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Juridical Analysis of Letter Forgery Crimes Committed by Intermediary Services "Brokering" (Case Studies of Decision Number 541 / Pid / B / 2018 / PN. Jkt.Tim)

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ABSTRACT
In Indonesia, there are regulations that govern falsification, which are regulated in the Criminal Code. Forgery itself is set in Chapter XII of Book II of the Criminal Code. Crimes related to forgery that often occur in Indonesian society are related to Pasal 263 of the Criminal Code until Pasal 266 of the Criminal Code. Including in the case where the adoptive author of the defendant requested the assistance of Intermediary Services to make fake E-KTP and SIM A, after an agreement between the two parties regarding the nominal to be paid and the "broker" is still a DPO. Issues raised How the Intermediary Services Accountability Against Criminal Act Forgery Letters related to Court Decision Number 541/Pid.B/2018/PN.Jkt.Tim? The method used by the authors is a normative legal research and the type of data used is secondary data. The author in his analysis shows that brokers who are still DPOs are obliged to account for their actions before the law because their actions are illegal. Due to the brokers act other than included in Pasal 263 paragraph (1) of the Criminal Code offense of counterfeiting is also included in Pasal 55 of the Criminal Code, namely the inclusion of the offense. The author concludes that when the brokers are tried in a trial, new facts can be found that can reduce the sentence for a crime that has been carried out in accordance with Pasal 263 paragraph (1) of the Criminal Code jo Pasal 55 of the Criminal Code.

Keywords: *forgery, deelneming, letter*

1. INTRODUCTION

All people really need a letter in their lives. Letters have an important role in people's lives. To meet all the needs of life, people will do various things so that their needs are met. It is the necessities of life that must be met that encourage people to take many ways such as taking actions that are prohibited by law. Crimes in Indonesia every day often occur as well as various kinds of crime as the times evolve. The crime itself is always related to various aspects of life in the form of social, environmental, and especially economic aspects. One crime that often occurs is crime related to forgery.

In Indonesia, there are regulations relating to counterfeiting crimes which are listed in the Criminal Code (KUHP). The forgery is listed in Article 263 of the Criminal Code - 266 of the Criminal Code. Acts related to counterfeiting that often occur in Indonesian society are article 263 of the Criminal Code (producing fake letters), article 264 of the Criminal Code (making authentic deeds to be false) and article 266 of the Criminal Code (governing to include untrue statements in authentic deeds.[1] Indonesia has a variety of securities, both securities and valuables, which contain legal force and in terms of content already stated in the legislation related to the letter. Securities or valuables to have legal force at least must meet the terms and conditions related to what the letter is made. The legal force of securities or non-valuable securities can arise due to the misuse of the documents. In fact on the ground there have been many cases of forgery of letters where the case occurred because only to meet the interests of individuals and also certain groups of people that could result in three parties will feel disadvantaged from the use of fake letters. Counterfeiting that occurs in the community is related to article 263 paragraph (1) of the Criminal Code concerning the fabrication of fake letters or falsification of letters.

Crimes related to forgery that often occur in the community are the falsification of E-KTP, and SIM A. Because these three letters are the most needed by the community to fulfill their daily needs, such as looking for work, a letter in the form of E-KTP, and SIM is needed. Sometimes people commit acts of counterfeiting due to coercion from within themselves so that they do not know the consequences of these actions can be punished.

The focus of the discussion that the writer took is related to the responsibility of intermediary services related to the Case of Falsified Criminal Act contained in Court Decision Number 541 / Pid.B / 2018 / PN. Jkt.Tim. The defendant in this decision was proven to have used fake letters in the form of E-KTP, SIM A, and fake NPWP. The original KTP of the defendant was lost and there was only a photocopy of the KTP. The defendant was planning to register as a grab driver, but the defendant did not know that to register required NPWP and SIM A. Therefore, the defendant immediately sought the services of intermediaries or "brokers" who could make fake E-KTP and SIM A card. To make a TIN required the original KTP from the person. The perpetrator contacted Hendrik (DPO) to make a fake ID card and SIM A for payment of a sum of money and by using a photocopy of the original KTP and a copy of the original SIM A. Then after getting a fake ID a.n Randhy Tyadika, the offender came to the DKI bank to open a new account. But when asked by NPWP a.n Randhy Tyadika, the defendant answered that he had not made it and the perpetrators listed NPWP a.n Solomon Andrianto Panjaitan. One month later, the defendant came to the Tax office in the Matraman area with the aim of making NPWP a.n Randhy Tyadika in accordance with the name printed on the fake ID card.

