



Review of Islamic Criminal Law on Perpetrators of Falsifying Death Certificates for Personal Profit

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Abstract - Basically, every one of us is a religion and of course every religion teaches goodness. Lying and lying is an act of lying and causing harm to oneself and even others. Therefore, this research is carried out to find out which Islamic law regulates the handling of the crime of forging death certificates and how positive laws regulate and handle the perpetrators of the crime of forging letters, which based on the research carried out the crime of forging death certificates can cause various losses to the victims, where the victims of this crime are not only the community but can causing losses to the government or the company. In Islamic law, criminal acts that cause harm to others are categorized as Jarimah acts with punitive sanctions in the form of ta'zir The rules based on positive law have been regulated in article 263 of the Criminal Code in the imposition of sanctions for perpetrators who forge or use fake letters as mentioned in paragraphs 1 and 2.

Keywords: Forgery of Death Certificates

I. INTROUCTION

The esthablishment of a state certainly has a purpose in its formation. Usually to achieve this goal. A regulation is made that will regulate all actions in the life of a state. Basically, the rules that are made are a legal product designed to achieve the goals of the establishment of a state and also provide a sense of security a comfort for the people who live in it.

Law is a law intended for the community as residents of the country. The laws that are formed are usually in the form of written or unwritten laws, usually written laws are in the form of the Criminal Code while unwritten laws are usually in the form of customary law, where customary law itself comes from old regulations that have been carried out for generations in several generations. There is also a type of law called custom which is an activity that generally occurs in the community whose existence has existed for a long time in society with the intention of regulating order in society whose laws are made by traditional leaders in society that are recognized by the people and enforced by law enforcers (Soeroso, 2019).

Along with the continuous development of knowledge and science, various forms of developments that occur in crimes or violations with all different purposes and modes of operation, of course, where it is an action that is clearly deviant or a violation of the legal rules that have been made, with various reasons that all criminal acts are considered crimes. Criminal acts at this time can be categorized as intentional or unintentional acts, criminal acts can basically also be committed by anyone, both from the lower middle class or the upper middle class, but all forms of crime are violations of the rules that have been regulated juridically and that are being enforced.

There are various problems that occur at this time, both problems that can cause a loss to an individual, group, and also the community itself. The problem that often arises in today's

society is the crime of forgery, fraud with various different operational modes so that it causes losses both in the form of material and formal.

The occurrence of this criminal act in the form of forgery of letters is basically caused by the limitations, the compulsion of the community to the increasingly high economic pressure and the need to continue their lives and their families so that the people take actions that can generate instant and easy profits solely for themselves, but when viewed from the humanitarian side, the act does not think about the losses experienced by the victims. One of the efforts that can be made in overcoming it is that there must be law enforcement against these problems.

Society in general should be able to adjust the existence of the law and develop problems of the existence of the law that often arise in society. Therefore, the community should be able to help in enforcing the rules of the law. Basically, the legal system consists of a set of legal norms with the aim of creating peace for the State and its people so that it can protect and improve the order of the law itself (Gede, 2022).

All types of crimes have basically been regulated in the Law, therefore crimes in the form of forgery of letters have also been regulated in article 263 paragraph 1 (Criminal Code) which in this article contains 2 meanings, namely, making fake letters or forging letters in the formal and material sense. In the sense of material, it means that the letter or document contains untruths or is not in accordance with the facts, while according to formal, it includes signatures or stamps that are forged (Rahim, 2021).

In Islam, the rules of the law that are made are called *jarimah*, in general all crimes committed by humans have been regulated and applied during the time of the Prophet. Broadly speaking, it can be concluded that the act of forging a letter can be categorized as an act of lying (lie) because basically the act is carried out on the basis of hiding a truth with a certain purpose to gain profits both individually and in groups, so that in this way the perpetrator of forging the letter can get his profit instantly. In the context of Islamic criminal law, the act of forging letters/documents is imposed on *the jarimah ta'zir* where the meaning of *ta'zir* itself is to leave the decision of punishment completely to the judge himself (Sari, 2019).

