



Forgery of a Will with Due Regard to Civil and Criminal Law

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ABSTRACT

This study aims to determine first, how the inheritance system in the book- Civil Law (Civil Code). Secondly, to find out how the forgery of a will in view of criminal law. This type of research is Library research and the research approach used is juridical normative approach. The data sources of this research are primary, secondary and tertiary data sources through legislation, books, journals and rulings. Data analysis is used by way of identification and classification of existing data and organize it systematically. The results of this study indicate that in the inheritance system according to the Civil Code there are two ways to obtain an inheritance, namely first, obtaining an inheritance based on the provisions of the act- law and second, obtain an inheritance based on testament. The existence of restrictions on certain parties that result in the abolition of the right to inherit which is one of the reasons for committing the crime of forgery of wills

INTRODUCTION

Family law plays a pivotal role in governing various facets of life, encompassing relationships between parents and children, property rights within marriage, and inheritance matters. **Sitompul & Maswandi** (2021) highlight the significance of family law in maintaining social order and safeguarding individual rights within the familial context.

In the parent-child relationship, the law establishes the rights and responsibilities of each party. Parents are obligated to provide care, nurture, and a proper education to their children. Children, in turn, are expected to demonstrate respect and obedience towards their parents' wishes. Additionally, parents are entrusted with the legal representation of their children in all legal matters, both in and out of court. The dynamics of these relationships and the legal framework surrounding them are explored in depth by **Bashori** (2016), who emphasizes the importance of legal clarity in defining parental responsibilities and children's rights.

When considering legal relationships that involve property within a marriage, the law recognizes the distinction between marital property and separate property. Marital property encompasses assets acquired during the course of the marriage and is considered jointly owned by both spouses, irrespective of who earned or acquired it. The management and division of marital property, particularly in cases of divorce or death, are subject to legal provisions and are often complex, as highlighted by **Putri & Purwaningsih** (2024). Separate property, on the other hand, remains under the exclusive control of the individual spouse, typically including gifts or inheritances received. The concept of separate property and its implications within the context of Indonesian marriage law are further elaborated upon by **Miftahuljannah et al.** (2023).

Inheritance law governs the transfer of wealth and assets upon an individual's death. The testator, or decedent, is the person whose property is being transferred, while the beneficiary is the individual or entity inheriting the property. The legal framework surrounding inheritance aims to ensure a fair and just distribution of assets in accordance with the testator's wishes, as elucidated by **Siahaan**

(2019). However, inheritance rights are not absolute; the law imposes restrictions and may disqualify certain individuals from inheriting, particularly those who have committed crimes against the decedent, such as forgery or murder, as discussed by **Hutahaean et al.** (2023). The potential for forgery and its impact on inheritance rights is a critical concern, as emphasized by **Yoseph** (2021) and **Muda et al.** (2023), who examine the legal ramifications of document falsification in various contexts.

In essence, family law encompasses a wide range of legal principles that govern familial relationships, property rights, and inheritance. It is crucial for upholding justice, maintaining social order, and protecting individual rights within the context of the family unit. The complexities and nuances of family law necessitate a comprehensive understanding of its various facets, as exemplified by the diverse perspectives offered in the cited references.

METHOD

The research utilizes a normative juridical approach, which involves studying the law as a set of norms or rules that are established within society and serve as guidelines for individuals' behavior. This approach, as elucidated by **Friedman** (2005) in his seminal work "A History of American Law," emphasizes understanding how these legal norms function in regulating actions and interactions among people. To achieve this, the study adopts both a legislative approach and an examination of the Civil Code, ensuring that the legal framework is thoroughly analyzed within these contexts. The data for this research are drawn from a range of sources, categorized as primary, secondary, and tertiary.

These sources are primarily accessed through library research, a common practice in legal research as highlighted by **Katharina Pistor** (2019) in "The Code of Capital: How the Law Creates Wealth and Inequality." The data processing and analysis techniques employed involve a detailed literature review, where relevant data and documents related to the research topic are carefully examined and analyzed. Once the data is collected, it undergoes a systematic process of identification and classification.

The data is then organized in a structured manner to ensure that it supports the research objectives and provides a clear understanding of the legal norms and their application in society.

RESULTS AND DISCUSSION

Laws serve as fundamental tools in any country, functioning not only as mechanisms to regulate and control individual and collective behaviors but also as instruments to protect the community from various forms of harm. In a normative context, particularly concerning the crime of letter forgery, these laws are articulated through specific statutes embedded in Indonesia's positive law. The crime of letter forgery is systematically addressed within the framework of the Indonesian Criminal Code (KUHP), which provides clear guidelines and legal parameters for identifying, prosecuting, and punishing such offenses.

