



Expert Opinion on Wetboek van Strafrecht Art 263, 264, 266 (Criminal Code) Versus Use of Birth Certificates in Petition for Cassation Number 3561 K/Pdt/2020. 05 August 2020. Juncto Determination of the Central Jakarta District Court Number 36/Pdt.P/2020. 03 February 2020. Concerning the Legalization of Children Out of Marriage

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1. INTRODUCTION

Whereas on February 3, 2020, there was a Central Jakarta District Court Decision. Class-1-A-Special, Decision on the Application for Determination Number 36/Pdt.P/2020. "Regarding the Application for Ratification of Freddy Widjaya (a child outside of marriage being a legitimate child in marriage) between Mrs. Lidia Herawati Rusli (Oei Mellie Nio) and the late Mr. Eka Tjipta Widjaya (Oei Ek Tjong)". Note: Based on the 1951 Marriage Manual, there was a marriage between Mrs. Lidia Herawati Rusli (Oei Mellie Nio) and the late Mr. Eka Tjipta Widjaya (Oei Ek Tjong).

Whereas regarding the abovementioned determination, on December 10 2020, there was a Decision on the Application for Cassation Number 3561 K/Pdt/2020, Regarding: Request for Cancellation of the Central Jakarta District Court's Decision. Class-1-A-Special Number 36/Pdt.P/2020. On 03 February 2020, "Regarding the Application for Ratification of Freddy Widjaya (a child outside of marriage becomes a legitimate child in marriage) between Mrs. Lidia Herawati Rusli (Oei Mellie Nio) and the late Mr. Eka Tjipta Widjaya (Oei Ek Tjong)".

Whereas the Petition for Cassation Number 3561 K/Pdt/2020, dated December 10, 2020, was filed through Advocate Warisman Jaya Daeli, S.H. Attorney for the Petitioners on behalf of Indra Widjaya(Oei Pheng Lian) and Franky Oesman Widjaya(Oei Jong Nian) and Muktar Widjaya (Oei Siong Lian) Children in Marriage Registration on 24 February 1953, between Mrs Trini Dewi Lasuki(Loa Sok Hoa) with the late Tuan Eka Tjipta Widjaya(Oei Ek Tjong).

That the Cassation Petition Number 3561 K/Pdt/2020, dated December 10, 2020, argued that the legal status as Children of Mrs. Trini Dewi Lasuki(Loa Sok Hoa) with the late Mr. Eka Tjipta Widjaya(Oei Ek Tjong) was recorded in the Registration of Marriage Dates February 24, 1953, with Documentary Evidence, among others:

1. Indra Widjaya (Oei Pheng Lian) based on Birth Certificate Number 1118, Makassar (Chinese) Civil Registry dated 11 September 1952; and
2. Franky Oesman Widjaya(Oei Jong Nian) Birth Certificate Number 81, Chinese Civil Registry. Makassar, August 28, 1965; and
3. Muktar Widjaya (Oei Siong Lian) Birth Certificate Number 776, Civil Registry (Chinese) Makassar Dated 11 July 1954.

Whereas on November 15, 2021, there was Letter Number 1944/Disdukcapil/472.1.11/XI/2021. Concerning Confirmation of the Legitimacy of Muktar Widjaya's (Oei Siong Lian) Birth Certificate Birth in Makassar, 07 Djuli 1954, with Birth Certificate Number 776, Civil Registry (Chinese) Makassar 11 Djuli 1954, registered or registered in the birth certificate register at the Population and Civil Registry Service Makassar City.

Whereas on November 15, 2021, there was Letter Number 1945/Disdukcapil/472.1.11/XI/2021. Concerning the Validity of Birth Certificate Franky Oesman Widjaya(Oei Jong Nian) Born in Makassar, 21

January 1958, Birth Certificate Number 81, Chinese Civil Registry. Makassar August 28, 1965, absent or not registered in the birth certificate register at the Makassar City Population and Civil Registration Service.