II. METHODS

In this legal research, the method that will be applied is to use the type of *Normative Juridical* research where the focus and discussion in this research is motivated by various reference points such as laws or judges' decisions and making Islamic law such as the Qur'an and hadith as well as the *ijtima'* of the scholars in resolving this problem. The type of research method used in this scientific work uses a normative juridical method, namely by collecting various reading materials in the form of the criminal code using article 263 contained in the criminal code and collecting data from various reading materials related to the application of *fiqh jinayah* in resolving penalties for perpetrators of document forgery.

III. RESULT AND DISCUSSION

1. Positive Legal Arrangements Against Forgery of Death Certificates

Crime is an act that prohibited to be committed which will cause harm to others and can even seize other people's rights by force. Crime that result in harm to others are a criminal offense in which the actions and penalties have been regulated by law. (Laminating, 2018). Crime has many types of motives, one of which is falsification of important documents, crime with this mode basically the perpetrator changes the authenticity or even falsifies the entire story or facts in the document and makes it look like the document contains the truth.

Document forgery is a criminal offense that can be committed by individually or even working together where the authenticity of document has been arranged or even changed by the perpetrator for profit. The law as a legal product designed by the government aims to prevent things like this from happening in the community, so that people can be careful not to become victims. Therefore, notification or socialization of the law needs to be done to the community to prevent this crime. (Sukaryati, 2022)

The application of punishment to criminals is basically one of the government's efforts to reduce the number of crimes, therefore the law regulates this along with the sanctions. Laws that are legal products in a country are the government's efforts to control, limit and prevent the occurrence of these crimes, where the provisions of these rules have been regulated in the positive law book called the criminal code.

Poverty, lack of education, job that is difficult to get are factors that will lead to criminal acts including crimes in the form of falsification of this document, in addition to personal and instant profit to generate profits that can be a driving force for someone to commit a crime. In the case of forgery of letters or documents in the law has been regulated in article 263 of the criminal code in which it is explained that.

1. Whoever makes a false letter or forges a letter that can issue a right an agreement (obligation) or a debt exemption or which can be used as information for an act with the intention of using or instructing others to use the letter as if the letter is valid and not forged then it is used it can bring some loss punished for forgery of the letter with a maximum sentence of 6 years.
2. With a similar punishment for whoever deliberately uses a fake or forged letter as if the letter is genuine and not forged, if the use of the letter can bring a loss. (Indonesia, 2022)

The Criminal Code (KUHP) has regulated the crime of letter forgery into several criteria, namely:

- Perjury
- Counterfeiting of currency, State banknotes and bank banknotes
- Counterfeiting of stamps and stamps/trademarks
- Forgery of letters
- False reports and false complaints

In positive law in Indonesia, all crimes related to the forgery of death certificates have basically been regulated and written in a criminal code, namely in chapter XII book II of the Criminal Code which can be used as a basis for criminalizing perpetrators who commit acts of falsifying death certificates through article 263 of the Criminal Code.

In article 263 of the Criminal Code, it is explained that the act of forging a letter contains 2 criminal elements in it which have been described in paragraphs 1 and 2. Based on the element of letter forgery contained in paragraph 1, it explains the criteria for all types of actions in making fake letters and forging letters. Meanwhile, the use in paragraph 2 explains that a person is punished if he uses a fake letter or uses a forged letter. Although the two forms of criminal acts are interconnected, each element has its differences. The difference in these 2 articles is in the *delicti* (when it occurs) and *the locus delicti* (place or location) of the criminal act.

In article 263 there are 2 crimes formulated in paragraphs 1 and 2 which in paragraphs 1 and 2 formulate related to the following elements. (Theo, 2019). When viewed from the objective, the elements in articles 1 and 2 are:

- a. Based on his actions:
 1. Contains lies
 2. Fabricate
- b. By Object:
 1. Letters that may give rise to rights
 2. Letters that can give rise to a bond
 3. Letters that may give rise to an exemption from liability
 4. A letter that can be provided as evidence of a thing
- c. The use of the letter can cause losses from the use of the fake letter

Meanwhile, based on the subjective element, using or instructing others to use documents or letters that are not proven to be true but are given to others to be used as if the contents of the documents or letters are true and in accordance with reality.

