

The Crime of Using Fake Diplomas Conducted by Members of the Regional House of Representatives in Indonesia: A Study

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ABSTRACT

One of the requirements to become a member of the House of Representatives is to possess a minimum high school diploma so that people who desire to have the certificate try hard to obtain it either legally or illegally. Falsifying certifications is an illegal method giving rise to criminal sanctions, as conducted by Abdul Kadir from Kraksaan Probolinggo. The type of research used in this thesis was normative juridical (legal research) research with statutory and conceptual approaches and qualitative descriptive analysis method. The fact of the use of a fake diploma by the member of the Regional House of Representatives of Probolinggo began with a report made by a Non-Governmental Organization United Community Association to the District Police of Probolinggo for the alleged use of the fake diploma and the indictment and the court decision No. 413/Pid.B/2019/PN where Abdul Kadir Bin Haeri was declared to be proven of guilty of using a fake diploma as stipulated in the Article 69 verse 1 of the Law No. 20 of 2003 concerning the National Education System.

Key words: Crime, Fake Diplomas, Regional House of Representatives.

1. INTRODUCTION

The use of fake diplomas or the purchase of academic degrees is exciting to observe. Currently, the misuse of counterfeit certificates is carried out by the public and political officials, such as what was done by a member of the Regional House of Representatives Probolinggo Regency. As a result, this deed is considered to be expected. Based on the Criminal Code, the act of falsifying a diploma is included in forgery of a document as stated in Article 263 of the Criminal Code, which regulates/determines that : (1) Whosoever makes a false document or falsifies a document that may create rights, a tie or a release of a debt, or is intended to be used as legal evidence about something other than the actual truth to use or to cause another person to use that document as if the contents are accurate and not falsified, can be charged with falsification of a document, with a criminal sentence of imprisonment for a maximum of six years. (2) One shall be charged with the same sentence, whosoever intentionally uses a false document or a document falsified as if it is true, if the false document may cause a loss.

Furthermore, based on article 69 verse 1 of the Law No. 20 the Year of 2003 on the National Education System which regulates/determines that: "Everyone who uses a diploma, certificate of competence, academic, professional, and vocational degrees proven to be false shall be punished with imprisonment for a maximum of five years and a maximum fine of Rp. 500,000,000., (Five Hundred Million Rupiah).

Things that have been ignored by everyone and sometimes considered easy can trigger criminal acts; an indifferent attitude towards rights and obligations can also be a factor causing other criminal acts. Receiving a fake diploma without any rights is a material offense if such an offense has consequences prohibited by the law and may cause losses to its users and may be subject to criminal threats.

Elections are present as an answer to the implementation of indirect democracy/representative democracy. They are a system in which people choose people they trust to represent them in administering the government, apart from the manifestation of people's sovereignty. Moreover, elections are also implementing the citizens' human rights as stated above in Article 28 D verse 3 of the 1945 Constitution: "Every citizen has the right to have equal opportunities in government.

After the election is over and the House of Representatives is appointed, the political party has the right of interim dismissal recall as a control mechanism against board members. The memory is generally understood as the recall of members of the House of Representatives to be dismissed, and therefore, they are replaced by other members who get the following most votes in the same electoral districts before the end of the term of office of the drawn members of the House of Representatives.

This alleged case of using a fake diploma was shown after Abdul Kadir has sworn as a Regional House of Representatives member in August 2019. This member of the House of Representatives from the Gerindra party (The Great Indonesia Movement Party) was named a suspect and detained by the investigators of the Police Criminal Investigation Unit of Probolinggo for allegedly using a fake diploma. Although the suspect's Pursue Package C diploma is original in its material, the serial number of the certification was not registered in the Education Office.

The defendant has currently been suspended as a member of the Regional House of Representatives of Probolinggo Regency by the regulations and provisions of the applicable law. The defendant who had committed the act of using the fake diploma would be punished or sanctioned internally from a political party, namely, he would be recalled if the leader of the concerned political party and the Honorary Body the Regional House of Representatives of Probolinggo Regency after the court decision had the permanent legal force.

Based on the case above, several things are studied, namely: The process of disclosing legal facts on the use of fake diplomas by members of the Regional House of Representatives of Probolinggo Regency is reviewed from the criminal law perspective and the application of the criminal law on the use of fake diploma by members of the Regional House of Representatives of Probolinggo Regency.

