

CRIMINAL RESPONSIBILITY FOR FRAUD MONEY Rp 285.000.000 OF OVERSEAS TRAVEL DOCUMENT PROCESSING (VISA) (Case Study of Police Report Number: LP / 432 / IX / 2020 / SULUT / SPKT)

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ABSTRACT

The difficulty of finding work in the country encourages many Indonesian workers to work abroad. To be able to leave Indonesia and be accepted in the destination country, one must have a visa as an entry permit and travel permit. However, there are still many people who do not understand the administrative procedures for visa processing, so service bureaus have emerged that offer document processing services. These service bureaus require operational and service fees. However, there are many cases where service bureaus receive money but do not fulfill their obligations, resulting in disputes that lead to police reports. This research examines criminal liability in visa processing fraud cases, with a focus on Police Report Case Study Number: LP/432/IX/2020/SULUT/SPKT. In addition, this study also analyzes the legal consequences of criminal fraud in visa management. The research method used is normative legal research, which examines legal norms based on a statutory approach. The analysis is carried out normatively qualitative with inductive logic, using the method of interpretation and comparative legal construction. In criminal law, fault is an important element in determining criminal liability. The principle of "no punishment without fault" emphasizes that a person can only be convicted if proven guilty. The legal consequences of the crime of visa fraud are criminal sanctions in accordance with Article 378 of the Criminal Code, which stipulates a maximum imprisonment of four years for perpetrators of fraud.

Keywords: Criminal Liability, Fraud, Visa Administration

INTRODUCTION

Indonesia faces a high unemployment rate due to limited job opportunities. This has an impact on people's welfare and triggers various negative consequences. Based on data from the Central Statistics Agency (BPS), the number of unemployed people in February 2021 reached 8.75 million, while the Open Unemployment Rate (TPT) in August 2022 was recorded at 5.86 percent. The main factors causing high unemployment include intense job competition, the lack of skills of job seekers, and the prolonged impact of the COVID-19 pandemic.

Due to the difficulty of obtaining work in the country, some people choose to work as Indonesian Migrant Workers (TKI) abroad, while others remain unemployed. This labor problem is still a major issue in developing countries. If the government fails to provide and manage employment effectively, the impact will hamper economic growth. Conversely, if

labor can be utilized optimally, then this problem can actually be a potential for accelerating development.

For prospective Indonesian workers (CTKI) who want to work abroad, they are required to have a passport and complete other administrative documents. Those who work based on work agreements and official placement procedures are referred to as Indonesian Migrant Workers (PMI). In addition to passports, CTKIs also need to apply for a visa as an entry permit to the destination country. The Immigration Office as an institution responsible for the entry and exit of people from Indonesian territory regulates this based on Law No. 6/2011 on Immigration. In the law, immigration is defined as the supervision of the movement of people in order to maintain the sovereignty of the country. In addition, immigration plays a role in various aspects of life such as economy, politics, law, and security.

Although the government has provided immigration services, many people still do not understand the administrative procedures in obtaining travel documents abroad. This has led to the emergence of travel document processing services, both by official service bureaus and individuals offering similar services. The use of these services requires additional costs that are often greater than if the community takes care of it independently.

The government through the Directorate General of Immigration has developed an online visa processing system through the website <https://visa-online.imigrasi.go.id> to facilitate the public. However, many have not been able to utilize this system optimally due to limited digital literacy. As a result, fraudulent practices in the processing of travel documents are still rampant, as seen in the case of Police Report Number: LP/432/IX/2020/SULUT/SPKT, where the victim was deceived by a perpetrator who offered visa processing services, but did not carry out his obligations after receiving payment.

In the context of criminal liability, the element of guilt is the main factor in determining whether a person can be convicted. Fault in criminal law is associated with the *mens rea* or malicious intent of the perpetrator. If someone violates the law, then he must be responsible for his actions. Criminal responsibility also has a social function, namely as a control so that people do not commit criminal acts.

