

Criminal Responsibility in Documents Forgery of Applying Credit Card

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Article	Abstract
<p>How to cite: Silvia Anggraini, et al, 'Criminal Responsibility in Documents Forgery of Applying Credit Card' (2024) Vol. 5 No. 1 Rechtenstudent Journal Sharia Faculty of KH Achmad Siddiq Jember State Islamic University.</p> <p>DOI: 10.35719/rch.v5i1.324</p> <p>Article History: Submitted: 16/12/2023 Reviewed: 13/03/2024 Revised: 19/04/2024 Accepted: 22/04/2024</p> <p>ISSN: 2723-0406 (printed) E-ISSN: 2775-5304 (online)</p>	<p>This research discusses criminal liability in cases of forgery of documents in credit card applications which contain an element of inclusion. Forgery of documents in Articles 263 to 276 of the Criminal Code. This research uses a normative juridical research method using three approaches, namely the statutory approach, conceptual approach, and case approach. Consisting of two problem formulations, namely 1) What is the article alleged by the Public Prosecutor in Decision no. 357/Pid.B/2019/PN.Jkt.Pst and Decision No. 358/Pid.B/2019/PN.Jkt.Pst are in accordance with the acts of participation carried out by the defendant? 2) What is the judge's consideration in handing down a decision against the perpetrator of the crime of document forgery in Decision No. 357/Pid.B/2019/PN.Jkt.Pst and Decision No. 358/Pid.B/2019/PN.Jkt.Pst are in accordance with the defendant's guilt? This research results that 1) the element of inclusion in the indictment made by the public prosecutor is not clear about the direction of participation, because the articles being targeted are different, so the indictment must be stated <i>obscure libel</i>. 2) the judge's considerations in handing down a decision regarding the criminal act of forgery of documents in decision no. 357/Pid.B/2019/PN.Jkt.Pst is in accordance with the defendant's error, namely fulfilling the element of error by intentionally falsifying a letter, and decision no. 358/Pid.B/2019/PN.Jkt.Pst has fulfilled the element of error by deliberately using a fake letter. However, because one of the elements of the indictment, namely the inclusion element, is considered unclear, one of the decisions must be null and void.</p> <p>Keywords: <i>Criminal Responsibility, Forgery, Credit Card.</i></p> <p>Abstrak Penelitian ini membahas tentang pertanggungjawaban pidana dalam perkara pemalsuan dokumen dalam aplikasi kartu kredit yang mengandung unsur penyertaan. Pemalsuan dokumen dalam Pasal 263 sampai dengan Pasal 276 KUHP. Penelitian ini menggunakan metode penelitian yuridis normatif dengan menggunakan tiga pendekatan yaitu pendekatan perundang-undangan, pendekatan konseptual, dan pendekatan kasus. Terdiri dari dua rumusan masalah yaitu 1) Apakah pasal yang didakwakan Jaksa Penuntut Umum dalam Putusan No. 357/Pid.B/2019/PN.Jkt.Pst dan Putusan No. 358/Pid.B/2019/PN.Jkt.Pst sesuai dengan perbuatan penyertaan yang dilakukan oleh terdakwa? 2) Bagaimana pertimbangan hakim dalam menjatuhkan putusan terhadap pelaku tindak pidana pemalsuan dokumen pada Putusan Nomor 357/Pid.B/2019/PN.Jkt.Pst dan Putusan Nomor 358/Pid.B/2019/PN.Jkt.Pst sudah sesuai dengan kesalahan terdakwa? Hasil penelitian</p>

ini adalah 1) unsur penyertaan dalam dakwaan yang dibuat oleh jaksa penuntut umum belum jelas arah penyertaannya, karena pasal yang disasar berbeda, sehingga dakwaan tersebut harus dinyatakan obsciur libel. 2) Pertimbangan hakim dalam menjatuhkan putusan terhadap tindak pidana pemalsuan dokumen pada putusan Nomor 357/Pid.B/2019/PN.Jkt.Pst sudah sesuai dengan kesalahan terdakwa yaitu memenuhi unsur kesengajaan memalsukan surat, dan putusan Nomor 357/Pid.B/2019/PN.Jkt.Pst sudah sesuai dengan kesalahan terdakwa yaitu memenuhi unsur kesengajaan memalsukan surat, dan putusan Nomor 357/Pid.B/2019/PN.Jkt.Pst sudah sesuai dengan kesalahan terdakwa yaitu memenuhi unsur kesengajaan memalsukan surat. 358/Pid.B/2019/PN.Jkt.Pst telah memenuhi unsur kekeliruan dengan sengaja menggunakan surat palsu. Akan tetapi karena salah satu unsur surat dakwaan, yaitu unsur pencantuman, dinilai kurang jelas, maka salah satu putusan harus batal demi hukum.

