

LEGAL REVIEW OF THE CRIMINAL ACT OF FRAUD IN THE SELECTION OF CIVIL SERVANT CANDIDATES (CPNS) IN BATBARA REGENCY

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ABSTRACT

The crime of fraud in the CPNS selection process is a crime regulated in Article 378 of the Criminal Code (And Article 492 of the new Criminal Code) involving perpetrators who use deception to benefit themselves or others unlawfully. Criminal liability of perpetrators of criminal acts in the selection process for Civil Servant Candidates (CPNS) in Batubara Regency Based on the decision of the Panel of Judges, the defendant was sentenced to 5 (five) months in prison because he was proven guilty of committing the crime of fraud under Article 378 of the Criminal Code, which is different from the demands of the Public Prosecutor, namely 2 (two) years and 6 (six) months imprisonment for being guilty of committing the crime of fraud in the selection of prospective civil servants

1. Introduction

Crime, as a complex phenomenon, must be understood from various perspectives. This is evident in everyday life, with varying opinions about a single crime. Advances in information technology, knowledge, and even legal developments have also impacted the development of crime. Simply put, the increasing number and complexity of laws and regulations seem to force criminals to be more creative and innovative in carrying out their crimes.

One of the crimes that occurs quite frequently in society is fraud. Fraud is a form of action that is referred to as a crime, namely an act that is contrary to legal interests. The causes and consequences of this act have become a concern for various parties, by conducting research based on scientific methods in order to obtain certainty in determining the portion and classification of this crime.



The crime of fraud is a class of criminal acts against a person's wealth which is carried out by lying (deceiving) other people by abusing the trust given, fraud is categorized as a criminal act that can benefit oneself by breaking the law and is considered an act that always harms other people, therefore the perpetrator of the crime of fraud can be held responsible for his actions with criminal sanctions under Article 378 of the Criminal Code, where a person is said to have committed fraud by moving another person with the intention of handing over a certain amount of money for a certain purpose, benefiting himself unlawfully, and the money is not used for the actual purpose but for his own interests.

The high level of public enthusiasm for being accepted as a Civil Servant Candidate (CPNS) has been exploited by some unscrupulous individuals as a means of profiteering, offering to be accepted as a Civil Servant Candidate (CPNS) in exchange for a monetary reward. The public is urged to disregard these claims. They are all lies; avoid becoming a victim of fraudulent schemes involving these Civil Servant Candidate (CPNS) recruitment schemes.

2. Research Method

This research is descriptive analytical, that is, research that describes, examines, explains, and analyzes laws and regulations related to the objectives of this research. The purpose of descriptive research is to accurately describe the characteristics of individuals, conditions, symptoms, or certain groups, or to determine the frequency or distribution of a symptom or the frequency of certain relationships between symptoms and other symptoms in society. The primary purpose of analyzing legal materials is to understand the conceptual meaning of the terms used in statutory regulations and to understand their practical application. Descriptive research aims to provide the most accurate data possible

3. Results And Discussion

Discussions about criminal liability cannot be separated from discussions about criminal acts. A person cannot be held responsible for being punished if they have not committed a crime. The elements of criminal action and fault (intention) are central elements in criminal law. The element of criminal action lies in the objective field, followed by the element of unlawful nature, while the element of criminal liability is a subjective element consisting of the ability to take responsibility and the existence of fault (intention and negligence).

Criminal liability requires the perpetrator to be capable of being responsible. It is impossible for a person to be held accountable if they are unable to be





responsible. The perpetrator's criminal liability requires that the crime they committed fulfill the elements stipulated in the law. Viewed from the perspective of the occurrence of prohibited acts, a person will be held accountable for those actions if the action is against the law and there is no justification or elimination of the illegal nature of the crime committed. And viewed from the perspective of the capacity to be responsible, only a person capable of being responsible can be held accountable for their actions. A criminal act without fault is the basis of criminal liability, therefore, in terms of being punished for someone who commits an act as threatened, this depends on whether in committing this act he was at fault.

Criminal responsibility is defined as the continuation of objective blameworthiness in a criminal act and subjectively fulfilling the requirements for punishment for that act. The basis for the existence of a criminal act is the principle of legality, while the basis for the perpetrator's punishment is the principle of fault. This means that the perpetrator of a criminal act will only be punished if they are at fault in committing the crime.

