

# Criminal Liability in Falsification of Letters Against Credits Agreements (Study Case Decision Number: 952/Pid.B/2019/Pn.Jkt.Brt)

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# Criminal Liability in Falsification of Letters Against Credits Agreements (Study Case Decision Number: 952/Pid.B/2019/Pn.Jkt.Brt)

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## ABSTRACT

Bank is a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit or other forms in order to improve the standard of living of the people. Therefore, it is very necessary to know the legal consequences of the credit agreement with the presence of a forged letter and criminal liability for the decision of the district court number: 952/Pid.B/2019/PN.Jkt.Brt. Furthermore, the research method used by the author is normative research. According to the results of the author's analysis of the legal consequences of the credit agreement with the existence of a forged civil letter, the agreement can be said to be null and void because in making a credit agreement you must use an authentic deed, identity and other original documents, not fake ones. In the verdict number 952/Pid.B/2019/PN.Jkt.Brt the charges used by the judge are alternative charges, namely: the first indictment of the defendant is subject to Article 143 Paragraph (2) of the Criminal Code in conjunction with Article 55 Paragraph (1) of the 1st Criminal Code and the second indictment the defendant is subject to Article 378 of the Criminal Code. Article 55 Paragraph (1) 1st of the Criminal Code.

**Keywords:** credit agreement, fake letter, criminal liability

## 1. INTRODUCTION

Bank is a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit or other forms in order to improve the standard of living of the people. [1] In order to channel credit to the public, the bank has made it happen in the form of a banking credit agreement. The granting of credit has been carried out through a credit agreement between the creditor and the credit recipient so that there has been a legal relationship between the creditor and the credit recipient. Bank credit agreements in general can be made in written form and in the form of a book agreement, this credit agreement is made in the form of an underhand deed or an authentic deed. Various steps that can facilitate the implementation of the manufacture of these documents related to credit in this case by using an authentic deed, the bank appoints a notary as his partner.

The State of Indonesia is a country that runs a system of government based on law or rechtstaat, not based on a system of power or machstaat. The state cannot act arbitrarily. [2] The 1945 Constitution (UUD 1945) being a basic foundation in forming the government of the

Indonesian state, has clearly explained that the Indonesian state is based on law. Notaries and their deed products can be interpreted as an effort by the state to create legal certainty and protection for the community. But in people's lives it is not uncommon to violate the law. [3]

Legal actions, which have been carried out by parties who have an interest in making a legal event, will usually be stated in the form of an agreement made by the parties and to bind them. [4] Legal actions, usually the parties who want to make an agreement in the form of an authentic deed that is made by an authorized official, namely a Notary. [4] In Article 1 point 1 of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the position of a Notary, a Notary is a public official who is authorized to make an authentic deed and has other authorities. [5]

According to Article 1868 of the Civil Code (KUHPerdata), the definition of an authentic deed itself is a deed made in the form determined by law, made by or before a public official authorized to do so at the place where the deed was made. The official authorized to make an authentic deed is a notary because a notary is a public official who has been appointed by the state. The notary makes the deed in question based on evidence or information or statements

from the parties that have been stated or shown or explained before a notary.

In the criminal provisions, a notary deed can be categorized as a category of documentary evidence, in which case the notary has an obligation <sup>14</sup> the deed he has made. This provision is regulated in Article 184 paragraph (1) of the **Criminal Procedure Code (KUHAP)**, legal under the law (27) are as follows:

1. Witness testimony;
2. Expert testimony;
3. Letters;
4. Instructions;
5. Defendant's statement.

If the notary in making the deed is not in accordance with the rules that already exist in the Notary Position Act or hereinafter abbreviated as UUJN, the <sup>58</sup>notary will receive sanctions or warnings contained in the <sup>18</sup>UUJN and the **Notary Code of Ethics**. According to Article 6 of the Notary Code of Ethics, the sanctions given to the notary who violate the code of ethics are as follows:

1. Reprimand;
2. Warning;
3. Temporary suspension from membership of the association;
4. Dismissal with honor from membership of the association;

5. <sup>55</sup>respective dismissal from association membership. But in reality, the work of a notary is not easy, in practice a notary is often involved in legal cases both as a sanction and as a suspect. The involvement of this notary in a legal case is due to an error in the deed he has made, either due to the error of the notary itself or the fault of the parties or one of the parties who did not provide original information or documents in making an authentic deed or there was an agreement between the notary and one of the parties involved. one party that causes harm to another party or it can be said that a notary has participated in a criminal act. In reality, what often happens in the field is that at the time of making the deed, the notary no longer checks the identity of the parties. As a result, the notary must bear the guilt of the parties that do not match the data on the identity of the parties. It is often the case that the notary and the notary's employees with their busy lives do not understand the consequences if in the deed the parties use false identities. Violations that often occur in the case of a notary making a deed do not guarantee the formal correctness of the deed he has made, meaning that there has been a procedural violation in the making of the deed. In addition, it can also be caused by the parties who have never appeared before a notary or the parties have never appeared before a notary at the same time.

In this case, Arsal Nursalim, who wants to guarantee his house certificate, has his address at Puri Kencana Blok K4 No. 6 South Kembangan, West Jakarta, then introduced by Dasrul to Indrawan who will later admit to being Candra along with the defendant named Bira Waty Salim alias Poniyah who will later claim to be Henny, Candra's wife with the intention of lending money to Arsal Nursalim. Then in 2016 Indrawan contacted the defendant along with

Dasrul, Daud Martin, and Ling met at Mall Kelapa Gading to discuss further about mortgaging the debt guarantee in the name of Arsal Nursalim SHM No. 4026 which will later be mortgaged back by the defendant to the Bank with a higher value so that later he will get a bigger profit, then Indrawan arranged a plan with a division of tasks that Indrawan would contact BTPN to recommend someone who would apply for a credit loan with land collateral. Then Daud Martin will pretend to be Arsal Nursalim to apply for a loan to BTPN by making an identity in the form of an ID card whose photo and signature are replaced with a photo and signature of Daud Martin, NPWP, SIUP, KK, Marriage Certificate, TDP, Certificate of Domicile. It was a fake business, while the defendant was only in charge of receiving a pledge from Arsal Nursalim and if there was a survey from the bank to the location of the guarantee to ensure that Arsal Nursalim who lived there did not complicate the survey process. And Indrawan contacted Niko Susanto, who at that time worked as a Relationship Manager (RM) at BTPN Taman Palem Branch by telephone saying that there is a brother from Indrawan named Arsal Nursalim who wants to apply for credit guaranteed by SHM No. 4026 on behalf of Arsal Nursalim having his address at Puri Kencana Blok K 4 No. 6 South Kembangan City of West Jakarta. The defendant together with Indrawan went to Arsal Nursalim's house which was witnessed by Dasrul to give Rp. 200,000,000.00 (two hundred million rupiah) to Arsal Nursalim to Arsal Nursalim with a receipt dated June 1, 2016 with a statement of money deposited for SHM certificate No. 4026 South Kembangan on behalf of Arsal Nursalim which has been pledged then the remaining Rp. 300,000,000,- (three hundred million rupiah) is paid after checking with the National Land Agency (BPN) then the SHM certificate will be submitted to Poniyah as collateral. An important point that will be discussed in this thesis is about criminal liability where a person can be held accountable if he has fulfilled the elements of criminal responsibility if someone does not meet these elements then he cannot be held accountable.

In connection with the author's explanation above, the author is interested in several things that can be appointed to be a thesis writing with the title "Criminal <sup>33</sup>ability in Forging Letters Against Credit Agreements (Case Study Decision Number: 952/Pid.B/2019/Pn.Jkt.Brt)".

