



## Responsibility Of Perpetrators Of The Criminal Act Of Using Fake Diplomas In The Nomination Of Legislative Members (Study Of Decision No. 105/PID/2021/PT.TJK JO. Decision No. 43/PID/2021/PN LIW)

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**Abstract.** A fake diploma or Aspal diploma (original but fake) is a criminal act that meets the formulation of the provisions of Article 263 of the Criminal Code and Article 264 of the Criminal Code, because it can give rise to a right. The diploma forgery was carried out by the defendant Sj bin BL (deceased) The approach to the problem in this research used a normative juridical and empirical juridical approach. Processing of the data obtained is carried out by means of data selection, data classification, and data preparation. Data analysis uses a qualitative approach.

**Keywords:** *Accountability, Fake Diploma, Legislative Member.*

### INTRODUCTION

In the modern era, a diploma is a certificate or document given by an institution to someone (can be a student, college student, or Islamic boarding school student). Generally, people will get it after graduating from an educational institution, be it a school, madrasa, or university. This diploma is very important to use in terms of career and professional education, a diploma is also a valuable document, namely a sign that we have graduated from an institution or educational institution, the existence of this diploma is recognized by the institution that issued or validated the diploma. However, there are also individuals who cheat to get a piece of diploma paper for their personal interests. This can be categorized as a crime that can lead to criminal acts. Crime in practice is a violation of religious norms, customs, morality that live in society. Religious crime is a violation of God's command (sin).

Forgery of diplomacy has become a moral disease that has no cure, and it has spread to all levels of education. Justifying any means just to get a diploma. This happens not only involving ordinary people, state officials, teachers and civil servants are also not free from cheating in the world of education. Criminal liability is a central concept in the criminal law system that serves to determine who is responsible for violations of the law and how the legal consequences are applied. In general, criminal liability refers to the principle that every individual who commits a crime must bear the legal consequences of his actions in accordance with applicable legal provisions. Criminal liability should contain elements that must be met. The elements in question can include acts that violate the law or applicable rules. Acts that violate the law or norms that apply in society should be able to be analyzed from a legal perspective, whether someone is indeed found guilty and can be held accountable for their actions, or whether someone is found guilty but cannot be held accountable for the mistakes they have made. The problem of diploma forgery is that for those involved, whether the perpetrator or user already knew in advance the legal consequences that would occur later so that of course they must bear responsibility both psychologically and spiritually because they are directly

considered capable of being responsible. The crime of forgery can be classified as a group of fraud crimes, but not all fraud crimes are forgery. The crime of forgery is classified as a crime of fraud if someone gives a description of a condition of an item (document) as if it were genuine or the truth is not legitimate and is his property.

Currently, there are allegations of the use of fake diplomacy by a certain individual who wants to register himself as a member of the Regional People's Representative Council (DPRD) under the name of the Defendant SJ bin BL (deceased). Regarding the alleged use of fake diplomacy, it is necessary to carry out control to maintain the dignity and honor of the world of education for individuals who are proven to be using fake diplomacy in addition to being held criminally responsible. Activities carried out by convict SJ bin BL (Alm) this is an activity of falsifying a diploma which was carried out deliberately to register himself to participate in the legislative candidate nomination in the West Lampung region in accordance with decision No. 105/Pid/2021/PT.Tjk.

## **LITERATURE REVIEW**

Convicts are those who have committed a crime and are now prohibited by criminal law, and whose actions are subject to criminal penalties based on a judge's decision that has permanent legal force. The verdict of the case of forgery of diplomas in the name of the defendant SJ bin BL (deceased) was sentenced to imprisonment which is not in accordance with the applicable regulations or laws. That the Defendant SJ bin BL (deceased) on a day and date that can no longer be remembered in July 2018 or at least at some time in 2018, took place in Pekon Sukananti Village, Way Tenong District, West Lampung Regency or at least in a place that is still included in the jurisdiction of the Liwa District Court which used a diploma, competency certificate, academic degree, profession, and/or vocation obtained from an educational unit that did not meet the requirements.

The previous verdict at the Liwa District Court stated in its verdict that the defendant SJ bin BL (deceased) was sentenced to 8 months in prison and a fine of Rp. 10,000,000, after hearing the verdict that had been read by the first instance court, namely the Liwa court on June 18, 2021, the defendant objected and filed an appeal which after going up to the appeal level, finally got a final decision on July 19, 2021. This decision is certainly different from the decision that has been determined by the first instance court. In the final decision determined by the High Court, this case was decided with a sentence of 5 months and a fine of IDR 5,000,000.

