



Legal Implications of Criminal Acts of Falsification of Covid-19 Rapid Test Letter by the Community

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Abstract: The definition of the crime of forgery of letters above that the crime of forgery of letters at the present time often occurs in the health order in Indonesia considering that until now Indonesia has experienced the Covid-19 pandemic outbreak that has hit all corners of the country, and the implications require the Indonesian government both central and regional to take various policies in dealing with the Covid-19 problem by issuing a Covid-19 rapid test letter as a certificate that a person's body is reactive or non-reactive in fighting Covid-19 in every person's body, the legal basis for the Decree of the Minister of Health of the Republic of Indonesia Number Hk.01.07/Menkes/247/2020 concerning Guidelines for the Prevention and Control of Coronavirus Disease 2019 (Covid-19), Minister of Health Regulation Number 1501/Menkes/Per/X/2010 concerning Certain Types of Infectious Diseases that can Cause Death. .07/Menkes/247/2020 concerning Guidelines for the Prevention and Control of Coronavirus Disease 2019 (Covid-19), Regulation of the Minister of Health Number 1501/Menkes/Per/X/2010 concerning Certain Types of Infectious Diseases that can Lead to Outbreaks and Countermeasures and high rules in Law Number 6 of 2018 concerning Health Quarantine which regulates and requires a Covid-19 rapid test certificate, rapid test letters are used by the government for everyone who travels across regions and abroad.

Keywords : legal implications; criminal offense; rapid test covid-19

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1. Introduction

The state is responsible for protecting the entire nation from various threats that can occur, as stated in the Preamble of the 1945 Constitution of the Republic of Indonesia, one of which is the threat of crime that can occur anywhere and anytime.¹ Crime is a complex phenomenon that can be understood from many different sides.² In our daily lives, there are various comments about a crime event that are different from one another, even though in individual experience it is not easy to understand crime itself. Humans are the source of various forms of crime, and one form of crime that is often committed by the community is the crime of forgery or the crime of forgery.³

The crime of forgery can be viewed in terms of the criminology of crime itself, which is a science and aims to determine the factors that cause the occurrence of crime, related to acts of forgery, one of which is caused by the needs and interests of the perpetrators (the people involved). The crime of forgery (*valschheid in geschrift*) is a crime that occurs quite frequently in society. Forgery is committed in various forms, ranging from letters in general, debt acknowledgment, deeds, doctor's certificates, official travel letters and so on. The perpetrators of mail forgery, both the maker and the user, have the motive to commit the act to protect their interests or want something to happen according to their will. The crime of forgery of documents can be found in the Criminal Code in Book II Chapter XII Article 263 to Article 276 concerning Forgery of Documents.

The definition of the crime of forgery of letters above that the crime of forgery of letters at the present time often occurs in the health order in Indonesia considering that until now Indonesia has experienced the Covid-19 pandemic outbreak that has hit all corners of the country, and the implications require the Indonesian government both central and regional to take various policies in dealing with the Covid-19 problem by issuing a Covid-19 rapid test letter as a certificate that a person's body is reactive or non-reactive in fighting Covid-19 in every person's body, the legal basis for the Decree

¹ Ahmad Ahmad dan Novendri M. Nggilu, "Denyut Nadi Amandemen Kelima UUD 1945 Melalui Pelibatan Mahkamah Konstitusi Sebagai Prinsip the Guardian of the Constitution," *Jurnal Konstitusi* 16, no. 4 (2019): 785–808, <https://doi.org/10.31078/jk1646>; Ahmad Ahmad dan Novendri M. Nggilu, *Constitutional dialogue : menguatkan intraksi menekan dominasi (konvergensi terhadap pengujian norma di Mahkamah Konstitusi)* (Yogyakarta: UII Press, 2023); Ahmad Ahmad, Fence M. Wantu, dan Novendri Mohamad Nggilu, *Hukum Konstitusi: Menyongsong Fajar Perubahan Konstotusi Indonesia Melalui Pelibatan Mahkamah Konstitusi* (Yogyakarta: UII Press, 2020); Suwito dkk., "Contemplating the Morality of Law Enforcement in Indonesia," *Journal of Law and Sustainable Development* 11, no. 10 (25 Oktober 2023): e1261–e1261, <https://doi.org/10.55908/sdgs.v11i10.1261>.

² Dian Ekawaty Ismail dkk., "Collocation of Restorative Justice with Human Rights in Indonesia," *Legality: Jurnal Ilmiah Hukum* 32, no. 2 (20 September 2024): 394–417, <https://doi.org/10.22219/ljih.v32i2.35374>; Bintang Muhamad Hendri dan Ahmad Ahmad, "Studying the Steps of the General Election Commission in Responding to the Recommendations of the Election Supervisory Body," *Estudiante Law Journal* 5, no. 2 (18 Juni 2023): 393–406, <https://doi.org/10.33756/eslaj.v5i2.18726>.

