



**JURIDICAL ANALYSIS OF RESPONSIBILITY PERPETRATOR OF THE
CRIME FORGERY OF LETTERS UNDER DURESS AS AN EFFORT TO ENTER
INTO SAME-SEX MARRIAGE: CASE STUDY**

Disna Dwi Kusuma^{1)*}, Emi Puasa Handayani¹⁾, Nur Chasanah¹⁾

¹⁾Faculty of Law, Kadirı Islamic University, Indonesia

*Corresponding Author, E-mail : disnadwikusuma20@gmail.com

ABSTRACT

Background. The criminal liability of the perpetrator of forgery of letters to carry out same-sex marriages which are now starting to occur by considering the judge's ratio decidendi. The purpose of this study is to analyze the *mens rea* in Article 48 of the Criminal Code on coercion against the actions of the perpetrators of verdict number 155/Pid.B/2017/PN.Pwr and number 134/Pid./2017/PN.Byl and to examine the ratio *decidendi* of the judge in deciding the case of forgery of letters in case number 155/Pid.B/2017/PN.Pwr and number 134/Pid./2017/PN.Byl.

Research Method. This research used normative juridical methods with a statue approach and case study approach. This research using literature and regulations that relevant to the topic or research problem criminal liability for perpetrators of mail forgery.

Findings. The results of the author's research on decision number 155/Pid.B/2017/PN.Pwr and decision number 134/Pid./2017/PN.Byl are that the defendant's *mens rea* does not fulfill the elements of Article 48 of the Criminal Code so that there are no justification and excuse reasons that make the defendant free from the charges, therefore the defendant for all his actions must be accountable.

Conclusion. The judge's ratio *decidendi* for both decision number 155/Pid.B/2017/PN.Pwr and decision number 134/Pid./2017/PN.Byl was correct and in accordance with the legislation.

Keywords: Criminal liability, Forgery of letters, Same-sex marriage.

BACKGROUND

The increase in population that results in the emergence of a diversity of life backgrounds and heterogeneous in nature makes it difficult to control the mindset of each individual, which is not uncommon on the basis of differences that then arise crimes and criminal acts. Along with the progress of the development of society and science, it can be believed that criminal acts will also continue to develop in terms of quantity and quality, resulting in losses for individuals, society, government or the state.[1]

Serving as a forum to answer all challenges related to criminal acts and new crimes that have begun to emerge, criminal law is required to be able to cover and is also expected to be a resolution to all problems faced by the community by seeking codification and coalition in the field of law, especially related to the preparation of new laws whose contents adjust the development of criminal acts today.

One of the crimes is mail forgery. The crime of mail forgery has a direct involvement and impact on the truth and trust of others. This is why the letter as an authentic deed, the rapid advancement of technology has given rise to various forms and developments of the crime of forgery of letters, indicating the higher level of intellectuality of the perpetrators to carry out their actions to forge letters.

The identity card is the official identity of the population and evidence of identity is often falsified for certain purposes. The same is the case with the example of a criminal offense of mail forgery tried by the Purworejo District Court, namely a criminal case with decision number 155/Pid.B/2017/PN.Pwr with the defendant named NAA alias PLJ. NAA was sentenced to imprisonment because she was proven to have falsified her identity to marry WS.

To deceive and convince the victim, the defendant Nova Aprida Aryani is known to have made illegal documents, namely falsifying his identity on his Identity Card (in Bahasa called as KTP) and Family Card (in Bahasa called as KK), which originally said NAA to PLJ and changing his sex from female to male, which documents were then used as a cover letter to obtain a marriage application. However, after the documents were handed over to the KUA officer, the KUA officer told the defendant that the defendant was a woman and that the defendant had admitted his identity as a woman, and therefore the planned marriage between the defendant and WS (witness victim), who was also a woman, could not take place.

Trying to compare with the decision issued by the Boyolali District Court Number 134/Pid.B/2016/PN.Byl where in the decision the defendant S alias MFS, who is female and still married to her husband S, deliberately falsified the identity papers on her KK and KTP with the help of other people, namely changing her name to MFS, who is male and a bachelor (virgin). The act of forging and using this false document was solely to realize his desire to marry the victim witness H.

