



Letter Forgery in Formal and Material Sense and Its Legal Consequence

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Abstract. Letter forgery is a classic crime but still shows its existence in criminal law enforcement. Letter forgery still adorns crime statistics in Indonesia. As a criminal offense that still exists, there are still different interpretations in the meaning of the elements in the letter forgery crime. This creates uncertainty for law enforcers in applying the article of letter forgery crime against concrete legal events. Thus, a clear understanding of the letter forgery crimes regulated in the KUHP (Criminal Code) is required. This paper aims to provide an explanation of the form of letter forgery in a formal and material sense and its legal consequences, so that it can assist law enforcers in implementing the right letter forgery article against concrete legal events. Based on the research results, it is found that forgery of letters in a material sense includes the contents of the letter which are not following the actual events or circumstances, while in the formal sense, the contents of the letter are following the facts, but the formal requirements such as the letterhead are faked or signed by an unrightful person. The legal consequence of both material and formal letter forgery is the letter becomes invalid. Particularly for formal letter forgery against authentic deeds in a condition where the it is signed by an official who has neither the right nor the obligation to sign, it will result in the loss of its authenticity, so that it becomes an ordinary deed.

Keywords: Letter Forgery · Formal and Material · Legal Consequence

1 Introduction

Kitab Undang-Undang Hukum Pidana (Indonesian Criminal Code) as part of the material criminal law regulates prohibited or ordered acts, accompanied by criminal sanctions for those who violate or do not comply, when and in what circumstances the sanctions are imposed, and how these Law and sanctions are enforced by the state. The prohibited act is often called a criminal act (*strafbar feit*) [1] or criminal crime which is an act that fulfills all the complexities of the elements formulated in the criminal law. Criminal offenses are always formulated in the form of sentences containing both subjective elements related to criminal liability and objective elements related to criminal acts. The elements of the criminal crime are what form the legal meaning of a particular crime. In the context of law enforcement, an explanation of the elements of crimes in the KUHP is essential for

law enforcers to apply the law to concrete legal events so that they are in accordance with the intent of the legislators. This is because the elements in the crime regulated in the KUHP are still abstract or sometimes obscure. The positive implication of the application of the law based on correct and good explanations of the KUHP is the preservation of the authority of the law in society.

2 Literature Review

One of the crimes regulated in the Criminal Code is letter forgery. Although there are still few writings that discuss the letter forgery crimes, it is actually one of the classic and existing crimes regulated in the legislative draft of New KUHP as well as laws outside the KUHP. Not only that, letter forgery crimes still adorn crime statistics in Indonesia. The crime of letter forgery is always there because the potential for its absolute existence is due to the government administration system and community agreements that require documents in the form of letters. The existence of the letter forgery crime makes it one of the most favorite modus operandi for land mafia to claim land ownership rights. Usually done in the making of a land sale and purchase agreement. These land mafias collaborate with village government officials to produce fake documents based on land ownership and seek out an extra who will act as if they are the owner of the land because the land has been abandoned by the real owner. After the fake letter explaining land ownership has been drafted, the fake letter is then used as the basis for the extras appointed to sell the land to the land mafia for an amount of money through a sale and purchase certificate. As a result, the sale and purchase deed based on the forged documents was used as the right to claim land ownership status for the land mafia. In addition, currently developing fake letter-making services that are in demand by the public. Starting from the service of making diplomas, identity cards, driving licenses to the making of fake sick certificates. Paying attention to the existence of the letter forgery crime, an understanding of the letter forgery crime is essential for law enforcers to properly implement the article material regulating the letter forgery crime. In reality, law enforcers still take different interpretations of the letter forgery crime. This has the potential to result in the less effective application of the criminal act of letter forgery and even seeming far from its true meaning.

3 Methodology

Based on this background, this paper tries to explain and provide a simple understanding of the form of letter forgery and its legal consequences. The study of letter forgery crimes in this paper is limited to the analysis of the crimes formulated in Article 263 paragraph (1) and Article 264 paragraph (1) of the KUHP.