³ Mohd Akbar, Mustamam Mustamam, dan Nelvetia Purba, "Pertanggungjawaban Pelaku Tindak Pidana Pemalsuan Hasil Rapid Test Bebas Virus Covid-19 (Studi Putusan Nomor 335/Pid. B/2020/PN Sbg)," *Jurnal Ilmiah METADATA* 4, no. 3 (2022): 75–87.

of the Minister of Health of the Republic of Indonesia Number Hk.01.07/Menkes/247/2020 concerning Guidelines for the Prevention and Control of Coronavirus Disease 2019 (Covid-19), Minister of Health Regulation Number 1501/Menkes/Per/X/2010 concerning Certain Types of Infectious Diseases that can Cause Death..07/Menkes/247/2020 concerning Guidelines for the Prevention and Control of Coronavirus Disease 2019 (Covid-19), Regulation of the Minister of Health Number 1501/Menkes/Per/X/2010 concerning Certain Types of Infectious Diseases that can Lead to Outbreaks and Countermeasures and high rules in Law Number 6 of 2018 concerning Health Quarantine which regulates and requires a Covid-19 rapid test certificate, rapid test letters are used by the government for everyone who travels across regions and abroad.⁴

Departing from the function of the Covid-19 rapid test letter which is a policy of the government, many unscrupulous people have made the Covid-19 rapid test letter an illegal livelihood, even involving health workers such as nurses and doctors. Here are some cases of criminal acts of falsification of Covid-19 rapid test letters that occurred in Indonesia:

- The Directorate of General Criminal Investigation (Dirreskrimum) of Banten Police revealed a syndicate case of counterfeiting Covid-19 antigen swab results in the Merak Port Area, Banten. Director of Criminal Investigation of Banten Police Commissioner Pol Ade Rahmat Idnal said that from the disclosure of this case he managed to secure five suspects, one of whom was a doctor. The five suspects, namely DSI (43), RO (28), YT (20), RS (20) and RF (31) as doctors at a clinic in Gerem, Cilegon City, Banten, are suspects in the syndicate of falsifying rapid antigen test letters as a condition for crossing at Merak Port, said Ade during the *Press Conference at the Banten Police Headquarters*. Monday, July 26, 2021. Ade explained that the five suspects have their respective roles. Suspects DSI and RF acted as providers and makers of fake antigen rapid test letters. The suspect DSI made the letter by changing the identity according to the passenger's KTP using a computer at Dr. RF's house.
- A travel driver and an honorary *outsourcer* at Bakauheni Port were arrested by the police for forging a Covid-19 rapid antigen letter. The two perpetrators are W (37), a resident of Pasar Minggu who is an *outsourced honorary worker* at Bakauheni Port and D (29), a resident of South Lampung who works as an illegal travel driver.
- The Cianjur Resort Police, West Java, dismantled a case of alleged forgery of a certificate of rapid antigen test results. The Covid-19 free letter was circulated among illegal travel drivers who would travel to transport passengers outside the area. Cianjur Police Chief AKBP Mokhamad Rifai said that two people had been named as suspects, each with the initials JAB and AR. JAB works as a

⁴ I. Kadek Suar Putra Dana, Anak Agung Sagung Laksmi Dewi, dan I. Made Minggu Widyantara, "Sanksi Pidana terhadap Tenaga Medis yang Melakukan Pemalsuan Surat Keterangan Rapid Test Covid 19," *Jurnal Interpretasi Hukum* 2, no. 1 (2021): 53-58.

freelance, while AR is listed as an honorary employee at the Cianjur Health Office (3/5/2021).

- Gorontalo Resort Police (Polres) found the use of fake rapid test letters at Djalaluddin Airport Gorontalo. The letter was used by four residents who wanted to leave Gorontalo through Djalaluddin Airport. The discovery of the use of a fake rapid test letter occurred on June 17, 2021. The letter used the letterhead of the Marisa Community Health Center, Marisa District, Pohuwato (24/6/2021).

Law Number 6 of 2018 concerning Health Quarantine, states explicitly that the Covid-19 rapid test certificate can only be issued by government health institutions, namely regional / government public hospitals and laboratories accredited by the government both central and regional, but there are still many ordinary people and even dragging a number of health workers to issue Covid-19 rapid test letters, this is contrary to government regulations and becomes a criminal act of falsification of health letters because and has the potential to issue rapid test letters that are not true or fake because legally the law does not follow procedures and even seems to harm other people.

The rule that people who will travel with a negative rapid test result letter has been used by irresponsible people to take advantage of it by falsifying negative rapid test result letters to be sold to people in need. People who choose to use fake negative rapid test result letters certainly have many reasons for people on business trips or other interests, one of which is because they are too lazy to take a rapid test, because they want to get negative rapid test results. The results of the letter are fast and not tired of queuing, then because the price ratio is cheap, and there are other reasons. In this case, the action is classified as a criminal offense.