Forgery of documents in the form of changing gender identity is often used as a mode of conducting same-sex marriages. In Indonesia, same-sex marriage is not legal under constitutional law. Aspects that trigger the occurrence of the crime of mail forgery in the form of counterfeiting identity in marriage is a clash of legal disciplines. It generally occurs when a person intends to create a false identity in an effort to realize hidden goals even if it is done illegally without responsibility.[2]

Law of the Republic of Indonesia Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage does not provide a loophole for same-sex couples to marry. Although it is not specifically written in the regulations, unusual marriages, namely same-sex marriages, are still contrary to societal norms. This act that deviates from what should be done is classified as an act that is condemned by the majority of the religious population, especially in most eastern cultural countries because the impact is not only material loss but also immaterial.[3]

Based on the description of the background above, the problem formulation that will be discussed in this article is whether the actions of the perpetrator in verdict number 155/Pid.B/2017/PN and number 134/Pid.B/2016/PN.Byl PWR contain *mens rea* as formulated in Article 48 of the Criminal Code, and what is the ratio *decidendi of the judge* in handing down a verdict on the crime of forgery of letters in case number 155/Pid.B/2017/PN.Pwr and verdict number 134/Pid.B/2016/PN.Byl.

The purpose of writing this article is to analyze whether the actions of the perpetrator in verdict number 155/Pid.B/2017/PN.Pwr and verdict number 134/Pid.B/2016/PN.Byl contain *mens rea* as formulated in Article 48 of the Criminal Code, and to analyze the *ratio decidendi of the judge* in deciding case number 155/Pid.B/2017/PN.Pwr and number 134/Pid.B/2016/PN.Byl.

Similar research that discusses criminal liability of perpetrators of criminal forgery of letters as an effort to enter into same-sex marriages in general has been carried out by

many previous researchers, such as RFS in his thesis entitled Analysis of the responsibility of perpetrators of criminal acts of identity forgery in marriage (Study of Decision no.865/Pid.B/2012/PN.Bks) in 2015. The source of legal material for the research conducted by Rio Fajar Sakti refers to interviews with respondents from the Bekasi District Court judges and this research focuses on the perpetrators of criminal acts of identity forgery in ordinary marriages, not the same sex.

The novelty of the previous research with the current research discusses the criminal liability of the perpetrator of forgery of letters to carry out same- sex marriages which are now starting to occur by considering the judge's ratio *decidendi*. The next literature discusses criminal liability against perpetrators of criminal forgery of letters is EAS in his thesis entitled Criminal liability for using fake letters in terms of Article 263 Paragraph (2) of the Criminal Code in 2018. The data of this research was obtained from interviews with investigators of the Semarang Police Criminal Investigation Unit. This research does not significantly discuss the subject who is the perpetrator of using fake letters and for what purpose the perpetrator uses fake letters. The novelty contained in the research conducted is that in obtaining legal data sources, the author obtains data from the decision.

RESEARCH METHOD

This research uses normative research methods (Legal Research) or document library research because it is based on written regulations or other legal sources.[4] Approach that researchers use a statue approach and case study approach in this research. The statue approach is carried out by examining the contents of legislation and doctrine related to the legal issues studied.[5] The case study approach is carried out through the technique of examining and describing a case in a natural context. This research aims to understand a decision, namely the consideration of the decision taken, the application and the consequences of the decision taken.

The legal data sources used by the author in this research are primary data and secondary data. Primary legal materials used by the author include:

- 1) The 1945 Constitution of the Republic of Indonesia, particularly article 28[6];
- 2) The Criminal Code, specifically Article 263;
- 3) Law of the Republic of Indonesia Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage[7];
- 4) Court Decisions Number 155/Pid.B/2017/PN.Pwr and Number 134/Pid.B/2016/PN.Byl[8,9].

In this research, the secondary legal materials used by the author are books of literature, and legal journals. The technique of collecting legal materials that the author uses to research and collect data through this normative research is using library research, which is carried out through reading, studying, examining and analyzing various references or literature, and regulations that are relevant to the topic of the problem that the author raises, namely criminal liability for perpetrators of mail forgery.