Kata Kunci: *Pertanggungjawaban Pidana, Pemalsuan, Kartu Kredit.*

Introduction

The development of credit cards in this era of globalization is a form of technological progress in the life of modern society which is used as a means of conventional payment and ownership *prestige* separately. Credit card or *credit card* is a form of today's lifestyle that if we don't follow it, we will be left behind by the rapid development of technology, but on the other hand, if we get carried away by the current, we will fall deeper into the vortex of life where we forget our identity.¹ So this credit card offers convenience in supporting daily transaction activities, namely online transactions *cashless* without having to carry cash. Carrying cash is considered more risky or unsafe, if a crime occurs it is difficult to trace it. The research method used is normative legal research (normative juridical), the criminals with credit card mode are increasingly modern and have a wide network, even from the information media which has been known that this network has reached abroad. Credit card crime has a making machine.² the card, namely, the data encoding machine on the card's magnetic stripe according to the data recorded on the original card. However, behind the convenience offered, many problems and crimes often occur, such as the crime of forging letters intended to successfully apply for a credit card.

Research on the problem of crime never stops being done by criminologists.³ This proves that crime is a basic thing that always exists and accompanies human journeys so to completely eliminate it is impossible. A form of crime that is often committed by society is the crime of counterfeiting or counterfeiting. As its development progresses, this crime takes various forms, one of the most prominent being the criminal act of credit card counterfeiting. The crime of forgery is a criminal act which contains an element of untruth or falsehood or something (object), which from the outside appears to be true even though the facts are contrary to the truth or the real thing.⁴

According to Wayan Santosa, "The crime of forgery of letters (*forgery*) is a crime that occurs quite often in society. Forgery is carried out in various forms, starting from letters in

¹ Johannes Ibrahim, *Credit Card Dilemma Between Contract and Crime*, (Bandung: PT. Refika Ditama, 2010), 1.

² Dea Ardha, "Analisis Kasus Pemalsuan Kartu Kredit Sebagai Bentuk Tindak Pidana Perbankan, Tinjauan Yuridis Terhadap Tindak Pidana Pemanipulasian Dokumen Elektronik Sehingga Dianggap Sebagai Data Yang Otentik (Studi Putusan Nomor 155/Pid.Sus/2018/PN Cbn)", *Jurnal Hukum Pidana dan Penanggulangan Kejahatan*, Volume 11 Issue 3, 2022. 67.

³ Topo, dkk. *Criminology*, (Raja Grafindo Persada: Jakarta, 2001), 21.

⁴ Adam Chazawi, *Crimes Regarding Counterfeiting*, (Jakarta: Raja Grafindo Persada, 2005), 3.

general, credit cards, deeds, doctor's certificates, official travel documents and so on. Perpetrators of forgery of documents, both the maker and the user, have a motive for carrying out this action to protect their interests or want something to happen according to their wishes."⁵ This case is an example of a criminal act of document forgery which was carried out jointly in an attempt to apply for a credit card, where the two defendants had their case files separated (*split*). Based on decision number: 357/Pid.B/2019/PN.Jkt.Pst, the actions of defendant B bin DJ were charged by the Public Prosecutor with an indictment in the form of an alternative, the first being Article 263 paragraph (1) of the Criminal Code in conjunction with Article 55 of the Criminal Code or the second, namely Article 263 paragraph (1) of the Criminal Code in conjunction with Article 56 of the Criminal Code. The main objective of the crime to be achieved is prevention aimed at the general public or to everyone so that they do not commit violations against public order. The oldest form of general prevention theory is criminal contains a deterrent or frightening nature by being carried out in public expect suggestieve from other members of society so they don't dare to do it the crime again.⁶ The results of the examination at the trial in decision number: 357/Pid.B/2019/PN.Jkt.Pst, the judge stated that the defendant was legally and convincingly proven to have committed the crime of participating in "making a fake letter if the use of the letter could cause harm" in accordance with the indictment The first alternative is Article 263 paragraph (1) in conjunction with Article 55 of the Criminal Code with a prison sentence of 1 year.⁷

Meanwhile, in decision number: 358/Pid.B/2019/PN.Jkt.Pst, the actions of the defendant MXJ were charged by the public prosecutor with subsidiary charges. Namely the primary indictment of Article 263 paragraph (1) of the Criminal Code and the subsidiary indictment of Article 263 paragraph (2) of the Criminal Code states that the defendant has been legally and convincingly proven guilty of committing the crime of "Using a fake letter if the use of the letter could cause harm" in accordance with Article 263 paragraph (2) Criminal Code. Criminal acts of misuse of credit cards can be categorized as: a criminal act, therefore if a credit card user misuses the card function This will then fulfill the elements of a criminal act which is then delegated a legal responsibility to him.⁸ Regarding the case above, the issue that will be studied is regarding the articles charged by the Public Prosecutor against the two defendants in the two decisions in accordance with the acts of participation, also regarding what the judge's considerations were in handing down the decision against the two defendants, whether it was in accordance with the mistakes committed by the defendant or not.

Research Method

Research type used by the author in this thesis research is legal research, normative juridical research. This type of normative juridical research is carried out by examining various kinds of formal regulations such as laws and other theoretical legal references which

⁵ Freddy Bornado, *Application of Criminal Sanctions Against Perpetrators of Credit Card Counterfeiting (Study Decision No.922/PID.B/2009/PN.JKT.SEL)*, Thesis (Indralaya: Faculty of Law, Sriwijaya University, 2020), 6.

