

# CRIMINAL LIABILITY AGAINST PERPETRATORS OF MAIL FORGERY



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## ABSTRACT

Among the various types of criminal acts in society, mail forgery is one of the most prevalent criminal acts. The crime of using forged documents has occurred in the community. The crime of forging a forged document is a criminal offense whose implications affect the truth and trust in people. The perpetrators use forged documents to gain profit for themselves. To prove the forgery of the victim's signature for the perpetrator's actions, the victim must report to the Police for the basis of conducting investigations and investigations into the forgery of letters. Using a forged letter can cause harm to others if the letter is used. And the truth of the contents of the letter cannot be proven. Therefore, the truth must be revealed and justice must be served. The crime of mail forgery is regulated in Article 263 to Article 276 of the Criminal Code, coupled with Article 55 and Article 56 of the Criminal Code if there are parties who participate (deelneming) in the criminal act of forgery. This research aims to provide an understanding of criminal liability against perpetrators of defamation This type of research uses the Normative Legal Research method.

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## 1. INTRODUCTION

The crime of mail forgery is basically a criminal offense that often arises in society. When looking from a simple perspective through writings and research results, the issue of forged letters is rarely discussed. Perhaps by many writers or researchers, matters relating to mail forgery are an offense

that is not problematic both in the formulation of the article as well as in its law enforcement.

Forgery is a form of crime regulated in Chapter XII of Book II of the Criminal Code, in which the book states that what is included in forgery is only in the form of writings, including forgery of signatures which is regulated in Article 263 of the Criminal Code up to Article 276 of the Criminal Code.<sup>1</sup>

Crimes that often occur are related to Article 263 of the Criminal Code (making false letters or falsifying letters) and Article 264 of the Criminal Code (falsifying authentic deeds) and Article 266 of the Criminal Code (ordering the insertion of false information into an authentic deed).

The crime of forgery of letters has been very detrimental to the community. The actions of law enforcement officials, especially the police, have not been able to minimize cases of criminal forgery, especially forgery of letters. There are still many forgeries that occur in social life or in society. Losses cannot be calculated because of the rampant counterfeiting. Forgery of letters now often occurs so that it is difficult to distinguish which letters are fake or forged letters. And the perpetrator does not think that the victim suffers because of his actions.

The act of making a forged letter is the act of making a letter that does not exist or has not previously existed, which is partly or wholly false. The act of falsifying, on the other hand, is any form of action directed at an existing letter, by deleting, changing or replacing one of its contents so that it is different from the original letter. This letter is called a forged letter.<sup>2</sup>

In Article 263 paragraph (1) of the Criminal Code, the crime of forgery of documents consists of the following elements:<sup>3</sup>

- a. Subjective Element: With intent to use it as genuine and unfalsified or to cause another person to use it.
- b. Objective Elements:
  - 1) Whoever;
  - 2) Makes a false letter or falsifies a letter;
  - 3) Which may give rise to a right, an obligation, a discharge of debt;
  - 4) Or which is intended as evidence of any matter;
  - 5) The use of a letter may cause a loss thereof

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<sup>1</sup> Lamintang, P.A.F., Lamintang, Theo, *Delik-Delik Khusus Kejahatan Membahayakan Kepercayaan Umum terhadap Surat, alat Pembayaran, Alat Bukti, dan Peradilan*, Jakarta: Sinar Grafika. 2013, p.95.

<sup>2</sup> Chazawi, Adami, *Kejahatan Mengenai Pemalsuan*, Jakarta: PT Raja Grafindo Persada. 2002, p.21.

<sup>3</sup> Pasal 263 Kitab Undang-Undang Hukum Pidana

According to Pompe, a *strafbaar feit* is a violation of norms that is not only committed intentionally but can also be committed unintentionally. An example of a violation of norms committed intentionally is formulated in Article 338 of the Criminal Code, namely "Whoever intentionally takes the life of another person, being guilty of murder, shall be punished by a maximum imprisonment of fifteen years." Meanwhile, according to Moeljanto translates "*Strafbaar feit*" as an act that is prohibited and threatened with punishment for whoever violates the prohibition and the act must also be truly felt by the community as an act that cannot or will hinder the creation of the social order that the community aspires to.<sup>4</sup>

According to the definition of the Draft National Criminal Code is:<sup>5</sup>

A. Formal Elements

- a. An act;
- b. The act is done or not done;
- c. The act is prohibited by law;
- d. The regulation is punishable by law.

B. Material Elements The act must be contrary to law, i.e. it must be truly perceived by society as an act that should not be done.