The research analysis technique of this thesis is descriptive analysis and deductive mindset. The descriptive analysis method is a method that explains in detail, detailed and structured with the aim of getting a comprehensive understanding.[10] By using a deductive mindset, this thesis research is based on general principles and theories, explaining the relationship between the data obtained in a structured and systematic

manner as well as considering the thoughts of experts who have a correlation with the research material as a comparison material.

In this research, researchers analyzes the decision of the Purworejo District Court and the decision of the Boyolali District Court which are then associated with theories in the literature as well as legislation relevant to legal issues which are then collected to produce a specific conclusion through the process of analyzing.

FINDINGS

1. *Ratio decidendi* of the Judge in Deciding Case Number 155/Pid.B/2017/PN.Pwr

Ratio decidendi is also called the judge's mind in making a verdict so that in addition to considering previous judges' decisions (*precedent*), the panel of judges should pay attention to educational, utility, humanitarian, enforcement and legal certainty factors that refer to legal, moral, political and social principles in making a decision in order to create justice.[11]

Case number 155/Pid.B/2017/PN.Pwr is considered to have fulfilled 2 (two) elements of the judge's *ratio decidendi*, namely juridical and non-juridical. Referring to the juridical *ratio decidendi* element in the case above, evidence that is considered valid and in accordance with the law has been presented at trial as described in the reading of the charges by the public prosecutor including witness testimony, expert testimony, testimony of the defendant and attention to evidence. The efforts taken by the public prosecutor to prove his charges were to bring in 8 (eight) witnesses where the testimony of several witnesses. This shows a causality, linkage, or relationship with one another that justifies the existence of an incident of forgery of letters by the defendant.

Based on the testimony of the defendant during the trial, the defendant admitted that his actions in forging a letter to fulfill the requirements to marry the victim witness were true, and the defendant was also fully aware of his actions. The defendant in decision number 155/Pid.B/2017/PN.Pwr presented several experts at the trial, and the testimony of these experts will be a mitigating consideration for the defendant.

The non-juridical *ratio decidendi* element contained in the case decision is that the act of forgery of the letter committed by the defendant caused material and immaterial losses in the form of embarrassment suffered by the witness Wilis Setyowati and her family, therefore the panel of judges considered that the use of the letter had been proven according to the law to cause harm.

Considering the above, the following are the elements contained in Article 263 paragraph (2) of the Criminal Code [12] which are considered by the judge, as follows:

1) The element "Whoever"

Based on the judge's consideration, the element of "whoever" is fulfilled according to the law because the word "whoever" is addressed to a legal subject with rights and obligations, which can be an individual or a legal entity. The defendant NAA Alias PJ during the trial was able to answer all questions posed by the presiding judge regarding the identity of the defendant as stated in the indictment by the public prosecutor and no *error* or *error in persona* in the determination of the status of a suspect or defendant.

Considering the element of "whoever", according to the panel of judges, it is sufficient to contain the identity of the defendant without a series of main criminal events, there is confidence and no doubt about the defendant's ability to take responsibility for his actions,

so the element of "whoever" as mentioned above is consistent so that it is fulfilled according to the law.

2) The element "Intentionally using false or falsified documents as if they were genuine"

The element of "intentionally" is continued by considering what type of unlawful act is interpreted as violating the provisions of Article 263 paragraph (2) of the Criminal Code on forgery of documents. That the unlawful act is in the form of using a forged or falsified letter as if it were genuine.[13] Quoting from what R.Soesilo stated about the notion of "*intentionally*" is that a person knows consciously that the letter he uses is fake. The purpose of using here is to give the letter to another person or in a place where the letter is needed. The theory of criminal law divides the element of "intent" into three types, including :

1. Purposeful intent. This deliberation considers that the perpetrator in committing the act intended an effect so that it is the basis for punishment.
2. Deliberate intent with certainty. The perpetrator in carrying out his actions does not have the aim of achieving the consequences that will be the basis of the *delict*. However, the perpetrator has the awareness that his actions will be followed by the consequences of his actions.
3. Willful intent with probable intent. In carrying out their actions, the perpetrators are aware that there will be unintended consequences later, but this does not make the perpetrators intend to cancel their actions.