⁶ Akbar Dani, *Pelaksanaan Penyidikan Tindak Pidana Pemalsuan Kartu Kredit*, *Jurnal Ilmiah Mahasiswa Bidang Hukum Pidana*, Vol. 3(2) Mei 2019, PP. 237-245

⁷ Decision Number: 357/Pid.B/2019/PN.Jkt.Pst.

⁸ Yohana Alexandra, *Analisis Yuridis dalam Pemidanaan Pemalsuan Kartu Kredit sebagai Tindak Pidana Perbankan*, *Jurnal Pendidikan Tambusai*, Volume 7 Nomor 3 Tahun 2023, 260.

are then connected to the main problems that occur.⁹ In this research, three types of approaches are used, namely the statutory approach (*statetheapproach*) namely a method carried out by reviewing laws and regulations relating to legal issues. In this approach, researchers will have the opportunity to examine the compatibility between one law and another law or the compatibility between a basic law and a law or the compatibility between a regulation and a law.¹⁰, also Conceptual approach (*conceptual approach*) namely the approach method carried out by studying the views and doctrines that have developed in legal science, and also the case approach (*case approach*) namely by taking a case-by-case approach regarding the crime of forgery of documents related to credit card applications. In the case approach, what must be truly understood is about *reason for falling*, namely the legal reasons used by the judge in handing down his decision¹¹.

Results and Discussion

Conformity of Articles Indicted by the Public Prosecutor in the Crime of Participating in the Crime of Forgery of Documents

The criminal examination process of the indictment by the Public Prosecutor has a very important position, for a judge the indictment is used as the basis for examining the case. For a Public Prosecutor, the indictment is used as a basis for proving a criminal act committed by the Defendant, and also for a Defendant or legal advisor, it is used to submit objection arguments and prepare a defense. Regarding the articles charged by the Public Prosecutor in decision number 357/Pid.B/2019/PN.Jkt.Pst and Decision Number 358/Pid.B/2019/PN.Jkt.Pst

According to Harun M. Husein, the indictment is the basis and at the same time limits the scope of the trial examination process, which means that the examination is limited to the facts of the acts alleged by the Public Prosecutor in the indictment. In an indictment, the judge's consideration in handing down a decision comes from the proven contents of the indictment in the trial which can ultimately be known¹². The form of indictment is divided into several types, such as single indictment, cumulative indictment, alternative indictment, subsidiary indictment, and combined indictment. In Decision Number 357/Pid.B/2019/PN.Jkt.Pst, the public prosecutor used an alternative form of indictment. An alternative indictment is an indictment containing charges that mutually exclude one another, usually marked with the conjunction "or" as an optional conjunction. Relating to criminal law policies which are an effort to protect the law In dealing with cases of credit card misuse, this is done by 2 efforts namely Penal and Non-Penal Efforts. Penal effort is a purposeful effort uncover cases related to the use of carding (credit card crimes), efforts This is done by basing the analysis through legal regulations in the form of Wetboek van Strafrecht also Law Number 19 of 2016 concerning modifications to Law Number 11 of 2008 concerning ITE. This effort is used because of legal regulations which strictly fixes criminal acts related to fraud The current use of cards is stated in Law Number 19 of 2016. Further analysis was carried out on the articles that would be used to arrest the perpetrator is simultaneously accused of the criminal

⁹ Peter Mahmud Marzuki, *Legal Research Revised Edition*, 13th printing (Jakarta : Prenamedia Group, 2017), 47.

¹⁰ Ibid, 145.

¹¹ Ibid, 158.

¹² Erwin Susilo, *Letter of Indictment, Objection/Exception, and Form of Legal Settlement*, (Bandung: PT Citra Aditya Bakti, 2020), 6.

act of carding.¹³ Usually used when the Public Prosecutor is unsure about which article is most appropriate for the defendant. In the evidentiary process the judge is free to determine which charges are most appropriate. If the elements in the article charged can be proven, then there is no need to provide other proof.¹⁴

Based on the description above, the public prosecutor prepared an alternative indictment covering the following 2 charges:*First*, The first charge is subject to Article 263 paragraph (1) in conjunction with Article 55 paragraph (1) 1 of the Criminal Code and the second alternative charge is Article 263 paragraph (1) in conjunction with Article 56 of the Criminal Code. Where in the demands submitted by the Public Prosecutor, the Public Prosecutor stated that defendant B bin DJ was legally and convincingly proven guilty of committing the crime of "Taking part in the act of making a fake letter or falsifying a letter" which is regulated and punishable by crime according to Article 263 paragraph (1) of the Criminal Code Jo Article 55 paragraph (1) 1 of the Criminal Code as we alleged in the first indictment and sentenced defendant B bin DJ to prison for 1 (one) year and 6 (six) months. This description can be explained starting from the "Whose" element. Whoever here means a person, human being or anyone who is a legal subject, who can be responsible and can be held accountable for the actions they have committed.