According to Roeslan Saleh, the elements of guilt in criminal responsibility include the ability to be responsible, the existence of elements of intent (*dolus*) or negligence (*culpa*), and the absence of excuses. In the case of visa fraud, these elements can be applied to determine the perpetrator's guilt and impose appropriate legal sanctions. Therefore, this research aims to analyze criminal liability in cases of fraud in the management of foreign travel documents, with a case study of Police Report Number: LP/432/IX/2020/SULUT/SPKT.

MATERIAL AND METHODS

The research method in this study uses a normative legal approach, which aims to understand the application of legal norms to existing facts in order to offer solutions to concrete problems. The approach used is a statutory approach by examining relevant legal regulations and a case approach that focuses on analyzing court decisions with permanent legal force. The sources of legal materials used consist of primary legal materials, such as the Criminal Code (KUHP), Law Number 6 of 2011 concerning Immigration, and Law Number 63 of 2024 concerning the Third Amendment to Law Number 6 of 2011 concerning Immigration. Secondary legal materials are in the form of books and scientific research results of experts, while tertiary legal materials include legal dictionaries and language dictionaries. The technique of collecting legal materials is done through library research and study of relevant documents. Analysis of legal materials is carried out normatively qualitative, with the preparation of sentences that are systematic, logical, and effective. Conclusions are drawn inductively, namely from specific matters to more general conclusions in order to answer research problems.

RESEARCH RESULTS AND DISCUSSION

1. Criminal Liability for Fraud in the Management of Overseas Travel Documents (Visa) (Case Study of Police Report Number: LP / 432 / IX / 2020 / SULUT / SPKT)

A. Concept of Criminal Liability

Criminal responsibility is an important aspect in criminal law that determines whether a person who has committed a criminal act can be sentenced. Not all actions that fulfill the

elements of the offense in the legislation automatically lead to punishment, because the element of guilt must also be fulfilled in the action (Moelyatno, 2002). Criminal responsibility is known in foreign terms as criminal responsibility, which aims to assess whether a person can be held accountable for criminal acts that occur (Farid, 2010).

In criminal law, the fundamental principle that applies is *geen straf zonder schuld* or *actus non facit reum nisi mens sit rea*, which means there is no punishment without fault (Moelyatno, 2002). Therefore, although an act is categorized as a criminal act, the imposition of punishment can only be done if the perpetrator has the element of guilt and has the ability to take responsibility. This is in line with Chairul Huda's opinion that criminal responsibility is a legal reaction to violations of social agreements in rejecting certain actions (Huda, 2006).

Simons, as cited by Teguh Prasetyo, explained that the ability to be responsible has two main requirements, namely first, awareness that his actions are against the law, and second, the ability to determine the will in accordance with this awareness (Prasetyo, 2016). In the perspective of criminal law, a person who acts without legal awareness or under circumstances beyond his control can be free from criminal liability. Sudarto asserted that the requirement for the imposition of punishment is not sufficient only by proving the elements of the offense in the law, but there must be an element of guilt (Ali, 2015).

The concept of criminal responsibility is also closely related to the doctrine of *mens rea* which asserts that a person can only be convicted if they have evil intent or a reprehensible mental attitude (Amrani & Ali, 2015). In practice, criminal law recognizes two main elements that must be met in order for a person to be sentenced, namely the existence of a criminal act (*actus reus*) and the element of guilt (*mens rea*). If one of these elements is not met, then a person cannot be held criminally responsible.

In addition, the principle of legality in Article 1 paragraph (1) of the Criminal Code confirms that an act can only be categorized as a criminal offense if there are rules that explicitly prohibit the act and stipulate criminal penalties (Moelyatno, 2008). Criminal responsibility is not only about ensuring that someone has committed a criminal act, but

also serves as a selection mechanism for the legal system to determine who deserves to be punished and at what level (Huda, 2006).