The real form of crime that still often occurs is closely related to the process of law enforcement in the field (community), namely the form of theft. Currently, not only the level of crime or quantity of crime is increasing but also the type of crime or quality has grown rapidly in Indonesia.⁵ Criminal sanctions are seen as an effective solution in tackling the problem. Law enforcement according to Soerjono's thinking is related or can be combined with the theory of the legal system put forward by Lawrence M. Friedman, where the legal system itself consists of legal substance, legal structure, and legal culture.⁶

Examining further legal efforts related to the criminal act of falsifying the Covid-19 rapid test letter according to Jimly Assiddiqie⁷, law enforcement is a process of making efforts to uphold or function legal norms in reality as a guide to behavior or legal

⁵ Ahmad Ahmad, "Measuring The Application of Corporate Social Responsibility of PT. Gorontalo MineralS," *Estudiante Law Journal* 4, no. 2 (15 Februari 2022): 132–45, <https://doi.org/10.33756/eslaj.v4i2.16489>.

⁶ Feby Egatri Gulo dan R. Rahaditya, "Analisis Pemidanaan Terhadap Pemalsuan Surat Keterangan Rapid Test Antigen," *Jurnal Serina Sosial Humaniora* 1, no. 1 (2023): 446–55.

⁷ Jimly Assiddiqie, "Penegakan Hukum," *Penegakan Hukum* 3 (2016), https://www.academia.edu/download/34124812/Penegakan_Hukum.pdf.

relations in the life of society and the state.⁸ The form of law enforcement that can be carried out properly and effectively is a form of benchmark for the success of a country in its intentions and efforts to raise the dignity of the nation, including the Indonesian nation in the legal field, especially in providing legal protection to its people.

The main problem of law enforcement actually lies in the factors that may affect it, where these factors have a neutral meaning that can show a positive or negative impact.⁹ One of these factors is the law itself, which in this paper will be limited to the law and its derivative regulations.

Indonesian law has regulated mail forgery as one of the crimes included in the Criminal Code (KUHP). Crimes that often occur are related to articles 263 to 268 of the Criminal Code (KUHP) which contain seven (7) differences into various types of crimes of mail forgery, namely: a. Forgery of documents in general: form, principal, forgery of documents b. Forgery of documents with aggravation c. Ordering the insertion of false information into an authentic deed d. Forgery of medical certificates. Forgery of medical certificates. e. Forgery of certain documents f. Falsification of official certificate regarding property rights g. Crime of forgery of license and entry letter for foreigners.¹⁰

The Task Force for the Acceleration of Handling Covid-19 has issued Circular Letter Number 9 of 2020 concerning Amendments to Circular Letter Number 7 of 2020 concerning Criteria and Requirements for Travel of Persons in the Period of Adaptation to New Habits Towards a Productive and Safe Society of Covid-19, with these changes, the validity period of the *polymerase chain reaction* (PCR) test certificate and the Covid-19 *rapid test* which are requirements for domestic travel of persons is extended to 14 days. Showing a PCR test certificate with a negative result or a rapid test certificate with a non-reactive result that is valid for 14 days at the time of departure, but as described by previous researchers that there are still frequent acts of falsification of certificates specifically related to the falsification of rapid test letters.

2. Research Method

The type of research used is normative empirical research that is, the writer will seek and find information that will later be used as the substance of this research by means of observation or conducting field studies at the place used as the object of this research and conducting literature studies. This type of research is normative legal research or juridical research. Normative legal research is research conducted by

⁸ Dian Ekawaty Ismail dkk., "Cyber Harassment of Public Figures: Causes and Importance of Legal Education," *E3S Web of Conferences* 594 (2024): 03005, <https://doi.org/10.1051/e3sconf/202459403005>.

⁹ Indah Amanah Poetri Soedarno Oei Pantouw dan Ahmad Ahmad, "Perlindungan Hukum Terhadap Masyarakat Akibat Penambangan Emas Di Sungai Tulabolo Yang Tercemar Merkuri," *Borneo Law Review* 6, no. 2 (2022): 187–204, <https://doi.org/10.35334/bolrev.v6i2.3242>; Novia Rahmawati A. Paruki dan Ahmad Ahmad, "Efektivitas Penegakan Hukum Tambang Ilegal," *Batulis Civil Law Review* 3, no. 2 (26 Agustus 2022): 177–86, <https://doi.org/10.47268/ballrev.v3i2.966>.