Forgery, broadly speaking, constitutes a category of crime wherein an object, most commonly a document or letter, is deliberately altered or fabricated in a manner that falsely represents it as genuine. The essence of forgery lies in its deceptive nature—while the object may appear authentic on the surface, it fundamentally contradicts the truth, thereby misleading others. This form of deception is not just a violation of legal norms but also poses a substantial threat to societal stability. The trust that communities place in written documents and records is crucial for maintaining social order and ensuring smooth interactions within various legal and economic systems. Forgery, therefore, undermines this trust, potentially leading to significant disruptions in social, economic, and legal frameworks.

Within the scope of Indonesia's positive law, the crime of letter forgery—referred to as *valschheid in geschriften*—is meticulously detailed in Chapter XII, Book II of the Indonesian Criminal Code (KUHP), specifically from Articles 263 to 276. These articles serve as the legal foundation for addressing and adjudicating cases of letter forgery, providing a comprehensive framework that categorizes the different forms of forgery and outlines the corresponding penalties. Articles 263 and 264, in particular, are pivotal as they enumerate the specific

elements that constitute the crime of letter forgery. The law classifies letter forgery into seven distinct types, each of which is defined and penalized under different sections of the Criminal Code:

- a. General Letter Forgery (*eenvoudige valsheid in geschriften*): This form of forgery, covered under Article 263, involves the basic falsification of letters or documents without any qualifying circumstances. It represents the most common and straightforward type of forgery.
- b. Forgery of Delivered Letters (*gequalificeerde valsheid in geschriften*): Addressed in Article 264, this type of forgery involves letters or documents that have been delivered with the intent to deceive. The delivery of the forged document adds a layer of seriousness to the crime, warranting a more severe penalty.
- c. Inserting False Information into Authentic Documents: Article 266 governs this form of forgery, where false information is intentionally inserted into an otherwise authentic document, thereby compromising its integrity and misleading those who rely on its contents.
- d. Forgery of Medical Certificates: Covered by Articles 267 and 268, this category involves the falsification of medical certificates, which can have grave implications for both individuals and institutions, particularly in legal or medical contexts.
- e. Forgery of Specific Documents: Articles 269, 270, and 271 address the forgery of specific types of documents that may hold particular importance or value, such as financial records or legal agreements. The specificity of these documents often elevates the severity of the offense.
- f. Forgery of Official Certificates Regarding Property Rights: Article 274 deals with the falsification of documents related to property ownership or rights, which can lead to significant legal disputes and financial losses.
- g. Possession of Materials or Objects for Letter Forgery: Article 275 criminalizes the possession of tools, materials, or objects that are intended for use in committing letter forgery. This

preemptive measure aims to curb forgery activities by targeting the means through which such crimes are committed.

Philosophically, the existence of law is predicated on the existence of society; laws emerge to regulate human interactions and ensure that social life is governed by established norms and rules. These norms and rules are essential for maintaining order and justice within a community, as they provide a structured framework within which individuals and groups can coexist harmoniously. The law's role in protecting society is equally crucial—it serves as a shield against various forms of legal transgressions, including forgery, which can destabilize societal order if left unchecked. Forgery, as a deliberate act of deception, directly challenges the integrity of legal and social systems, necessitating a robust legal response.

In the context of inheritance law, which is closely related to the broader legal framework discussed, the principle that everyone is entitled to inherit is subject to important legal restrictions. The law imposes specific limitations on who can inherit, ensuring that individuals who have engaged in certain unlawful or immoral actions are disqualified from benefiting from an inheritance. These restrictions are articulated in Article 838 of the Civil Code, which outlines several categories of individuals who are deemed unfit or legally barred from inheriting. These categories include:

- a. Individuals Convicted of Murder or Attempted Murder of the Deceased: This category applies to anyone who has been legally convicted of murdering or attempting to murder the person from whom they stand to inherit. The law views such individuals as unworthy of benefiting from their victim's estate.
- b. Individuals Convicted of Slander Against the Deceased: This category includes individuals who have been found guilty of slandering the deceased by falsely accusing them of a crime punishable by five years or more in prison. The intent behind such slander is often malicious, aimed at damaging the deceased's reputation or standing, which the law seeks to penalize by disqualifying the slanderer from inheriting.

- c. Individuals Who Used Violence or Coercion to Influence the Deceased's Will: This category covers those who have employed force or coercion to influence the contents or execution of the deceased's will. Such actions are considered a grave violation of the deceased's autonomy and are grounds for disqualification from inheritance.
- d. Individuals Who Embezzled, Destroyed, or Falsified the Deceased's Will: Article 838(4) specifically addresses cases where an individual has tampered with the deceased's will, whether through embezzlement, destruction, or forgery. Such acts not only violate the law but also undermine the deceased's final wishes, leading to the forfeiture of the perpetrator's right to inherit.