## 2. METHODS

This research method uses normative juridical research methods where looking at the problem from the study of the reference material used is the legislation as the main material (primary legal material) and secondary legal materials such as literature, law books, scientific works, scientific articles that discuss criminal liability for perpetrators of criminal acts of mail forgery.

## 3. DISCUSSION

### EVIDENCE IN THE CRIME OF FORGERY OF LETTERS

The process of "proof" is essentially more dominant in court hearings in order to find the material truth of the events that occurred and give confidence to the judge about the incident so that the judge can give the fairest possible decision. The evidentiary system adopted by the Criminal Procedure Code as stipulated in Article 183 of the Criminal Procedure Code combines objective and subjective elements in determining the guilt or innocence of the defendant. There is no most dominant of the two elements, both are

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<sup>4</sup>Sofyan, Andi, and Azisa, Nur, *Hukum Pidana*, Makassar: Pustaka Pena Press. 2016, p.99.

<sup>5</sup> *Ibid.*

interrelated. If a case is legally proven (valid in the sense of evidence according to the law), but does not convince the judge of the guilt, the judge cannot impose a criminal judgment on the defendant.<sup>6</sup>

The system of evidence is the regulation of the kinds of evidence that may be used, the decomposition of evidence, and in what ways the evidence is used and in what way the Judge must form his belief before the court.<sup>7</sup>

In connection with the trial process of the crime of mail forgery, in the court session the evidence by the judge is carried out by listening to the defendant's testimony, witness testimony and evidence of forged letters presented at the trial. If deemed necessary, the judge can hear testimony from expert witnesses to increase his confidence in deciding the case. these things will be able to provide clues to assess the subjective elements of the crime of forgery of letters. If the evidence is deemed sufficient to give the judge the confidence to prove that the perpetrator fulfills the elements of the crime of forgery of documents, then the perpetrator can be convicted.

Studied from a juridical perspective, according to M. Yahya Harahap, evidence is a provision that contains outlines and guidelines on the ways that are justified by law to prove the guilt charged to the defendant. Evidence is also a provision that regulates the evidence that the judge may use to prove the defendant's guilt. The court cannot arbitrarily and arbitrarily prove the defendant's guilt.<sup>8</sup>

Making a false letter is making a letter that is wholly or partially false. False means untrue or contrary to the truth. Making a false letter can include the following:<sup>9</sup>

1. Making a letter that is partly or wholly inconsistent with or contrary to the truth. This act is called intellectual forgery (*intelectuele valsheid*).
2. Making a letter look as if it came from someone other than the person making the letter. The falsity of the letter lies in the origin or the author of the letter. This act is called material forgery (*materiele valsheid*).

The proof of the criminal offense of using a forged letter must be proven by one of the forms of action and one of the objects of the letter. The way to prove it is to see based on the law of evidence by using a minimum of two

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<sup>6</sup> Efendi, Tolib, *Dasar-Dasar Hukum Acara Pidana ; Perkembangan Dan Pembaharuanya di Indonesia*, Malang: Setara Press. 2014, p.172.

<sup>7</sup> Alfitra, *Hukum Pembuktian dalam beracara Pidana, Perdata dan Korupsi di Indonesia*, Jakarta: Raih Asa Sukses. 2011, p.28.

<sup>8</sup> Harahap, M. Yahya. *Pembahasan Permasalahan dan Penerapan KUHAP Penyidikan dan Penuntutan*, Jakarta: Sinar Grafika, 2007, p.252.

<sup>9</sup> Chazawi, Adami, *Kejahatan Mengenai Pemalsuan*, Jakarta: PT. RajaGrafindo. 2000, p.100.

valid evidence as in Article 183 jo 184 of the Criminal Procedure Code. The letter evidence submitted by the Public Prosecutor can be used as evidence by the judge and is considered to have the same free evidentiary power as other evidence, because the position of the letter evidence against other evidence is mutually reinforcing and supportive, where the assessment remains in the hands of the judge.

## CRIMINAL LIABILITY OF PERPETRATORS OF MAIL FORGERY

The application of sanctions against the crime of mail forgery is regulated in Chapter XII, Book II of the Criminal Code on Crimes. The act of forging a letter is a type of violation of truth and trust, with the aim of obtaining benefits for oneself or others. An orderly association of life in an organized and developed society cannot take place without the guarantee of the truth of some evidence of letters, therefore the act of forgery of letters can threaten the survival of the community.<sup>10</sup>

The act of forgery can be categorized first of all in the group of crimes of fraud, but not all acts of fraud are forgery. The act of forgery is categorized as a crime of deception if a person describes a situation on an item (letter) as if it were genuine or the truth was possessed. Because of this description other people become deceived and believe that the situation described on the goods (letter) is true or genuine. Forgery of writing (letter) occurs when the contents of the letter that is not true is described as true. Forgery can also be said to be an act that imitates, creates an object that loses its validity with the aim of gaining profit. Similar to making a fake letter, forgery of a letter can occur to part or all of the contents of the letter.