The problem that the author raised was How is the Accountability of Intermediary Services (Percaloan) Against Criminal Acts of Falsification of Letters related to Court Decision Number 541 / Pid.B / 2018 / PN. Jkt.Tim?

The rest of the paper is organized as follows: section 2 introduces the theoretical framework used in this paper, which includes state’s sovereignty over the airspace and the responsibility of the state; section 3 presents the analysis by applying the theoretical framework to the present case; lastly, section 4 will conclude the analysis and presents direction for future research.

2. THEORETICAL FRAMEWORK

2.1. Basic Theory of Judge Considerations

2.1.1. Judge's Consideration

Judge's consideration is one of the most important aspects in determining the realization of the value of a judge's decision that contains justice (ex a quo et Bono) and contains legal certainty, besides, it also contains benefits for the parties concerned so this judge's consideration must be done carefully, both, and careful. If the judge's judgment is not thorough, good, and careful, then the judge's decision derived from the judge's consideration will be overturned by the High Court / Supreme Court.[2]

The judge in the examination of a case also requires a proof, in which the results of the evidence are made as a judge as the basis for consideration to decide on a case being handled. Proof in question is the most important stage in the examination in the trial. The proof is intended to obtain certainty that an event or fact that was submitted happened, to obtain a verdict that is true and fair. The judge cannot pass a decision before it is evident for him that the event/fact happened, that is proven its truth so that there appears to be a legal relationship between the parties.[3]

2.1.2. Judge Rationale

The basis of judges in dropping court decisions needs to be based on theory and the results of research that are interrelated with one another so that maximum and balanced research results are obtained at the level of theory and practice. One of the efforts to achieve legal certainty in the judiciary, where the judge is a law enforcement officer who through his decision can be a benchmark for the achievement of certainty of the law.

Some several theories or approaches can be used by judges in considering the award in a case presented by Mackenzie, namely the Theory of Balance, what is meant by balance here is a balance between the conditions determined by the law and the interests of the parties involved or related to the case, Theory of the Art Approach and Intuition is that the ruling by the judge is discretion or authority of the judge. As a discretion in rendering decisions, the judge will adjust to the circumstances and fair punishment for each criminal offense, or in a civil case, the judge will see the state of the litigants, namely plaintiffs and defendants, in civil cases, defendants or public prosecutors in cases criminal. Impairment of decisions, judges use the art approach, more determined by instinct or intuition than knowledge from the judge, Scientific Approach Theory The starting point of this science is the thought that the process of imprisonment must be done systematically and carefully, especially in relation to decisions before in order to ensure the consistency of the judge's ruling, the Theory of Experience Approach is the experience of a judge is something that can help him in dealing with cases that he faces daily, Decidendi Ratio Theory is a theory based on a fundamental philosophical foundation and considers all aspects that are relating to the subject matter of the dispute then seeks legislation relevant to the subject matter of the dispute as a legal basis in rendering decisions and the consideration of judges must be based on clear motivation to enforce the law and members

fish justice for parties who litigate, Policy Theory, aspects of this theory emphasize that the government, society, family and parents share the responsibility to guide, foster, educate and protect the defendant, so that one day they can become useful humans for their families, communities and nation.[4]

2.2. Theory of causality

The teachings of causality or the theory of causality in the science of criminal law are used to determine which actions of a series of actions are seen as causes of the emergence of prohibited effects. Jan Remmelink argues that what is the focus of the attention of criminal law experts is what meaning can be attached to the notion of causality so that they can answer the question of who can be held accountable for a particular effect. Unlike Jan Remmelink, Wirjono Projodikoro expressed the opinion that the Criminal Code does not adhere to a particular causality theory. The Prosecutor and Judge are given the discretion to choose between the theories of known causality.[**5**]