¹⁰ Lukmanul Hakim, Dwi Ramasari, dan Raja Raihan Aditama, "Tinjauan Yuridis Terhadap Tindak Pidana Pemalsuan Surat Swab Di Tengah Wabah Covid 19 (Studi Putusan Nomor: 57/PID. B/2022/PN KLD): Universitas Bandar Lampung," *YUSTISI* 11, no. 1 (2024): 406–16.

examining library materials or secondary data only. Normative legal research (legal research) is to find the truth of coherence, namely whether the rule of law in accordance with the norms in the form of orders or prohibitions is in accordance with legal principles, and whether a person's actions (act) are in accordance with legal norms, (not just in accordance with legal rules) or legal principles.¹¹

3. Analysis and Discussion

3.1. Legal Implications of Criminal Acts of Covid-19 Rapid Test Letter Forgery by the Community

Seeing the development of the current era there are many problems that arise, and these problems will harm individuals, groups, communities to the state, from the many problems that occur in people's lives there is one problem that is common / often occurs, namely criminal acts of forgery, especially in the forgery of letters that can harm an individual or party.¹²

certain. This is the reason why forgery is discussed and grouped into criminal offenses. Crime is a social problem that occurs in the midst of society, because the perpetrators and victims are also members of society, and it can be concluded that the crime will continue to run / develop along with the dynamics of community life. In the Indonesian legal system, the crime of mail forgery is clearly regulated in Articles 263 to 276 of the Criminal Code.

1. Factors causing the occurrence of mail forgery committed by the perpetrator.

The act of forgery is actually only widely known in an advanced society, where the data is used to make it easier for people to socialize. This act of forgery can be classified first of all in the group of "fraud" crimes, so that it is not all fraud if someone gives a description or an item as if it is genuine or true, whereas in fact or truth it does not have. Because of this information other people are deceived and believe that the condition interpreted on the object / letter / data is true or genuine.¹³

The act of forgery is a type of offense against truth and belief with the aim of gaining profit for oneself. An orderly social life in an advanced society cannot take place without a guarantee of the truth of the facts of the message, data evidence and other related documents, because the act of forgery can be a threat to the survival of the community. All actions or deeds by humans must have causes and consequences as well, because in the act of crime has a motive or reason to fulfill a

¹¹ Ishaq Ishaq, *Metode Penelitian Hukum Dan Penulisan Skripsi, Tesis, Serta Disertasi* (Alfabeta, 2017).

¹² Jacqueline Claudia Panambunan, Christine Tooy, dan Wilda Assa, "Tindak Pidana Pemalsuan Surat Swab Polymerase Chain Reaction Oleh Aparatur Sipil Negara Berdasarkan Pasal 263 Ayat (1) Dan Pasal 268 Ayat (1) Kitab Undang-Undang Hukum Pidana," *Lex Administratum* 10, no. 3 (2022), <https://ejournal.unsrat.ac.id/index.php/administratum/article/view/41975>.

¹³ I. Kadek Candra Karunia Bagiarta Putra, I. Nyoman Gede Sugiarta, dan Ida Ayu Putu Widiati, "Sanksi Pidana Terhadap Pelaku Pemalsuan Surat Rapid Test di Masa Pandemi Covid-19," *Jurnal Preferensi Hukum* 2, no. 3 (2021): 525-29.

crime with all kinds of reasons that vary from one another. various in this crime occurs because everyone has different interests.

In terms of finding the causes of criminality with various methods that cannot be separated from the history of criminology, it is also necessary to re-examine the background of criminality using psychology, criminality can also be viewed from the aspect of sociology, namely the development of criminal character will not be able to escape the influence of the social environment.

Theoretically, the position of criminology in analyzing a crime or deviant behavior is to:¹⁴

- Gain a more in-depth interpretation of human attitudes and the social institutions of society that influence the tendency to deviate from legal norms.
- Finding better ways to use interpretation in conducting social policies that can avoid or minimize and overcome crime. In other words, criminological analysis is useful in obtaining the causes that encourage the formation of a crime.

Crime is seen as an act that deviates from the values or norms that apply in society. Norms in this society are the consensus of members of the community with sanctions for those who deviate from the consensus, so that the imposition of punishment means reaffirmation to the wider community that they are bound by a set of common norms and values, crime is synonymous with social deviation, there are several theories in reviewing the role of factors behind the occurrence of a crime and deviant behavior, including:

- 1) Social structural factors. There is a theory that emphasizes the important role of social structural factors in analyzing crime, and the occurrence of deviant attitudes, including the theory of crime and economic conditions according to (W.A. Bonger), and according to anomie theory (Robert Merton), sub-cultural theories, conflict theories and so on.
- 2) Interaction factors In this case, the need for aspects of inheritance of values and norms, especially to children who are experiencing the socialization process in society. The results of research according to the figures of this school as stated by Clifford R. Shaw and Henry D. McC. Kay explained that in an area or region with a low crime rate there is a lot of uniformity, similarity of values and conventional attitudes in relation to the upbringing of children, self-adjustment to the law and as well as those that are closely related. High-crime areas, on the other hand, develop a system of conflicting and competing moral values. Thus, the learning stage process is related to the techniques of committing crimes and the justifying motives that support the commission of a crime.