The panel of judges gave consideration based on the legal facts revealed at trial and then linked it to the theory of the element "deliberately using a forged or falsified letter as if it were genuine" so as to reach the following conclusion:

The first consideration is that the falsification of identity documents in the form of KTP and KK by the defendant was used as a condition to register for marriage with the victim witness WS, while the defendant knew that marriage with a woman is not allowed. Because the defendant realized the purpose of his actions, the element of intentional purpose has been fulfilled.

According to the author's analysis, the element of deliberate intent is likely to be fulfilled. This can be seen from the motive of the actions committed by the defendant that the defendant through his testimony revealed in the trial admitted that he knew the consequences that would result from his actions (using fake documents or KTP and KK). However, this did not deter the defendant from using forged documents to register his marriage with the victim WS.

The second consideration was that the name PLJ on the KTP and KK was not the real name of the defendant, where the real name listed on the KTP and KK was NAA of female gender. The fake KTP and KK were then used to request a letter of introduction to the KUA in Binong Village in order to marry the victim witness WS. This shows that the defendant's actions have fulfilled the element of intentionally using fake documents and have been proven according to the law.

3) The element "If the use of the letter could cause harm"

The meaning of loss is not only in the form of material loss but also loss in the community. The judge's reasoning stated that based on the legal facts at trial, the defendant knew the consequences of his actions against the witness SW and his family would be embarrassed in the community. Considering that the embarrassment suffered by the

witness Wilis and her family is a form of immaterial loss in the form of loss of name, loss of honor and loss of dignity in the eyes of the community.

2. *Ratio decidendi of the Judge in Decision Number 134/Pid.B/2016/PN.Byl*

Decision number 134/Pid.B/2016/PN.Byl has fulfilled the two categories used by judges in considering each decision, namely juridical and non-juridical elements. Evidence is needed to strengthen the charges against the defendant, as stipulated in Article 183 of the Criminal Procedure Code, which requires at least two valid pieces of evidence to convince the occurrence of the criminal offense.

The public prosecutor, in proving his charges against the defendant, had presented witnesses and heard expert testimony as a valid requirement for the fulfillment of the juridical elements. 6 (six) witnesses testified during the trial and the judge considered that there were similarities and connections in the testimonies given by the witnesses. Therefore, the elements of Article 184 of the Criminal Procedure Code have been fulfilled. Based on the testimony of the defendant, he confirmed the testimony of the witnesses and admitted his actions in forging a letter to marry the victim H, the defendant gave an alibi for his actions in forging the letter because the victim often called the defendant and said that she did not want to be in a relationship for long and immediately asked to be married and for his actions the defendant pleaded guilty and regretted his actions. The consideration of the defendant's testimony during the trial shows that this decision fulfills the contents of Article 189 paragraph (1) of the Criminal Procedure Code.

Non-juridical elements that fulfill decision number 134/Pid.B/2016/PN.Byl include the background of the defendant committing a criminal offense, the consequences of the defendant's actions and the circumstances of the defendant when he committed his actions.

According to the defendant's statement, he did this because he wanted the victim to ask for an immediate marriage, so he decided to falsify the identity papers on his ID card and family card. As a result, the victim witness and her family suffered material and immaterial losses. The public prosecutor charged the defendant under Article 263(2) of the Penal Code and the judge, based on his reasoning, decided to sentence the defendant to 2 years imprisonment. Penalized the defendant with the same article, namely Article 263 paragraph (2) of the Criminal Code, the author also agrees that the imposition of punishment on the defendant using Article 263 paragraph (2) of the Criminal Code was appropriate based on the facts that showed that the defendant had indeed committed mail forgery. The elements contained in Article 263 paragraph (2) include:

1. The element of "Whoever"

Considering that in this case the public prosecutor had presented the defendant to the court with her identity, namely Suwarti Binti Prapto, and it was proven that she matched the personal data contained in the investigation report and the indictment of the public prosecutor.

Considering that based on the legal facts in the trial mentioned above, the first element "whoever" has been fulfilled according to the law.