According to the kartanegara satchoid, there is a difference between making a fake letter and divining is:

1. In the making of a fake letter, initially there was not a single letter, but after the letter was completed, the content of the letter would be contrary to reality itself.
2. At the time of committing the act of forgery, initially there was a letter that contained truth, but then the content of the letter was changed in such a way that the content of the fake letter was not in accordance with the truth.
3. In making a letter, basically the letter is made to obtain a right or bond between the writer of the letter and another person or can also be used as evidence of certain problems or statements, in the context of a death certificate can be used as evidence or statement of a person who has passed away in order to be free from debt and family responsibility in paying it or the existence of an engagement between certain people, whether the perpetrator is alone with another person or another person with another person or a letter made as evidence related to this matter is an element of objective elements that are of the nature of the letter itself that can cause benefits or proof of a certain thing. Based on this, there is a loophole for the perpetrators of the crime of letter forgery as a tool to obtain profits as referred to in article 263 of the Criminal Code.
4. The element in the category of forgery of this letter refers to the element of intentionality of the perpetrator where the perpetrator himself knows the consequences of the crime he committed and the consequences of his actions themselves, where the consequence is the criminal sanction itself.
5. In the element of using or giving others to use the fake letter, which if the perpetrator uses it himself even though the content of the letter is known to him to be untrue, but it is still used for personal or group interests, or giving the fake letter to another person who even the person does not know whether it is fake or genuine related to the truth, then this element can be said to be a forgery offense based on the formality.
6. If the use of the letter causes potential losses, or provides undue benefits, causes a release of rights and obligations related to debts or is used as a tool of evidence it can be concluded that the use of the letter has caused material, financial, or loss that has economic value in it.

In the context of material criminal law, an expert named G A Van Hamel said that criminal law is the basic principle of a rule adopted by the State in maintaining legal order, namely by prohibiting anything that is not in line with the legal system and imposing a sanction or punishment for those who violate the prohibition (Faramis, 2019).

In committing the act of forging a letter there is an element of intentionality in it, which can be interpreted that the purpose of using and making a fake letter itself is for his personal gain alone or to make it for use by other people. In its use, the government itself has regulated it in the Criminal Code in articles 263 to 267. An intentionality in a criminal act is said that Peak Tela realizes and consciously realizes that what he has done is a crime that violates the law and there is a sanction for him if he violates it.

According to Moeljatno, for a criminal act, the criminal element in the crime must be fulfilled

- 1) The existence of a criminal act
- 2) The fulfillment of the criminal element element in the crime is committed.
- 3) The act is against the law (Fuad, 2018)

Based on the category, the act of letter forgery has several elements of criminal acts in it, including:

1. Intentionality
2. Culpa
3. Criminal liability

These three things are subjective elements of criminal requirements for the perpetrators of forgery of letters/documents if we follow the group that includes the element of error in a broad sense into the definition of a delik (*Stafbaar Feit*) as a subjective element of a delik (Hamzah, 2017). Based on the explanation of the elements above, it means that the crime of forging this letter must meet these three elements because the perpetrator realizes that his act is an unlawful act that even has an impact not only on one person but on many people because forging a letter can be in the form of an insurance letter, information on birth

certificates, death certificates and even death certificates which can be used as a tool to obtain personal benefits instantly.

A. Motives for Counterfeiting Crimes

Basically, every crime has a causal factor. In the crime of forgery of the letter itself, the factor behind the crime is large because of the increasingly suffocating economic pressure so that a situation like this makes the perpetrator no longer think about the risks of his own actions.

Based on the results of the research that has been carried out by the author, there are several factors that at this time can encourage people to commit a crime in the form of forgery of death certificates, the most important of which is to obtain a profit that can be quickly and instantly made just by using a fake letter, economic needs are also not spared from the factors behind the occurrence of the crime, Based on its coordinates, menusia are social creatures whose lifestyle is social as advocated by Aris Toteles (Imansyah, 2013) As an individual being, humans cannot meet all their needs easily, therefore in order to achieve all their desires, Manasi is taught to try harder to achieve it, but not everyone wants to go through this, there are even those who do instant ways that even violate laws and rules in order to achieve a great profit and with a short process.