## 2. DISCUSSIONS

### 2.1. Legal Consequences Of Credit Agreements With Fake Letters

In legal perception there is <sup>19</sup> not only a regulation but in legal perception there are also legal consequences that must be borne by legal subjects and legal entities, an action that will be carried out by legal subjects or legal entities. Legal consequences <sup>19</sup> are consequences that arise from an action that occurs from all legal actions that have been carried out by legal subjects against legal objects. [6] In both civil and criminal legal consequences, the actions that arise are null

and void, the meaning of null and void in civil law is an agreement that has been made from the beginning is considered to never exist, whereas null and void in a criminal case is contained in a court decision, which means [49] the decision was handed down from the start, deemed to have never existed and has no legal force and consequences and the decision has no power for execution. One example [8] of the legal consequences carried out by the subject in the court's decision number 952/Pid.B/2019/PN.Jkt.Brt is a credit agreement with a fake letter. A credit agreement is a process of borrowing and borrowing agreements between a bank that acts as a creditor and another party who acts as a debtor which later [48] the debtor has an obligation to pay off all his debts after a predetermined period of time with interest. [7] In making a credit agreement there must be authentic evidence where this authentic evidence is to indicate that the parties concerned have used the original and not falsified identities, but in this court decision the party who made the credit agreement was Daud Martin. Then Daud Martin had committed a violation, both civil and criminal, which resulted in legal consequences for the credit agreement by using a forged letter. According to Article 263 paragraph (1) which reads [5]

"Anyone who makes a forged letter or falsifies a letter that can give rise to a right, agreement or [5] 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 not fake, is threatened if the [6] his can result in losses due to falsification of letters, with a maximum imprisonment of six years." [8]

According to Article 264 of the Criminal Code, it reads that: [9] [27]

1. Forgery of a letter is punishable by a maximum imprisonment of eight years, if it is committed against:

- (1) authentic deeds;
- (2) debt securities or debt certificates from a country or part thereof or from an institution;
- (3) sero letter or debt or certificate of sero or debt from an association, foundation, company, or airline;
- (4) talon, proof of dividend or interest from one of the letters described in 2 and 3, or proof issued in lieu of the documents;
- (5) let [1] of credit or trade letter intended for circulation.

2. It is threatened with the same punishment whoever deliberately uses the letter in the first paragraph, the contents of which are not true or which are falsified as if it were true and not falsified, if the falsification of the letter can cause harm

The factors for the occurrence of credit agreements using fake letters or fake documents are as follows: [10]

- a. The existence of bad faith from the defendant as a credit provider;
- b. Employees as credit providers do not carry out their duties in accordance with operational standards that have been determined by the bank;
- c. There is an opportunity for the negligence of another employee, so that the defendant can easily commit his act;

d. Lack of supervision from the center so that the incident took a very long time and caused huge losses. explanation above is a point of view of the [13] legal consequences in a criminal manner. However, what if the legal consequences of the credit agreement with the presence [4] of a forged letter when viewed from [24] a civil point of view based on Article 1 paragraph 11 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, h [13] after referred to as the Banking Law, The definition of credit is a provision of money or an equivalent claim, based on a loan agreement or agreement between a bank and another party which requires the borrowing party to repay the debt after a certain period of time with interest. [11] Based on the description above, the authors can conclude that credit is a loan that has been given by the Bank to someone to use and to be returned with interest within the period determined by [16] parties contained in the agreement. Meanwhile, according to Article 1313 of the Civil Code, the definition of an agreement is an act in which one or more people bind themselves to one or [3] one other people.[12] If viewed carefully, the meaning of the agreement contained in Article 1313 of the Civil Code has shown that in fact an agreement has given rise to obligations or achievements of one or more people, who have been entitled to such an achievement. Each of these parties consists of one or more people, the more developed the legal knowledge of the parties contained in the agreement can also be [41] in the form of one or more legal entities. Credit agreement is an agreement made between the Bank and another party as a loan, the party who wants to borrow or owe, then the party must provide a guarantee to the Bank. The loan repayment period has been determined and contained in the agreement The elements contained in this agreement can be classified into two main elements involving the subject element or parties who have been involved in the agreement and two other main elements that have a direct relationship with an object of the agreement. The subjective element includes the existence of an element of an agreement that is free from the parties who have promised and the skills of both parties who have implemented the agreement. Meanwhile, objective elements such as the existence of an object that has been agreed and the object that has been agreed must be something that is justified by law. If one of these elements is not met, it can cause the agreement to [47] be invalid. The conditions that must be met for making an agreement are contained in Article 1320 of the Civil Code, namely as [21] ws:[13]