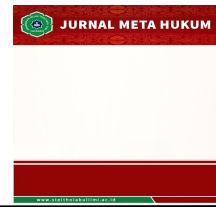
Criminal liability is the responsibility of an individual for the criminal acts they commit, and the person is responsible for the criminal acts they commit. Criminal liability arises from the commission of a criminal act. Criminal liability is essentially a mechanism established by criminal law to respond to violations of an agreement to reject a particular act.

The act of abuse, when viewed from the perspective of Indonesian positive criminal law, can be categorized as a crime, because Indonesian positive criminal law regulates not only the interests between individuals but also the state as an institution that has the function of protecting every citizen, in this case a person who has become a victim of a crime. Basically, to determine whether someone has committed a crime or not, they must fulfill the elements of a crime, namely:

1. The existence of an act
2. This action is prohibited by law
3. This act is punishable by criminal law.
4. The perpetrator can be held responsible for these actions.

Not everyone who commits a crime can always be punished, depending on whether the person or defendant in committing the crime has a mistake or not. Because to impose a penalty on someone who commits a crime is not enough just to commit a crime, but there must also be an element of mistake in it. Regarding the definition of guilt or criminal responsibility apart from the criminal act, because in the case of a criminal act the object is the act while in the case of criminal responsibility the object is the person who committed the criminal act. The basis of criminal acts is the principle of legality (Article 1





paragraph (1)) of the Criminal Code (KUHP), the contents of the Article state that "there is no act that can be punished except by previously existing laws and regulations", while the basis for punishing the perpetrator is the principle of no punishment without fault (*geen straf zonder schuld*).

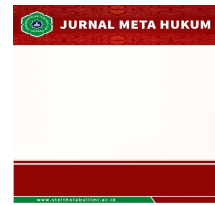
To determine whether or not the perpetrator of a crime is at fault, it must first be determined whether the defendant has the capacity to be responsible for the crime he committed. The defendant's capacity to be responsible is related to the defendant's mental/mental health when committing the crime. The perpetrator is considered capable of being responsible for his actions if he meets several conditions, namely:

1. The ability to distinguish between good and bad actions; what is lawful and what is unlawful;
2. The ability to determine one's will according to one's awareness of the good and bad of the action.

Reason factor (*intellectual factor*) namely being able to differentiate between actions that are permitted and those that are not. The feeling or will factor (*volitional factor*) namely being able to adjust one's behavior with awareness of what is permitted and what is not. In accordance with what is stated in Article 44 paragraph (1) of the Criminal Code (KUHP), namely:

- (1) Whoever commits an act for which he cannot be held responsible because his soul is disabled in growth or disturbed by illness, shall not be punished.
- (2) If it turns out that the perpetrator cannot be held responsible for the act because his mental development is defective or disturbed due to illness, then the judge can order that the person be admitted to a mental hospital, for a maximum of one year as a probationary period.

Case example is Maslinda Wansari, SKM (the defendant) offered witness Sri Mahdani that the defendant could enter the child of witness Sehat Ginting named Rudi Ginting to become a Civil Servant in Batubara Regency without taking part in the selection or through the insertion route at a cost of Rp. 95,000,000.- (ninety five million rupiah), that upon the defendant's notification, witness Sri Mahdani felt certain that the defendant was witness Sri Mahdani's superior at the BPPA and KB Office of Batu Bara Regency Government so that later witness Sri Mahdani conveyed this to witness Sehat Ginting, and based on this information, then on a day and date that is no longer remembered, still around November 2010, witness Sehat Ginting came to witness Sri Mahdani's house in Cinta Dame, Dusun IV, Cinta Dame Village, Air Putih District, Batubara Regency and handed over Rp. 95,000,000.- (ninety five million rupiah) to be delivered to the defendant, then the next day witness Sri Mahdani handed over the money to the defendant at the defendant's house which is located at the



Indrapura Police Dormitory, Air Putih District. Indrapura, Batubara Regency and received directly by the defendant.

