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**CRIMINAL LIABILITY FOR DEBTORS WHO PROVIDES FAKE  
LETTER TO CREDITORS TO GET CREDIT**

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**Abstract**

The issue described in this study is about which letters can be an objects of falsified by debtors to get credit from creditor and how is the debtors accountability for providing fake letters to creditors. The method used in this research is normative, which is emphasizes the gap in norms that occur, this normative analysis mainly using library materials and laws and regulations as the source of research material. The results shows that there are several letters that can be falsified, such as: Letter of Assignment, ID, Family Card, Pay Slip. The purpose is to show that the letter seems to come from someone other than the author (perpetrator) so it is called material forgery (material valsheid), the origin of the letter is fake. Then, the act of falsifying a letter is carried out by making unauthorized changes (without the rightful permission) in a letter or writing, regarding the signature or the contents. Criminal liability for debtors who provide fake letters to creditors is leading to criminal prosecution of the perpetrators, if they have violated the provisions of Article 263 of the Criminal Code and fulfill the elements of Article 263 of the Criminal Code and the ability to be responsible is an element of error, therefore to prove the element of error, then the element of responsibility must also be proven, however, to prove the existence of an element of accountability is very difficult and requires time and money, so in practice it is used that everyone is considered capable of being responsible unless there are signs that indicate otherwise.

**Keywords:** Creditor, Debtor, Fake Letter, Liability

**I. INTRODUCTION**

Banking as a financial institution has a very strategic role in economic activities through its business activities to collect public funds and channel financing for productive and consumptive businesses, as well as to determine the direction for the formulation of government policies in the monetary and financial sector in supporting the stability of national development, especially for can be a safe place to store funds, a place that is expected to carry out financing activities for the smooth running of the business and trade world.

The presence of banks as providers of financial services cannot be separated from the community's need to apply for loans or financing from banks. Financing is a term that is often equated with debt or loans whose repayments are carried out in installments. This shows that a person's efforts to meet funding or financial needs can be reached by making loans or financing to banks. Every banking activity must comply with the principles of banking compliance, namely all banking activities that are legally regulated in Law Number 10 of 1998 concerning Banking, and include carrying out banking

principles (prudent banking) by using legal signs in the form of safe and sound . The legal activities of the bank and in general are the withdrawal of public funds.

System for reporting debtor credit conditions from banks and other financial institutions. This information is reported periodically on the 12th of each month. The Debtor Information System can be accessed by other banks or other financial institutions with an online system. When a debtor submits an application for provision of funds or provision of credit at a financial institution, the bank will look at the debtor's information system for an assessment. The assessment is about whether the debtor is eligible to receive funds or credit financing from the financial institution concerned. Debtors who have a bad loan history in a financial institution (in this study the financial institution in question is a bank), then the bank where the debtor applies for credit will know it and refuse the debtor's credit financing application.

In general, crimes in the banking sector are crimes classified in the laws and regulations in the field of administrative law which contain criminal sanctions (Kansil, 1989). The term crime in the banking sector is to accommodate all types of unlawful acts related to activities in running a bank business, while the term criminal offense in the banking sector indicates that a crime committed in carrying out its functions and business as a bank can be categorized as a crime (Lamintang & Theo, 2009). economic crime. Crime in the banking sector is a form of economic crime that is often carried out by using banks as targets and means of activity in a mode that is very difficult to monitor or prove based on banking laws.

One of the modus operandi of banking crimes is forcing banks or affiliated parties to provide information that must be kept confidential, not providing information that must be fulfilled to Bank Indonesia or to State Investigators, receiving, requesting, permitting, agreeing to receive compensation, additional money, commission services, money or valuables for personal use in order for other people to get credit, down payment, credit priority or other people's approval to violate the maximum credit limit (LLL). One of the modes of crime from debtors to creditors is to obtain credit from a bank by using fake, fictitious documents or collateral, misuse of credit, obtaining credit repeatedly with the same object as collateral, ordering, eliminating, erasing,

Article 263 Paragraph (1) of the Criminal Code states that whoever makes a forged letter or falsifies a letter that can give rise to a right, engagement or debt relief, or which is intended as evidence of something with the intention of using or ordering other people to use the letter as if the contents are true. and is not counterfeit, is threatened if the use can cause harm, due to falsification of the letter, with a maximum imprisonment of six years. Article 263 Paragraph (2) of the Criminal Code states that they are threatened with the same punishment, whoever intentionally uses a forged or falsified document as if it were genuine, if the use of the letter can cause harm.

