

REVIEWING THE CRIMINAL PENALTIES FOR FORGERY OF COVID-19 CERTIFICATE BY MEDICAL PERSONNEL

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ABSTRACT

This article discusses the relationship between law and society, beginning with a review of the statement “where there is society, there is law” (*ubi societas ibi ius*). The research highlights how societies form laws in an effort to protect themselves or their groups. However, societal developments are often faster than legal reforms, resulting in some regulations becoming irrelevant to the current situation. The Covid-19 pandemic, for example, has changed various aspects of people's lives, including travel restrictions and requirements. Documents such as the Covid-19 Certificate have become important in a pandemic situation, but cases of forgery have also increased. Syndicates of Covid-19 Certificate forgery, including perpetrators who are medical personnel, indicate a serious violation of the law. The imposition of criminal and administrative sanctions is necessary to uphold justice and emphasize the importance of complying with the code of ethics, especially in the context of health services. Through an understanding of applicable regulations and laws, as well as fair enforcement of sanctions, it is hoped that the community can obtain justice and protection in accordance with current social and health conditions.

Keywords: Criminal Threats, Mail Forgery, Covid-19.

INTRODUCTION

Reviewing a statement that reads “where there is society, there is law” (*ubi societas ibi ius*), it can then be examined that the real society forms the law where it is based on the interest to protect itself or certain groups. The law actually develops following the development of society itself or in another sense that law and society should move in one rhythm in order to create a prosperous society. However, in fact, the development of society itself is much faster than the renewal of the law itself so that there are not a few regulations that are no longer relevant if applied to the current situation.

The Covid-19 pandemic has in fact changed almost all community activities in terms of economy, health, culture, and politics. One of the things that is quite different between normal conditions and a pandemic is the discovery of visitor restrictions in a certain place or time, where these actions are taken as an effort to minimize the spread of the Corona virus in Indonesia.¹ In addition, since the outbreak of the Corona virus and making it a pandemic as stipulated by Presidential Decree No.12 of 2020, there are several things that must be fulfilled by individuals who want to travel out of their home region. One of them is the Covid-19 Certificate where this

¹ Muh. Hasrul, ‘Aspek Hukum Pemberlakuan Pembatasan Sosial Berskala Besar (PSBB) Dalam Rangka Penanganan Corona Virus Disease 2019 (Covid-19)’ (2020) III Jurnal Legislatif, hlm. 385

requirement makes it evident that a person is not being infected by the virus or in the sense that a person can travel in the midst of a pandemic situation.²

The Covid-19 Certificate generally contains evidence that the individual is in a negative state of being infected with the Corona virus, while to prove someone is negative a health test is needed which can be in the form of Swab Antigen, Swab PCR to Genose.³ The Covid-19 Certificate itself can only be issued by certain agencies, generally hospitals, health centers, and other health facilities. Regarding the Covid-19 Certificate is something that must be fulfilled by individuals who want to travel in the midst of the Covid-19 pandemic as stipulated in Circular Letter No.7 of 2020. The Covid-19 Certificate is a document that plays an important role in this pandemic condition and it is fitting that this document is made with the actual condition of the individual.

But in fact, recently there has been a syndicate of Covid-19 Certificate forgery where the Certificate is not made through medical examination and only based on the format of the letter that has been made and then the letter is traded. This activity is certainly very detrimental because of course there is a possibility that the person is in fact infected with the Corona virus so that individuals can become a source of spreading the virus while traveling. After being investigated, it turned out that in the Covid-19 Certificate forgery syndicate there was a perpetrator who worked as a medical worker at a health center in Ambon City. Forgery itself is one of the actions that is punishable by criminal law, while forgery itself consists of several forms, such as oaths, statements, letters and seals. In this problem we find the fact that there is a criminal act of letter forgery committed by medical personnel, and then this paper is made to find out about the criminal penalties that can be imposed by the perpetrator based on Indonesian positive law.