Whereas on November 15, 2021, there was Letter Number 1946/Disdukcapil/472.1.11/XI/2021. Regarding Confirmation of the Validity of the Birth Certificate of Indra Widjaya(Oei Pheng Lian) Birth in Makassar, 06 September 1952, Birth Certificate Number 1118, Civil Registry (Tionghoa) Makassar 11 September 1952, not present or not registered in the birth certificate register at the Population and Civil Registry Service Makassar City;

November 24, 2021, Freddy Widjaya (a child out of wedlock became a legitimate child in the marriage between Mrs. Lidia Herawati Rusli (Oei Mellie Nio) and the late Mr. Eka Tjipta Widjaya (Oei Ek Tjong) based on the Decision of the Determination of the Central Jakarta District Court. Class-1-A -Special Number 36/Pdt.P/2020. February 3, 2020, reports:

1. Reported on behalf of Indra Widjaya (Oei Pheng Lian) and
2. Reported on behalf of Franky Oesman Widjaya(Oei Jong Nian) and
3. Reported on behalf of Muktar Widjaya(Oei Siong Lian) Children in Marriage Registration on 24 February 1953, between Mrs. Trini Dewi Lasuki(Loa Sok Hoa) and the late Mr. Eka Tjipta Widjaya (Oei Ek Tjong) to POLRI Headquarters with Evidence of Report Receipt Letter Police Number STTL/467/XI/2021/BARESKRIM. "Regarding the alleged crime of using fake birth certificates in the Cassation Application Number 3561 K/Pdt/2020. August 5, 2020 at the Civil Registry Office at the Central Jakarta District Court. Class-1-A- Special".

Whereas on December 16, 2021, an Investigation Order Number SP.Lidik/1759/XII/2021 was issued. Whereas on February 4 2022, a Continuation Investigation Warrant was issued Number SP.Lidik/349/II/2022. Whereas on October 18, 2022, an Order for Termination of Investigation Number SP2Lid/75/X/2022.DitTiPidum was issued. On October 19, 2022, the Notice of Termination of Investigation Number 984/X/2022/DitTiPidum was issued. Rapporteur Freddy Wijaya and Reported Parties 1. Indra Widjaya (Oei Pheng Lian); 2. Franky Oesman Widjaya(Oei Jong Nian); 3. Muktar Widjaya(Oei Siong Lian) "Alleged Crime of Using Fake Birth Certificates in Petition for Cassation Number 3561 K/Pdt/2020. August 5, 2020 at the Civil Registry Office at the Central Jakarta District Court. Class-1-A-Special".

2. PROBLEM

Act 1. Indra Widjaya (Oei Pheng Lian) and 2. Franky Oesman Widjaya(Oei Jong Nian) and 3. Muktar Widjaya(Oei Siong Lian) through Advocate Warisman Jaya Daeli, S.H (power of attorney) used a "False" Birth Certificate in the Petition for Cassation Number 3561 K/Pdt/2020. August 5, 2020, at the Civil Registry Office at the Central Jakarta District Court. Class-1-A-Special, is an act as referred to in Wetboek van Strafrecht Art 263(2) of the Criminal Code?.

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Act 1. Indra Widjaya (Oei Pheng Lian) and 2. Franky Oesman Widjaya(Oei Jong Nian) and 3. Muktar Widjaya(Oei Siong Lian) through Advocate Warisman Jaya Daeli, S.H (power of attorney) used a "False" Birth Certificate in the Petition for Cassation Number 3561 K/Pdt/2020. August 5, 2020, at the Civil Registry Office at the Central Jakarta District Court. Class-1-A-Special, is an act as referred to in Wetboek van Strafrecht Art 266(2) of the Criminal Code?.

3. DISCUSSION

About Inquiry. On December 15, 2006, the KaBaResKrim PolRI issued a Criminal Investigation Manual. Chapter III. Pages 46 – 71. Implementation of the Investigation, which is based on Articles 4, 5, 9, 16, 37, 102, 103, 104, 105, 108, 111 UU-RI Number 8 of 1981, Concerning Criminal Procedure Law, and UU-RI Number 2 of 2002, Concerning the Indonesian National Police. The definition of Investigation, is a series of Investigator actions to seek and find an event that is suspected of being a criminal act in order to determine whether or not an investigation can be carried out according to the method regulated in the law. Investigation Tactics, is the method chosen and carried out by the Investigator in an effort to obtain the data/information needed for the successful execution of the task. The conditions for Investigation, among others, are the Mental Investigator: a. have high discipline, motivation and dedication; b. have loyalty and honesty; c. be confident, d. an hold on to secrets; e. diligent, diligent, and tenacious; f. have courage and fortitude in facing risks; g. careful, thorough and responsive in assessing the situation/situation; h. ull of initiative and good at adapting to