Fraud mode is also one of the ways often used by debtors to take advantage of debtors (Chazawi, 2008). Article 378 of the Criminal Code states that anyone with the intention of benefiting himself or another person against the law, by using a false name or false dignity, by deceit or by a series of lies moves another person to hand over an object to him, or to give a debt or write off a debt, is threatened with for fraud with a maximum penalty of 4 (four) years. The alternate method, sometimes called mesne process, protected the creditor against fraud (Coleman, 1999).

Every perpetrator of a banking crime must be held accountable for his actions before the applicable law. Criminal punishment is basically a negative reward for deviant behavior committed by members of the community so that this view sees punishment only as retaliation for mistakes made on the basis of their respective moral responsibilities. imposed the sentence. On the one hand, punishment is intended to improve the attitude or behavior of the convict and on the other hand, the punishment is also intended to prevent other people from committing similar acts.

## II. RESEARCH METHOD

The type of legal research used is normative, namely research that emphasizes the norm gap that occurs, this normative analysis mainly uses library materials and legislation as a source of research material.. The approach used in this research is the statutory approach. The approach to legislation is an approach using

legislation and regulations. In this research, the legislative approach is carried out by reviewing the Criminal Code (KUHP). In this study there are legal materials consisting of: 1) Primary legal materials include: the 1945 Constitution of the Republic of Indonesia, and the Criminal Code (KUHP), 2) Secondary legal materials include: books or literature, research results obtained from interviews with authorized parties who can support writing, and works from legal circles as well as articles obtained through print or electronic media related to the issues raised.

To analyze the legal materials that have been collected, several analytical techniques are used, namely: 1) Description technique, by using this technique the researcher describes as it is against a condition or position and legal or non-legal propositions, 2) Interpretation techniques in the form of the use of types of interpretation in legal science such as analogies and grammatical interpretations, 3) Evaluation techniques are assessments in the form of correct or incorrect, agree or disagree, true or false, valid or invalid by researchers on a statement of formulation of norms, decisions, whether listed in the primary and secondary legal materials, and 4) Argumentation techniques in the form of statements originating from the author's thoughts or analysis which are outlined in written form.

### III. RESULTS AND DISCUSSION

#### 1. Letters that can be objects to be falsified given by the debtor to the creditor to get credit

According to [Kansil \(2009:39\)](#) law is a rule that lives in society which the community must obey and carry out. The legal elements themselves according to Indonesian legal scholars are: regulations regarding human behavior in social interactions, regulations are enforced by authorized official bodies, regulations are coercive, sanctions for violations of these regulations are firm. Law enforcement is part of the demands of the people who want a legal reform, for that it is very necessary to increase awareness of the rights and obligations of every citizen in an effort to achieve the goals of the state itself.

The main source of criminal law is the Criminal Code (KUHP), which consists of 3 books ([Soesilo, 2013](#)). Book I contains general rules of criminal law, Book II on criminal acts and Book III on criminal offenses. As explained in *Memorie van Toelichting (MvT)*, the distinction and grouping of criminal acts into crimes (*misdrifven*) and offenses (*overtredingen*) is based on the premise that:

1. In fact, in society, there are a number of actions which basically contain forbidden (against the law) nature, for which the maker deserves to be punished even though sometimes such acts are not stated in the law.
2. The new acts have a prohibited nature and the maker is threatened with a crime after the act is stated in the law ([Chazawi, 2008:20](#)).

Such thinking is reflected in the terms *rechtsdelicten* for crimes as intended first and *wetdelicten* to refer to violations as intended second, which is in fact a crime in the form of a crime that is more serious than a violation. It is clear that for crimes basically the forbidden or disgraceful nature of the act lies with the community, while for violations it is because it is contained in the Act.

The crimes contained in Book II are classified into certain forms, which are basically based on the legal interests that are violated/dangerous by the act. Many legal interests in society are protected by law, which in essence can be grouped into 3 major groups, namely: individual legal interests, community legal interests and state legal interests.

The three (3) legal interest groups, although they can be distinguished, sometimes a legal interest can be included in more than one legal interest group. As in the crime of forging a letter (a certificate of completion of school). Violation of the legal interest in trusting the diploma and the use of the diploma as a means to nominate a representative of the people, not only in the form of a violation/attack against the legal interests of the community but also against the legal interests of the State.

The crime of counterfeiting or abbreviated as the crime of counterfeiting is a crime in which it contains an element of untruth or falsehood of something (object), which thing appears from the outside as if it were true when in fact it is contrary to the truth. The crimes of counterfeiting contained in Book II of the Criminal Code are grouped into 4 groups, namely: crimes of perjury (Chapter IX), crimes of

counterfeiting money (Chapter X), crimes of counterfeiting materials & brands (Chapter XI), crimes of letter counterfeiting (Chapter XII).