2. RESEARCH METHODOLOGY

The present research employed a normative juridical method with the statutory and cases approach.

The type of legal materials used is the Primary ones. They serve as the data sources obtained from the binding legal materials consisting of regulations from the 1945 Constitution as the highest law, then the Criminal Code, and Law No. 20 the Year of 2003 on the National Education System. Secondary Legal Materials are closely related to primary legal materials and may help analyze and provide explanations for primary legal materials, including books, scientific works, research results, and opinions of scholars (doctrine) within the scope of legal research. Tertiary Legal Materials are other materials relevant to the subject matter that provide information on primary legal materials and secondary legal materials such as encyclopedias dictionaries.

In searching for the legal materials in this study, a literature study was used, and the data analysis employed used was a qualitative data analysis with analytical descriptive or content analysis where this kind of research is aimed at describing and interpreting the existing conditions or relationships, growing opinions, ongoing processes, ongoing consequences or developing trends.

3. DISCUSSION

A. Disclosure of Legal Facts Against the Use of Fake Diploma by the Member of the Regional House of Representatives

There are two vocabularies in English when they are translated into Indonesian. They have the same meanings, namely evidence, but the two words have quite a principle difference. The first is "evidence," The second is "proof." The term 'evidence' means any information that provides the basis for supporting a belief that some parts or all facts are accurate. While the phrase proof refers to the results of an evaluation process, and the conclusion is drawn from the evidence, it may also use broader meanings to refer to the process itself.

Clearly states this

"Evidence is information. It is information that provides grounds for the belief that a particular fact or a set of facts is true. Proof is a term with variable meaning. In legal discourses, it may refer to the outcome of the process of evaluating evidence and drawing inferences from it, or it may be used more widely to refer to the process itself and to the evidence which is being evaluated."

It may be concluded that based on statement that the word evidence is closer to the term evidence according to the positive law, while the word proof may mean the argumentation leading to a process. In the Great Dictionary of the Indonesian Language, the term (evidence) is translated from the Dutch bewijs which is interpreted as something that states the truth of an event. In the legal dictionary, bewijs is interpreted as everything that shows the reality of specific facts or the untruth of other points by the parties in a court case to provide materials to the judge for his consideration. Meanwhile, proving means showing evidence, and the proof is meant as a process, action, or method of proving.

The next is the meaning of the law of evidence does not define the law of proof but defines proof as provisions containing guides and guidelines on how the law is justified to prove the guilt charged against the accused. The proof is also a provision that regulates the evidence justified by the law and determines the proof that the judges may use to prove the accused's guilt.

Proposes the definition of proof as provisions that contain guides and guidelines on the ways justified by the law, proving the guilt that has been charged against the defendant. The proof is a provision that regulates the evidence warranted by law, which is used by the judges in proving the guilt accused in the trial, and it is not justified to prove the guilt of the defendant without any juridical reasons basis on justice.

In the context of criminal law, evidence is the core of criminal case trials because what is sought in criminal law is material truth. Nevertheless, evidence in criminal cases has been found since the investigation stage to seek and find events that are suspected of being criminal acts to be able to carry out an investigation or not. At this stage, proof has occurred, where the investigators look for evidence to make light of a criminal act and determine or find the suspect.

Thus, it can be understood that proof is seen from the perspective of criminal procedural law, namely, the provisions that limit court proceedings to find and defend the truth, either by the judges, public prosecutors, defendants, or legal advisers, all of whom are tied to the provisions and procedures, as well as the valuation of evidence determined by the law. It is not justified to take independent actions in assessing evidence, and it should not conflict with the law. The defendant is not permitted to defend something considered valid outside the provisions determined by the law.

Proof is the act of proving. To prove means to give or show evidence, do something as truth, implement, signify, witness, and convince. The opinion that proving is convincing the judge of the truth of the argument or arguments put forward in a dispute.

A Non-governmental organization United Community Association reported Abdul Kadir to the District Police of Probolinggo for the alleged use of a fake diploma. Then the police made an investigation and ensured that the certificate used by the member of the Regional House of Representatives in Probolinggo was fake after receiving a confirmation from the Education Office of Probolinggo regency that the diploma in the name of Abdul Kadir was not registered in the Education Office. The Investigators immediately determined him a suspect in the alleged fake diploma case, and he was immediately detained on Friday, October 4, 2019.