The defendant deceived witness Sehat Ginting that Rudi Ginting had been appointed as a Civil Servant Candidate, the defendant handed over to witness Sri Mahdani a photocopy of 1 (one) copy of the Decree of the Minister of Transportation of the Republic of Indonesia Number: SK-KEM-HUB-0154708201-BKN-VIII-2011, which decided that starting from August 1, 2011, Rudi Ginting was appointed as a Civil Servant Candidate at the Ministry of Transportation, North Sumatra Regional Office dated January 1, 2011 and 1 (one) copy of the Decree of the State Civil Service Agency Number: 065/UP.3/12/2010 which decided that Rudi Ginting was appointed as a Civil Servant Candidate at the Ministry of Transportation, North Sumatra Regional Office starting from January 1, 2011 dated December 30, 2010, then witness Sri Mahdani handed over a photocopy of the Decree to witness Sehat Ginting, approximately three months later the defendant handed over to witness Sri Mahdani a Decree Original Appointment 1 (One) sheet of Letter of Excerpt of the Decree of the Minister of Transportation of the Republic of Indonesia Number: SK-KEM-HUB-0154708201-BKN-VIII-2011 which decided that starting from August 1, 2011 that Rudi Ginting was appointed as a Civil Servant Candidate at the Ministry of Transportation, North Sumatra Regional Office dated January 1, 2011 and 1 (One) sheet of Letter of Excerpt of the Decree of the State Civil Service Agency Number: 065/UP.3/12/2010 which decided that Rudi Ginting was appointed as a CPNS at the Ministry of Transportation, North Sumatra Regional Office starting from January 1, 2011 dated December 30, 2010, then witness Sri Mahdani handed over the original Letter of Appointment to witness Sehat Ginting, but after waiting for some time Rudi Ginting did not receive a call from the North Sumatra Provincial Transportation Agency to become a Civil Servant, and it turned out that the 2 (Two) sheets of the letter were declared fake by the Agency Civil Service.

The defendant promised to return the money belonging to witness Sehat Ginting amounting to Rp. 95,000,000.- (ninety-five million rupiah) to witness Sehat Ginting by transferring it to witness Sehat Ginting's account, but until now the money has not been returned by the defendant. As a result of the defendant's actions, witness Sehat Ginting suffered a loss estimated at Rp. 95,000,000.- (ninety-five million rupiah).

Based on the facts contained in the statements of witnesses, expert statements and statements of suspects, it is clear that the formulation of the indictment is in accordance with the results of the investigative examination and will then be submitted to the trial.



It is common for a prosecutor to maintain his charges and ensure that the defendant does not escape the law. One way to maintain this is by making an indictment with more than one charge as long as it is in accordance with the crime committed by the defendant.

The charges used in this case are alternative charges, because in the perpetrator's actions there are several articles that are suspected and in order to ensnare the perpetrator so that there is no loophole to escape from his actions. The application of Article 378 of the Criminal Code itself is appropriate compared to Article 372 of the Criminal Code, where the prosecutor has considered that the defendant has been legally and convincingly proven guilty of committing the crime of fraud (378 of the Criminal Code) that in Article 378 of the Criminal Code has matched all the elements in the provisions of the article where the defendant with the intention to benefit himself or others unlawfully, by using a false name, false identity, by trickery, or a series of lies, moves others to give an item or to make debt or write off receivables. Thus, in this case the application of Article 378 of the Criminal Code is appropriate and the defendant has been proven to have committed the crime of fraud.

The public prosecutor's indictment has the nature and essence of an indictment, which has outlined carefully, clearly and completely both the identity of the defendant and the description of the act carried out by the defendant and accompanied by the time and date of the act and the place where the act took place, so that in the opinion of the author, the indictment has formally fulfilled the requirements in accordance with Article 378 of the Criminal Code.

Judging from the amount of evidence used by the Public Prosecutor to prove the perpetrator's guilt, the decision has fulfilled the formal elements in proving guilt based on Article 183 of the Criminal Procedure Code which stipulates that: "A judge may not sentence a person unless with at least two valid pieces of evidence he obtains the conviction that a crime actually occurred and that the defendant is guilty of committing it."