According to the Panel of Judges, the meaning of the word "Whoever" in this element refers to the perpetrator of a criminal act, namely a person or group of people who, if proven to have committed a criminal act, will be held responsible for the criminal act committed. This is intended to examine further who is the defendant. , is he really the perpetrator to avoid it?*error in person* in punishing someone.¹⁵ In Decision Number 357/Pid.B/2019/PN.Jkt.Pst it was explained that the Public Prosecutor had brought the defendant before the court because he was charged with committing a criminal act as described in the indictment. Based on the testimony of the defendant and also the statements of one witness and another, they are in agreement and related to each other. Defendant B bin DJ has provided information and confirmed his identity as stated in the indictment as well as the Investigation Report (BAP) prepared by investigators as attached, so that it is true and did not happen *error in person*. And also be able to be physically and mentally healthy to answer the judge's questions and be able to take responsibility for the actions carried out, so that the elements of whoever this is are fulfilled. Transactions using credit cards on the internet require detailed personal data users for services or buying and selling goods. Safety when doing it Filling in personal data containing details of the credit card owner's data seems to have gaps to be used as a criminal weapon. This loophole is used by criminals cyber to falsify transaction authorization, which causes the transaction as if it were truly valid and approved by the credit card owner.¹⁶

The public prosecutor in making the indictment must be careful and refer to the formulation of Article 143 paragraph (2) of the Criminal Procedure Code which states that there are formal and material requirements. These formal requirements include the suspect's full name, place of birth, age/date of birth, gender, nationality, place of residence, religion and

¹³ Safitri, & Arsawati, *Tinjauan Yuridis Perlindungan Hukum Terhadap Pemegang Kartu Kredit Setelah Keluarnya Surat Edaran Bank Indonesia No. 16/25/DKSP Tahun 2014 Tentang Penyelenggaraan Kegiatan Alat Pembayaran Menggunakan Kartu*. Jurnal Analisis Hukum, Vol. 2 No. 1 April, 2019,142.

¹⁴ Andi Muh Sofyan, Abdul Asis, Amir Ilyas, *Criminal Procedure Law*, (Jakarta: Kencana,2020), 171.

¹⁵ Decision Number 357/Pid.B/2019/PN.Jkt.Pst.

¹⁶ Lalamentik, *Penerapan Hukum Bagi Pelaku Penyalahgunaan Kartu Kredit (Fraud) Menurut KUHPidana*. Lex Crimen, Vol. 9 No. 1. Maret, 2020, 214.

occupation. Then, further regarding the material requirements, the Public Prosecutor must explain the indictment clearly, carefully and completely regarding the criminal act charged by stating the time and place where the crime was committed.¹⁷ Likewise, choosing the form of the indictment which will be prepared in alternative, subsidiary or cumulative form is the authority of the Public Prosecutor, therefore the Public Prosecutor must be very careful and careful in making the indictment.

Choosing a form of indictment that is appropriate to the form/style of the criminal act revealed as a result of the investigation is something that needs to be considered before starting to prepare the indictment. This is very important because if there is a mistake in applying the form of the indictment to the form/style of the criminal act being charged, it can cause the indictment to be vague/vague (*Obscuur libel*). Accusations that are vague/vague, in accordance with the jurisprudence that has been stated previously are null and void.¹⁸ Regarding the article charged by the judge against defendant B bin Dj in his alternative indictment, the facts revealed that the element "Those who committed it, those who ordered it, and those who participated in carrying out the act" created ambiguity. Because the act involved was the act of forging a letter as regulated in Article 263 paragraph (1) of the Criminal Code, but in the prosecution of the case the defendant MXJ was proven to have violated Article 263 paragraph (2) of the Criminal Code concerning the act of using a forged letter. In accordance with the information given by defendant B bin DJ and defendant MXJ, that defendant B bin DJ indeed agreed to the goals that arose from defendant MXJ's ideas, defendant B bin DJ is considered to support and agree with the same goals. regulated the handling of credit card abuse, while many criminal acts occur. Thus, to anticipate credit card abuse, the policy that must be taken by the government is legal discovery (*rechtfinding*) that must be carried out immediately because there are no provisions that regulate the handling of credit card abuse.¹⁹

The actions of defendant B bin DJ are in accordance with the chronology of the case in that he provided the documents or data required to apply for a credit card to defendant MXJ, but before he submitted them, the documents were first forged by the defendant, such as by forging one of the KTPs in the name of Narika. whose population identification number had been changed by preparing paper containing an arrangement of numbers with a size similar to the NIK on the photocopy of the KTP in Narika's name, then the defendant pasted it on top of the NIK and then photocopied it again, so that it was not visible that the NIK was pasted on. So that the elements of forging a letter as intended in Article 263 paragraph (1) of the Criminal Code have been fulfilled, but what follows regarding this participation is what causes confusion. Because the defendant MXJ, in a separate prosecution, found out that the act he committed was using fake documents. So the offenses or material acts committed by the two defendants are different. This shows the inaccuracy in applying the article. So the meaning of participation is unclear, the act of forging documents has been proven to have been committed by defendant B bin DJ, but this offense of participation is not fulfilled because what action would be included if the offense committed was different. As a result of those elements are not

¹⁷ Article 142 paragraph (2) KUHAP.

¹⁸ Harun M. Husein, *Indictment Letter on Techniques for Preparing Functions and Problems*, Jakarta: Rineka Cipta, 1990, 106.