¹⁴ Susie S. Rottie, "Analisa Hukum Terhadap Pemalsuan Surat Hasil Rapid Tes Pada Masa Pandemi Covid 19 Ditinjau dari Kitab Undang-Undang Hukum Pidana," *Lex Privatum* 9, no. 12 (2021), <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/38453>.

- 3) Social reaction factors. One of the criminology cases that explains crime from the perspective of social reactions written by Edwin Lemert. In Mulyana W. Kusuma's book entitled "Criminology and the problem of crime, a brief introduction" in the book Lemert reveals the process of a person being shunned as a perpetrator of deviation and the consequences of a career in his life organized or formed by himself around the status as a perpetrator of deviant nature. As Lemert points out, there is a distinction between primary and secondary deviance. Primary deviation explains the state of a person who commits acts of violation of the norm but this is done is still considered foreign to him. While on the other hand in secondary deviation concerns in the case of a person orchestrating his psychological characteristics around the role of deviant traits. secondary deviation is often an act of violation of norms that is repeated many times and manifests as a social reaction.

The social status of a person in society is influenced by several factors. As long as in that society there is something that is valued, then there are also layers in it and such layers are what determine a person's social status. All actions or actions carried out by humans must have causes and consequences, as well as in crime, every crime has a motive or reason for committing a crime and each of these reasons is different from one another. this comparison occurs because every human action has different interests. Sutherland argues that criminal attitudes are learned behavior in a social environment, meaning that all behavior can be learned by various methods.

Based on the influences of the theory, it can be concluded that the emergence of differential association theory is based on:

- 1) That everyone will want to accept and acknowledge the patterns of attitudes and behaviors that will be carried out.
- 2) Disappointment in learning behavioral traits can lead to inconsistency and disharmony.
- 3) The conflict of culture is a basic principle in explaining crime.

The factors that cause the perpetrator to commit the act of falsifying the health certificate of the covid-19 test results include:

- 1) Economic Factors. Economic factors are one of the starting points for the falsification of covid-19 test results health letters, in this case that the perpetrator said that he issued a covid-19 test result health letter because he wanted to help his countrymen and countrymen, from the impact of the implementation of the PSBB which resulted in many employees being laid off and resulted in these employees wanting to return home, many employees who were laid off were unable to pay the price of the covid-19 test result health letter due to economic factors.
- 2) Factors of Intention and Opportunity Not only the above factors, it is practically explained that a crime or criminal act, including the crime of

forgery, arises due to two things, namely the existence of intent and opportunity. a criminal act of forgery can be committed if two elements have been fulfilled, meaning that there is an intention and an opportunity to carry out the intent. A person who has the intention to commit a criminal act, if he does not have the opportunity to make it possible, then the intention or criminal act will not be carried out, and vice versa, a person who has the opportunity to commit a criminal act, but if he has the intention to commit the act at all, so in the case of falsifying the health letter of the covid-19 test results because of the opportunity factor to falsify the rapid test letter due to the impact of the covid-19 pandemic.¹⁵

2. Elements of perpetrator responsibility in the act of falsifying the Health letter of covid-19 test results.

Falsification of health letters from the covid-19 test results in terms of criminal law, is a criminal act of forgery regulated in the Criminal Code Article 268 paragraph (1) and (2). Indonesian criminal law has contained something falsification which is a form of criminal action classified as a crime in the Criminal Code regulation related to forgery of letters. Forgery of letters in Article 268 paragraph (1) is material forgery, because the falsity lies in the legal subject, which is also an act of intellectual forgery, because the falsity lies in the content of the letter.

The element of guilt in Article 268 paragraph (1) in the form of intent as an intention (opzet alsoogmerk) aimed at misleading the public law authorities and insurers. In this case, the impression arising from the false or falsified letter in Article 268 paragraph (1) is twofold, the first is in the content of the letter, which is actually false or falsified, but gives the impression to the person that the content is true or not falsified. The second is the impression of a legal subject of the letter maker, which is not actually made by a doctor, but gives the impression that it was made by a doctor.¹⁶

Article 268 of the Criminal Code contains two forms of criminal offenses, each defined in paragraph (1) and paragraph (2). if the two defined criminal offenses are detailed, they contain the following elements: in paragraph (1) contains the elements:

Elements that are objective in nature:

- a. His actions:
 - 1) create falsely;
 - 2) counterfeiting;
- b. The object: in a doctor's certificate about the presence or absence of disease, infirmity or disability;

¹⁵ septri Ayu Saputri, "Pertanggungjawaban Pidana Terhadap Pelaku Pemalsuan Surat Rapid-Test di Masa Pandemi Covid-19 (Studi Kasus Putusan Nomor 256/Pid. B/2020/Pn Pbu)" (Phd Thesis, Universitas Muhammadiyah Magelang, 2022), <http://eprintslib.ummgl.ac.id/id/eprint/3706>.