circumstances / situations. The abilities of the Investigator, among others are: a. able to carry out tactics and investigative techniques; b. master the KUHAP (UU-RI No 8 of 1981), the Criminal Code (Wetboek van Strafrecht) and other laws and regulations; c. have broad general knowledge; d. know the environmental situation/characteristics and the target of the investigation; e. able to use the main tools and special tools to complete their duties; f. able to adapt to the environment which is the object of investigation; g. master and understand cases that require further investigation; h. know the background/motive of the target of the investigation; i. c. be confident; d. can hold on to secrets; e. diligent, diligent, and tenacious; f. have courage and fortitude in facing risks; g. careful, thorough and responsive in assessing the situation/situation; h. full of initiative and good at adapting to circumstances / situations. The abilities of the Investigator, among others are: a. able to carry out tactics and investigative techniques; b. master the KUHAP (UU-RI No 8 of 1981), the Criminal Code (Wetboek van Strafrecht) and other laws and regulations; c. have broad general knowledge; d. know the environmental situation/characteristics and the target of the investigation; e. able to use the main tools and special tools to complete their duties; f. able to adapt to the environment which is the object of investigation; g. master and understand cases that require further investigation; h. know the background/motive of the target of the investigation; i. able to make temporary estimates of the information obtained without giving suggestions. Investigation Support, namely facilities and infrastructure in all forms, both conventional and modern facilities and infrastructure (scientific crime investigation). Cost Support, namely in the form of adequate financial support to finance activities and the needs of implementers, according to the investigation plan. Investigation techniques, namely in the form of observation, both of people, objects, places of events. An interview is a business/activity that is either undercover or open or a combination of closed and open, to obtain information from people who have or are suspected of having information. Surveillance, both Mobile Surveillance and Fixed Surveillance and Loose Surveillance and Strict Surveillance and Combined Loose and Strict Surveillance, are systematic follow-up activities against people, places, objects. The subject of the object of investigation includes involvement in a crime/crime. The target of the investigation is that after receiving a police report, searching for and collecting and analyzing facts that can be used as the basis for a criminal incident, the targets are directed to: a. person (victim/fact witness/perpetrator); b. Goods/goods(BB); c. Place (TKP);

The reported incident/event is a criminal act or not. Completion of Investigation, is to find and obtain evidence and evidence in order to support the investigation process later, with the intent of: 1. Searching for and finding who and where are the witnesses who support evidence; 2. Know what and where the evidence is and how to get it and confiscate the evidence; 3. Knowing who the perpetrators of the crime were, both direct perpetrators, those who ordered, those who helped, those who provided evil assistance; 4. Know where the perpetrators are, how powerful they are and when and how to use force; Knowing where the case was carried out by the perpetrator and what evidence is related to each of these crime scenes. The Investigation Plan is that in order to achieve optimal results, the implementation of the investigation is selected among Investigators/Assisting Investigators who are considered capable and according to the objectives of the investigation.

On the 28th of September 2014, the Indonesian National Police's Criminal Investigation Agency issued Regulation Number 3 of 2014, "Concerning Standard Operational Procedures for Investigating Criminal Acts". Appendix S.O.P. "About Criminal Investigations". In essence, apart from what is contained in the Criminal Investigation Guidebook, there is an explanation that it is necessary for the Investigative Supervisor to work together with the Investigator to determine the Target Object of the Investigation, and if deemed necessary, may request technical assistance for police investigations in the form of Labfor, Inafis, Dokpol, Jihandak, Cyber, Psychology, etc.

Wetboek van Strafrecht. Art 263(1) Valschheid in Geschriften Delict. Staatsblad of 1915 Number 723. Juncto Article-II-Transition of the 1945 Constitution. Juncto UU-RI Number 1 of 1946, February 26, 1946. Juncto UU-RI Number 73 of 1958, September 29, 1958 (State Gazette of the Republic of Indonesia of 1958 Number 127): Hij die een geschrift waaruit eenig recht, eenige verbintenis of eenige bevrijding van schuld can ontstaan, of dat bested is on tot bewijs van eenig feit tediene, valschelijk opmaakt of vervalscht, met het oogmerk om het als echt en onvervalscht te gebruiken of door anderen te doen gebruiken, wordt, indien uit dat gebruik eenig nadeel can ontstaan, als schuldig aan valschheid in geschrift, gestraft met gevangenisstraf van ten hoogste zes jaren. Whoever makes a fake letter or forges a letter which can issue a right, an agreement or which can free the perpetrator from his debt or which can be a statement about an act, namely with the intention of using or ordering someone else to use the letter as if it were a who was not falsified, then he, because of falsifying a letter, is sentenced to imprisonment for a maximum of six years, that is, if using the letter can bring harm. Opinion of Satochid Kartanegara. The objective element is that which exists outside of humans, in the

form of: an act or action, a certain effect (eem bepaald gevolg) and circumstances (omstandddigheid) all of which are prohibited by law. Subjective elements in the form of being accountable and mistakes. Subjective elements: 1. whoever (supporters of legal rights and obligations);