¹⁹ Enggar Agni, *Analisis Hukum Pada Kuhp Pasal 263 Dan Pasal 378 Dalam Penanggulangan Tindak Pidana Penyalahgunaan Kartu Kredit (Credit Card)*, PAJOU (Pakuan Justice Journal Of Law), Volume 02, Nomor 02, Juli-Desember 2021, 82-103.

fully and comprehensively explained, causing the allegations to become vague (*Obscure Dragonfly*), so that it could result in the lack of clarity regarding the criminal act alleged to have been violated by the defendant's actions.

This case is still closely related to Decision Number 357/Pid.B/2019/PN.Jkt.Pst which was discussed previously, because it is still in the same criminal incident but the examination is carried out separately *orsplit*. In this decision the Public Prosecutor filed a subsidiary charge against defendant MXJ, namely the Primair charge was subject to Article 263 paragraph (1) of the Criminal Code and the Subsidiary charge was subject to Article 263 paragraph (2) of the Criminal Code. So in the evidentiary process the judge must prove one by one the charges alleged against the defendant, if the primary charge is not proven then the subsidiary charges will be examined and so on.²⁰

Lamintang and Samosir explained the difference between "making a fake letter and "falsifying a letter", namely, that in making a fake letter, initially there had not been any letter before, then a letter was made whose contents were contrary to the truth. Meanwhile, in the act of forgery, initially there was a letter, but the contents were changed or falsified in such a way that the contents were contradictory or different from the truth.²¹ If we look at the chronology of the case and in accordance with the demands of the public prosecutor in the indictment as well as the facts revealed in the trial, MXJ's actions do not fulfill the elements of making a fake letter or falsifying a letter, because the data or documents he received from defendant B bin DJ were already falsified previously by defendant B bin DJ in a separate prosecution. So this element of falsifying was carried out by his co-workers who participated in carrying out the criminal offense. So it is not appropriate if the actions carried out by the defendant MXJ are subject to Article 263 paragraph (1) of the Criminal Code, especially in the element of making a fake letter or falsifying a letter. Falsification in insurance regarding. The letter is contained in article 263 (1), 263 (2) of the Criminal Code. Whoever wrote the letter fake or fake letters can give rise to something called with rights, discharge of debts or obligations, or intended as evidence of which is something that is referred to as to use or order others to use the letter as if its contents were true and will not happen to be faked or threatened, if such use may result in loss, because there is a fake letter, it is a crime imprisonment for a maximum of 6 (six) years.²²

Furthermore, regarding the subsidiary indictment of Article 263 paragraph 2, the defendant MXJ has fulfilled the provisions of the first element, namely the element of who, because the defendant in his confession has confirmed his identity as stated in the indictment, then next According to R. Soesilo, the explanation in article 263 paragraph (2) of the Criminal Code is: Those punished according to this article not only "forge" a letter (paragraph 1), but also "deliberately" use a forged letter (paragraph 2), meaning "deliberately" that the person who uses it must know that the letter he uses is fake. If he does not know about it, he is not punished.²³ Because it is considered use, for example handing over the letter to another person

²⁰ Andi Muh Sofyan, Abdul Asis, Amir Ilyas, *Indonesian Criminal Law*. 173.

²¹ P.A.F Lamintang and C.D Samosir, *Indonesian Criminal Law* (Bandung: Sinar Bary, 1983), 111.

²² Bela Indah Kumala, *Sanksi Pidana Terhadap Tindak Pidana Pemalsuan Surat pada Data Polis Asuransi*, *Jurnal Analogi Hukum*, Volume 2, Nomor 3, 2020. 341.

²³ Andi Muh Sofyan, Abdul Asis, Amir Ilyas, *Indonesian Criminal Law*. 95.

who must use it further or handing over the letter to a place where the letter must be needed. In this case, even if a fake letter is used, it must be proven that the person acted as if the letter were genuine and not faked, and the action must also be able to cause harm.²⁴

Viewed from the chronological aspect of the criminal act of document forgery committed by the defendant, in general the act committed was a mistake for which of course he must be held criminally responsible. Because the effect of the actions carried out by the defendant was to result in large material losses to Bank BNI Tbk. Y.A Triana Ohoiwutun stated that in determining whether or not a person is guilty, apart from the person having committed a criminal act, the existence of a certain psychological condition and the causal relationship between that psychological condition and the action must also be assessed, thereby giving rise to a reproach, and the essence of imposing criminal sanctions is a form of censure for criminal acts.²⁵ Based on the chronology above, according to the author, all documents that had previously been falsified by defendant B bin DJ (in a separate prosecution) were already known to defendant MXJ, he was aware and aware of the actions he had committed, that the data used were falsified data, also regarding losses incurred. This means that the element of intentionality referred to in Article 263 paragraph (2) of the Criminal Code is fulfilled on the basis of his awareness of using forged documents. The crime of forgery of documents is one of the crimes regulated in the Criminal Code as law positive in Indonesia.

