die and cannot be called research.[13]In this research, the author uses primary data, namely data that has binding power in the form of statutory regulations and binding decisions. Meanwhile, secondary data is data taken from various books, literature decisions and scientific articles that are related to the legal issue being researched. Based on the type of normative juridical research, data collection is carried out by document study or literature study, namely by collecting legal materials that are in line with legal issues which are analyzed by means of literature study.[14]. Data that has been processed through statutory regulations, court decisions, and the results of legal research, will be analyzed according to what the author needs. In this research, data analysis will then be carried out qualitatively, which will produce descriptive data. Materials in the form of primary and secondary are analyzed qualitatively and conclusions are drawn deductively, namely drawing conclusions from a general problem to the concrete problems faced, then answering the problems of this research.

3. RESEARCH RESULTS AND DISCUSSION

3.1. Application of Material Criminal Law in the Crime of Document Forgery as Regulated in the Criminal Code

Before explaining the juridical analysis and response to the application of material criminal law and also the response to the judge's legal considerations, we will analyze the legal provisions contained in Article 184 of the Criminal Procedure Code. Article 184 of the Criminal Procedure Code states: Valid evidence is:[15]

1. Witness statements.
2. Expert testimony.
3. Letter.
4. Instruction.
5. Defendant's statement

And the provisions of Article 183 of the Criminal Procedure Code state that a judge may not impose a crime on a person unless, with at least two valid pieces of evidence, he is convinced that a criminal act has actually occurred and that the defendant is guilty of committing it.[15]. In the criminal case decision at the Jakarta Supreme Court Number 418K/PID/2016 on behalf of the defendants, the judge's statement was found that the suspect was proven guilty of committing a criminal act as stated in Article 263 paragraph 2 of the Criminal Code in conjunction with Article 55 paragraph (1) 1st. that the statement seen in the judge's legal considerations is correct (juridically) because in this case the public prosecutor has submitted evidence in the form of: "2 (two) original sheets of statement made in Sosa 27 October 2004 written on stamped paper"

Apart from presenting evidence as mentioned above, the public prosecutor also presented witnesses to strengthen the charges against the defendant as referred to in the indictment. The public prosecutor presented 5 witnesses in the district court trial, namely Hj. Salma, Syariani Lubis, Aswin Lubis and Syawaludin Lubis as well as Wiki Wijaya Lubis who is also the heir of the late. H. Mahyuddin Lubis.

In relation to the single indictment filed by the public prosecutor against the defendant, namely article 263 paragraph 2 jo. Article 55 of the Criminal Code, based on Article 263 of the Criminal Code and the facts of the trial are correct because there is only one criminal act charged, namely the crime of making a fake letter or falsifying a letter as intended in Article 263 paragraph 2 of the Criminal Code. then based on article 55 of the Criminal Code concerning participation in a criminal act which is in conjunction it is also appropriate because in the criminal act of making a fake letter there is an element of participating in a criminal act, where in this criminal act of making a fake letter it is carried out jointly between two or more people by sharing their respective roles, in this case were carried out by Defendant I and Dawah II. Then, based on Article 64 of the Criminal Code which is in conjunction with this, it is also appropriate because the criminal act of making a fake letter that was committed was a similar act, namely making a fake letter, the time between which was not too long (as of October 2004), and the crime of making a fake letter also arose. from an intention, or will, or decision.

The judge's application of the law based on the facts revealed in the trial was linked to the proof of the elements of the indictment, so the single charge charged against and the defendant's article was declared proven, namely violating Article 263 paragraph (2) jo. Article 55 of the Criminal Code. The element "Whoever", that the word Whoever refers to a person who, if the person is proven to fulfill all the elements of a criminal act as intended in the criminal provisions regulated in Article 263 paragraph 2 of the Criminal Code, he can be called the perpetrator of the criminal act.

that what is meant by anyone is anyone as a legal subject supporting rights and obligations who commits an act and is held accountable according to the law, in this case, the defendants in the name of Amir Hamzah Lubis and Syahrul Lubis alias H. We can see this in the case of a witness being confronted to give a statement, the defendant states that the witness's statement is true and then it is also supported by the defendant's statement so that the defendant is considered a competent person according to the law and can take responsibility for his actions. Based on the information and description, the element "whoever" is proven legally and convincingly according to the law.