4 Result of Research

4.1 History of the Letter Forgery Crimes Arrangement

Looking at its historical context, the provisions for letter forgery in the KUHP cannot be separated from the provisions of the criminal law applied in the Netherlands which are also influenced by the Penal Code in Roman and French Law. The Penal Code of Roman

Law stipulates that a *de eigenlijke falsum* or true crime of forgery includes forgery of securities and counterfeiting of currency. Only then was it added with another deceptive forgery crime, but it was different from forgery of a letter. In other doctrines of the crime of forgery, it is referred to as *quasi falsum* or pseudo forgery. Since that time, legal experts have never clearly distinguished between *de eigenlijke falsum* as a crime of letter forgery and *quasi falsum* as an pseudo forgery. This is continuously applied by the creators of the Penal Code in France who mention the crime of forgery as *faux en ecritures*. The Penal Code in French law places *faux en ecritures* together with other crimes that are not a crime of letter forgery known as *les crimes et delits contre la paix publique* or crimes against public order. In the current KUHP as well as in the new Legislative Draft version on August 28 2020, the provisions of the letter forgery crime are formulated in Book II of the Criminal Code on crimes and a separate chapter on letter forgery. The regulations are different from the KUHP and the new draft version, but have similarities with the French Penal Code, in Article 6 of the Attorney General's Regulation Number: PER-036 / A / JA / 09/2011 concerning Standard Operating Procedures (SOP) for general Criminal Case Handling, placing a letter forgery as a crime against state security and public order. The consequence of the regulation in PERJA 36/2011 makes letter forgery an ordinary crime that can be prosecuted without any complaint because of its nature that disturbs state security and public order.

Cleiren and Nijboer emphasized that there are 2 (two) interests protected in the letter forgery crime, namely: 1) public interest (*publica fides*); and 2) can cause losses [2]. Letters as one of the institutions for carrying out private legal relations, be it an agreement, inheritance, or public relations, must be maintained in trust and truth. The community, the state, and the government put a belief in the truth of what is stated in a letter, especially in an authentic one. There are trust and the authenticity of the contents which must be guaranteed because there are legal interests that are protected in it. On this basis, the letter forgery crime regulation was established to protect these legal interests. The offense against the public's belief in the authenticity of the contents of the letter is an act that can be punished, which by law is determined to be a crime. Forgery of letters relating to private rights or public interest is a form of crime that can disrupt public order.

4.2 Elements of Letter Forgery Crimes in Article 263 Paragraph (1) and Article 264 Paragraph (1) of the KUHP

Letter forgery crimes are regulated in Chapter XII concerning Forgery of Letters Articles 263–278 of the KUHP. From the articles that regulate the forgery crime, the definition of letter forgery is contained normatively in the provisions of Article 263 paragraph (1) of the KUHP which states that letter forgery is the act of making fake letters or falsifying letters that can give rise to rights, commitments or debt relief, or which is intended as evidence of something to use or instruct other people to use the letter as if the contents are true and authentic, they are threatened, and if the use may cause harm. In contrast to the crime of letter forgery in Article 263 paragraph (1) of KUHP which is a forgery against an ordinary letter, the provisions of Article 264 paragraph (1) are an offense of forgery which is exacerbated because it is committed against: 1) authentic deeds; 2) debt securities or certificates of debt from a country or part thereof or from a public institution; 3) stocks letter or certificate of stocks debt or debt from an

association, foundation, company or airline; 4) talon, proof of dividend or interest from one of the letters listed in numbers 2 and 3, or evidence issued as a substitute for said documents; 5) letters of credit or trade letters destined for circulation. This objection is manifested in the form of criminal sanctions in Article 264 paragraph (1) of KUHP, namely a maximum imprisonment of 8 (eight) years compared to Article 263 paragraph (1) with a maximum imprisonment of 6 (six) years. Article 264 paragraph (1) of KUHP is a *lex specialis systematis* of Article 263 paragraph (1), because letter forgery is carried out against authentic deeds.