A dispute of interest is a dispute that can arise in an employment relationship, which is caused by a lack of agreement regarding the creation or replacement of an employment contract and work conditions as regulated in employment regulations, companies and collective agreements.²⁶ Defendant VA in the PN Decision No.36/Pid.B/2021/PN.Krg, VA was declared legally proven and convince guilty of committing the crime of making a fake letter and using a fake letter and the judge sentenced him to prison for a long time 1 (one) year and 6 (six) months.²⁷

Judge's Considerations in Imposing Decisions Against Perpetrators of the Crime of Document Forgery

Judges are part of the unity of the judiciary which has certain characteristics reflected in the symbol of "Panca Dharma Hakim", namely Kartika yang symbolizes trust and piety in the omniscient divinity respective beliefs, Chakra which symbolizes the ability to erase all falsehood, prevalence and injustice. While Chandra who contains the qualities of wisdom and

²⁴ Andi Muh Sofyan, Abdul Asis, Amir Ilyas, *Indonesian Criminal Law*. 102.

²⁵ Y.A Triana Ohoiwutun, Dkk, *Looking at the Imprisonment of Schizophrenia Convicts in the Perspective of the Purpose of Punishment*, Legal Reflection Journal Volume 7 Number 1, October 2022. 67.

²⁶ Lutfi Aprilia, *Analisis Penyelesaian Perselisihan Hubungan Industrial(PHI)secara Litigasi maupun Non-Litigasi*, Rechtenstudent Journal Vol 4 No 2 2023. 176.

²⁷ Regina Tarigan, *Analisis Yuridis Terhadap Tindak Pidana Pemalsuan Surat Yang Dilakukan Pegawai Notaris (Studi Putusan Pn Karanganyar No.36/Pid.B/2021/Pn.Krg)*, JURNAL NORMATIF FAKULTAS HUKUM UNIVERSITAS AL AZHAR, Vol 3 No. 1 2023. 261.

authority, Sari which means having qualities being virtuous and having good behavior and Tirta which is interpreted as being honest.²⁸

The judge in handing down a decision against the defendant in court must be based on the applicable rules, such as Article 183 of the Criminal Procedure Code which generally states that the judge cannot decide on a case unless he has at least two valid pieces of evidence and in relation to this the judge has confidence. that the defendant is guilty of committing a crime. Criminal liability according to criminal law is a person's ability to be responsible for mistakes. Accountability in criminal law adheres to the principle of no crime without fault (*no punishment without guilt*). Even though it is not formulated in law, in practice it is implemented. Errors and responsibility for actions cannot be separated²⁹. Mistakes that in foreign languages are referred to as *debt* is the psychological state of a person related to the act he does which is such that based on the state of the act the perpetrator can be blamed for his act.³⁰ Error is a determining factor in criminal liability because it should not be part of the meaning of the criminal act itself. The occurrence of credit card crimes cannot be separated from the monitoring system issuing bank. Credit card crime shows the weak quality of the bank internal inspection and supervision of a bank. The main cause of occurrence Credit card crime is a weakness in bank internal supervision.³¹ Moeljatno said that "whether the inconcreto who committed the act was actually sentenced to a crime or not, that is beyond the meaning of a criminal act. This means that whether the person who committed a criminal act can be held responsible for his actions is outside the context of the definition of a criminal act.³² The form of error is divided into two forms, namely intentional error (*Trick*) and fault for forgetfulness (*Fault*). The element "can cause losses" as referred to in Article 263, both paragraph (1) and paragraph (2) of the Criminal Code as well as Article 266 are good paragraph (1) and paragraph (2) of the Criminal Code are often debated the proof. Is the element of loss an element that must be proven? or not remembering the existence of special qualifications in the letter in the formulation of the Article 263 paragraph (1), namely a letter that can give rise to debts or receivables prove a certain thing.³³

According to the Panel of Judges, the proven element of "Making a fake letter or falsifying a letter which can give rise to a right of engagement or debt relief, or which is intended as proof of something" means that the existence of a fake or forged letter causes losses to certain parties. In this case, those who suffered losses were the victims, whose personal documents had been misused and also PT Bank BNI Tbk which suffered material losses amounting to Rp. 500,000,000,- (five hundred million rupiah). The object of the letter in question is the victim's personal documents. In this case, the actions of defendant B bin DJ fulfill the elements of falsifying a letter of intentThe act of forgery initially contained a letter,

²⁸ Mario Agusta & Chindy, *Code of Professional Ethics for Judges in the Context of Realizing a Judge Profession with Integrity*, *Datin Law Journal*, Vol.1, No.2, 2020, 128.

²⁹ Mario Agusta & Chindy, *Code of Professional Ethics for Judges in the Context of Realizing a Judge Profession with Integrity*, 151

³⁰ Frans Maramis, *General and Written Criminal Law in Indonesia*, (Jakarta : Raja Grafindo Persada, 2012), 85.

³¹ Agus Mulya Karsona, "Eksistensi Pengadilan Hubungan Industrial Dalam Penyelesaian Perselisihan Hubungan Kerja Di Indonesia", *Jurnal Hukum Acara Perdata, Adhaper* Vol 2, No 2 (2016), 141.

³² Andi Muh Sofyan, Abdul Asis, Amir Ilyas, *Indonesian Criminal Law*. 139.