## **METHODS**

The problem approach in this study uses a normative legal approach and an empirical legal approach. The normative legal approach focuses on the internal aspects of positive law, such as legal norms, rules, and principles contained in laws and regulations, then the empirical legal approach focuses on how the law is applied in society and its impact. This research is conducted by conducting field research to observe what happens in the field, such as attitudes, assessments, and behaviors related to the problems studied.

This approach is used to understand the problem of how How is the application of material criminal law in the criminal case of using fake diplomas in the nomination of legislative members in decision No. 105/PID/2021/PT.TJK, the decision of which is not in accordance with the applicable criminal code.

## **RESULTS**

### **The Term Criminal Responsibility**

Responsibility in criminal law can be interpreted as criminal responsibility, in Dutch, as "atorekenbaarheid", in English, criminal responsibility or criminal liability. Criminal responsibility is imposing punishment on the perpetrator for an act that violates a prohibition or creates a

prohibited condition. Criminal responsibility therefore concerns the process of transferring the punishment that exists in a criminal act to the perpetrator. Criminal liability is a fundamental concept in criminal law that regulates the legal consequences that must be faced by someone who has committed a crime. This concept is the basis for the state in imposing sanctions on perpetrators of crimes as a form of retaliation for their actions, as well as an effort to prevent similar crimes from occurring in the future. In the context of criminal liability, there are a number of elements that must be met, including the element of an unlawful act, an element of error, and an element of consequences arising from the act. In addition, criminal liability is also closely related to the principles of criminal law such as the principle of legality, the principle of humanity, and the principle of legal certainty. Through the application of these principles, it is hoped that the criminal justice system can run fairly and provide protection for human rights. Determining the existence of guilt and criminal responsibility is done simply by reviewing whether the perpetrator fulfills all the contents of the formulation of the criminal act. In the procedural field, this means that proof that a criminal act has been committed is considered sufficient as a basis for the defendant's criminal responsibility.

Thus, a person can be held accountable in criminal law as long as it can be proven that his actions have fulfilled all the contents of the formulation of the criminal act charged. By itself, the imposition of criminal penalties or punishment is solely based on this. Criminal liability is sometimes seen as the implementation of law enforcement officers such as judges in examining, trying, and deciding a criminal case. A crime will not occur if there is no error, Guilt is the state of mind of the person who committed the act and his relationship to the act committed is such that the person can be blamed for committing the act. If the maker makes a mistake in committing the crime, he will of course be punished. However, if he has no fault, even though he has committed a prohibited act and this act is punishable by a crime, he will certainly not be punished. The principle of no crime without fault is thus a fundamental principle in holding the author accountable for committing a criminal act. The principle of error based on the concept of "No Crime without Error" is a very fundamental principle in holding the perpetrator of a crime accountable for having committed a mistake that can result in harm to others. The crime in question only refers to something that is prohibited and the act has been regulated in a regulation, namely the Law. Intentional criminal acts that are carried out consciously and knowing the impact of the act and wanting the consequences of their actions, for example in the case of the use of fake diplomacy, the defendant who knew very well what he was doing, namely changing or falsifying a diploma which clearly violated the applicable law and regulations but still did it. This concept of intent is important in enforcing criminal law.

Proof of the element of intent is one of the absolute requirements for being able to impose a criminal penalty on a perpetrator. Apart from the element of fault, there is also criminal liability without fault, usually called Strict Liability. Strict Liability is criminal responsibility without fault. This means that the perpetrator can be punished if he has committed an act as formulated in the Law without looking at his mental attitude. The concept of strict liability is an exception to the principle of fault formulated in Article 38 paragraph (1). The formulation is as follows: For certain crimes, the law can determine that a person can be punished solely because the elements of the crime have been fulfilled without considering the existence of fault. The reason for including the principle of strict liability in the concept of criminal law to come can be seen in the following explanation: The provisions in this paragraph are also exceptions like paragraph (2), therefore, they do not apply to all crimes, but only to certain crimes specified by law. For certain crimes, the perpetrator of the crime can be punished only because the elements of the crime have been fulfilled by his actions. Here, the guilt of the perpetrator of the crime in committing the act is no longer considered. This principle is known as the Strict Liability principle The implementation of criminal punishment in Indonesia still has weaknesses in every criminal punishment system,

one of the weaknesses faced comes from law enforcement officers who do not apply the laws and laws in force in Indonesia.