Kinds of the teachings of Causality, the Theory of Conditio Sine Quanon, are the teachings that are the basis of the teachings of causality because the various theories that emerge later are refinements or at least are still related to the theories put forward. Based on these theories each condition is a cause, and all conditions are of equal value, because if one condition does not exist, then the consequences will be different. Every condition, both positive and negative, for a result to occur is a cause and has the same value. If one condition is removed it will not be possible to have a concrete result, as it turns out according to time, place, and condition. There are no conditions that can be removed without changing the consequences.[**6**] The Individualizing Theory is This theory tries to make a distinction between 'conditions' and 'causes'. According to this theory in each event, there is only one cause, which is the most decisive condition for the arising of an effect. This theory looks at all the conditions that exist after the act has occurred (post-factum) and seeks to find a condition that can be considered as the most decisive condition for an effect.[**7**] Generalizing Theory is a theory which states that in searching for a cause (causa) from a set of factors that influence or relate to the emergence of an effect carried out by looking at and assessing which factors are reasonable and according to reason and experience, in general, can cause an effect.[**8**] Relevance Theory is a theory that does not begin by holding a distinction between the causes and conditions such as generalization theory and individualization theory but starts by interpreting the offense formulation concerned. The formulation of offense that only contains the prohibited effects is tried to determine what behaviors are intended when making the prohibition. So in this theory of relevance, the important question is that when the law determines the offense formulation, which behaviors imagined by it can have a prohibited effect.[**9**]

2.3. Criminal Liability Theory

Criminal Liability is a despicable act by the community which is accountable to the maker for the act committed by taking responsibility for the despicable act on the maker, whether the maker is also despicable or the maker is not reprehensible. In the first statement, the maker is certainly convicted, while in the second statement the maker is certainly not convicted.[**10**]

The elements that lead to the conviction of a defendant are capable of being responsible, and the condition of a defendant's ability to be responsible is the reason and will factor. The reason factor is a factor that can differentiate between actions that are allowed and actions that are not allowed. Will factor is a factor that can adjust his behavior with conviction over which is allowed and which is not allowed.[**11**]

In criminal law against a person who commits an offense or an act of a criminal offense, criminal principles are required in criminal liability. One of the principles of criminal law is the principle of nullum delictum nulla poena sine pravia lege or often referred to as the principle of legality, this principle becomes an unwritten basic principle in complying with criminality for people who have committed criminal acts "not convicted if there are no mistakes". This basis is about being held responsible for one's actions. This means that a person can only be held liable if the person makes a mistake or does something that violates the laws and regulations. This principle of legality implies that no acts are prohibited and threatened with criminal sanctions if that has not been stated in advance in statutory regulation. The purpose of this is that a person can only be held liable if the act has been regulated, no one can be punished or held accountable if the regulation arises after a criminal act. To determine the existence of a criminal offense must not use the word figuratively, and the rules of criminal law are not retroactive.[**12**]

2.4. Teachings of Inclusion (Deelneming)

In the teaching of criminal law, a crime or a crime is sometimes not only committed by one person but also involves all the devices or other people involved in the occurrence of the crime will also take responsibility for the consequences of the crime. The author will describe in detail the teaching of inclusion in terms of understanding, the forms of inclusion in criminal offenses especially those regulated in Article 55 and Article 56 of the Criminal Code.

In general, the meaning of inclusion in all forms of interference of people together with others in carrying out acts that result in offense or unwillingness to end acts that are prohibited by criminal law.[**13**]

3. ANALYSIS

3.1. Criminal Accountability Against Criminal Acts Forgery Related Letter of Court Decision Number 541 / Pid.B / 2018 / PN. Jkt.Tim

The author will only analyze from the brokering point of view, because in the author's view the legal sanctions against brokering itself are only limited to Article 263 of the Criminal Code and also if the brokering concerns a train ticket, then brokering the fire ticket can be punished by Law No. 23 of 2007 concerning Railways or "brokering" (appointments) relating to narcotics transactions/transactions can be punished by Law Number 35 of 2009 concerning Narcotics and the phenomenon of brokering in Indonesia itself is quite numerous and is often used by the public. But there are no independent rules or regulations that generally contain legal sanctions that can ensnare these brokers.