1. Agree on those who bind themselves;
2. The ability to make an engagement;
3. A certain thing;
4. A lawful cause;

The validity of an agreement is determined by the fulfillment or non-fulfillment of the conditions determined by law. If these conditions are not fulfilled in [18] agreement, then the agreement is threatened with being null and void by law. This can result in the cancellation of which needs to be known by each party to the agreement. An agreement can be said to be null and void if there is a violation of the terms

of the validity of an engagement. The obligation to have [23] object in an agreement has been stated in Article 133[13]0 Article 1334 of the Civil Code, as well as Article 1335 and Article 1336 of the Civil Code which regulates a halal clause. [14]

The types of cancellation in the agreement are as follows:

### 1. Canceled [31] to non-fulfillment of one of the conditions for the validity of the agreement

An agreement can [25] said to be void if it relates to the issue of not fulfilling the legal requirements of an agreement contained in Article 1320 of the Civil Code consisting of [29] conditions, namely as follows:[14]

- a. agree that those who bind themselves;
- b. the ability to enter into an engagement;
- c. a certain thing;
- d. a lawful reason.

### 2. Canceled by law because of the null conditions that are met

An agreement with a null condition becomes null and void because of the void conditions that have been fulfilled and can result in the return of the situation to its original condition when the engagement appears or it can be said that such an agreement is null and void as such has been [15] inactive to the point where the agreement was made.[15] Article 1265 of the Civil Code states that "a void condition is a condition which, if fulfilled, terminates the engagement, and brings everything back to its original state as if there had never been an engagement".[16] The cancellation of the agreement that has been regulated in the agreement can be carried out by reason of the termination of the agreement, in this case the agreement is specified for reasons so that one or both parties can terminate the agreement. Thus, not all defaults can cause one of the parties to terminate the agreement, but only the defaults that have been mentioned in the agreement.

### 3. Cancelled due to default

[26] The term default comes from the Dutch language which means bad performance. Someone who has promised but does not do or keep what he has promised, then that person is negligent, negligent, breaks a promise or he has violated the agreement, if he has done or done something that he is not allowed to do so that it can be said as a default. [17]

### 32 4. Cancellation of the agreement unilaterally

Cancellation of the agreement that is [46]ried out unilaterally means the unwillingness of one of the parties in the agreement to fulfill the achievements that have been agreed between the two parties in the agreement which will be held when the other party intends to fulfill the achievements that have been promised and wants to continue to obtain the counter-achievement from the other party contained in the agreement.

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If seen from the explanation above, it can be concluded that the legal consequences of the credit agreement with the presence of a forged civil letter, the agreement can be said to be null and void because in entering into a credit agreement an authentic deed, identity and other documents are genuine, not fake. Meanwhile, the legal consequences of a credit agreement with a criminally forged letter is an act that can have legal consequences if the act has fulfilled the elements in the article that has been imposed on the perpetrator of a crime in the district court decision number 952/Pid.I[17]9/Pn JktBrt the defendant has fulfilled the elements of Article 263 of the Criminal Code, therefore the legal consequences of the credit agreement with the existence of a criminally forged letter, namely the agreement can be canceled by law and the person who has committed the act can be subject to criminal penalties from Article 263 of the Criminal Code.