³³ Eva Zulva, *Menghancurkan Kep Ancurkan Kepalsuan (Studi Ten An (Studi Tentang Tind Ang Tindak Pidana Pemalsuan Dan Problem An Problema Penerap A Penerapannya)*, *Jurnal Hukum & Pembangunan*, Vol 48 No 2, 321.

but the contents were changed or falsified in such a way that the contents were contradictory or different from the truth.³⁴

According to R. Soesilo in his book *The Criminal Code (KUHP) and his complete comments, Article by Article*, explaining that the person who commits it (Pleger) means that person must alone have carried out all the elements or elements of the criminal incident. The one who ordered it (Doenpleger) means that the criminal act was carried out by at least 2 (two) people, namely the one who ordered it (Doenpleger) and the one who was ordered to do it (Pleger), but the one who ordered it (Pleger) cannot be held responsible for his actions.³⁵

Meanwhile, participating in the act (Medepleger) means that the act was carried out jointly, there must be at least 2 (two) people, namely the person who committed it (Pleger) and who participated in it (Medepleger), the condition for both or more people is that all of them carried out the act of execution. This element, according to the Panel of Judges, is that the occurrence of a criminal act is a result of a common will and intention, there is a similarity in the will of one perpetrator to another, only the role is different, there is the person who commits, orders to commit or participates in committing the act. Whoever has in his possession any document, knowing the same to be forged, and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document is one of the descriptions mentioned in section 466, be punished with imprisonment for a term which may extend to seven years, and shall also be liable to a fine; and if the document is one of the description mentioned in section 467, shall be punished with impriso.³⁶ Credit Card is a card identification which allows the holder to purchase goods and services in the present and pay for them in the future. Credit Card is issued by Bank, Hotels, Travel organization, to individual who are classified a good credit risk a small fee, must be paid in advance by the individual to obtain certain credit card.³⁷

The facts revealed in the trial were that the defendant had consciously provided a number of KTP and NPWP data belonging to other people which were needed to apply for a credit card for the idea of developing a car buying and selling business which was initiated by witness MXJ in a separate prosecution. Before the data was submitted, the defendant had changed or falsified the data. The Panel of Judges considered the charges which according to the Panel of Judges were most in line with the facts revealed in the trial, in the end the Panel of Judges was convinced to consider the first alternative charge by the public prosecutor, namely violating the provisions of Article 263 paragraph (1) in conjunction with Article 55 paragraph (1) 1st of the Criminal Code. Based on the considerations of the Panel of Judges, the defendant B bin DJ has been legally and convincingly proven guilty of committing the crime of participating in the crime of forgery of documents, which is considered inappropriate, because the charges imposed by the Public Prosecutor are considered unclear or vague. The purpose of this study is to analyze the development of Islamic banking in Indonesia after the three sharia bank margins. The method used in this study is analysis. The role of the Sharia

³⁴ P.A.F Lamintang and C.D Samosir, 111.

³⁵ Amri Amri, "Instruksi Walikota Jayapura : Effectiveness of Lawin Creating a Clean and Healthy Environment", *Indonesia Journal of Law and Islamic Law*, Vol 5 No 1, (2022), 45.

³⁶ Miftahurrozi Qiyah, "Corporate Social Responsibility dalam Pelestarian Lingkungan Perspektif UU PTdan Fikih Lingkungan di PTPN XI Pabrik Gula Djatiroto Kabupaten Lumajang", *Rechtenstudent Journal Fakultas Syariah UIN KHASJember*, Vol 3 No 1 (2022), 21.

³⁷ Wijaya, *Membangun Model Penegakan Hukum Pidana Dalam Tindak Pidana Penggunaan Kartu Kredit*, *Jurnal Ilmiah Dunia Hukum*, Volume 4 No 2 April 2020, 371.

Bank has received full attention from the government and is expected to be able to strengthen the national economy and contribute as an international bank.³⁸

The element of error, namely deliberate intent as an intention to create/falsify a letter, has indeed been fulfilled, but the careful, clear and complete description in Article 143 paragraph (2) of the Criminal Procedure Code as a material requirement for making an indictment letter has not been fulfilled by the Public Prosecutor. This creates confusion regarding the offense of participation imposed on the defendant, whereas to be said to be a participant (*co-perpetrator*) must meet certain requirements, namely conscious cooperation, so that there are at least two perpetrators, namely the person who carries out (*perpetrator*) and people who participate in doing (*co-perpetrator*). It is said to be sufficient if the action carried out has the same aim and is aimed at something that is prohibited by law. Next, there is a joint action that is carried out physically, meaning that the action is truly completed to realize the intended offense.³⁹ The articles being targeted must be the same so that the purpose of the participation is clear so that it can be known which is the main actor and who participates in carrying it out.

The provisions of article 143 (2) of the Criminal Procedure Code, require that the indictment must state the time (*Time Offense*), and the place where the crime occurred (*Place of Offence*). And it must be prepared carefully, clearly and completely regarding the offense charged. If this requirement is violated, according to the provisions of article 143 (3) of the Criminal Procedure Code, the indictment is null and void due to the vague/vague indictment (*Obscure Dragonfly*). The panel of judges in their deliberations paid little attention to this matter. Even though the essence of the material acts committed by these two defendants are different, the consequences of these vague or vague charges can be assessed as one of the decisions in Decision Number 357/Pid.B/2019/PN.Jkt.Pst or decision Number 358/pid.B/2019/PN.Jkt.Pst is *mutatis mutandis* null and void, because the main perpetrator is unknown, as a result of unclear charges (*Obscure Dragonfly*).