2. Element "Intentionally use a forged or falsified document as if it were genuine and unfalsified"

Considering this element, deliberately using a forged or falsified document means with the intention of the perpetrator and using a way or method that is contrary to the law or fraud, the perpetrator can make changes in a true document.

Based on the legal facts presented during the trial, the defendant knew that same-sex marriage was not allowed by the state, so the defendant used his brains to marry the victim witness by deliberately falsifying his identity on authentic documents such as his ID card and family card, falsifying his name and gender as MFS is male, which is contrary to the actual facts with the help of other people. Furthermore, the forged letter was used as an administrative requirement for marriage, so on October 1, 2015 an official marriage took place between the defendant M. Fendi Saputra and the victim witness H.

Considering the legal facts mentioned above, the second element "Deliberately using a fake or falsified letter as if it were genuine and not falsified" is also legally fulfilled.

3. The element "If from its use can cause a loss"

Based on the legal facts established during the trial, the actions of the defendant caused the victim witness H and her family to suffer humiliation to their honor and dignity. They felt cheated because the victim witness was legally married to the defendant within 7 (seven) months. The material loss suffered by the victim witness was Rp.12,000,000 (twelve million rupiah) for the cost of the marriage. Considering these facts, the element "If its use can cause a loss" has been fulfilled according to the law.

DISCUSSIONS

1. Analysis of the perpetrator's actions in decision number 155/Pid.B/2017/PN Pwr and decision number 134/Pid.B/2016/PN.Byl with mens rea as formulated in Article 48 of the Criminal Code

One of the elements that must be fulfilled to determine criminal sanctions against an act is the *mens rea element*. *Mens rea (mental element)* is the inner attitude or condition of a person's soul when committing an act, also called the element of *fault*. In criminal law, *Actus non favit reum nisi mens sist rea* or in other terms the principle of no punishment without fault has a relationship with the element of responsibility. This principle states that if a person has committed a crime and the elements formulated in the offense have been fulfilled, he cannot be declared a defendant, therefore it is necessary to prove whether the person's actions can be proven accountable or not, in the sense of whether his actions have elements of guilt or not [14]

Barda Nawawi Arief argues that the scope of criminal acts is only limited to objective acts, while the inner attitude of the perpetrator of criminal acts in this case is subjective and must be excluded from the scope of criminal acts, because the inner attitude of the perpetrator is included in the scope of guilt and criminal responsibility is the ethical basis for punishing the perpetrator. [14] Analysis related to criminal responsibility is based on the criteria of a person's ability to be held accountable for his actions. Criminal responsibility is a direction for judges to determine a certain condition or circumstance which is then used as a basic foundation for the perpetrator's responsibility so that he/she can be punished. [14]

Based on the author's analysis, the differentiation of the element of guilt from the criminal offense results in the element of guilt becoming the determining factor of criminal liability. Judges in practice when examining, adjudicating and deciding a case also consider the elements of criminal liability as a concrete form of the implementation of the theory of separation of criminal acts and criminal liability. Thus, this theory views that criminal offense only contains *actus rea* as an objective element, while *mens rea* is a subjective element of criminal offense. [13]

The defendant NAA, who is female, has been in a dating relationship for 7 years with the witness WS, who is also female. Based on the testimony of Wilis, she did not know that Pratama Julianto was a woman. These facts prove that the defendant's sexual orientation is deviant, which is called a lesbian or a womanizer. According to expert testimony in the contents of decision number 155/Pid.B/2017/PN.Pwr which states that people whose sexual orientation is normal or *straight* will generally do anything for the person they love, while someone who has a deviant sexual orientation or same-sex lover will certainly have difficulty finding a partner so they will try to do anything to keep their partner.

The forgery of documents committed by the defendant Nova Aprida Aryani mentioned above, when compared with decision number 134/Pid.B/2016/Pn.Byl, there are differences regarding how the defendant forged the documents even though the forged documents were both KK and KTP. The appellant's decision number 134/Pid.B/2016/Pn.Byl explained how the defendant falsified the documents by ordering another person to process the KK and KTP documents and then when they were ready, the DPO received a fee from the defendant.