The classification is based on the object of counterfeiting, which if further detailed there are 6 objects of crime, namely (1) information on oath, (2) currency, (3) banknotes, (4) stamp duty, (5) brand, and (6) letter. The establishment of this regulation regarding the crime of counterfeiting is basically aimed at legal protection of public trust in the truth of something: information on oath, on money as a means of payment, stamp duty, brand, and documents. Because of the public's legal need for trust in the truth of these objects, the law stipulates that this belief must be protected by including the act of attacking it as a prohibition accompanied by a criminal threat.

A letter cannot give rise to a right, but a right arises because of an agreement that has been placed in the letter or proven by a letter. Actually, the legal consequences must first be linked to legal actions rather than directly linked to letters. The terms rights, engagement/agreement and discussion are legal terms that have a broader meaning found in everyday life. However, there is a type of letter that immediately gives rise to rights, namely formal letters, such as money orders, checks, giro-bilyets.

Any notification or statement that is not true in writing cannot be considered as a forgery of letters. Only notices or statements that can lead to legal consequences that are intended to be used by the perpetrators are punishable acts, if they can cause harm. It can also be said, that every normal person will believe it and will and will be deceived by it. The types of these letters are letters of sale and purchase agreements, letters of borrowing money, letters of work chartering, letters of lease - renting. All of these are letters that cause legal consequences, namely the emergence of rights and obligations, which letters can give rise to a right, engagement or release of debt.

Investigators' efforts in uncovering the crime of forgery of letters must first be seen/checked whether the contents of the letter are true or not, then the agency that issued it is true or not, and look at the requirements for obtaining the letter, whether it is in accordance with the procedure or not. In this examination, investigators usually have to coordinate with the relevant agencies. In the letter contained a certain meaning or meaning of a thought, the truth of which must be protected. The crime of counterfeiting this letter is aimed at protecting the law against public trust in the truth of the contents of the letters.

Making a fake letter is compiling a letter or writing in its entirety. This letter exists because it was faked. This letter has the aim of showing that the letter seems to come from someone other than the author (the perpetrator). This is called material counterfeiting (material valsheid). The origin of the letter is fake. The act of falsifying a letter is carried out by making unauthorized changes (without the rightful permission) in a letter or writing, which changes can involve the signature or the contents. It doesn't matter, that this was previously something that wasn't true or something that was true; change of content that is not true to true is a forgery of the letter.

The crime of forgery of letters was formed with the aim of protecting the interests of public law regarding trust in the truth of the contents of 4 kinds of letter objects, namely:

1. a letter giving rise to a right;
2. a letter issuing an engagement;
3. a letter giving rise to debt relief, and
4. a letter made to prove a certain thing/condition.

Based on the above, there are actions that are prohibited against the 4 kinds of letters, namely making fake letters (valschelijk opmaken) and forging (vervalsen).

Making fake letters or forging letters, whether made by handwriting, printing, or using a typewriter. A falsified letter issues a right, an agreement or debt relief or which may be used as a statement for an action. In order to be able to say that someone falsified a letter according to Article 263 of the Criminal Code, there must be an intention to use or order someone else to use the fake letter as if the letter was genuine (not fake).

The letter must have the character of being used as proof of an event. There are restrictions on this nature, namely based on its nature it must have the power of proof. Provisions intended for proof must result in the strength of proof, the results of the strength of proof which must be based on a power/authority that can give strength of proof to certain types of documents. In this case, it is not only limited to the power of proof before a judge, but also the power of proof based on administrative regulations among government services. In this case, it does not include people who personally have the authority to make a letter intended for proof of an act, making a letter that can be punished. On the other hand, it can also be interpreted that as an understanding based on law, a letter is intended for proof of an act, it is acceptable to accept a letter which by its nature is intended for evidence. Such a letter cannot be determined by everyone who composes it or uses it.

Intentionally using a forged or forged letter is a crime that stands alone in addition to the crime of forging itself. In order to be able to declare someone guilty of using such a letter, it is not necessary that the act of making the letter results in a forgery which makes the perpetrator liable to a criminal sentence, but it is sufficient if at the time the document was used it was fake, and the perpetrator was aware of this. It is clear that in order to be seen as using a forged or forged letter, the perpetrator needs to have used the letter to deceive other people.

The use of forged or falsified documents must be able to bring about losses in the sense that there is no need for the losses to actually exist, it is only possible that there will be losses, which is interpreted as losses here not only include material losses, but also losses. in the field of society, decency, honor, etc. What is meant by letter in this case, apart from a handwritten letter, typewriter or printing machine, also includes a copy or photocopy of the letter.