The verdict of Decision Number 358/Pid.B/2019/PN.Jkt.Pst which was examined stated that the defendant MXJ had been legally and convincingly proven guilty of committing the crime of "using a fake letter, if the use of the letter could cause harm". Because the defendant MXJ has been charged by the Public Prosecutor with the charge of Subsidiarity, the Panel of Judges first considers the Primair charge as regulated in Article 263 paragraph (1) of the Criminal Code, if it is not proven, then they will examine the subsidiary charge and so on.⁴⁰ After the trial process, the Panel of Judges was of the opinion that the defendant did not fulfill the formulation in the primary indictment because the material acts committed by the defendant were different from the offense formulation contained in the provisions of Article 263 paragraph (1) of the Criminal Code. Then the Panel of Judges then considered the subsidiary charges of Article 263 paragraph (2) of the Criminal Code, namely "Deliberately using a letter whose contents are false or forged, as if it were true and not forged, if the use of the letter could cause harm."

Article 263 Paragraph (2) regulates the deliberate use of fake or forged letters. Using this means handing over the letter to another person who must use it further or handing over

³⁸ Eka Kurniasari, *Prospek Masa Depan Bank Syariah di Indonesia Pasca Pemergeran Bank-Bank Syariah BUMN*, *Rechtenstudent Journal* 2(1), April 2021. 248.

³⁹ Andi Hamzah, *Indonesian Criminal Law* (Jakarta : Sinar Graphics, 2019), 353.

⁴⁰ Andi Muh Sofyan, Abdul Asis, Amir Ilyas, *Indonesian Criminal Law*, 166.

the letter to a place where the letter is needed. In the case of the use referred to here, it must also be proven that the person is acting as if the letter is genuine and not forged, and that action must cause harm. According to the Panel of Judges, the actions of the defendant MXJ fulfill the elements of Article 263 paragraph (2) of the Criminal Code, because all of what is meant in Article 263 paragraph (2) of the Criminal Code is in accordance with the actions carried out by the defendant. Therefore, the defendant's actions fulfilled the element of responsibility, namely that there was an intentional mistake in the form of intent to use a fake letter.

Based on the considerations of the Panel of Judges, the defendant MXJ has been legally and convincingly proven guilty of committing the crime of "Using a fake letter if the use of the letter could cause harm" in accordance with the indictment of Subsidiary for violating Article 263 paragraph (2) of the Criminal Code, which is in accordance with the facts revealed in the trial. . Because the defendant has been declared legally and convincingly guilty of the crime he was charged with and the Panel of Judges did not find any excuse or justification that could be used as a reason to remove the sentence for the defendant, the defendant must be seen as a responsible legal subject and therefore must be sentenced to justice. in proportion to the error as stipulated in Article 193 paragraph (1) of the Criminal Procedure Code. However, regarding the length of the sentence, the Panel of Judges does not agree with the Public Prosecutor, so they will decide for themselves in this decision. The Panel of Judges decided to sentence defendant MXJ to prison for 1 (one) year.

Conclusion

The article charged by the Public Prosecutor in Decision Number 357/Pid.B/2019/PN.Jkt.Pst in his indictment uses alternative charges, that the defendant is charged with the first alternative charge of violating Article 263 paragraph (1) in conjunction with Article 55 paragraph (1) to -1 of the Criminal Code and the second alternative charge Article 263 paragraph (1) in conjunction with Article 56 of the Criminal Code, as well as the Article charged in Decision Number 358/Pid.B/2019/PN.Jkt.Pst by the Public Prosecutor using the Subsidiarity charge where the Primair charge is charged under Article 263 paragraph (1) of the Criminal Code and the subsidiary indictment are subject to Article 263 paragraph (2) of the Criminal Code which is not in accordance with the actions committed by the defendant because the contents of the indictment are considered *vague/obscure dragonfly* so that the content of the formulation of the indictment is not compound and does not clearly confirm the accompanying offense described in the indictment so that it does not fulfill the formulation of Article 143 paragraph (2) of the Criminal Procedure Code.

The judge's considerations in handing down a decision on the perpetrator of the crime of document forgery in Decision Number 357/Pid.B/2019/PN.Jkt.Pst and Decision Number 358/Pid.B/2019/PN.Jkt.Pst are in accordance with the defendant's mistake in the form intentional as an intention where both defendants were aware of their actions and the consequences resulting from those actions. However, the panel of judges in their considerations did not pay attention to the careful, clear and complete description in Article 143 paragraph (2) of the Criminal Procedure Code as a material requirement for making an indictment which was not fulfilled by the Public Prosecutor. The consequences of these vague or vague charges can be assessed as one of the decisions from Decision Number

357/Pid.B/2019/PN.Jkt.Pst or Decision Number 358/pid.B/2019/PN.Jkt.Pst which must mutatis mutandis be null and void.

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