The element "Making a fake letter or falsifying a letter, which can give rise to a right, obligation or discharge of debt, or which is intended as proof of a right". That in making this fake letter, the defendants Amir Hamzah Lubis and Syahrul Lubis alias H. Ilun asked Suharyanto for help to ask for the original blank form. Suharyanto himself acted as a seller and provider of blank blanks which had previously been purchased from Soeparno. The price for the empty form was purchased at IDR 500,000 (five hundred thousand rupiah).

One method that can be used to make a fake statement is by making and filling out a letter that only the defendant knows about and then giving it to HJ. Salma is the stepmother of the defendant and is also a witness in this case. The statement letter contains things or circumstances that are not true or false. This kind of action also includes forgery of letters. The act of writing and printing a statement letter with writing that contains incorrect content also includes the meaning of making a fake letter according to article 263.[16].

Then the fake certificate made by defendant I fulfilled the elements of a letter intended as evidence of a right. With the words "intended", the certificate is deliberately made or issued to prove the truth of something, in this case the certificate is proof that the witnesses, namely HJ. Salma, Syariani Lubis, Aswin Lubis and Syawaludin Lubis as well as Wiki Wijaya Lubis have received their share of the inheritance, which in reality is that the oil palm plantation is controlled and managed by Defendant II. Based on the information and description, the element of "making a fake letter or falsifying a letter" is legally and convincingly proven according to the law.

The element "with the intention of using or ordering other people to use the letter as if the letter were genuine and not falsified". Whereas based on the facts revealed in the trial process, it was found that it was true that the defendants, in this case Amir Hamzah Lubis and Syahrul Lubis, had made a fake letter in the form of a certificate of approval for the distribution of the inheritance of oil palm plantations in Sosa Tapanului. Then, after the defendant and his colleagues had finished making a fake letter in the form of a fake certificate, the letter was then given to his stepmother, namely witness HJ Salma, to be signed with notes without seeing the contents of the letter. The fake certificate is given to be used as if the letter is genuine and not falsified. Based on the information and description, the element "with the intention to use or order someone else to use the document as if the document were genuine and not falsified" is legally and convincingly proven according to the law.

The element "If the use of the letter can cause losses". The use of the letter must be capable of causing losses. "Can" means that it is not necessary that the loss actually already exists, just the possibility that there will be a loss is enough, what is interpreted as "loss" here does not only include material losses, but also losses in the social field, morality, honor and etc[17].

Whereas based on the facts revealed in the trial process, it was found that it was true that the fake certificates issued by Defendant I and Defendant II resulted in the witnesses who were also heirs of H. Mahyudin Lubis, namely HJ. Salma, Syariani

Lubis, Aswin Lubis and Syawaludin Lubis as well as Wiki Wijaya Lubis suffered losses, due to the fact that the palm oil assets that were distributed and written in the fake certificate are currently still managed and controlled by Defendant II.

Based on the information and description, the element "If the use of the letter can cause loss" is proven legally and convincingly according to the law. The element "As a person who does it, or participates in doing it". Based on the facts revealed at the trial, there was real cooperation which started with Defendant II Ir. Syahrul Lubis ordered his driver to pick up his stepmother who is also one of the heirs of H. Mahyuddin Lubis on the grounds of reconciling the fight between Defendant II Syahrul Lubis Alias H. Ilun and his older brother who was also a witness, namely Alifa Lubis, to be present at the inheritance house. from Alm. Mahyuddin Lubis and it turned out that all the stepchildren of witness HJ were present at the house. Salma, whose aim was to resolve the argument between Defendant II H. Syahrul Lubis and his brother Alifa Lubis. In fact, Defendant I and Defendant II had written a statement which was presented to witness Hj. Salma to sign. Initially witness Hj. Salama did not want to sign because he was in doubt, but because he was pressed by Defendants II and II, finally witness Hj. Salma signed too.