According to the testimony of a psychologist in verdict number 155/Pid.B/2017/PN.Pwr, the sexual orientation of homo, lesbi or *gay* people does not appear suddenly, sexual orientation is influenced by two kinds of indicators, namely biological and psychological factors. There are pros and cons regarding the determination of the status of homosexuality as a psychiatric disease or not. DSM I and DSM II (*Diagnostic and Statistic Manual of Mental Disorder*) as the pro team states that homosexuality is a deviation so it is categorized as a mental disorder. Similarly, the opinion expressed by psychiatrist F (Deputy Section of Religion Spirituality and Psychiatry of the Indonesian Psychiatric Association) that LGBT is a mental illness and that it is not a mental disorder. It is possible that it can be transmitted to other people.[15] Another case with the *American Pshychiatric Association* in DSM III, eliminating homosexuality from the category of mental disorders or mental defects. So that against this paradigm homosexuality is considered a normal and natural behavior.[15]

Regarding the different ideas mentioned above, the author agrees with the economist who states that homosexuality is a deviation of sexual orientation and not a disease so it does not need to be treated. Deviations in sexual behavior are also not natural and of course can be learned. An LGBT person has the same basic rights as a citizen and gets legal protection as stipulated in the law, but when an LGBT person commits an act that is against the law, of course criminal sanctions cannot be avoided.

Referring to Article 44 of the Criminal Code on matters that eliminate, reduce or aggravate punishment, it becomes an umbrella related to subjects who cannot be held accountable for their actions, namely a person who has a mental disability in growth or is disturbed due to illness will not be convicted, criminal responsibility can only be carried out on someone who has the ability to be responsible so that all his actions can be held accountable.

Decision number 155/Pid.B/2017/PN.Pwr that based on the legal facts revealed in the trial, the defendant consciously and admitted that he falsified the identity on the letters in the form of KTP and KK by scanning them and then the falsified letters were taken to Binong Village to be used to request an introduction letter.

recommendation for marriage. In the appeal decision number 134/Pid.B/2016/PN.Byl the defendant admitted that he ordered someone to make a forged KK and KTP, changing the identity in these documents to be used as administrative requirements for marriage. There were differences between the two defendants in the way they forged the KK and KTP. This indicates that from the outset the defendant had malicious intent to deliberately use forged

documents to achieve certain objectives. The method of forging letters based on the two decisions mentioned above shows that the development of criminal acts goes hand in hand with the development of the digital era which makes it easier for someone to manipulate authentic letters.

During the trial, the defendant made a statement that he knew the consequences of his actions in using forged documents in the form of a forged KTP and KK, both in decision number 155/Pid.B/2014/PN.Pwr and appellant's decision number 134/Pid.B/2016/PN.Byl have similarities, namely the consequences of the defendant's actions in forging documents were that the victim witness and his family felt cheated and embarrassed because they had invited neighbors for their son's wedding celebration before it was finally revealed that the defendant was a woman. Referring to the opinion expressed S.R.S that the ability to be responsible must fulfill two elements, namely the state and ability of the soul, not the ability to think.[15]

Therefore, the author concludes that the legal facts as stated above do not fulfill the elements in Article 44 of the Penal Code regarding matters that nullify, mitigate or aggravate the punishment, however the defendant NAA alias JLP as a defendant. The defendant in Decision Number 155/Pid.B/2017/PN PWR is considered eligible as a person who can be held accountable for his actions before the law. Likewise, the defendant in decision number 134/Pid.B/2016/PN.Byl did not find things that eliminated, reduced or aggravated the punishment, so the judge believed that the defendant could be held accountable for his actions.