Regarding the use or use of forged documents carried out by the perpetrator in the crime of forgery of letters, it does not have to be able to cause harm, it is not necessary that the loss is real or true, only the possibility of loss is enough to ensnare the perpetrator of forgery of letters, which means that the loss here does not only include material losses but also immaterial losses in society, decency, honor and so on.<sup>11</sup>

Article 263 paragraph (1) of the Criminal Code contains several elements:

1. The element of "whoever" in criminal law refers to the subject of criminal law, namely individuals (rechtsperson) and legal entities. In

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<sup>10</sup> Anwar, Moch. *Hukum Pidana Bagian Khusus ( KUHP Buku II )*, Bandung: Alumni. 1980, p.23.

<sup>11</sup> Susanto, Eko Adi. *Pertanggungjawaban Pidana Yang Memakai Surat Palsu Ditinjau Dari Pasal 263 Ayat ( 2 ) KUHP*, Jurnal Daulat Hukum Volume 1 No. 1 Maret 2018, p.3.

addition, to be charged with a criminal offense, a perpetrator must also be able to take responsibility for his actions, which means that the perpetrators are not mentally and mentally disabled. In the case that the author described earlier, the perpetrators are someone who has common sense and is aware of his actions and can be responsible, so this element has been fulfilled legally and convincingly.

2. The element of "making a false letter or falsifying a letter" In this case, the perpetrators made and falsified a letter so that the element of making a false letter or falsifying a letter was fulfilled.
3. The element "which may give rise to a right, an obligation, or a discharge of debt, or which may be used as evidence for an act." In this case, the user or maker uses a fake letter.

Andi Hamzah argues that if you look at the definition of the crime of forgery of letters according to Article 263, the elements can be seen:<sup>12</sup>

- a. Subject (normadressaat): whoever
- b. Core part of the offense (*delictsbestanddelen*):
  - 1) Making a false document or forging a document
  - 2) Which may give rise to a right
  - 3) With inten to use or to cause others to use such document as if were true and not forged
  - 4) If such use may cause loss
- c. Penalty: Imprisonment of up to six years. "Article 263 of the Criminal Code is a deliberate offense, even sometimes not only deliberate action but deliberate intent (*opzet als oogmerk*). Punishable for using or causing to use as genuine and not falsified. According to Prof. van Hamel, if in the formulation of a criminal provision is required *bijkomend oogmerk* or a further intention must be done intentionally, although the element of intentionality is not expressly stated as one of the elements of the criminal offense in question".<sup>13</sup>

Article 263 of the Criminal Code is a deliberate offense, not a deliberate act but deliberate intent (*opzet als oogmerk*). Punishable for using or causing to use as genuine and not forged. There is a core part of culpa (negligence), which in the KUHP are all deliberate offenses, there is no culpa offense in mail forgery. Articles 263, 264 and 266 of the Criminal Code are specific offenses of forgery which are very important for the society. The additional punishment applied is deprivation of rights and no forfeiture.

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<sup>12</sup> Hamzah, Andi,. *Delik-delik Tertentu (Speciale Delicten) di dalam KUHP*. Jakarta: Cahaya Prima Sentosa. 2015, p.128.

<sup>13</sup> Lamintang, P.A.F. and Lamintang, Theo. *Op.Cit.*, p.97.

#### 4. CONCLUSION

Article 263 Paragraph (2) of the Criminal Code regulates the act of using forged documents, the crime of forgery of documents is a type of violation of truth and trust, with the aim of obtaining benefits for oneself or others which can cause material and non-material losses.

The regulation of criminal acts of forgery applicable in Indonesia is contained in Chapter IX to Chapter XII of the Criminal Code (KUHP). Where the criminal act of forgery regulated in the Criminal Code does not only include forgery of a letter, but there are several types of criminal acts of forgery, one of which is the criminal act of forgery of letters. A person can be declared guilty and responsible for the criminal act he committed if he has fulfilled three elements, namely guilt, capable of being responsible, and there is no excuse.

#### 5. LIMITATION

Criminal responsibility must be given to people who have clearly committed a criminal offense or unlawful act and with appropriate sanctions imposed. Criminal law policy against the crime of mail forgery in the future in criminal law requires reforms that must pay attention to the formulation of regulations, rules or guidelines for punishment and also criminal liability for perpetrators of mail forgery.

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