DISCUSSION

Regulations Related to Falsification of Covid-19 Certificate Reviewed from Applicable Regulations

In an effort to prevent the massive spread of the Corona Virus in Indonesia, the government continues to take various actions that can hinder the spread, one of which is through the

² Surat Edaran No. 7 Tahun 2020 Tentang Kriteria dan Persyaratan Orang Dalam Masa Adaptasi Kebiasaan Baru Menuju Masyarakat Produktif dan Aman Corona Virus Disease 2019

³ I Wayan Putu Sucana Aryana, 'Kebijakan Hukum Pidana Terhadap Pemalsuan Surat Keterangan Negatif Covid-19' (2021), hlm. 3

implementation of Large-Scale Social Restrictions (PSBB). Large-Scale Social Restrictions (PSBB) is in fact one of the mandates that can be carried out in order to reduce the spread of the Covid-19 virus as stipulated in Law No.6 of 2018 in conjunction with Government Regulation No.21 of 2020. In the PSBB implementation mechanism itself is to reduce the number of outgoing and incoming individuals in a certain area, this is intended to minimize the number of spread either spread from migrants or from local residents to other areas. This PSBB activity does not tightly close the opportunity for people who want to travel to other areas, under these conditions individuals must be able to prove themselves free from Covid-19 in order to be able to travel. Then, as a sign that the individual is indeed free from Covid-19, this must be explicitly stated in the Covid-19 Certificate issued by the Hospital, Puskesmas, or other health facilities.

As one of the procedures for obtaining a Covid-19 Certificate, an intensive examination must be carried out on individuals, especially in the respiratory tract and one of the Covid-19-related examinations that are often carried out is through Swab Antigen, Swab PCR, and Genose. After conducting the examination, it can only be proven whether the individual is free or is being infected by the Corona Virus. Covid-19 Certificate as one of the documents that must be fulfilled by individuals who want to travel is strictly regulated in Circular Letter No. 7 of 2020. Seen from the structure of the Covid-19 Certificate, it can be categorized as a form of medical record, related to medical records as stipulated in the Minister of Health Regulation No. 269 / MENKES / PER / III / 2008 states that, Medical records are files that contain records and documents about patient identity, examination, treatment, actions and other services that have been provided to patients. Thus, the content contained in the letter should contain the real condition of the individual according to the results of the examination that has been carried out.

Forgery is an act that is punishable by crime, and this is clearly regulated in the Criminal Code (KUHP) precisely in Chapter IX Book II of the Criminal Code from Articles 263 to 276. Regarding mail forgery, there are 2 (two) types of forgery that can be identified as Intellectual Forgery and Material Forgery.⁴ Intellectual forgery can be defined if the substance of the letter does not correspond to the original conditions or reality or if the author of the letter also does not understand the matters contained in the letter.⁵ Meanwhile, material forgery is when there is a discrepancy with the sender of the letter or it can be said that the subject of the letter so as to give the impression as if the letter was made by someone contained in the letter when in fact it

⁴ Adami Chazawi, *Pelajaran Hukum Pidana 2* (Raja Grafindo Persada : 2002), hlm.43

⁵ Sayid Segaf Alatas, 'Perbuatan Pidana Pemalsuan Surat Menurut KUHP Dan Daluarsa Hak Penuntutan' (2016) I Jurnal Ilmu Hukum, hlm. 10

is not.⁶ In the case of falsification of a Covid-19 certificate or a letter issued by a doctor whose substance is contrary to the actual condition, it has been regulated in more detail in Article 268 of the Criminal Code. Article 268 of the Criminal Code clearly states that anyone who falsely makes or falsifies a doctor's certificate of the presence or absence of a disease with the intention of misleading the public authorities, his actions are punishable.

Regarding the falsification of the Covid-19 certificate, it can be classified as a type of intellectual forgery, this is due to the discrepancy between the individual's health condition and the statement contained in the Covid-19 certificate. The consequences arising from this discrepancy will have an impact on the rate of spread of the virus itself in Indonesia because there is no filtering of individuals who want to travel, which of course will then complicate the government's goal of minimizing the spread of the corona virus in Indonesia. The falsification of the Covid-19 certificate by medical personnel has clearly ignored the provisions of Article 51 paragraph (1) of Law No. 29 of 2004 which basically states that doctors or medical personnel have an obligation to provide medical services in accordance with professional standards and standard operating procedures and the medical needs of patients.⁷

Criminal Threats for Medical Personnel Who Falsify Covid-19 Certificate

In June 2020, the Ambon City Police succeeded in arresting a syndicate of Covid-19 certificate forgery in the results of the investigation, it was discovered that one of the perpetrators was a medical worker at a health center in Ambon City.⁸ This perpetrator certainly plays a major role in the process of falsifying the Covid-19 certificate based on the fact that he already understands how the structure is related to the Covid-19 certificate. The actions taken by the perpetrator have in fact harmed various parties, both the Government and other individuals who accidentally make contact so that it is likely that the individual is the source of the spread of the virus in the middle of the journey later. Therefore, it is appropriate that the act of falsifying the Covid-19 certificate by medical personnel be given fair sanctions as determined in Indonesian positive law. The imposition of fair sanctions for medical personnel certainly aims to prevent