The crime of forging a letter in terms of forging a death certificate which is the focus and especially in the discussion of this research is the most often used method by perpetrators of crimes in order to reap the benefits of men and groups, there are several advantages that can be obtained from forging death certificates, namely:

1. Claiming life insurance

Life insurance is a service used by most people as a form of protection against unexpected situations or circumstances and adds a financial loss or loss of income to a person due to a death which is usually a backdrop for his family. Basically, insurance funds that can be disbursed through various insurance parties but the nominal amount is not small so that the benefits that can be obtained from life insurance are very profitable, a lucrative profit fund that makes people can become criminals by falsifying documents and death certificates of relatives or family members who have life insurance.

2. Doing a new wedding

In marriage, there are the pillars of marriage that must be fulfilled, namely there is a prospective husband and a prospective wife, there is a marriage guardian, there are witnesses and ijab qabul, then based on the pillars of diattas, if it is understood, it will be considered valid based on religion. For most people, marriage is a once-in-a-lifetime moment, but there are also those who think that marriage can be done more than 1 time on the condition that the first wife does not know. Therefore, there are many ways to be able to do this, one of which is to fake the death of a partner to be able to marry another woman. By making a death certificate for the first wife with widower status, the perpetrator can legally and legally remarry even though his first wife is still alive.

The above statement is reinforced by several cases that will be discussed in this study based on crimes that are currently occurring. Falsifying death certificates in their fields is used by perpetrators to obtain the profits they want and usually this crime is carried out jointly by making a profit-sharing agreement to certain parties or even carried out by individuals only, there are several examples of cases that occur at this time and will be discussed by the author in this research among others:

1. Insurance Claims

In 2021, precisely on December 28 at a BPJS office on Jl Tumanurung Raya Yasmin Sqyare No.13 Kel, Sungguminasa Kec. KK, and a certificate from the village head of Pao. Then, the victim gave his account number as a transaction for the disbursement of the insurance. So that the funds obtained by RONAL EFENDI AMOUNTED TO 42,000,000 which were then withdrawn by RONAL EFENDI in the amount of 500,000 to be given to his friend named Suardi. BPJS was suspicious of the sura attached by RONAL EFENDI and then reconfirmed the authenticity of the letter and found that SAMSINAR amsih was still alive so that BPJS reported the matter to the police and was finally arrested. Based

on the decision of the Sungguminasa District Court no. 108/Pid.B/2022/PN.Sgm, the perpetrator on behalf of RONAL EFENDI was ENSNARED WITH PASL 263 of the Criminal Code paragraph 2 with a penalty of imprisonment for 2 years. Based on the judge's decision, it can be concluded that there is a motive behind the perpetrator committing the crime of forging the death certificate, namely the existence of an element of intention to disburse BPJS SAMSINAR insurance funds.

2. New Marriage

In this case, the perpetrator named Suraji, 56 years old, forged a death certificate together with the head of the Religious Affairs Office (KUA) which is located in Petang District, Badung Regency, Bali with the intention of helping Suraji to be able to have a new marriage with a woman named Hernanik who at that time Suraji's wife, Suartini, 54 years old, was still alive and healthy. Suraji together with the Head of the Religious Affairs Office named Abdul Munir forged the management file in the marriage requirements at KUA, in August 2019 Suraji and Abdul Munir made a statement related to death and forged a letter of antian on behalf of Suartini as Suraji's wife, not only that Suraji and Abdul Munir also forged an Identity Card (KTP) in the name of Suartini and a Family Card (KK) based on the assistance provided by Abdul Munir to Suraji he received money of 1,500,000. Based on the actions of the two perpetrators, Suartini experienced a mental and psychological shock to her who at that time was still alive, then Suartini reported the incident to the police station. Based on the actions of Suraji and Abdul Munir, they were ensnared under articles 263 of the Criminal Code and 264 of the Criminal Code with a maximum threat of imprisonment for eight years in prison.

Based on the description of the problem taken as an example in the explanation above, it can be concluded that the crime of forging a letter, especially in the forgery of a death certificate, can cause various profits that can be generated according to the wishes of the perpetrator himself. Based on the profits generated from the act of forging the death certificate, it became the motive of the perpetrator himself to do it. At this time, crime is not only what is visible in front of the eyes, crime at this time is not even visible anymore, we can see it again with the naked eye because many modes of crime are camouflaged with a development.