Based on the memorandum of defense of the defendant's legal representative in decision number 155/Pid.B/2017/PN PWR, it was explained that due to pressure from the witness T (W's parents) for the defendant to immediately marry the witness W, the defendant was forced to falsify his identity which was then used to obtain a marriage license. This was also the case in the appeal decision number 134/Pid.B/2016/PN.Byl that in the testimony of the defendant, he said that the victim witness often asked the defendant to marry her on the telephone. It was also explained in the memorandum of plea of the defendant's legal counsel in decision number 155/Pid.B/2017/PN.Pwr that the defendant NAA had no intention of forging a photocopy of his ID card and a photocopy of his family card as a condition for marriage, however due to the pressure of the victim witness's parents, the defendant was forced to forge the documents. In line with the testimony of the aforementioned defendant, this was also the case in appeal decision number 134/Pid.B/2016/PN.Byl where the defendant Suwarti committed the act of forging a letter because she was asked by the victim witness to propose to her immediately, hence the evil intention to forge a letter in order to get married to the victim witness who was of the same sex as the defendant.

Explicitly, *overmacht* is listed in Article 48 of the Criminal Code which reads "Whoever commits a crime under the influence of coercion shall not be punished." Because not every coercion can be used as an excuse for exemption from punishment, to determine whether the defendant's actions in the contents of decision number 155/Pid.B/2017/PN

PWR meets the elements of Article 48 of the Criminal Code on coercion, the author argues that the conditions experienced by the defendant in the reading of the pledoi from the defendant's legal counsel mentioned above, can be categorized as an emergency. R. Sugandhi stated that in an emergency, an idea arises from a compelling party so that another person is forced to determine what criminal acts he will do in order to realize the idea.

The judge in his consideration decided that there were no matters that could eliminate criminal liability, either as justification or excuse. The judge also explained that when the act of falsifying the letter committed by the defendant due to pressure from the parents of the witness W was carried out, this could have been avoided by the defendant so that the reasons from the defendant's legal counsel did not meet the provisions of Article 48 of the Criminal Code and Article 49 Paragraphs (1) and (2) of the Criminal Code, therefore the panel of judges concluded that the actions committed by the defendant must be held accountable to him. The author agrees with what has been decided by the judge regarding the act of forgery of letters committed by the defendant that could have been avoided. When he was pressured to marry the witness Wilis, the defendant should have admitted that he was a woman so that he could not continue his relationship with the witness W towards marriage.

Seen from the perspective of the defendant who did not confess his true identity when he was pressured to immediately marry the victim witness W by the victim witness' parents, the author argues that in these circumstances if the defendant revealed his true identity which was that he was a homosexual, then he would become a target of hatred and difficult to accept socially. In the end, whatever the defendant had done was not justified and was contrary to the law.

Based on the above aspects, it can be concluded that the defendant in taking responsibility for his actions does not fulfill the elements of Article 44 of the Criminal Code on matters that eliminate, reduce or aggravate the punishment and also does not fulfill the elements of Article 48 of the Criminal Code on force (*Overmacht*) so that the actions of the defendant must be accountable according to the law.

2. Comparison between decision number 155/Pid.B/2017/PN.Pwr and decision number 134/Pid.B/2016/PN.Byl

The basis of the judge's freedom in determining the severity of the sentence that the defendant will serve depends on the judge's subjectivity based on the case position, the value of justice and the value of truth. Law No. 48 of 2009 on Power The Judiciary explains the function of the provision of punishment (*strafftoemeting leidraad*) which is used as a guide for judges when deciding on punishment after the defendant has been legally proven to have committed the act as charged to him in the hope that the criminal sentence imposed is more rational and proportional.[16]

That the decision number 155/Pid.B/2017/PN.Pwr and the appellant's decision number 134/Pid.B/2016/PN.Byl the defendant had the same motive when forging the letter, namely to fulfill the requirements for same- sex marriage. This is clearly contrary to legislation, in addition to violating the provisions of Article 263 paragraph (2) of the Criminal Code the defendant also violated Law number 1 of 1974 concerning Marriage and the defendant can also be charged with fraud.