⁶ I Wayan Putu Sucana Aryana, 'Kebijakan Hukum Pidana Terhadap Pemalsuan Surat Keterangan Negatif Covid-19' (2021), hlm. 3

⁷ Pasal 51 Undang-Undang No.29 Tahun 2004 Tentang Praktik Kedokteran

⁸ Muhammad Naufal, 'PNS Puskesmas Hingga Pegawai Angkasa Pura Terlibat Pemalsuan Surat Rapid Test Antigen di Maluku' <https://regional.kompas.com/read/2021/05/28/190853378/pns-puskesmas-hingga-pegawai-angkasa-pura-terlibat-dalam-pemalsuan-surat?page=all>> diakses pada 5 Juni 2021

medical personnel from being arbitrary about their ability to do this for money alone considering the knowledge they have and the moral burden they bear will have a big impact on the surrounding community.

The forgery of Covid-19 certificate by medical personnel as regulated in Article 263 of the Criminal Code emphasizes that if the forgery is done intentionally or in the sense that medical personnel are aware of their actions and the risks, they can be subject to two types of sanctions, namely criminal sanctions and code of ethics sanctions.⁹ Related to criminal sanctions, it has been regulated in Article 267 of the Criminal Code where forgery of letters committed by medical personnel can be punished with a maximum imprisonment of 4 (four years).¹⁰ Furthermore, related to the imposition of criminal penalties, it must be elaborated again whether he committed the act of forgery individually or there were other people who helped him, if he committed participation (*deelneming*) then referring to the provisions of Article 53 of the Criminal Code, it is stated that the criminal penalty is added by 1/3 of the principal punishment. In the matter currently discussed, it is found that they are a syndicate so that they are interconnected and work together so that they can be classified with the crime of participation (*deelneming*).

Regarding the falsification of the Covid-19 certificate, it is an act that tarnishes the name of the medical staff itself and this can be categorized as a violation of the Code of Ethics. The amount of sanctions given for violations of the Code of Ethics is determined based on the weight of the ethical summons or in the sense that there have been various amounts for actions included in violations of the Code of Ethics. The imposition of these sanctions is administrative in nature which does not cause formal sanctions for the perpetrator, so that the imposition of sanctions in this case is generally in the form of protection or guidance.¹¹ However, if the actions of medical personnel are severe enough that they must be guided so that previous violations do not recur and also as a learning medium, then sanctions for ethical violations can be in the form of :

1. Reprimand or demand verbally or in writing
2. Delay of salary increase
3. Demotion to a lower salary or rank

⁹ Mario Gregorius Funan Ahoinanai, dkk, 'Akibat-Akibat Hukum Terhadap Pelaku Tindak Pidana Pemalsuan Rekam Medis Seseorang' (2021) I Jurnal Interpretasi Hukum, hlm.55

¹⁰ Pasal 267 Undang-Undang No.1 Tahun 1946 (KUHP)

¹¹ I Kadek Suar Putra Dana, dkk, 'Sanksi Pidana Terhadap Tenaga Medis Yang Melakukan Pemalsuan Surat Keterangan Rapid Test Covid-19' (2021) II Jurnal Interpretasi Hukum, hlm.56

4. Revocation of license to practice temporarily or permanently

The act of falsifying the Covid-19 certificate by medical personnel must in fact be subject to sanctions in the form of both criminal and administrative sanctions. The imposition of criminal sanctions is intended as a form of deterrence because his actions have been very detrimental to the public interest and the act of forgery has also been clearly regulated in the Criminal Code (KUHP). While administrative sanctions are a form of protection based on guidance considering that the perpetrator is a medical staff who has been attached with a code of ethics so that administrative sanctions can be intended as a learning medium for the perpetrator not to misuse his abilities.

CONCLUSION

The act of falsifying a Covid-19 certificate can be classified as intellectual forgery or in the sense that there are incongruities and untruths related to the things that are contained in the letter. The act of forgery of medical documents has been clearly regulated in Article 267 of the Criminal Code which clearly states that medical personnel who take actions that are not in accordance with professional ethics or these actions are intentional, the actions of these medical personnel are punishable by a maximum imprisonment of 4 (four) years. In addition to criminal sanctions, medical personnel can also be subject to administrative sanctions, namely in the form of violations of the code of ethics and ethical violations do not cause formal sanctions so that sanctions are imposed in accordance with the weight of the violations committed. The unification of both criminal sanctions and administrative sanctions is appropriate considering that the act of forgery of letters committed by medical personnel is not only detrimental to the public interest but also affects the authority of the medical personnel themselves.

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