Observing the formulation of the provisions of Article 263 paragraph (1) of KUHP, the following elements can be identified: 1) Objective elements: a) The act: made a fake or forge. b) The object: a letter that can give rise to a right, a letter which gives rise to an engagement, a letter which gives rise to an exemption from a debt, or a letter which is intended as evidence of a matter. c) The use of said letter may cause losses; 2) Subjective Elements: with the intention of using or ordering other people to use the letter as if the contents were true and not faked. Meanwhile, in Article 264 paragraph (1) the KUHP has objective and subjective elements that are almost the same as the elements in Article 263 paragraph (1), but because it is a *lex specialis systematis*, the object of the offense of letter forgery in Article 264 paragraph (1) KUHP are the letters stipulated in Article 264 paragraph (1) of the KUHP itself, one of which is an authentic deed. The following is a brief explanation of the elements contained in the two articles:

The elements of the criminal act of letter forgery as referred to in Article 263 paragraph (1) of KUHP are as follows: First, the elements of whoever is the individual legal subject (*natuurlijke persoon*) to which a criminal act formula is addressed or which becomes the *adresat* of a provision of law. -laws regarding a criminal act. In this case, Article 263 paragraph (1) of KUHP does not require certain qualities of the perpetrator to be able to commit this crime, so that it can include anyone except corporations because the KUHP has not regulated corporate legal subjects. Second, the element of making a false letter or forging letters, namely pouring out thoughts in writing in which case what is written is something that is contrary to the truth or imitates a letter that has previously existed as if it were an original letter. Third, the element can give rise to a right, an engagement or release of debt or that is intended as evidence of a matter, namely the letter has a certain effect in the form of rights from a person, either the perpetrator himself or another person, or creates convictions between certain people, either the perpetrator himself or herself. With other people or other people with other people or cause the cancellation of debt, whether the debt of the perpetrator himself or others or a letter made as evidence of something. This is an objective element, in which the nature of the letter can cause something useful for those who make, receive or use the letter. Fourth, the element with the intention, namely this element indicates that the form of the error in this article is intentional. This means that when the perpetrator commits an act, he knows and wills (*weten en willens*), both the action and the result of the action. It is the same as an element with a goal, which describes that legislators want a form of intent as an intention (*opzet als oogmerk*), namely deliberation to achieve a goal (which is near) or what is also called *dolus directus*. So the intention of the doer is not only directed at his actions, but also at the results of his actions. Fifth, the elements to use or order someone

else to use it, namely the perpetrator's deliberate making of the letter to be used by himself or ordering someone else to use it. This means that the perpetrator deliberately uses the letter that the contents are untrue or has been faked, and the perpetrator has known the untruth or falsity of the letter, but the perpetrator continues to use it as if the letter is true and not fake, or it can be said that this is an offense of material forgery. Sixth, the elements if the use of the letter can cause harm, which includes the possibility (potential) of loss, either material or financial loss for parties other than the perpetrator if the letter is used. Why should it be a material loss? This is due to the previous element, that the forged letter must be a letter that gives rise to a right, an engagement, or debt relief or is intended as evidence of something, it has clearly shown that the loss that must occur is a loss that is material/ financial/ or have economic value.

Furthermore, the elements referred to in Article 264 paragraph (1) of the KUHP. As previously mentioned, the object of forgery in Article 263 paragraph (1) of KUHP is an ordinary letter, while in Article 264 paragraph (1) of KUHP is an authentic deed, state debt securities, debt securities from public institutions, sero, and talon. However, this paper limits it to authentic deeds. From the point of view of the official who made it, the authentic deed is divided into 2 (two) namely authentic deeds made by public officials (*openbaar ambtenaar*) and authentic deeds made by other officials or public employees (*ambtenaren of personen*) who are not public officials (*openbaar ambtenaar*). First, authentic deeds are made by public officials. Authentic deeds made by public officials are what is meant by authentic deeds in Article 1868 of the KUHPerdata (Indonesian Civil Code), which states that authentic deeds are deeds that are in the form determined by law, drawn up by or in front of public employees who are in power for that in the place where the deed was made. For example, deeds made by notaries or deeds made by Land Deed Making Officials (PPAT) or Temporary Land Deeds Making Officials (PPATS). Article 1 of Law no. 30 of 2004 on The Position of a Notary, states that a notary is a public official who has the authority to make deeds of authority and other powers as referred to in this law. Second, the form of deeds made by other officials or public employees, who are not public officials. For example, a marriage registrar official at the Office of Religious Affairs (KUA) or a marriage registrar at the Civil Registry Office, Court Clerks, Bailiffs, including Investigators who make Investigative Examination Minutes, Judges who make decisions or rulings. From the explanation of the authentic deed, the determination of the authenticity of a letter is based on the making of the letter by a legitimate official. The making of the letter includes being drawn up in front of a legal official, for example, a sale and purchase certificate as well as a notary certificate, as well as being signed by a legal official.