The requirements of guilt in criminal law include psychological and normative aspects. From a psychological perspective, guilt is related to the inner relationship between the perpetrator and his actions, which includes elements of intentionality (intention), recklessness (recklessness), and negligence (negligence) (Arief, 2014). Meanwhile, from a normative perspective, fault is assessed based on society's view of whether a person should have avoided the act committed and whether he should be reproached for his actions (Amrani & Ali, 2015).

In legal practice, judges have an important role in assessing the element of guilt of a defendant. The judge must ensure that there is no reason for the exclusion of guilt before imposing a sentence, even if the defendant does not submit a defense on that basis (Huda, 2006). The concept of criminal responsibility serves as a tool to balance between individual rights and the interests of society by placing fault as the main requirement for punishment. Thus, the doctrine of “no punishment without fault” remains a fundamental principle in the modern criminal law system.

B. Investigation Process Related to the Crime of Fraud in the Management of Overseas Travel Documents (Visa) (Case Study of Police Report Number: LP / 432 / IX / 2020 / SULUT / SPKT).

Criminal responsibility is a fundamental principle in criminal law that determines whether a person who has committed a criminal act can be sentenced. According to Moelyatno, a person can only be sentenced if his actions are proven to fulfill the elements of a criminal offense stipulated in the legislation and contain elements of guilt (Moelyatno, 2002). Fault in criminal law is the main aspect that distinguishes between unlawful acts that can be subject to criminal sanctions and acts that cannot be punished.

In criminal law, the applicable principle is *geen straf zonder schuld* or *actus non facit reum nisi mens sit rea*, which means there is no punishment without guilt (Moelyatno, 2002). This means that criminal liability is not only based on the proof of the elements of the

offense, but also the existence of malicious intent or negligence of the perpetrator. This is in line with Farid's thought that criminal responsibility aims to determine whether a person can be held accountable for a criminal offense (Farid, 2010).

Simons, as cited by Teguh Prasetyo, explained that a person can be said to be criminally responsible if he is able to realize that his actions are against the law and has the ability to determine his will in accordance with this awareness (Prasetyo, 2016). Sudarto emphasized that merely fulfilling the elements of the offense is not enough to impose punishment; there must be an element of guilt as the basis for punishment (Ali, 2015). Therefore, if a person commits an unlawful act under circumstances that eliminate the element of guilt, then he cannot be subject to punishment.

In criminal law, the doctrine of mens is known *mens rea*, which emphasizes that a person can only be sentenced to punishment if he has evil intentions or a despicable inner attitude (Amrani & Ali, 2015). To be able to convict someone, two main elements must be fulfilled, namely the criminal (act *actus reus*) and the element of guilt (*mens rea*). If one of these elements is not fulfilled, then criminalization cannot be carried out because it is contrary to the principle of legality as stated in Article 1 paragraph (1) of the Criminal Code (Moelyatno, 2008).

According to Chairul Huda, criminal responsibility is a legal reaction to violations of social agreements that reject certain actions (Huda, 2006). Therefore, criminal law has a clear mechanism in determining whether a person can be subject to criminal sanctions. The basic principle of this mechanism is that a person can only be punished if he commits a criminal act with full awareness and without any factors that eliminate his guilt.

In legal practice, judges have a major role in assessing the element of guilt of an accused. The judge must ensure that there is no reason for the absence of guilt before imposing a sentence, even if the defendant does not submit a defense on that basis (Huda, 2006). This shows that criminal responsibility does not only assess the actions of the perpetrator, but also takes into account the psychological and social circumstances behind the action.

Error in criminal law can be categorized into several forms, namely , intentrecklessness, and negligence (Arief, 2014). This form of fault determines the extent to which a person can be held criminally liable. The higher the level of intent in an act, the more severe the punishment that can be imposed on the perpetrator.