Judges must uphold the provisions of the law but must not ignore other aspects related to a crime. The purpose of a judge in imposing criminal sanctions on a defendant is to improve the defendant and prevent the defendant from committing another crime. As stated by R. Wirdjono Prodjodikoro regarding the purpose of punishment, the purpose of criminal law is to fulfill a sense of justice, to educate, and to improve those who have committed crimes, so that they become people of good character and thus beneficial to society.

In making decisions and imposing criminal sanctions, judges must consider legal considerations, including the prosecutor's indictment, the defendant's testimony, witness testimony, evidence, and articles of criminal law. Non-legal



considerations also include the background of the defendant's actions, the consequences of the actions, and the defendant's condition at the time of the offense.

The criminal act of fraud in the recruitment of Civil Servant Candidates (CPNS) is a trick or a series of lies so that someone feels deceived because the words seem true. Usually someone who commits fraud, is explaining something that seems true or happened, but in fact his words are not in accordance with the reality, because the goal is only to convince the person who is the target to admit his wishes, while using a fake name so that the person concerned is not known, as well as using a fake position so that people believe his words. Fraud itself among the community is a very reprehensible act but rarely the perpetrators of this crime are not reported to the police. Small-scale fraud where the victim does not report it makes the fraudster continue to develop his actions which ultimately the fraudster becomes a large-scale fraudster.

After considering the verdict, it is seen that the judge took into consideration in handing down the verdict against the defendant is very appropriate. The basis for the judge's consideration in handing down the verdict is based on the juridical facts revealed before the trial and by law has been determined as the intended matter, including the indictment of the Public Prosecutor, the statements of the defendant and witnesses, evidence and elements of the crime charged, and non-juridical considerations consisting of the background of the defendant's actions, the defendant's condition, and the defendant's economic condition, plus the judge must be convinced whether the defendant committed a criminal act or not as contained in the elements of the crime charged against him. The verdict was issued based on the demands of the public prosecutor and the facts revealed in the trial, then this became the consideration for the Panel of Judges to issue a verdict. In this case, the defendant was charged with Article 378 of the Criminal Code concerning fraud. After that, the Panel of Judges considered whether there were reasons that could be the basis for eliminating the criminal sentence against the defendant, both forgiving reasons and justification reasons. However, in this case, the Panel of Judges did not find a basis for eliminating the criminal sentence against the defendant. Therefore, the defendant was declared to be responsible for his actions. In this case, the verdict handed down by the Panel of Judges to the defendant was lower than the demands of the Public Prosecutor, this was due to the existence of mitigating factors for the defendant which were taken into consideration by the Panel of Judges in issuing the verdict.

The judge's sentence imposed on the defendant was five months, less than the prosecutor's demand of two years and six months in prison, with an order to





detain the defendant. This lighter sentence was also based on the defendant's repatriation of some of the fraud victim's money

4. Conclusion

Legal arrangements criminal act of selection fraud The recruitment of Civil Servant Candidates (CPNS) is regulated in Article 378 of the Criminal Code. The fraudulent method in the criminal act of recruitment of Civil Servant Candidates (CPNS) in Batubara Regency is caused by the opportunity given by the victim in the form of trust and the victim's intention which is carried out in the wrong way and there is a loophole for the perpetrator to help someone get into civil service through an insertion route.

Criminal liability of perpetrators of crime selection for acceptance of Civil Servant Candidates (CPNS) in Batubara Regency Based on the decision of the Panel of Judges, the defendant was sentenced to 5 (five) months in prison because he was proven guilty of committing the crime of fraud under Article 378 of the Criminal Code, which is different from the demands of the Public Prosecutor, namely 2 (two) years and 6 (six) months imprisonment for being guilty of committing the crime of fraud in the selection of prospective civil servants.

Judges' considerations in handing down decisions against perpetrators of fraud crimes selection for acceptance of Civil Servant Candidates (CPNS) in the decision of case number 317/Pid.B/2013/ PN.Kishas been in accordance with the primary indictment of the Public Prosecutor and has fulfilled the elements of Article 378 of the Criminal Code and there is no justification or excuse for the actions carried out by the defendant and he must be held responsible for his actions in accordance with the decision handed down by the judge, namely imprisonment for 5 (five) months

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