This is in accordance with the explanation of Article 55 of the Criminal Code where in this case Defendant I and Defendant II can be categorized as participating in the crime. in this case, participating in the meaning of the word jointly committing a criminal act where at least two or more people are involved (there are people who carry it out and participate in it), then all those involved in this case the defendant in forging documents actually cooperate physically, and finally the physical collaboration was not due to coincidence but was planned beforehand (in this case the defendant and his colleagues had planned to forge the letter beforehand).

In this case, defendants I and II realized that the statement they had made was fake and not as genuine as it should be. In this way, the element "As a person who commits, or participates in committing" is proven legally and convincingly according to the law. The first condition is that it must arise from an intention, will, or decision. In this case we can see that defendants I and II basically had a clear intention to make fake letters. This intention can be seen from when Defendant II ordered his driver to pick up witness Hj. Salama with the aim of reconciling a fight, even though it was to sign a fake statement.

The conditions for both actions must be the same, in this case the actions are the same, namely making a fake letter. Then the third condition is that the time between them is not too long. In this case it can be seen that defendants I and II asked their other siblings to sign as well. Because all the elements of Article 263 paragraph (2) of the Criminal Code in conjunction with Article 55 Paragraph 1 of the Criminal Code have been fulfilled, the Defendant is declared legally and convincingly proven according to the law to have committed the criminal act as charged in a single indictment by the Public Prosecutor in his decision. , the panel of judges at the Padangsidempuan District Court stated that Defendant I Ir. Amir Lubis and defendant II Ir. Syahrul Lubis alias Ilun, has been legally and convincingly proven guilty of committing the crime of participating in using fake or forged documents.

This first judge's decision is considered correct, because as previously explained, all the elements of Article 263 paragraph (2) of the Criminal Code in conjunction with Article 55 Paragraph (1) 1 of the Criminal Code have been fulfilled, proven legally and convincingly according to the law. Then, in another decision by the panel, the defendant was sentenced to prison for 10 (ten) months.

3.2. Imposing criminal sanctions on perpetrators of criminal acts taking part in making fake letters

Article 263 paragraph 2 of the Criminal Code states that making a fake letter or falsifying a letter is subject to criminal sanctions of up to 6 (six) years in prison. In other words, the maximum penalty is six years in prison and cannot exceed six years. So, the prison sentence imposed by the judge was appropriate because it did not exceed six years. In terms of participation, Article 55 of the Criminal Code is not a reason for reducing the sentence or a reason for eliminating the sentence.

In the case of continued actions as stated in article 64 of the Criminal Code, this is basically a reason for aggravating the crime by using the heaviest criminal threat. However, article 64 of the Criminal Code paragraph 2 (two) also mandates that only one criminal provision be used if a person is accused of counterfeiting or destroying money and using objects to commit acts of counterfeiting or destroying money, included in the provisions of this article is article 263 of the Criminal Code which was imposed on the defendant.[18].

In this case, because the defendant only did one act, namely making a fake letter, the criminal provisions imposed are still based on Article 263 paragraph 2 of the Criminal Code. So by considering the description of the witnesses' statements, the defendant's statement, evidence, as well as the presence of juridical considerations, mitigating factors and aggravating factors, the prison sentence given by the judge in his decision is appropriate.

Then in another decision by the panel of judges, evidence in the form of 2 original sheets of statement was confiscated for destruction. It is confiscated to be destroyed basically so that the item cannot be used again to commit a crime, because evidence is basically used as a tool to commit a crime. Based on the provisions of article 39 of the Criminal Code. In paragraph 1 it is stated that the convict's property which was obtained by crime or which was intentionally used to commit a crime can be confiscated. From these provisions it can be seen that there are several elements that must be met by a judge to be able to confiscate an item, namely goods belonging to the condemned person, which were obtained by crime or which were intentionally used to commit a crime. Then in Article 46 of the Criminal Code, paragraph 2, it is stated that if the case has been decided, the object subject to confiscation is returned to the person or persons mentioned in the decision, unless according to the judge's decision the object is confiscated for the state, to be destroyed or damaged to the point where it cannot be used. again or, if the object is still needed as evidence in another case.