Criminal sanctions in law aim to uphold legal norms and provide a deterrent effect to the perpetrator. According to given by law for a legal event or action of a legal subject (Utrecht, legal sanctions are the consequences Utrecht, 2005). In the context of criminal liability, the sanctions imposed must be proportional to the level of guilt committed by the perpetrator so as not to contradict the principle of justice.

The concept of criminal responsibility also reflects the balance between the interests of society and individual rights. Hoefnagels stated that criminal sanctions are legal reactions to violations of the law that have been determined in the legislation (Sholehuddin, 2003). Therefore, the criminal justice system must ensure that the imposition of punishment is carried out objectively, fairly, and based on valid evidence.

In the case of fraud, the criminal responsibility of the perpetrator must be proven through the elements contained in Article 378 of the Criminal Code. This article stipulates that a person can be convicted if, with the intention of unlawfully benefiting himself or another person, he uses deception or a series of lies to move another person to give something to him (Moelyatno, 2008).

In the case of visa processing fraud as occurred in Police Report Number: LP / 432 / IX / 2020 / SULUT / SPKT, the elements in Article 378 of the Criminal Code have been fulfilled. The perpetrator promised visa processing by asking for a sum of money from the victim, but in the end the promised visa never existed, and the money that had been submitted was not returned (Huda, 2006).

In terms of criminal law, the perpetrator's actions in this case not only fulfill the elements of fraud, but also the elements of embezzlement as regulated in Article 372 of the Criminal Code. The difference between fraud and embezzlement lies in how the perpetrator obtained the goods or money. In fraud, the perpetrator obtains goods or money by

deception, while in embezzlement, the perpetrator obtains goods or money legally but then misuses them for personal gain (Moelyatno, 2008).

In this case, the perpetrator initially obtained money from the victim legally on the grounds of visa processing. However, because the promised visa never arrived and the money was used for personal gain, the perpetrator can be charged with fraud or embezzlement (Huda, 2006).

The practice of law enforcement in fraud cases often faces obstacles in proving the elements of guilt. Therefore, the criminal justice system must pay attention to aspects related to the intention and inner state of the perpetrator so that there is no criminalization of acts that should not be punished (Ali, 2015).

The normative approach to criminal responsibility emphasizes the balance between the protection of society and the protection of individuals suspected of committing criminal offenses. Therefore, in making a decision, the judge must consider all relevant factors, including whether there are reasons that can erase the offender's guilt (Huda, 2006).

From this research, it was found that in practice, many fraud cases involve an element of trust between the perpetrator and the victim. This shows that the legal protection mechanism for fraud victims still needs to be strengthened through a firmer and clearer legal policy (Ali, 2015).

In conclusion, criminal liability in Indonesian criminal law relies heavily on the principle of fault as the basis for punishment. This concept ensures that a person can only be convicted if he or she has malicious intent or negligence in committing a criminal act (Moelyatno, 2002).

Thus, in the criminal justice system, it is important to ensure that the criminal elements in a case have been fulfilled before imposing punishment on someone. This is in line with the principles of justice and legality that are the basis of modern criminal law (Huda, 2006).

CONCLUSIONS AND ADVICE

Based on the results of the research that the author has described in the previous chapter, the author can conclude that:

- a) That guilt is a very important thing in criminal responsibility to punish someone, in criminal law the principle is known, “no punishment without guilt”.
- b) Legal consequences are the consequences given by the law for a legal event or action of the subject of law, the legal consequences in the crime of fraud in the management of overseas travel documents (Visa) are legal sanctions for the responsibility of the suspect for the crime of fraud in the management of overseas travel documents (Visa). The legal sanctions are described in Article 378 of the Criminal Code on fraud with a maximum imprisonment of 4 years.

From the conclusions that the author has given provide , the author can the following suggestions:

- a) Appeal to the public to be careful in submitting documents as a requirement to go abroad through the services of brokers, it is better to take care of it yourself and ask the information section at immigration.
- b) The public should avoid criminal acts because criminal acts will create criminal liability and there will be legal consequences, namely criminal sanctions.

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