Negligence committed by law enforcement officers will have an impact on the law in Indonesia in the future. The theories of the purpose of punishment that have been generally known so far are 3 (three), namely absolute theory, relative theory, and combined theory, which are widely put forward by scientists by considering various aspects of the targets to be achieved, in the imposition of criminal penalties, which in this case cannot be separated from socio-cultural values. Punishment is inherent in every life of society, to express what should be done to lawbreakers, even in the form of punishment of children by their parents. Punishment is an institution that shows transactions involving individuals, transactions controlled by rules, in the form of what must be done, to whom the punishment is imposed, and for what the punishment is imposed. The perpetrator of a crime who has been sentenced by a judge to imprisonment, then the judge's verdict will be implemented by the Prosecutor. This imprisonment is implemented by "imprisoning a person for a certain period of time so that he is not free to carry out his activities in society as usual". Criminal law enforcement in Indonesia in reality cannot fix what has happened, nor can it change human behavior instantly, but criminal law enforcement is expected to provide a deterrent effect and fear of the law so that the same mistake is not repeated. In this case, the role of the judge is very necessary to determine fair law enforcement. Based on Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, the role and greatest opportunity for legal reform lies in the hands of judges .

This means that judges in actualizing the idea of justice require a conducive situation, both from external and internal factors within a judge. Nowadays, the law is no longer a form of retribution but rather a form of guidance to create a more orderly social order that runs in accordance with applicable laws and regulations. Resocialization or reintegration into society is a legal effort to shape the character of people who are dealing with the law, so that guidance, training and guidance are carried out so that later after they are no longer dealing with the law they can live again in society with a better personality than before. The main purpose of resocialization is to reduce recidivism or so that former prisoners do not repeat the same mistakes, it is hoped that with this resocialization, former prisoners will receive good guidance so that they can socialize with the environment and the surrounding community, after being returned to society it is hoped that society can also accept former prisoners back and not ostracize them. Social factors play a very important role in this, in order to shape the character of former prisoners and support them in a better direction so that there is no repetition of criminal acts. This resocialization program is indeed designed as guidance, training and learning for prisoners. The programs that have been formed aim to change the mindset and behavior of former prisoners, as well as equip them with the skills they need, and after they have finished serving their sentences, it is hoped that these former prisoners can find work and build a new life with the results of the guidance they have received in correctional institutions.

This resocialization also sometimes has obstacles, the social stigma attached to former prisoners often makes people feel afraid and reluctant to communicate or accept them back into society. People who still do not fully trust these former prisoners often suspect whether a prisoner has completely changed or not, it becomes a concern for the community. In addition, economic factors are also a significant obstacle. Many former prisoners have difficulty finding stable jobs, so they are vulnerable to returning to crime in order to meet their living needs. Society also needs to change its view of ex-convicts and give them a second chance to improve themselves. Then the business world can play a role by providing job opportunities for ex-convicts who have shown behavioral changes. The concept of punishment in modern justice has undergone significant evolution. In this context, punishment is not just about giving punishment, but also aims to improve the perpetrator, restore the victim, and maintain public

order and security. Concepts such as restorative justice, rehabilitation, and social reintegration are becoming increasingly central to the criminal justice system.

### **Restorative Justice**

The definition of Restorative Justice (RJ) is giving the perpetrator the opportunity to be responsible for his actions to the victim and the community, all parties involved are brought together to reach an agreement on what the best action is for the perpetrator.

### **Rehabilitation**

Rehabilitation is defined as a set of interventions designed to optimize function and reduce impairment in individuals with health conditions in their interactions with their environment. For the social, economic, and health benefits of rehabilitation to be fully realized, timely, high-quality, and affordable rehabilitation interventions must be available to all.

### **Social Reintegration**

Social reintegration aims to restore the relationship of life, living, and livelihood of Correctional Inmates (WBP). They are not only punished and restricted in their freedom of movement because of the actions they have committed, but are given a coaching program as provisions for them to later live life with the wider community. Given that the legal paradigm has been transformed into modern law, which means law that is just and brings benefits. Conceptually and historically it is very different from what applies in the previous system, namely imprisonment. Human behavior that sometimes they do not only act according to and in accordance with human rights and applicable norms, but not infrequently also do asocial actions and even those that violate the law.