B. Forgery of Death Certificates in the View of Islamic Criminal Law

Crime is basically an act that will certainly cause other people as victims. In Islam all the actions and behavior of the people have been taught and exemplified by the prophet Muhammad SAW in the science of fiqh and also the Quran. Fiqh is a law based on the Qur'an and hadith which is the guidance of the holy book of Muslims which contains goodness and benefit for human life both in the world and in the hereafter. In fiqh, crime is an act that intrudes, takes away and harms the rights of fellow human beings.

In Islamic law, there are two terms that are often used in the application of criminal acts, namely *jinayah* and *jarimah*. What is meant in it is that there is a prohibition in the form of doing the ordered act and abandoning the prohibited act. (Santoso, 2010) So that everything that leads to punishment determined by the sharia is a crime. From this definition, it means that no good deed is actively or passively counted as a crime except for a specific punishment for the act that has been determined by the Shari'a

It can be said that the legal provisions used by the *jurists* are sourced from the Qur'an and Hadith. Counterfeiting of script in the language is called *Tazyiif*, while in its sense it is a forgery in Islamic law included in the category of deception. (Wardi, 2008) Where deception itself is an act or word that shows untruth (lying, false) with the intention of misleading, outsmarting, or seeking profit from the deed, deception is a subtle crime with a person's attempt to trust others with cunning intellect or a strategy of mangiming something to gain profit so that the person believes what the perpetrator says.

Forgery is an act committed by a person to gain a profit from a despicable act, namely dishonesty and is an act of fraud. According to Islam, the act of deceiving or committing deception is also called *Al-makr*, based on the definition that has been described above, there is actually no law in Islamic law that regulates specifically the perpetrators of forging letters or documents, but criminal acts committed by forging a letter or document with the aim of

obtaining personal benefits and legal provisions according to Islamic criminal law are categorized as The punishment of *Ta'zir* as taught by Umar bin Khattab against Mua'an ibn Zaidah who at that time forged the temple of Baitul al mal which at that time the punishment set by Umar bin Khattab was the punishment of *Ta'zir* where the punishment of *Ta'zir* itself was a rule that had been set by the Shari'ah and then violated, then the provisions of the punishment given to the violators of the Shari'a rules were given completely to the ruler of the territory which at this time we call the judge in a trial, so that the legal provisions for the perpetrators of forging letters or documents are based on the conclusions and provisions of the judge on the considerations that have been made.

Islam prohibits all kinds of acts of fraud, forgery and lies including the act of forging letters, because these acts are wrongful acts said in a narration of the Prophet (peace and blessings of Allaah be upon him) once traveled and passed by food sellers, then he put his hand into the merchandise. It turned out that in the merchandise the Prophet found a food that was wet and no longer suitable for consumption, narrated through Imam Muslim Abu Hurairah which read:

" from Abu Hurairah RA, that the Prophet PBUH once walked past a pile of food to be sold, then he put his hand in the pile, then unexpectedly before his finger touched the wet food while asking the trader "why is this food wet" the trader then said that it may be wet because of the rain of the Prophet (peace and blessings of Allaah be upon him). Then the Prophet asked him again. Why don't you put this wet thing on top so that others will know about it? The Messenger of Allah then said, whoever cheats, makai a is not one of my people (HR Imam Muslim)

In the Qur'an itself, Allah hates those who commit deceitful deeds in their words and deeds in order to gain profit for themselves, as Allah says in the Qur'an surah Al-ankabut verse 68 which reads:

وَمَنْ أَظْلَمُ مِمَّنِ افْتَرَىٰ عَلَى اللَّهِ كَذِبًا أَوْ كَذَّبَ بِالْحَقِّ لَمَّا جَاءَهُ أَلَيْسَ فِي جَهَنَّمَ مَثْوًى لِّلْكَافِرِينَ

And who is more unjust than those who falsely commit to Allah or deny the right when it comes to him? Isn't there a place in Hell for disbelievers?