In its consideration, the panel of judges requires proof in front of the trial to make it appear real and truthful that the case or case that it is handling exists. After the verification has been carried out, from that proof the panel of judges in the a quo case can discuss and discuss in advance the elements contained in the offense that will be charged to the defendant in this context will certainly be revealed in the trial that there is participation or inclusion (*deelneming)* which in this case the involvement of the brokering. The doctrine of *deelneming* is the position of legal subjects for which criminal liability can be held, the perpetrators of criminal acts are those who commit, who order to do, who participate in doing (vide. Article 55 Paragraph (1) of the Criminal Code), and those who deliberately assist when the crime is committed and those who deliberately provide opportunities, facilities or information (vide Article 56 of the Indonesian Criminal Code). And the existence of a causal relationship or what is often referred to as causal relations that occur related to the case being handled.

The criminal liability pinned on brokering services which are currently still a DPO is Article 263 paragraph (1) of the Criminal Code by the article handed down by the panel of judges against the defendant Solomon Andrianto Panjaitan alias Randhy Tyadika and also Article 55 of the Criminal Code. Brokerage services can be subject to criminal threats with Article 263 paragraph (1) of the Criminal Code because the brokering services make fake E-KTP which in turn will give rise to the right of the existence of fake E-KTP and the brokering actions have fulfilled the contents of Article 263 paragraph (1) KUHP. The rights that arise due to the existence of fake E-KTP are very diverse such as the emergence of the right to get a job, with the existence of fake E-KTP can purchase any goods, can make loans to banks or open new accounts at banks, and so on. In addition to the rights incurred, the E-KTP can indirectly cause losses to the local treasury that is the lack of income because it is not recorded at the local regional government.

In addition to Article 263 paragraph (1) of the Criminal Code, brokering services which are still DPOs may be subject to Article 55 of the Criminal Code instead of Article 56 of the Criminal Code because the brokering services participated in the act and there was an agreement that occurred between the broker and the defendant relating to the nominal that must be paid by nominal the defendant went brokering. The defendant requested or ordered the brokering service with a commission or payment is given to the brokering and from this, the mutual agreement between the defendant and the brokering service occurred. This collective agreement and commission is the basis for the act of brokering fulfilling the *deelneming.*

Percaloan services which are still DPOs were convicted as makers *(dader)* because the broker took part in committing falsified criminal acts or being convicted as a perpetrator *(plegen)* which means the brokering services themselves committed acts that meet the formulation of offense and are considered most responsible for the crime.[**14**] Moeljatno in his book mentioned what was meant by the perpetrators (plegen), namely for the formulation of offense that was formally compiled about the person who did the behavior as stated in the offense formula. The formulation of the offense has been compiled materially, then who causes the consequences as in the formulation of offense, which we must determine by the teachings of causality.[**15**]

The activities carried out by the brokering service gave birth to a criminal offense which is contained in Article 55 of the Criminal Code and also the brokering service act which falsified the E-KTP which the E-KTP was used by the defendant to open a savings account at the DKI Bank branch in Pulo Gadung branch. Therefore, brokering services can be charged with a criminal threat in which the article which ensnares itself in Article 263 paragraph (1) of the Criminal Code related to counterfeiting offenses and Article 55 of the Criminal Code related to the offense of inclusion.

Judging from the brokering service acts that are against the law which results in a criminal offense, the existence of an element of error in the broad sense that has been outlined above as well as the falsification criminal act carried out by

the brokering service (the fake E-KTP made) is used by the defendant can cause rights for the defendant the brokering services which are still DPOs should be responsible for the actions that have been done before the law. But if later, when arrested new facts are found that there are other things (such as the reasons for justification or forgiveness of brokering services) that can reduce the sentence depends on the consideration of the panel of judges at the hearing following Article 263 paragraph (1) of the Criminal Code jo Article 55 of the Criminal Code.

4. CONCLUSION

The activities carried out by the brokering service gave birth to a criminal act which is contained in Article 55 of the Criminal Code and also the brokering service act which falsified the E-KTP which the E-KTP was used by the defendant to open a savings account at the DKI Bank branch in Pulo Gadung branch. Therefore, brokering services can be charged with a criminal threat in which the article which ensnares itself in Article 263 paragraph (1) of the Criminal Code related to counterfeiting offenses and Article 55 of the Criminal Code related to the offense of inclusion.

But if later, when arrested new facts are found that there are other things (such as the reasons for justification or forgiveness of brokering services) and can also be seen whether the brokering services are capable and legally responsible for criminal acts that have been carried out and can reduce the sentence depends on the consideration of the panel of judges at the hearing under Article 263 paragraph (1) of the Criminal Code jo Article 55 of the Criminal Code.

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