With the intention (oogmark) of the inner attitude (the perpetrator really wants the act and or the consequences of the act) the doctrine of *actus non facit reum nisi mens sit rea* (*actus reus* and *mens rea*) an act cannot make a person guilty unless it is committed with malicious intent or *geen straf zonder schuld*. Mistakes are an important element of criminal responsibility in addition to other elements, namely the ability to be responsible and the absence of excuses or justifications. Intentional. *Memorie van Toelichting*, 'intentionally' (opzettelijk) is the same as 'willens en wetens' (willed and known). There are three kinds of intentionality: a. intentionally as an intention (opzet als oogmerk). b. intentionally with an awareness of necessity (opzet bij noodzakelijkheids bewustzijn) or deliberately with an awareness of certainty (opzet bij zekerheidsbewustzijn); c. intentionally with awareness of possibility (opzet bij mogelijkheids bewustzijn) or *dolus eventualis*. Two Theories: The Theory of Will (*willstheorie*) requires actions and their consequences, this theory of will is known as the *dolus manus* principle.

The theory of imagining (*voorstellingstheorie*) consequences cannot be desired because in principle humans only have the will to carry out actions but cannot will the consequences. Opinion of E. Utrecht. "Deliberately as the intention if the maker (dader), wants the consequences of his actions. In other words, if the creator previously knew that the consequences of his actions would not occur, then he certainly would not have committed the deed. Objective Elements: 1. make (make new or renew) fake letters (letters whose contents contradict the truth either regarding the contents or signature as if they came from the person whose name is written on the letter) or falsify letters (everything in the form of letters: handwritten, computer, typewriter or printed and so on); 2. can issue a right, an agreement or can free the perpetrator from his debt or can be a statement about an action; 3. will use or order other people to use it; 4. As if it were an actual letter that was not forged; 5. using the Letter can bring losses. Art. 263(2): *Met dezelfde straf wordt gestraft hij die opzettelijk gebruik maakt van het valsche of vervalschrift als ware het echt en onvervalscht, indien uit dat gebruik eenig nadeel can ontstaan*. The same penalty shall be imposed on anyone who intentionally uses a forged letter or a forged letter, as if it were a real letter and was not forged, that is, if using the letter can cause harm. Subjective Elements: 1. Whoever (supporter of legal rights and obligations); 2. intentionally(). Objective Elements: 1. use fake or forged letters, as if they were real letters and not faked; 2. If you use the letter it can bring losses.

Wetboek van Strafrecht Art 264. Criminal Code. BPHN Translator Team Translation. Paragraph (1) Forgery of letters is punishable by imprisonment for a maximum of eight years, if committed against: 1. authentic deeds; 2. bonds or debt certificates from a country or its parts or from a public institution; 3. shareholding or debt certificate or certificate of share or debt from an association, foundation, company or airline; 4. talon, proof of dividends or interest from one of the letters described in numbers 2 and 3, or proof issued in lieu of said letters; 5. letter of credit or trade letter provided for circulation. Paragraph (2): A person who deliberately uses the letter referred to in paragraph (1) will be punished with the same penalty, the contents of which are not original or those which have been falsified as if they were true and not forged, if the falsification of said letter can cause harm. P.A.F. Lamintang and C.D. Samosir: Paragraph (1): A person guilty of forging documents is punished with a maximum prison sentence of eight years, if the act has been committed: 1. in authentic deeds (forgery of letters carried out in authentic deeds. "deeds authentic" according to Article 1868 BW: An authentic deed is a deed in the form determined by law, made by or before public officials who are in charge for that at the place where the deed was made. NB. "Authentic Deed": Notary Deed, Official Deed of Making Land Deed, Birth Deed and other deeds issued by Civil and Population Registry agencies, Court Decisions. 2. in debentures or debt certificates from a country or a part thereof or from a public institution; 3. in shares, debentures or certificates regarding shares or debt of an association, foundation, company or airline; 4. in the talons, proofs of profit or interest included in one of the letters referred to in the two previous numbers or in the evidence issued in lieu of said letters; 5. in letters of credit or commercial documents intended for circulation.