Based on Law No. 48 the Year of 2009 on Judicial Power, judges in deciding cases are free, independent, and are not interfered with by other parties. They are observing case No.413/Pid.B/2019/PN Krs concerning False Diplomas of the member of the Regional House of Representative of Probolinggo Regency, the judges, used the right of grammatical interpretation according to the laws and regulations, namely the Law No. 20 the Year of 2003 on the National Education System, Article 69, verse (1) stating that: "Every people who use diplomas, certificates of competence, academic, professional, and vocational degrees which are proven to be false, shall be sentenced to a maximum imprisonment of five years and a maximum fine of Rp. 500,000,000 (Five Hundred Million Rupiah).

Looking at the District Court of Kraksaan's decision, the judges first considered the juridical, sociological, and philosophical aspects in deciding the case. The judge's analysis interpreted the law by the legal facts presented in the trial, so they thought there were aggravating and mitigating things. The aggravating things are as follows: 1) The defendant's actions had violated the values of honesty in the country's democracy; 2) The defendant's actions harmed the other candidates for members of the Regional House of Representative of Probolinggo Regency. The Mitigating factors are that 1) the defendant behaved politely during the trial; 2) the defendant admitted and regretted his actions; 3) the defendant had never been convicted.

From many citizens involved in running for candidates for members of the Regional House of Representatives, there is a possibility that they use fake diplomas to fulfill the requirements to nominate themselves as members of the Regional House of Representatives. It is evident in criminology as a science studying crime that first it is investigated dealing with the purpose of the act, the reasons for doing so, whether his talent is evil, or the circumstances of the surrounding community drive it under both sociological and economic conditions.

The candidate for the member of the Regional House of Representatives of Probolinggo Regency was determined to commit a crime to qualify as the member of the Regional House of Representatives. Then the act was a crime related to using a fake diploma. This crime contains a system of untruth or falsehood of a thing (object) where something appears from the outside as if it was accurate when it was contrary to the truth. The act of using a fake diploma is a type of violation of two basic norms, namely the first is the truth (trust), of which violation can be classified as a fraud crime group, and the second is the public order of which violations are classified as crimes against the state or public order.

Proving guilty of using a fake diploma to run for a candidate for the Regional House of Representatives with the initial AK, the judges sentenced him to a trial at the Kraksaan District Court to a prison sentence of 1 year and four months. In the problem, it was proved that he had used a fake diploma, as demonstrated by the fact that the signature on the certificate was non-identical or False. The judges found the defendant guilty for violating Article 69 verse (1) on the Use of Fake Diplomas as stipulated in Law No. 20 the Year of 2003 on the National Education System.

Regarding the obligation to possess a high school diploma, this is, of course, started as an absolute requirement for every citizen who intends to nominate himself as a member of the Regional House of Representatives. Although this does not fully reflect the face of pure democracy, namely "every citizen has the right to be elected and to vote," this is a solution to have the people's representatives with integrity by looking at the lowest benchmark, namely Senior High School Education level.

The perpetrator, who was originally only a trader, intended to become a member of the Regional House of Representatives. He happened to be financially capable and got an offer that a particular party would support him. It is this motive that made him fake a diploma. Therefore, it can be concluded that two factors influence the crime of counterfeit letters/diplomas, namely external factors and internal factors.

B. Application of the Criminal Law for the Prohibition of the Use of Fake Diplomas by the member of the Regional House of Representatives of Probolinggo Regency.