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### 2.2. Criminal liability against the decision of the District Court no. 952/Pid.B/2019/PN.Jkt.Brt

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According to the Big Indonesian Dictionary [37] or hereinafter abbreviated as KBBI, the notion of responsibility is the obligation to handle everything if something happens that can be prosecuted, blamed, and brought to justice. [18] In law, the notion of responsibility is a consequence of the consequences of a person's freedom regarding his actions which have a close relationship with ethics and morals in [23]rying out an act. [19] According to Titik Triwulan, accountability must have a basis, namely things that give rise to the legal right for someone to sue others and in the form of things that will later give birth to other people's legal obligations to provide accountability. [20] In addition, in the system of proof of criminal law, there is criminal responsibility for actions that have been carried out by perpetrators of criminal acts. According to Chairul Huda, the basis of the existence of a crime is the principle of legality, while what can be convicted is on the basis of his mistake, this can be interpreted that a person has had a criminal responsibility if he has committed an act that is wrong and contrary to applicable law. However, in essence the criminal liability is a form of mechanism that has been created to react to the violation of an agreed action.[21] Accountability is a form of determining whether a person will be released or convicted of a crime that has occurred, in this case to mention that someone has aspects of criminal responsibility, in this case of course there are several elements that must be met to say that someone can be held accountable . 11

Based on court decision number 952/Pid.B/2019/PN Jkt Brt, the elements of criminal liability that were proven were as follows:

- a. The existence of a criminal act; The existence of a crime in this decision the perpetrator committing this crime is forgery of letters. The crime of forgery of [28]ers has been regulated in Article 263 and Article 264 of the Criminal Code and in this case something forged is in the form of a false identity against KTP, NPWP,

SIUP, KK, Marriage Certificate, TDP, Certificate of Business Domicile.

57 There is an element of error;

Based on the consideration of the panel of judges who have stated that the perpetrator is proven guilty by carrying out the actions mentioned in this decision, and has been proven to have committed elements of criminal responsibility, it is certain that the perpetrator has confirmed that there is an element of guilt in the perpetrator

c. The existence of the ability to be responsible;

When in a person or perpetrator there is an element of a criminal act and an element of error that makes him proven to have committed a crime, then the consequences that must be accepted by the perpetrator must have the ability to be responsible for all actions that have been committed by him to others who have felt harmed.

d. No excuses

Everyone who has committed a crime that harms other people is indeed very difficult to forgive, unless that person has the ability to be responsible in accordance with the elements that have been mentioned. When a person has succeeded in being responsible according to the applicable law, then the apology can be taken into consideration, but if his actions have harmed other people to the point of harming the state, it is questionable whether that person is able to take responsibility for his actions, otherwise the act cannot be forgiven.

The basis for the judge's consideration in making a decision against the defendant in the district court decision number 952/Pid.B/2019/PN.JktBrt stated that the defendant Bira Waty Salin 54 is Poniyah was guilty of committing a crime "together with the intent to benefit oneself or others, unlawfully by means of deceit or a series of lies to 33 give other people to hand over something to him" as stated in the Second Indictment of the Public Prosecutor which has been regulated and is punishable by criminal charges in Article 378 of the Criminal Code in conjunction with Article 55 Paragraph (1) of the 1st Criminal Code. However, in the trial the judge also used alternative charges, namely:

First: Article 263 Paragraph (2) of the Criminal Code jo. Article 55 Paragraph (1) of the 1st Criminal Code

Second: Article 378 of the Criminal Code jo. Article 55 Paragraph 1 (1) of the 1st Criminal Code

Based on 60 judge's considerations regarding alternative charges in the district court decision number 952/Pid.B/2019/Pn.JktBrt, the elements in Article 263 Paragraph (2) of the Criminal Code and Article 378 of the Criminal Code are as follows:

Elements of Article 263 Paragraph (2) of the Criminal Code:

1. Elements of "Whosoever"
2. The element of "intentional" using a forged or falsified document as if it were true if the use of the letter could cause harm.