¹⁶ Made Dwi Raditya Utama Putra Sari dan AA Ngurah Oka Yudistira Darmadi, "Sanksi Pidana Bagi Pelaku Pemalsuan Surat Rapid Test Di Kota Denpasar," *Jurnal Hukum dan Sosial Politik* 1, no. 4 (2023): 25-37.

c. Fault: with intent to mislead the public authorities or insurers. In the criminal act of forgery can be charged in criminal sanctions sourced in article 268 of the Criminal Code formulates including:

- 1) Any person who forges or falsifies a doctor's certificate concerning the presence or absence of disease, infirmity or defect, with intent to mislead the public authorities or insurers, shall be punished by a maximum imprisonment of four years.
- 2) By the same punishment shall be punished any person who with similar intent makes use of an untrue or falsified certificate as if it were true and unfalsified. The element of fault as criminal liability is not psychological fault or fault as in the element of criminal offense (which takes the form of intent or negligence). The element of fault that is not psychological or normative has been widely discussed in the doctrines of criminal law by criminal law experts.

The Criminal Code provides the principle of no punishment without fault (*geen straf zonder schuld*), but in this case Indonesian criminal law does not explicitly link fault with criminal responsibility. This is due to the consequence of the monist theory adopted by the KUHP. When discussing the element of guilt, it will discuss guilt as an element of criminal offense as well as discussing the element of guilt as an element of criminal responsibility. Because the forms of guilt (intentionality and negligence) are psychological errors, criminal responsibility is also psychological. Criminal liability in the common law system relates to the perpetrator.¹⁷

In the Criminal Code, criminal responsibility is based on a mental state, hence a guilty mind. Guilty mind means an act of subjective guilt, where a person is said to be guilty, so that the person must be responsible, the existence of a criminal liability imposed on the maker then the maker must be punished, The absence of a guilty mind means that the maker cannot be held criminally liable and the impact is not expressly stated what is meant by criminal liability, but criminal liability is negatively regulated which usually uses the phrase "not punishable" (articles 48,49,50,51 of the Criminal Code), cannot be held liable because it is in "(article 44 paragraph (1) and (2) of the Criminal Code) and others. Such an arrangement led to the birth of theories on criminal liability in civil law in the Netherlands, and especially in Indonesia adopting the Dutch Criminal Code. In general, criminal law theories regarding criminal liability for civil law are always related to guilt, or called the principle of guilt, which is defined by the principle of "no punishment without fault".

In the current Criminal Code which adheres to fault as a factor of criminal offense, so in reviewing fault as an element of criminal offense and will discuss criminal liability. In this case, it is impossible for a person to be held accountable and

¹⁷ Clieverd Jery Tasane, Juanrico Alfaromona Sumarezs Titahelu, dan Erwin Ubwarin, "Pelaku Pemalsuan Keterangan Bebas Covid-19 Oleh Anak Buah Kapal KM Cantika 99," *TATOHI: Jurnal Ilmu Hukum* 1, no. 5 (2021): 439–47.

sentenced if he does not commit a criminal act. But even if he commits a criminal act, it is not always punishable.

A person who commits a criminal act will be punished if he has fault. A person who has fault when at the time of committing a criminal act, from the point of view of society he can be reproached for it, because it is considered that he could have done otherwise if he did not want to do so. In essence, this matter is reprehensible, because for him it could have been avoided by committing the unlawful act. This is because the will of the doer is seen in the unlawful act, so it is reprehensible to him. To this extent, a wrong that gives rise to or has an effect is reprehensible. The reproach can be possible because the maker can make an effort, so that he does not act contrary to the law, the violation of the norm depends on his will.

To the perpetrator of a criminal offense, it can be imposed in the form of criminal sanctions or punishment. Particularly in terms of punishment as one of the main problems of criminal law, a very important issue is the concept of the purpose of punishment which seeks to find the basis for the justification of punishment as an effort to make punishment more functional. In taking responsibility for a reprehensible act on the perpetrator, it is true that whether or not the perpetrator is convicted does not depend on whether there is a criminal act or not, but on whether or not the defendant is reprehensible for having committed the criminal act. That is why it is also said that the basis of criminal action is the principle of legality, which is the principle that determines that an act is prohibited and punishable by punishment for whoever does it, on the other hand, the basis of the punishment of the perpetrator is the principle of no punishment if there is no fault.

Hence, it can be said that there must first be certainty about the existence of a criminal act and all the elements of guilt must be linked back to the criminal act committed, so that it can be concluded that the guilt that results in the conviction of the defendant must be:

- 1) Committing a criminal act.
- 2) Able to take responsibility.
- 3) With intent or negligence.
- 4) Absence of excuse.