The act of deviation from the agreed norms causes disruption of order and peace in human life. Human behavior in everyday life and social life is a very complex and multidimensional phenomenon. Social life is influenced by internal and external factors. Internal factors include psychological aspects such as personality, emotions, motivation, and values. Meanwhile, external factors include social, cultural, economic, and physical environmental influences. Misappropriation committed by the community is often labeled as a violation or crime. It is stated that the correctional system in Indonesia is a process or system of community treatment that includes services, guidance, community guidance, and fulfillment of human rights. In this case, of course, there is authority from law enforcement officers to realize services, guidance and fulfillment of human rights for these members.

## **DISCUSSION**

### **Use Of Fake Diplomas In Legislative Candidate Nominations**

Criminal law is a part of science that specifically studies one particular aspect of law in general, namely criminal law. Criminal law is also called "special sanction" law because legal subjects who violate criminal law will be subject to punishment in the form of suffering/misery. The development of law that follows the development of the times certainly has several obstacles or constraints, the large human population that continues to increase every year has resulted in a fairly high and varied crime rate, for example. Using another person's identity or falsifying an identity, whether in the form of falsifying a name, address, position or other identity used to deceive the victim into believing that the false identity is the real identity, is a criminal act. The Regional People's Representative Council (DPRD) is a regional people's representative institution that serves as an element of regional government administration.

The DPRD as a regional legislative body has an equal position and is a partner of the regional government. The DPRD has three functions, namely: Legislation related to the

formation of regional regulations, budget, authority in terms of regional budget (APBD), supervision, authority to control the implementation of regional regulations and other regulations and regional government policies. Revealing a criminal act of forgery of a diploma or other important document, can use the science of graphology. Graphology is a science that studies, identifies, analyzes, evaluates criminality, and knows a person's personality through their handwriting patterns, this graphology is able to recognize forgery of writing, how to find secret writing, and knowledge of reading a person's character from their writing.

This criminal act of forgery is a form of crime that is quite often committed by the public with or without a tool in it. The crime of forgery is classified as a crime of fraud if someone provides a description of a condition of an item (document) as if it was genuine or the truth is not valid that the item is his. On this basis, other people are deceived and believe that the condition described on the item or document is true or genuine.

The crime of forgery of documents (*valsheid in geschriftten*) can be divided into 7 (seven) types of groups, namely:

1. Forgery of letters is generally the main form of forgery of letters (Article 263).
2. Aggravated forgery of documents (Article 264).
3. Ordering someone to insert false information into an authentic deed (Article 266).
4. Falsification of a doctor's certificate (Article 267, Article 266).
5. Forgery of certain documents (Article 269, Article 270, Article 271).
6. Forgery of official certificates regarding property rights (Article 274).
7. Storing materials or objects for falsifying documents (Article 275).

Specifically in Law Number 20 of 2003 concerning the National Education System and in criminal liability regarding the forgery of diplomas are the person who makes or provides assistance and the person who uses the fake diploma. Criminal liability for a civil servant who uses a fake diploma is contained in articles 68 and 69 of Law Number 20 of 2003 concerning the National Education System which can be punished with a maximum imprisonment of five years and/or a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah). Diploma forgery is a serious criminal act and has wide-ranging implications. Perpetrators of diploma forgery intentionally create, change, or falsify official documents stating that someone has completed a certain level of education. This action not only harms the educational institution whose name is used, but also harms society as a whole. By falsifying diplomacy, perpetrators try to gain personal benefits, such as getting a job, a promotion, or increasing social status. In fact, this action is a form of fraud that can damage public trust in the education and recruitment system. The law has regulated strict sanctions for those who forge diplomas, however, cases of diploma forgery still frequently occur.

This shows that there are still many irresponsible individuals who dare to take risks to gain instant benefits. To prevent the occurrence of diploma forgery, joint efforts are needed from various parties, such as the government, educational institutions, and the community. Increasing supervision of the diploma issuance process, stricter verification of the completeness of documents, and socialization regarding the dangers of diploma forgery are important steps that need to be taken. In addition, there also needs to be a high level of legal awareness among the community so that they are not tempted to commit acts that violate the law. The judge's considerations in deciding the case of the crime of forgery of diplomacy consist of legal considerations, philosophical considerations and sociological considerations which are the reference or basis for a judge in deciding a case, the problem of the use of fake diplomacy used by SJ bin BL (deceased) is an action which has injured public trust, by making fake diplomacy which should be the property of other people, but was transferred to the name of the defendant SJ bin BL (deceased) the criminal sentence imposed by the judge is still considered too low so that it raises several questions in the law enforcement efforts that have been taken by a high