Forgery of a will is particularly egregious as it not only constitutes a criminal offense but also represents a profound breach of trust and truth. The act of forging a letter or document, especially one as significant as a will, is an affront to the principles of justice and honesty that underpin the legal system. The primary aim of forgery is typically to secure an illegitimate advantage, whether for oneself or for others, at the expense of the rightful beneficiaries. In a society where written documents and records play a critical role in the administration of justice, commerce, and governance, the integrity of these documents is paramount. Forgery undermines this integrity, posing a serious threat to the community by eroding the trust that is essential for the functioning of an organized and developed society.

The crime of letter forgery, as outlined in Chapter XII, Book II of the Indonesian Criminal Code (KUHP), is classified under the broader category of fraud. Fraud, in this context, refers to any act that misrepresents the truth or deceives others, leading them to believe that something false is true. In the case of letter forgery, the deception revolves around the contents or appearance of a letter, which are altered in such a way as to convince others of its authenticity. The harm caused by such deception is significant, as it can lead to false conclusions, erroneous decisions, and unjust outcomes in legal, financial, or personal matters.

The Criminal Code distinguishes between two primary forms of letter forgery: creating fake letters and using fake letters. Article 263 of the Criminal Code provides a detailed explanation of these offenses:

- a. **Creating or Forging Letters:** This offense involves the creation or alteration of a letter in a manner that falsely represents it as genuine. The forged letter may confer rights, create obligations, release debts, or serve as evidence, and its use or intended use is central to the crime. The law stipulates that anyone who creates or forges such a letter, with the intent to use it or have others use it as if it were genuine, can be sentenced to a maximum of six years in prison. The potential for harm, particularly financial or legal harm, is a key factor in determining the severity of the offense.
- b. **Using Forged Letters:** This offense applies to individuals who knowingly use a forged letter as if it were genuine, fully aware of its falsity. The use of the forged letter must have the potential to cause harm, whether through legal, financial, or personal consequences. The penalty for this offense is the same as that for creating a forged letter, reflecting the law's emphasis on the intent and knowledge of the perpetrator.

Article 264 of the Criminal Code further addresses forgery by increasing the penalties under specific conditions:

- a. **Forgery of Authentic Documents:** When the forgery involves authentic deeds, bonds, certificates related to state or public institutions, or other significant documents, the penalty is increased to a maximum of eight years in prison. This reflects the heightened seriousness of tampering with documents that carry significant legal or financial weight.
- b. **Using Forged Authentic Documents:** The same elevated penalty applies to anyone who knowingly uses a forged authentic document, recognizing the potential for considerable harm in such cases.

The legal analysis of forgery, as outlined in Article 263, reveals both objective and subjective elements.

The objective elements pertain to the physical act of creating or altering a letter in a manner that produces a falsehood—this includes the creation of fake letters, the use of false letters, and the representation of such letters as genuine. These elements also encompass the types of letters involved, such as those that confer rights, create obligations, release debts, or serve as evidence. The subjective elements, on the other hand, relate to the mental state of the perpetrator, specifically the intent to deceive and the knowledge of the letter's falsity. The presence of both objective and subjective elements is essential for establishing the crime of forgery.

In addition to the criminal penalties associated with letter forgery, the legal consequences extend into civil law, particularly in cases involving wills and inheritance. Perpetrators of will forgery not only face criminal prosecution but also risk losing their rights to inherit, as stipulated by the Civil Code. This dual impact underscores the gravity of forgery as an offense that violates both criminal and civil law. The intersection of these legal domains reflects the comprehensive nature of the legal system's response to forgery, aiming to address both the immediate harm caused by the offense and the broader implications for justice and fairness in society.

CONCLUSION

The findings of this research reveal that within the inheritance system governed by the Indonesian Civil Code (KUHPerdata), there are two primary methods of acquiring an inheritance: one is through statutory provisions, and the other is via a will. When a will is involved, the crime of forgery plays a significant role in the inheritance process. In the context of criminal law, the act of forging a will carries severe legal consequences, including the complete nullification of the offender's right to inherit. This highlights the serious impact of forgery within the inheritance framework, where such fraudulent actions can lead to the legal disqualification of the perpetrator from receiving any part of the estate. The presence of forgery not only undermines the integrity of the inheritance process but also triggers legal mechanisms designed to protect the rightful distribution of assets, ensuring

that inheritance rights are preserved only for those who are lawfully entitled.

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