In the elements of guilt and unlawfulness, which are not elements of a criminal offense or as a basis for ensuring criminal liability, the judge's reasoning is found by studying the purpose of making legal norms in the law and the legal interests to be protected by legal norms and laws. The excuse in the justification either contained in the criminal law or derived from jurisprudence with the basis of criminal liability.

Regarding the elements that must be considered by the judge to ascertain criminal responsibility are:

- 1) The unlawfulness is theologically assessed and is not an element of a criminal offense;

- 2) Mistakes made in theological assessment and not as an element of a criminal offense;
- 3) There is no reason for justification;
- 4) There is no reason for forgiveness;
- 5) Able to take responsibility.

The actions committed by the defendant have indeed violated the provisions of Article 268 paragraph (1) of the Criminal Code, because the elements of this article have been proven. Article 268 paragraph (1): Any person who forges or falsifies a doctor's certificate concerning the presence or absence of disease, infirmity or defect, with intent to mislead the public authority or the insurer, shall be punished by a maximum imprisonment of four years.

The elements contained in Article 268 paragraph (1) of the Criminal Code are as follows: (1) The existence of a perpetrator; (2) Placing false information into a doctor's certificate about the truth of the letter; (3) The element with the intention of using or ordering others to use the letter, as if it were genuine or unfalsified, then as an accountability to determine whether a person will be released or will be punished for the actions that have occurred, in this case to find out that someone has criminal responsibility, in this case there are elements that must be fulfilled to declare that someone is declared guilty and held criminally responsible.

4. Conclusion

The Legal Implications of the Criminal Act of Falsification of the Rapid Test Covid-19 Letter by the Community have several impacts, one of which can determine the factors that cause the perpetrator to commit the act of falsifying the health letter of the covid-19 test results including, economic factors and factors of intention and opportunity for the perpetrators. As for the elements contained in the crime of forgery of letters, there is a perpetrator, placing false information in a doctor's certificate about the truth of the letter and the element with the intention of using or ordering others to use the letter. Substantially, the unification of criminal law related to mail forgery can have implications for, provide legal certainty and have implications for the realization of law in the perspective of expediency.

References

- Ahmad, Ahmad. "Measuring The Application of Corporate Social Responsibility of PT. Gorontalo Minerals." *Estudiante Law Journal* 4, no. 2 (15 Februari 2022): 132-45. <https://doi.org/10.33756/eslaj.v4i2.16489>.
- Ahmad, Ahmad, dan Novendri M. Nggilu. *Constitutional dialogue : menguatkan intraksi menekan dominasi (konvergensi terhadap pengujian norma di Mahkamah Konstitusi)*. Yogyakarta: UII Press, 2023.

- — —. “Denyut Nadi Amandemen Kelima UUD 1945 Melalui Pelibatan Mahkamah Konstitusi Sebagai Prinsip the Guardian of the Constitution.” *Jurnal Konstitusi* 16, no. 4 (2019): 785–808. <https://doi.org/10.31078/jk1646>.
- Ahmad, Ahmad, Fence M. Wantu, dan Novendri Mohamad Nggilu. *Hukum Konstitusi: Menyongsong Fajar Perubahan Konstotusi Indonesia Melalui Pelibatan Mahkamah Konstitusi*. Yogyakarta: UII Press, 2020.
- Akbar, Mohd, Mustamam Mustamam, dan Nelvetia Purba. “Pertanggungjawaban Pelaku Tindak Pidana Pemalsuan Hasil Rapid Test Bebas Virus COVID-19 (Studi Putusan Nomor 335/Pid. B/2020/PN Sbg).” *Jurnal Ilmiah METADATA* 4, no. 3 (2022): 75–87.
- Asshiddiqie, Jimly. “Penegakan Hukum.” *Penegakan Hukum* 3 (2016). https://www.academia.edu/download/34124812/Penegakan_Hukum.pdf.
- Dana, I. Kadek Suar Putra, Anak Agung Sagung Laksmi Dewi, dan I. Made Minggu Widyantara. “Sanksi Pidana terhadap Tenaga Medis yang Melakukan Pemalsuan Surat Keterangan Rapid Test Covid 19.” *Jurnal Interpretasi Hukum* 2, no. 1 (2021): 53–58.
- Gulo, Feby Egatri, dan R. Rahaditya. “Analisis Pidana Terhadap Pemalsuan Surat Keterangan Rapid Test Antigen.” *Jurnal Serina Sosial Humaniora* 1, no. 1 (2023): 446–55.
- Hakim, Lukmanul, Dwi Ramasari, dan Raja Raihan Aditama. “Tinjauan Yuridis Terhadap Tindak Pidana Pemalsuan Surat Swab Di Tengah Wabah COVID 19 (Studi Putusan Nomor: 57/PID. B/2022/PN KLD): Universitas Bandar Lampung.” *YUSTISI* 11, no. 1 (2024): 406–16.
- Hendri, Bintang Muhamad, dan Ahmad Ahmad. “Studying the Steps of the General Election Commission in Responding to the Recommendations of the Election Supervisory Body.” *Estudiante Law Journal* 5, no. 2 (18 Juni 2023): 393–406. <https://doi.org/10.33756/eslaj.v5i2.18726>.
- Ishaq, Ishaq. *Metode Penelitian Hukum Dan Penulisan Skripsi, Tesis, Serta Disertasi*. Alfabeta, 2017.
- Ismail, Dian Ekawaty, Yusna Arsyad, Ahmad Ahmad, Novendri M. Nggilu, dan Yassine Chami. “Collocation of Restorative Justice with Human Rights in Indonesia.” *Legality: Jurnal Ilmiah Hukum* 32, no. 2 (20 September 2024): 394–417. <https://doi.org/10.22219/ljih.v32i2.35374>.
- Ismail, Dian Ekawaty, Jufriyanto Puluhulawa, Novendri M. Nggilu, Ahmad Ahmad, dan Ottow W. T. G. P. Siagian. “Cyber Harassment of Public Figures: Causes and Importance of Legal Education.” *E3S Web of Conferences* 594 (2024): 03005. <https://doi.org/10.1051/e3sconf/202459403005>.