Furthermore, if this letter is linked as evidence in a criminal case, it can be stated that the only article that regulates the evidence for this letter is Article 187 of the Criminal Procedure Code which consists of the following paragraphs:

- a. Minutes and other letters in an official form made by an authorized public official or made before him, containing information about events or circumstances that he heard, saw or experienced himself, accompanied by clear and unequivocal reasons for the information.
- b. Letters made according to statutory provisions or letters made by officials regarding matters included in the management for which they are responsible and which are intended to prove something or a situation.
- c. A certificate from an expert containing an opinion based on his expertise regarding a matter or condition that is officially requested from him.
- d. Another letter that can apply if it has something to do with the content and other evidence.

For this reason, in the case of a forged letter, the object that the debtor can falsify to the creditor is only to obtain credit, not only the contents of the letter, but also the signature of the person needed under the letter, whether it is done by hand or by using a signature stamp. , as well as the affixing of a photo of another person from the rightful holder in a letter, even parts that are inseparable from a letter, for example attachments to the letter, even though those parts are not the contents of the letter in question.

## **2. Criminal Liability for Debtors Who Provide False Letters to Creditors**

The disgraceful act by the community is held accountable to the person who made it. This means that an objective reproach for the act is then forwarded to the defendant. The next question is whether the defendant is also blamed for the act, why is the objectively reprehensible act, subjectively accountable to him, therefore the act is on the maker.

Definition of Accountability A person who commits a criminal act may only be punished if the perpetrator is able to account for the actions he has committed, the issue of accountability is closely related to errors, because of the principle of responsibility which states firmly "Not convicted without any mistakes" to determine whether a person is a criminal. can be held accountable in criminal law, it will be seen whether the person at the time of committing a crime had an error. Criminal responsibility or in foreign terms is called teorekenbaarheid or criminal responsibility which leads to the punishment of a person with the aim of determining the ability to be held criminally responsible for a criminal act

committed. To be able to be convicted, a person must fulfill the elements of the offense that have been determined by law and in terms of his actions there is no justification or excuse for forgiveness and the ability to be responsible for his actions. In the criminal law doctrine, a person can be held accountable if he fulfills three (3) elements, namely:

1. able to be responsible,
2. There is a mistake
3. There is no justification or excuse for forgiveness.

Doctrinally, an error is defined as a certain psychological state of a person who commits a criminal act and there is a relationship between the error and the act committed in such a way that the person can be reproached for committing a criminal act. Criminal liability leads to the punishment of the perpetrator, if he has committed a criminal act and fulfills the elements that have committed a crime and fulfills the elements that have been determined by law. Judging from the occurrence of a prohibited act, he will be held accountable if the act violates the law. From the point of view of the ability to be responsible, only people who are able to be responsible can be held accountable.

a. The State of His Soul;

1. Not disturbed by continuous or temporary illness
2. Not disabled in growth (stupid, idiot, crazy and so on)
3. Undisturbed by surprise (hypnotism, temper tantrums, etc.)

b. His Soul Ability;

1. Can realize the essence of his actions
2. Can determine his will for the action, whether it is carried out or not
3. Can find out the faults of the action.

In addition, doctrinaires to determine the ability to be responsible must have two things, namely the ability to distinguish between good and bad actions, those that are in accordance with the law and those that are contrary to rights. The existence of the ability to determine his will according to his conviction about the good and bad deeds he did. Meanwhile, regarding the issue of accountability, the Criminal Code does not provide any limitations. The Criminal Code only formulates it negatively, that is, it requires when a person is considered unable to account for the actions taken.

Criminal liability after committing a crime and fulfilling the elements that have been determined by law. It is said that someone is capable of being responsible (toerekeningsvatbaar), including:

Mental state:

- a. Not bothered by continuous or temporary illness.
- b. No defects in growth (stupid, idiot, etc.)
- c. not disturbed by surprise, hypnotism, anger overflowing, subconscious influence/reflexe beweging, melindur/slaapwandel, shivering due to fever/koorts, nyida and so on. In other words he was in a conscious state.

Based on the formulation of Article 44 paragraph (1) of the Criminal Code, a person cannot be held accountable for an act for two reasons, namely:

1. His soul is flawed in his growth
2. His soul is disturbed because of illness

The criminal law doctrine states that an error is considered to exist if, with or due to negligence, has committed an act or has not done something that causes conditions or consequences that are prohibited by criminal law and is carried out responsibly.