Judging from the 2 (two) decisions that the author examines, namely decisions number 155/Pid.B/2017/PN.Pwr and number 134/Pid.B/2016/PN.Byl, in imposing the crime of forgery of letters, judges tend to use normative considerations but do not exclude considerations based on empirical legal facts. The considerations that judges take are based on existing legal facts and then linked to the appropriate legislation in order to realize justice for the parties to the case. According to the author's analysis, the panel of judges' consideration of decision number 155/Pid.B/2017/PN.Pwr and appellant's decision number 134/Pid.B/2016/PN.Byl has fulfilled two categories, namely juridical and non-juridical elements, among others:

1. The judge's *ratio decidendi* is juridical:

The public prosecutor in decision number 155/Pid.B/2017/PN.Pwr brought the defendant to trial with a single charge of being guilty of committing the crime of using a forged or falsified document as if it were genuine as stipulated in Article 263 Paragraph (2) of the Criminal Code, whereas in decision number 134/Pid.B/2016/PN.Byl the defendant was charged with an alternative charge of violating Article 263 Paragraph (2) of the Criminal Code.

The panel of judges in decision number 155/Pid.B/2017/PN.Pwr and appellant's decision number 134/Pid.B/2016/PN.Byl stated that the defendant was legally and convincingly proven guilty of committing the crime of using forged documents that caused a loss. The act of mail forgery committed by the defendant must be held accountable because the elements charged by the public prosecutor have all been fulfilled.

There was evidence presented during the trial to prove that the defendant had actually committed the crime and therefore there were no circumstances that could extinguish the punishment. In his testimony at trial, the defendant admitted that he had indeed committed the act of forgery of letters and was aware of the consequences of his actions. There was congruence between the testimonies given by the witnesses so that the series of testimonies formed a coherent story of how the forgery of letters committed by the defendant could occur.

2. *Ratio decidendi* of the judge that is non-juridical in nature:

The background of the defendant's actions in falsifying the letter in decision number 155/Pid.B/2017/PN.Pwr was because he received. Meanwhile, in the appeal decision number 134/Pid.B/2016/PN.Byl, based on the testimony of the defendant, he stated that the reason he falsified the letter was because the victim witness often asked to be married immediately and did not want to date for a long time.

Based on the two alibis in the aforementioned two decisions, to fulfill the request of the parents of the victim witness and the victim witness, the defendant falsified a letter to fulfill the administrative requirements for marriage by falsifying his identity, changing his name and gender so that he could get married. The excuses made by the defendant cannot exempt the defendant from criminal sanctions because the defendant's actions are not justified by law, state or religion.

As a result of the defendant's actions, in decision number 155/Pid.B/2017/PN.Pwr based on the consideration of the panel of judges that the actions committed by the defendant witness W and his family were embarrassed in the community. Considering that the embarrassment suffered by the witness W and her family is a form of immaterial loss in the form of a loss of name, loss of honor and loss of dignity in the eyes of the community, while the panel of judges in decision number 134/Pid.B/2016/PN.Byl stated that as a result of the actions committed by the defendant, the victim witness suffered immaterial losses in the form of embarrassment, feelings of deception and the fall of honor of the victim witness's family in the community. The victim witness also suffered a material loss of money totaling Rp. 12,000,000 (twelve million rupiah) for wedding expenses, all of which were borne by the family of the victim witness.

CONCLUSION

The act of forging a letter under duress committed by the defendant, namely by falsifying the name and gender in an effort to enter into a same-sex marriage based on decision

number 155/Pid.B/2017/PN.Pwr and decision number 134/Pid.B/2016/PN.Byl, was proven not to contain *mens rea* as formulated in Article 48 of the Criminal Code.

The coercion directed at the defendant by the witness's parents to immediately marry their child should have been avoided by the defendant, as well as the defendant's ability to be responsible for his actions based on the facts revealed at trial that there were no matters that could eliminate or reduce the crime because the defendant did not suffer from mental disability so that legally the defendant was declared as a person who was able to be held accountable for his actions. The *ratio decidendi* of the panel of judges against the perpetrator of mail forgery in verdict number 155/Pid.B/2017/PN.Pwr and appellate verdict number 134/Pid.B/2016/PN.Byl has fulfilled two elements, namely, juridical elements and non-juridical elements.

The act of using a forged letter could have been thwarted at the village level if the officer had been careful to check according to the procedure through the official *website* so that when there is a mistake or falsification of identity on official documents such as KTP or KK, it can be immediately identified and prevent the act of falsifying letters to achieve certain goals as intended by the defendant.

Conflict of Interest

The authors declare no conflicts of interest in this work and publication of this paper.

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