Basically, the punishment regulated by Islam for the perpetrator of forging a death certificate is called the *Ta'zir* punishment which in the application of the *Ta'zir* punishment; *zir* is divided into several legal sanctions, namely

1. Capital punishment

Basically, the death penalty is used for perpetrators who commit crimes such as murder or insulting the prophet, but according to madhhab Maliki, the death penalty is allowed as the highest sanction of *ta'zir*, such as sanctions for people who do damage to the earth. (Saebani, 2013)

2. Prison

According to the language, it is called *Al habsu* which means to hold. The intention is to detain someone from committing legal acts, whether detained at home, mosque or in other places. Which was once applied by the Prophet and Abu Bakr. Prison sentences are categorized in 2 things, namely limited prison and indefinite prison. Limited imprisonment is a punishment whose time has been clearly determined, where this punishment is based on a crime for the perpetrator of *Khamar*, *riba* or false witness. Indefinite imprisonment is a punishment whose term does not have a certain time limit that lasts until the perpetrator is sentenced to death or at least until he repents. The criteria for this indefinite prison are for perpetrators of very serious crimes, for example, such as murder.

3. Punishment of exile

Basically, the provisions of this exile punishment are intended for the perpetrators of *huddud jarimah*, but the scholars agree that applying this exile punishment can be given to the perpetrators of *ta'zir jarimah* such as forging the Baitul mal temple, or even forging Qur'anic verses. This punishment of exile is given to the perpetrator of *jarimah* who is feared to affect others so that the perpetrator must be exiled to avoid the act from happening again in the community (Masyrofa, 2020).

Criminal acts simply refer to the perpetrators both actively and passively, while whether the perpetrator when committing a criminal act is reprehensible or has a fault, is not the

territory of the criminal act itself, but has entered into criminal responsibility because the evidence is only a tool to prove the truth in the crime (Mahrus, 2011). Evidence itself is a provision that has been regulated in formal law as proof in trial, it can be concluded that all provisions outside the trial cannot be used as evidence.

In the trial evidence in the case of forgery of letters or documents of the existence of the letter used or forged letter is an evidence in the trial that will show the actual incident in a problem, based on a piece of letter as evidence, it can be known what elements of violation have been committed by the perpetrator and will be able to determine whether the act was carried out jointly or only individually. So that the letter can be said to be written evidence that contains all the signs of reading that can be understood and contains certain elements in determining a problem.

IV. CONCLUSION

All types of criminal acts related to the benefit and security of the community have been regulated in the law itself. Literally, the conclusion based on the discussion that has been described above related to all types of crimes in the forgery of letters / documents has basically been regulated by the state in articles 263 to 267 of the Criminal Code and based on Islamic law the act of forging letters / documents is categorized as a crime of jealousy with sanctions given in the form of ta'zir punishment where this type of punishment is given to the ruler to determine what kind of sanction will be Given. However, we can see that currently in the Middle of our society we still encounter all kinds of crimes that occur and even as if they are not afraid of the law, where various forms of letters, both used in education, health and possession, can all be forged. In fact, the act of forgery is carried out deliberately which can be interpreted as a person who uses or makes him aware of the consequences and prohibitions but still violates the regulation. So, we can conclude that the law at this time does not have a fearful effect on our people.

The view of the poverty rate can be used as an effort to prevent the crime from happening again. As we know that the economy and living necessities such as clothing and food are factors that encourage people to commit crimes so as to ignore the consequences and criminal threats of the crimes they commit. The author's high hope for the government to pay more attention to every regulation related to the crime of letter forgery at this time is due to the fact that there is a void in public understanding of this crime of letter forgery, which may even be a part of the victim who could use fake letters made by others without knowing it himself. And take firm action against perpetrators who deliberately use or make fake letters and the wrong state apparatus devices in using their positions and instead cooperate to help or even make fake letters. Law enforcement in Indonesia should be carried out firmly, for the sake of achieving the vision and mission of the making of the rules so that the government must pay more attention to the causes and consequences that can be caused in all types of crimes in Indonesia at this time, especially in the crime of forging death certificates. So that the rules and regulations made can have a deterrent effect and fear the perpetrators of the crime of forging letters so that no one is harmed anymore

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