1) Intentional is divided into three types, among others:

- a. Deliberately as an intention (oogmerk)
- b. Deliberately aware of certainty or necessity (zekerheidsbewustzji)
- c. Deliberately aware of the possibility (dolus eventualis, mogelijkeheidsbewustzjin)

2) Negligence is divided into two, among others:

- a. Serious negligence (culpa lata)
- b. Mild neglect (culpa levis)

#### A. Deliberate (Dolus)

Most criminal acts that have an element of intent or opzet are not elements of negligence or culpa. This intentionality must involve three criminal elements, namely: 1st: the prohibited act, 2nd: the consequences that are the main reason for the prohibition, 3rd: The act violates the law. Intentions are divided into three types, among others:

a) Deliberately as an intention (oogmerk):

Intentional as an intention or intent is the realization of the offense which is the goal of the perpetrator.

b) Deliberately aware of certainty or necessity (zekerheidsbewustzijn):

Deliberately aware of certainty is the realization of the offense is not the goal of the perpetrator, but is an absolute requirement before/when/after the goal of the perpetrator is achieved.

c) Deliberately aware of the possibility (dolus eventualis, mogelijkheidbewustzijn):

Deliberately aware of the possibility of realizing the offense is not the goal of the perpetrator, but is a condition that may arise before/when/after the goal of the perpetrator is achieved.

#### B. Negligence (culpa)

Negligence is a form of error that arises because the perpetrator does not meet the standards that have been determined by law, the omission or negligence occurs because of the person's behavior.

There are two kinds of negligence (culpa) known in criminal law, namely culpa lata and culpa levis. Only culpa lata is a requirement for an offense letter. Culpa lata can be divided into realized culpa (bewuste schuld) and culpa that is not realized (onbewuste schuld).

In the culpa that is not realized in this case, the perpetrator does not think or think that there will be consequences, so this miscalculation is a way of thinking that should be reproached. For example, a worker who throws goods from a warehouse without thinking about the possibility of someone being violated, where by chance a rock is hit by a rock and dies.

In this case, the difference between intentional possibility and culpa lata does not have a very clear difference. Deliberately aware of the possibility is the occurrence of an effect that should be aware of the possibility, while the culpa lata is the occurrence of an effect that is not aware of the possibility.

In accordance with the theory of criminal responsibility, it is said that every person who is proven to have committed a crime must be held accountable for every act that has been committed either intentionally or unintentionally before the applicable law, because the mistake was committed intentionally by the debtor in order to merely get credit. from the creditor, this can be detrimental to the company if the bank is not or is not careful in conducting the selection process for debtors who apply for credit loans.

## IV. CONCLUSION AND SUGGESTION

### 1. Conclusion

1. Letters that become objects that can be falsified, such as: Appointment Decree, Identity Card, Family Card, Salary Slip. This letter exists because it was faked. This letter has the aim of showing that the letter seems to have come from someone other than the author (the perpetrator) so it is called material forgery (material valsheid), the origin of the letter is fake. The act of falsifying a letter is carried out by making unauthorized changes (without the rightful permission) in a letter or writing, which changes can involve the signature or the contents.

The crime of forgery of letters was formed with the aim of protecting the legal interests of the public regarding trust in the truth of the contents. There are 4 types of letters that can be forged, namely:

- 1) a letter giving rise to a right;
- 2) a letter issuing an engagement;
- 3) a letter giving rise to debt relief, and
- 4) a letter made to prove a certain thing/condition.

2. Criminal liability for debtors who provide fake letters to creditors is to lead to criminal prosecution of the perpetrators, if they have violated the provisions of Article 263 of the Criminal Code and fulfill the elements of Article 263 of the Criminal Code and the ability to be responsible is an element of error, therefore to prove the element of error, the element of responsibility must also be proven, however, to prove the existence of an element of accountability is very difficult and requires time and money, so in practice it is used that everyone is considered able to take responsibility unless there are signs that indicate otherwise

## 2. Suggestion

1. It is recommended to the Bank to be more careful in sorting out the loan application letters submitted by debtors considering the situation and conditions in Indonesia in terms of the economy being unstable, causing the perpetrators' intention to commit acts against the law, therefore the bank is also advised to have an archive of letters which cannot be forged with more sophisticated technology so that the making of fake letters cannot be done again by criminals.
2. It is recommended to the police to take a humanitarian approach to the perpetrators of making fake letters if there is an element of intent, it can be done in accordance with the authority of the police which has been regulated in the law, especially since the making of fake letters has a very crucial impact on finances in Indonesia so that the police are expected to carry out sanctions in accordance with the applicable laws and regulations

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