There are restrictions regarding the letter in Article 263 paragraph (1) and 264 paragraph (1) of the KUHP, while the subjective element and the object of the action remain the same, namely making a fake or falsifying. Likewise, in other articles that regulate the crime of letter forgery in the Criminal Code, the object of the letter of forgery is the letter itself, be it an ordinary letter or an authentic letter, while the object of the act which is prohibited is making a fake or falsifying it. This is the focus of the analysis in this paper.

4.3 Making False and Forging Letters in Material and Formal Sense and Their Legal Consequences

In interpreting the nature of the act of making fake or forging letters as objects of actions that are prohibited in Article 263 paragraph (1) and Article 264 paragraph (1) of the CKUHP, there are 5 (five) things that must be understood. First, the term forged or faked letters. This thing sounds similar but it is not the same. If you make a fake, there is no need for comparative evidence of the fake documents. But if a letter is forged, there must be comparative evidence. Making a fake, for example, I never went to a Muhammadiyah university, but I have its law faculty diploma. This is called making a fake. If a comparison is sought, there will never be. This is called making a fake, so there is no comparison. However, if a letter is forged, there must be evidence against it. There must be an original letter to distinguish which is then the original and which is the fake. There was an original letter that was later made forged so that it did not match the original. However, in practice, the act of forging a letter does not have to be proven by the existence of comparative evidence, but it is sufficient to prove that the perpetrator forged the fake letter with evidence in the form of tools (such as computers, printers, etc.) which the perpetrator used to forge the letter so it does not match the original. Therefore, in the context of Article 263 paragraph (1) of the Criminal Code and Article 264 paragraph (1) of the Criminal Code, the Criminal Code uses the term making false letters or falsifying letters as objects of prohibited acts. This is to make it easier for the public prosecutor and the judge to prove and apply the elements of Article 263 paragraph (1) and Article 264 paragraph (1) of the KUHP against concrete legal events whether the context is making fake letters or falsifying fake letters. This is the first understanding.

In the second understanding, there is a forgery in the material sense and formal sense. Forgery in the material sense means that what is stated in a letter is not following the facts. Creating a letter unlawfully which can distort the facts. But it can also not include what should be included in a letter. Once again, the so-called material letter forgery is what has been stated in a letter is factually different from the actual events. What is different is that it does not conform to the facts or does not include what should be included. For example, in making a certificate of inheritance I state that the children of a and d are x and y, even though there is a z that I did not mean. Even though this z should have been included, this falls into the category of material forgery, which is not in accordance with the facts. Or in other cases, for example, in a certificate of inheritance where the heirs are a, b, c, but what is written is d, e, f, which is therefore not following the facts, this is also included in letter forgery in the material sense, namely explaining something which does not correspond to the facts or incomplete information in a letter. Whereas the second is letter forgery in a formal sense, namely the contents of the letter are following the actual events, but the letterhead or the signature is falsified, or it is signed by other people rather than the one who should have signed there. Even though the contents are following the facts, it is still counted as letter forgery in a formal sense.