The Public Prosecutor essentially demanded that the panel of judges at the District Court of Kraksaan decide on the following matters: stating that the defendant Abdul Kadir Bin Haeri had been legally and convincingly proven to have committed a crime *"everyone uses diplomas, certificates of competence, academic, professional and vocational degrees that are proven to be false violate article 69 verse (1) of Law no. 20 the Year of 2003 on the National Education System;* and sentencing the defendant Abdul Kadir Bin Haeri with imprisonment for 2 (two) years and a fine of IDR 50,000,000 (fifty million rupiahs) Subsidiary 5 (five) months of imprisonment reduced by the period of detention that the defendant had served with the order of the defendant remains detained;

The crime of falsifying diplomas is categorized into the Articles 266 verse 2 and 263 verse 2 of the Criminal Code, namely regarding letter falsification of document falsification, where the regulation on diploma falsification in the formulation of the Article 266 verse 2 and the Article 263 verse 2 of the Criminal Code is not stated explicitly but implicitly. Diploma falsification is regulated explicitly in Law no. 20 the year 2003 on the National Education System. In the criminal liability regarding falsification of diplomas, it is the person who makes or helps to give and who uses the fake certificate. Therefore, the legal principle of *lex* is applied or the regulations that expressly override general rules because the provisions in the Criminal Code do not explicitly mention diploma falsification, unlike what is regulated in the Law no. 20 the Year of 2003 on the National Education System, which expressly holds the falsification of diplomas.

District Court made the decision of Kraksaan No. 413/Pid.B/2019/PN the Unscrupulous member of the member of the House of Representatives of Probolinggo Regency was found to be guilty of using a diploma that was not registered with its authenticity or was said to have used a fake diploma as to complete the administration as a candidate for the Regional House of Representatives of Probolinggo in the 2019 election which was proven to be false. For the fact, Abdul Kadir was charged to violate Article 69 verse (1) of Law No. 20 the Year of 2003 on the National Education System with imprisonment of 1 (one) year 4 (four) months and a fine of Rp. 30,000,000 (thirty million) subsidiary to 3 (three months) imprisonment.

Article 69 verse 1 of the Law No. 20 the Year of 2003 on the National Education System regulates/determines that: "Everyone who uses a diploma, certificate of competence, academic, professional, and vocational degree which is proven to be false shall be punished with imprisonment for a maximum of five years and a maximum fine of Rp. 500,000,000., (Five Hundred Million Rupiah).

When it is viewed from the provisions of Article 69 verse (1) of the Law No. 20 the Year of 2003, it is related to the case of the use of a fake diploma by a member of the Regional House of Representatives on behalf of Abdul Kadir, the elements of each person in this article have been fulfilled, namely referring to the legal subject committing a criminal act, namely a member of the Regional House of Representatives of Probolinggo Regency with the name of Abdul Kadir, whose identity was asked at the beginning of the trial, as well as from the statements of the witnesses, there was no mistake about the person as a legal subject who was presented as a defendant in the case. During the trial process, on the defendant there were no things that excluded him from criminal responsibility, meaning that if it was proven that all the accused elements were charged, the person concerned was deemed to be capable of being responsible for his actions.

According to the traditional view, in addition to the objective conditions for committing a criminal act, subjective conditions or mental conditions should also be met to be held accountable and criminally imposed. This personal requirement is called "error." Thus, what is meant by criminal liability is the assessment of whether a suspect/defendant may be held accountable for a criminal act that occurs.

The next element is to use diplomas, certificates of competence, academic, professional, and vocational degrees that are proven to be fake. A certification is a formal letter of which its existence results from certain rights and may be used as evidence that the owner of the diploma has graduated from a level of education and the owner of the certification has the right to use the certificate for the member candidate of the Regional House of Representatives.

A certificate sheet may fulfill all rights for people whose names are listed on the diploma to exercise their rights as graduates of a certain level of education. A diploma that gives Abdul Kadir the right to exercise the right as a graduate of the Pursue Package C education level and is intended as proof of something because Abdul Kadir is considered to have passed the Pursue Package C. Any elements of each person that may cause rights and as evidence of the thing is the subjective element. Therefore, if it is viewed from this element, actually if it is associated with this case, it also fulfills this element because Abdul Kadir has indirectly used a diploma, and it is fake, but it seems as if the contents are accurate and not faked. Concerning the falsification of a diploma, a falsified diploma is a tool used to deceive other people, and other people consider the diploma to be genuine and not to be falsified. Namely, those to whom the diploma was intended can be people in general and particular people. In this case, the person who was deceived was Abdul Kadir as the recipient and, at the same time, the owner of the fake diploma given by the person with the initials. So, according to Abdul Kadir's statement, he did not know that he had never attended direct education like students in general and as Abdul Kadir had received a fake diploma, and the public, in general, was also deceived because they did not know that Abdul Kadir's diploma was fake. The diploma and the Pursue Package C were only affected when he had become a member of the Regional House of Representatives.