judge, the article charged in this problem is in Article 69 of Law Number 20 of 2003 concerning the national education system. The authority to maintain this given public trust is obtained from the government to issue a diploma equivalent to formal education. PKBM Insan Cendikia which is where the defendant took package C education where in PKBM Insan Cendikia there has been a public trust attached to it, but it turns out that the public trust has been injured by its individuals themselves. The teaching and learning process that has been passed by the defendant turned out to be made easier by placing the defendant's name in the position of another person who should have received his rights. Legal certainty comes from the Ruler or the State which can be in the form of articles in the Law, and also the consistency in the judge's decision between one judge's decision and another judge's decision for a similar case that has been decided. Consistency in the judge's decision between one decision and another judge's decision in a similar case that has already been decided, if for a similar case there is a big difference between the court decision in a certain city and the court decision in another city in a period of time that is not too different but one has permanent legal force, it will cause legal uncertainty.

Then the criminal responsibility that has been carried out by the perpetrator SJ bin BL (deceased) has been sentenced to 5 months in prison and a fine of Rp. 5,000,000.00 (Five Million Rupiah). The act of forgery of letters is usually the forgery of documents, not infrequently the forgery carried out is the forgery of diplomacy carried out for personal gain, this activity may not have a direct impact on social life but if it is carried out continuously it will have a major impact on the social environment, this forgery of diplomacy is usually not only carried out by ordinary people but can be carried out by several government officials, therefore this activity can reduce public trust in the use of the diploma. Acts that are against the law and can also be known as the reasons for someone to commit an unlawful act, so that it can cause social reactions in society. Social reaction can also be said to be an effort to achieve social order, this form of social reaction will become increasingly apparent when problems and threats of crime increase in quantity and quality. Social control through law will confront individuals or members of society with alternative choices, namely adjustment or deviation, while the most serious form of deviation or violation is a violation of criminal law, which is called a crime. The difference in principle between the act of making a fake letter and forging a letter is that in making a fake letter/faking a letter, there is no letter before the act is carried out, then a letter is made, the contents of which are partly or wholly contrary to the truth or are false.

The crime involving the defendant SJ bin BL (deceased) is a crime of falsifying a diploma that was deliberate and known to the defendant and a witness who issued the fake diploma, which is clearly in accordance with the judge's considerations using Article 69 of Law Number 20 of 2003. Intention in a crime can be interpreted as wanting and knowing (what) the perpetrator is doing. A person who does an act intentionally means that he wants the act and knows or is aware of the act he is doing. Intentional criminal acts that are carried out consciously and knowing the impact of the act and wanting the consequences of their actions, for example in the case of the use of fake diplomacy, the defendant who knew very well what he was doing, namely changing or falsifying a diploma which clearly violated the applicable law and regulations but still did it. This concept of intent is important in enforcing criminal law. Proof of the element of intent is one of the absolute requirements for being able to impose a criminal penalty on a perpetrator. The judge must be able to prove in court that the perpetrator has done his actions intentionally. This proof can be done through various means, such as witness statements, physical evidence, or expert testimony. In fact, this intention stems from a state of mind that is difficult to know and prove directly, no one knows whether someone did it intentionally or not, the only ones who know whether it was intentional or not are themselves.

## CONCLUSION

The responsibility that must be carried out by the perpetrator in this criminal act of diploma forgery, based on the judge's decision, namely legally, the high judge views the fact that according to the statutory regulations it is felt that it still does not fulfill the applicable statutory regulations. Philosophically, the high judge viewed the fact that this was the first time the defendant had committed a crime and the defendant admitted his actions, so the high judge considered that the defendant should receive a reduced sentence with the aim of improving the defendant's behavior.

Sociologically, the high judge viewed the facts within the defendant, including that the defendant was someone who had never been convicted, and that the high judge also viewed the aspect that the defendant was not the only perpetrator of the crime of falsifying a diploma. In accordance with the article charged in Article 69 of Law No. 20 of 2003 concerning the national education system. Then in the final verdict the defendant was sentenced to 8 months in prison and a fine of Rp. 5,000,000 (five million rupiah) it is hoped that the defendant can be aware and not repeat the same actions in the future, this is because this is the initial step or the defendant's evil intention to nominate himself as a member of the legislature, the verdict would be different if the defendant had served as a member of the DPRD for years and had received a salary from the state.

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