Paragraph (2): Punished with the same penalty, whoever deliberately uses one of the forged or forged letters referred to in paragraph (1), as if the letter was genuine and not forged, and if using it can cause a loss. S.R. Sianturi. nine kinds of letter forgery: 1. Simple letter forgery (263); 2. Letter forgery is qualified (264); 3. Provision of false information on an authentic deed (266); 4. Provision of fake or falsified medical certificates (267, 268); 5. Forgery of various certificates (269); 6. Forgery of travel documents (270); 7. Forgery of cover letter for buffalo/mammals (271, 241); 8. Forgery of official certificates regarding property rights (274); 9. Storing counterfeit objects or tools (275, 276). Article 264 constitutes a qualified (specialized) offense for

forgery of letters. If the act of writing constitutes the use of a forged letter in an authentic deed, it is prosecuted using Article 264 paragraph (2) of the Criminal Code.

Wetboek van Strafrecht Art 266 Indonesian Criminal Code. Whoever orders to place false information in an authentic deed regarding an incident whose truth must be stated in the deed, with the intention of using or instructing other people to use the deed as if the deed matched the truth, then if using it can result in losses, sentenced to imprisonment for seven years. Paragraph (2): With a similar penalty, whoever deliberately uses the deed as if the contents match the actual facts, if the use of the said document can cause losses.

IV. CLOSING

Criminal liability therefore concerns the process of transferring the blame that exists on a crime to the maker. Accountability for someone in criminal law is to continue objectively reproaching criminal acts subjectively towards the maker. Criminal responsibility is a normal condition and psychological maturity that brings three kinds of abilities to: a. Understanding the meaning and consequences of his own actions; b. Realizing that his actions are not justified or prohibited by society; c. Determine the ability to act. The basis for the existence of a crime is the principle of legality, while the basis for the punishment of the maker is the principle of error. The basis of criminal responsibility includes the existence of an error in the soul of the perpetrator in relation to behavior that can be punished and based on the psychology of the perpetrator can be reproached because of his behavior. In order for the perpetrator to be wrong, it must be reached and determined in advance concerning the perpetrator: a. Responsible ability; b. The relationship, psychology between the perpetrator and the resulting consequences (including behavior that is not against the law in everyday life; c. Dolus and culpa, mistakes are subjective elements of a crime. Based on all of the description above, it is concluded that the act

1. Indra Widjaya (Oei Pheng Lian) and 2. Franky Oesman Widjaya(Oei Jong Nian) and 3. Muktar Widjaya(Oei Siong Lian) jointly (medepleger) through Advocate Warisman Jaya Daeli, S.H (power of attorney) using fake birth certificates: 1. Indra Widjaya (Oei Pheng Lian) based on birth certificate number 1118, Civil Registry (Chinese) Makassar dated 11 September 1952; and 2. Franky Oesman Widjaya(Oei Jong Nian) Birth Certificate Number 81, Chinese Civil Registry. Makassar, August 28, 1965; and 3. Muktar Widjaya(Oei Siong Lian) Birth Certificate Number 776, Makassar (Chinese) Civil Registry dated 11 July 1954, when filing a Petition for Cassation Number 3561 K/Pdt/2020. Dated August 5, 2020, at the Place of Case Incident (TKP) at the Civil Registry Office of the Central Jakarta District Court. Class-1-A-Special, with the intention of canceling the Decision Letter of the Central Jakarta District Court. Class-1-A-Special. Petition Number 36/Pdt.P/2020. 03 February 2020. Ratification of Freddy Widjaya (a child out of wedlock becomes a legitimate child in a marriage) between Mrs. Lidia Herawati Rusli (Oei Mellie Nio) and the late Mr. Eka Tjipta Widjaya (Oei Ek Tjong) is an act as referred to in Wetboek van Strafrecht Art 264(2)) Criminal Code and/or as referred to in Wetboek van Strafrecht Art 266(2) Criminal Code. Thus the Opinion of Criminal Law Experts on Wetboek van Strafrecht Art 263, 264, 266 (Criminal Code) is conveyed.