The threat of imprisonment is a maximum of five years and a maximum fine of Rp. 500,000,000, if carried out against a diploma, is a weighting provision of Article 263 verse (2) or Article 266 verse (2) of the Criminal Code. A person who uses a fake diploma against the types of letters regulated in this article will be subject to threats in Article 263 (2) and Article 266 (2) of the Criminal Code. If it is related to the case of the use of fake diploma committed by Abdul Kadir', then Abdul Kadir has fulfilled the elements stated in this article, namely Abdul Kadir used a phony letter using form a fake diploma against diplomas, certificates of competence, academic, professional, and vocational degrees. The application of criminal sanctions against the use of forged letters carried out by Abdul Kadir, although there are provisions in the Article 69 of Law Number 20 the year of 2003 on the National Education System which has specifically regulated the use of fake diplomas so that the appropriate application of sanctions is used for users of certificates is the sanction stated in the provisions of the Law No. 20 the Year of 2003 on the National Education System, especially in the Article 69 verse (1) on the Use of Fake Diplomas, because of using fake diplomas.

The analysis of the application of the law against falsification of diplomas is based on the regulation stated in the Criminal Code, especially Article 263 of the Article 266 of the Criminal Code. The provisions of the Article 263 verse (2) of the Criminal Code, if it is viewed from the conditions stated in the Article 263 verse (2) or the Article 266 verse (2) of the Criminal Code, are associated with the case of fake diplomas in the name of Abdul Kadir Bin Haeri, the element that anyone in this article has been fulfilled, by referring to the legal subject who committed a criminal act, namely on behalf of Abdul Kadir Bin Haeri. A diploma is a formal letter of which its existence bears certain rights, and it can be used as evidence that the owner of the diploma has graduated from a level of education and the owner of the certification has the right to use it for personal use. A certificate yields the rights for the person who has the name written on the diploma to exercise the rights as the graduate from a certain level of education, pass the national exam, and get a national exam score in the form of a diploma. It has also been fulfilled since Abdul Kadir Bin Haeri has a Fake Diploma, and he uses the right to be a graduate of the Pursue Package C. It is intended as evidence of something because Abdul Kadir Bin Haeri has passed the Pursue Package C. Using a fake diploma can give rise to rights, and it is evidence of something that is an objective element. The certificate of the Pursue Package C was only discovered to be fake during the election of the member of the Regional House of Representatives in the Probolinggo Regency. In Article 263 verse (2) of the Criminal Code. Any person who falsifies letters against the types of letters regulated in this article will be subject to threats in Article 266 verse (2) of this Criminal Code. The arrangement is in Articles 263 and 266 of the Criminal Code on the Use of Counterfeit Letters chapter. Still, the rules in the Criminal Code only regulate, in general, the use of counterfeit documents, which include diplomas which are types of letters, so for the benefit of counterfeit notes, the appropriate application of the criminal sanctions is the Articles 263 266 of the Criminal Code. While for the Use of False Diplomas if it is associated with education, then in Article 69 Verse 1 on the Use of Counterfeit Diplomas, it is contained in the Law No.20 the Year of 2003 on the National Education System where it has been regulated explicitly on the use of such fake diplomas, so that the appropriate application of

sanctions used by the use of counterfeit credentials is the sanctions stated in the provisions of the Law No. 20 the Year of 2003 on the National Education System, especially in the Article 69 verse (1).

For applying the criminal law in Indonesia in decision Number 413/Pid.B/2019/PN.Krs, on behalf of Abdul Kadir Bin Haeri, was proven guilty of using fake certificates, namely diplomas, and violating Articles 263 266 of the Criminal Code. Still, the use of the bogus certificate carried out Abdul Kadir has explicitly been regulated in Law No. 20 the Year of 2003 on the National Education System in Article 69 Verse (1) on the Use of Fake Diplomas. Therefore according to the principle of *lex specialis derogat legi generali*, then what is used is the rule in Article 69 verse (1) on the use of fake diplomas stated in Law No.20 the Year of 2003 on the National Education System. Therefore, the use of fake certificates is regulated in two criminal rules; there is *Concurcus Idealist* in the use of counterfeit diplomas carried out by Abdul Kadir so that the criminal sanctions that are more appropriate to use are the most challenging legal rules, namely the rules contained in Article 69 Verse (1) on the Use of Fake Diplomas in the Law No. 20 the Year of 2003 on the National Education System.