- Panambunan, Jacqueline Claudia, Christine Tooy, dan Wilda Assa. "Tindak Pidana Pemalsuan Surat Swab Polymerase Chain Reaction Oleh Aparatur Sipil Negara Berdasarkan Pasal 263 Ayat (1) Dan Pasal 268 Ayat (1) Kitab Undang-Undang Hukum Pidana." *Lex Administratum* 10, no. 3 (2022). <https://ejournal.unsrat.ac.id/index.php/administratum/article/view/41975>.
- Pantouw, Indah Amanah Poetri Soedarno Oei, dan Ahmad Ahmad. "Perlindungan Hukum Terhadap Masyarakat Akibat Penambangan Emas Di Sungai Tulabolo Yang Tercemar Merkuri." *Borneo Law Review* 6, no. 2 (2022): 187-204. <https://doi.org/10.35334/bolrev.v6i2.3242>.
- Paruki, Novia Rahmawati A., dan Ahmad Ahmad. "Efektivitas Penegakan Hukum Tambang Ilegal." *Batulis Civil Law Review* 3, no. 2 (26 Agustus 2022): 177-86. <https://doi.org/10.47268/ballrev.v3i2.966>.
- Putra, I. Kadek Candra Karunia Bagiarta, I. Nyoman Gede Sugiarta, dan Ida Ayu Putu Widiati. "Sanksi Pidana Terhadap Pelaku Pemalsuan Surat Rapid Test di Masa Pandemi Covid-19." *Jurnal Preferensi Hukum* 2, no. 3 (2021): 525-29.
- Rottie, Susie S. "Analisa Hukum Terhadap Pemalsuan Surat Hasil Rapid Tes Pada Masa Pandemi Covid 19 Ditinjau dari Kitab Undang-Undang Hukum Pidana." *Lex Privatum* 9, no. 12 (2021). <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/38453>.
- Saputri, Septri Ayu. "Pertanggungjawaban Pidana Terhadap Pelaku Pemalsuan Surat Rapid-Test di Masa Pandemi Covid-19 (Studi Kasus Putusan Nomor 256/Pid. B/2020/PN Pbu)." PhD Thesis, Universitas Muhammadiyah Magelang, 2022. <http://eprintslib.ummgl.ac.id/id/eprint/3706>.
- Sari, Made Dwi Raditya Utama Putra, dan AA Ngurah Oka Yudistira Darmadi. "Sanksi Pidana Bagi Pelaku Pemalsuan Surat Rapid Test Di Kota Denpasar." *Jurnal Hukum dan Sosial Politik* 1, no. 4 (2023): 25-37.
- Suwito, Deni Setiawan, Mohamad Hidayat Muhtar, dan Ahmad. "Contemplating the Morality of Law Enforcement in Indonesia." *Journal of Law and Sustainable Development* 11, no. 10 (25 Oktober 2023): e1261-e1261. <https://doi.org/10.55908/sdgs.v11i10.1261>.
- Tasane, Clieverd Jery, Juanrico Alfaromona Sumarezs Titahelu, dan Erwin Ubwarin. "Pelaku Pemalsuan Keterangan Bebas Covid-19 Oleh Anak Buah Kapal KM Cantika 99." *TATOHI: Jurnal Ilmu Hukum* 1, no. 5 (2021): 439-47.