The last thing in the decision is to charge the defendant to pay court costs of IDR 2,500 (two thousand five hundred rupiah). This point is also correct because it is an embodiment of the principles of criminal justice, namely the principles of fast, simple and low-cost justice. Low costs mean case costs that can be afforded by many people. Apart from that, in terms of the defendant paying court costs, it is also regulated in Article 222 of the Criminal Procedure Code, paragraph 1, namely "Anyone who is convicted of a crime is burdened with paying the court costs and in the case of a verdict of acquittal or release from all legal charges, the court costs are borne by the state."

The Criminal Procedure Code itself does not determine the amount of court costs that must be paid by a convict, so to find out the amount of the case costs, you must refer to the Letter of the Chairman of the Supreme Court of the Republic of Indonesia No. KMA/155/X/1981 dated 19 October 1981 (Letter from the Chairman of the Supreme Court 1981) and Number 27 of the Attachment to Decree of the Minister of Justice No. M.14-PW.07.03 of 1983 concerning Additional Guidelines for the Implementation of the Criminal Procedure Code (Kepmenakeh 1983) which basically

determines the following:

1. The maximum case fee that can be charged to a convict is IDR. 10,000.- and a minimum of Rp. 500,-
2. From the cost of Rp. 10,000,-, the District Court can charge Rp. 7,500,- and for the High Court Rp. 2,500,-[19]

In the above description of the analysis of the judge's decision considerations in relation to the concept/theory of legal philosophy, it is first understood that legal philosophy is very necessary for judges so that their decisions truly reflect justice. From the perspective of legal philosophy, justice can be approached, both from a procedural and substantive perspective. Procedural justice is interpreted as justice that originates from applicable laws and regulations, while substantial justice is obtained by exploring the values that grow and live in society. The judge's decision above fulfills the elements of procedural and substantial justice, because the judge has based his decision on positive law (procedural justice) and decided the case based on the fact that participation in the criminal act of making fake documents is disturbing in society, both the perpetrator and the person who participated. so it must be punished even though there are no accompanying sanctions for the criminal act of making fake documents in positive law (procedural justice).

Integrated with legal theories such as law enforcement theory, the judge's decision has fulfilled the concept of law enforcement theory. If implemented correctly it will give rise to legal certainty, and the judge's decision has given birth to legal certainty because it has given sanctions in the form of criminal penalties to the perpetrators. Likewise, it is related to the theory of the purpose of punishment, which is not just punishment considered as an effort to defend but also to provide legal protection for the victims' rights. The judge's decision Sentencing the defendants to prison terms of 1 year and 6 months respectively minus the time the defendants are in detention is a form of legal protection for victims.

Linked to the sociological theory of jurisprudence which basically teaches that duty Judicial judges are no longer understood simply as implementers of the law to concrete events (in the form of various cases and conflicts) or as mere mouthpieces of the law (*boncha de la loi*) but also as drivers of social engineering, hence the influence of judges' decisions on society. is the creation of community behavior that is in accordance with the objectives of the law.

4. CONCLUSION

- 1) Legal arrangements for inclusion in the Criminal Code are regulated in 55 paragraph 1 of the Criminal Code. Participation itself can be divided into several forms, namely the actor (*pleger*), the person who orders it (*doenpleger*), the person who participates (*medepleger*), the promoter (*uitlokker*). Regulations for the act of falsifying letters are regulated in Chapter Overall, the core of all forms of criminal acts of letter forgery are making fake letters, falsifying letters and using fake letters or forged letters. what is formulated in the articles on forgery of letters is the action on the object or form of the letter.
- 2) The imposition of criminal sanctions against perpetrators of criminal acts who participated in making fake letters which is carried out continuously in the Supreme Court Decision Number 418K / PID / 2016 is based on legal facts, whether through witness statements, defendant statements, or evidence, mitigating and aggravating matters. the defendant and based on juridical considerations. In this case the defendant committed the act by means of participation. With the fulfillment of the elements in

article 263 paragraph 2 of the Criminal Code jo. Article 55 paragraph 1 of the Criminal Code means that the criminal offense charged is legally and convincingly proven according to the law.

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