The requirements for liability in criminal law, especially the existence of an error after it turns out that a person has committed a criminal act, are based on subjective elements, which are in the mind of the person who commits the use of the Fake Diploma. The inner attitude of using a fake diplomat is an intention (*dolus*). It is because someone who uses a phony diploma is an act that is deliberately committed with full awareness. After all, it requires good thoughts and thoroughness to produce certification. While the objective elements of the front of using fake certificates as regulated in Article 69 Verse (1) of the Law No. 20 the Year of 2003 on the National Education System consists of objective elements that are born and appear in the tangible form, namely producing a letter in the form of a diploma by the user of the fake letter.

The fake diploma carried out by Abdul Kadir has met the requirements of criminal liability, namely the existence of an error in the form of intention (*dolus*). It can be seen because the fake diploma made by Abdul Kadir was intentionally carried out with full awareness and high accuracy in the use of certificates. The use of counterfeit credentials done by Abdul Kadir has fulfilled the requirements for criminal liability because the perpetrator can be responsible, has an intentional error, and has no excuse for forgiveness, so that Abdul Kadir may bear his criminal responsibility.

Therefore, the decision made by the judges is correct. As the use of fake diplomas is a special rule relating to education, the proper legal basis is Article 69 verse (1) on counterfeit certificates as stipulated in Law No. 20 in 2003 on the National Education System.

4. CONCLUSIONS

Disclosing the use of a fake diploma by a member of the Regional House of Representatives of Probolinggo regency began with a report made by the Non-Governmental Organization United Community Association to the District Police of Probolinggo for the alleged use of a fake diploma. The police conducted an investigation and ensured that the certificate used by an unscrupulous member of the Regional House of Representatives of Probolinggo Regency was completely fake after the Probolinggo Police confirmed to the Education Office of Probolinggo Regency that the diploma in the name of Abdul Kadir was not registered in the Education Office.

In applying criminal law in Indonesia in decision No. 413/Pid.B/2019/PN, Abdul Kadir Bin Haeri was declared guilty of using a fake diploma violating Articles 263 verse (2) and 266 verse 2 of the Criminal Code. But, the use of the phony certificate conducted by Abdul Kadir has been regulated explicitly in Article 69 verse (1) of Law No. 20 the Year of 2003 on the National Education System. Therefore according to the principle *lex specialis derogat legi generali*, what is used is the rule in Article 69 verse (1) on the use of fake diplomas stated in Law No. 20 the Year of 2003 on the National Education System. It is because the use of a letter in the form of a fake diploma is regulated in two criminal rules, there is *Concurcus Idealist* in the use of counterfeit notes by Abdul Kadir so that the criminal sanctions that are more appropriate to use are the legal rules contained in the Article 69 verse (1) of the Law No. 20 the Year of 2003 on the National Education System. Therefore, the decision made by the judges is correct. As the use of fake diplomas is a special rule relating to education; as a result, the proper legal basis is Article 69 verse (1) on the use of counterfeit credentials as stipulated in Law No. 20 the Year of 2003 on the National Education System.

SUGGESTIONS

Regarding what is done by the member of the Regional House of Representatives, the General Elections Commission should be more careful in carrying out administrative selection by the Regulation of The General Elections Commission No. 20 the Year of 2018 on the nomination of members of the Regional House of Representatives and House of Representatives, that when there is an administration that makes the General Elections Commission doubt, it is given the authority to check directly to the relevant agencies, so that the same incident concerning with the members of the Regional House of Representatives with fake diplomas will not be repeated. As a form of evaluation in the 2019 simultaneous elections, the General Elections Commissions should have

a technology that can verify the authenticity of the diplomas of legislative and executive candidates, or if it is not possible to procure the technology as intended, the author suggests that the General Elections Commissions in cooperation with the Ministry of Education and Culture verify the authenticity of diplomas of the candidates using the existing technology.

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