Third understanding. The legal consequence of forgery of letters in a formal and material sense results in the letter being invalid [3]. In the case of formal letter forgery of authentic deeds, even though the deed is true, it is still signed by an official who does not have the right or obligation to sign, which will result in a loss of authentication of the deed. Thus, it becomes an ordinary deed. The consequence of a signature is that a

statement, of course, is acknowledged by or accountable to the person who signs the letter. This is very necessary for law enforcement in enforcing the law [4]. Why is that? For example, a PPATS who is no longer serving, makes and signs a sale and purchase deed as an authentic deed. So, the appropriate article imposed on the perpetrator is Article 263 paragraph (1) of the KUHP and not Article 264 paragraph (1) of the KUHP. The authentic deed has lost its authenticity because it was made by PPATS which is no longer authorized so that the sale and purchase deed as an authentic deed becomes an ordinary deed. A deed becomes an authentic deed because it is drawn up and signed by an authorized official based on law. The fourth understanding.

The forgery crime is a single offense so that if there is one word or fact in the letter which is not following the truth, it can be said to be letter forgery, both in the context of forgery in material or formal. Words or facts that are made to be untrue must be done on purpose so that the letter becomes a fake document that can be used to claim a right.

Finally, the fifth understanding. Letter forgery crime in Article 263 paragraph (1) of the KUHP is a semi-formal and semi-material offense. This has been explained in the consideration of several verdicts as follows:

- 1) Adjudication of the Supreme Court of the Republic of Indonesia Number: 10K / Kr / 1965 dated May 29, 1965, which states “the possible losses caused by letter forgery based on article 263 of the KUHP do not have to be in the form of material losses, it can also be in the form of losses to the interests of the public, it seems in terms of the use of letters. That which is faked can make it difficult to investigate a case”;
- 2) Adjudication of the Supreme Court of the Republic of Indonesia Number: 88K / Kr / 1974 dated May 15, 1975 which states “because Article 263 of the KUHP formulates “it can cause harm to other people”, then the loss does not need to be real”;
- 3) Adjudication of The Hoge Raad of 22 April 1907, W. 8536, 1 Dec. 1941, 1942 No. 241, which states “there is no requirement for the loss to arise but only the possibility of such loss”;
- 4) Adjudication of The Hoge Raad of 8 June 1897, W. 6981, 15 Jan. 1912, W. 9288, which states “the accused need not be able to imagine the possibility of such harm.”

From some of these juridical arguments, in the context of Article 263 paragraph (1) of the KUHP as a formal criminal offense [5], the loss of a fake or forged letter does not need to be proven, because the fake letter will undoubtedly disrupt the public interest. Including, even though the fake letter was made by the perpetrator with the intention of claiming a right, the harm caused by the fake letter does not need to be known or realized by the perpetrator, it does not even need to be real [6]. Meanwhile, in the context of material offenses, the fake letter causes harm to others and is part of the public interest. The legal consequence is that as an ordinary offense, it is not necessary for the person who suffered a loss to report the occurrence of an offense for forgery of this letter, but everyone can report it because there is a public interest that is disturbed by the existence of the fake letter.

The form of letter forgery in a formal and material sense is a way that makes it easier for law enforcers to apply the article of letter forgery to concrete legal events that are not only occur in the real world but also in cyberspace. Thus, it is very important to distinguish between the two forms of letter forgery.

5 Conclusion

The Letter forgery crime in Article 263 paragraph (1) of the KUHP as a single criminal act contains 2 (two) meanings, namely making a fake or forge a letter in a formal and material sense. In a material sense, it means that the contents of the letter contain falsehoods or are not based on the actual event/facts, while in the formal sense it includes false signs, as well as the unlawful person who signed a letter. The consequences of making or falsifying a letter in a formal and material sense result in the letter being invalid. If a letter is forged in a formal sense against an authentic deed, the authenticity of the deed will be lost so that it becomes an ordinary deed, because it was made by an unauthorized person.

Based on the explanation of the form of letter forgery in the formal and material sense, it is hoped that law enforcers will understand the form of letter forgery in the formal and material meaning and its legal consequences so that they are not mistaken in applying the letter forgery law against concrete legal events.

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