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Elements of Article 378 of the Criminal Code:

1. The element of "whoever"; 4
2. The element "with the intent to unlawfully benefit oneself or another person"
3. The element "by using a false name or false dignity"

4. The element "by deceit, or a series of lies, moves another person to hand over something to him or to give a debt or write off a debt"

Judges in giving a consideration to decide a criminal case, it is hoped that the judge does not judge from one party so that matters regarding the imposition of the judge's decision, whether the judge's considerations have burdened or eased the criminal sentence and the judge must have logical thinking in order to reach a decision. When viewed from the legal basis used by the Panel of Judges, namely Article 378 of the Criminal Code in conjunction with Article 55 Paragraph (1) of the 1st Criminal Code, it is not appropriate and appropriate when viewed from the position case contained in the district court decision number 952/Pid.B/2019/PN.JktBrt the defendant should be subject to Article 263 Paragraph (2) of the Criminal Code jo. Article 55 Paragraph (1) of the Criminal Code 2 cause the defendant has been proven to have violated Article 263 Paragraph (2) of the Criminal Code which reads "those 5 used with the same punishment, whoever intentionally uses a forged or forged letter as if it were real, if the use of the letter is can cause harm" in Article 263 Paragraph (2) of the Criminal Code, the defendant is threatened with a maximum imprisonment of six years. However, the verdict in the district court number 952/Pid.B/2019/PN.JktBrt which decided that the defendant was subject to Article 378 of the Criminal Code Jo. Article 55 Paragraph 51 The 1st KUHP is too light because in Article 378 it is punishable by a maximum imprisonment of four years and 30 defendant is subject to imprisonment of 3 (three) years reduced as long as the defendant is in temporary detention and with an order that the defendant remains detained when compared Article 263 Paragraph (2) of the Criminal Code.

### 3. CONCLUSION AND SUGGESTION

#### 3.1. Conclusion

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- I. The legal consequences of the credit agreement with the existence of a forged civil letter, the agreement can be said to be null and void because in entering into a credit agreement you must use an authentic deed, identity and other original documents, not fake ones. While the legal consequences of a credit agreement with a criminally forged letter, namely an act can have legal consequences if the act has fulfilled the elements in the article that has been imposed on the perpetrator of a crime in the district court decision number 952/Pid.B/2019/Pn.JktBrt the defendant has fulfilled the elements of Article 263 of the Criminal Code, therefore the legal consequences of the credit agreement with the presence of a forged letter are that the agreement can be canceled by law and the person who has committed the act can be subject to criminal penalties from Article 263 of the Criminal Code.

II. In the imposition of decision number 952/Pid.B/2019/PN.JktBrt the charges used by the judge are alternative charges, namely: 2

The defendant's first indictment is subject to Article 263 Paragraph (2) of the Criminal Code in conjunction with Article 55 Paragraph (1) of the 1st Criminal Code as well as elements of Article 263 Paragraph (2) of the Criminal Code as follows:

- a. whose element; 5
- b. The element intentionally uses a forged or falsified letter as if it were real, if the use of the letter can cause harm.

64ile the indictments of the two 12ndants are subject to Article 378 of the Criminal Code jo. Article 55 Paragraph (1) of the 1st Criminal Code and the elements of Article 378 of the Criminal Code are as follows:

- a. The element of "whoever"; 4
- b. The element "with the intent to unlawfully benefit oneself or another person"
- c. The element "by using a false name or false dignity"
- d. The element "by deceit, or a series of lies, moves others to hand over something to him or to give debts or write off debts"

### 3.2. Suggestions

- I. A party who wants to apply for a certificate guarantee to another person must be even more careful so that the certificate that has been guaranteed by that party is not mortgaged back by another person to the Bank using a false identity.
- II. Law enforcers in imposing sentences to defendants must be based on the heavier criminal penalties first and the articles imposed must be in accordance with the actions that have been carried out by the defendant.

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# Criminal Liability in Falsification of Letters Against Credits Agreements (Study Case Decision Number: 952/Pid.B/2019/Pn.Jkt.Brt)

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