

CRIMINAL LIABILITY AGAINST PERPETRATORS OF FRAUDULENT CRIMINAL ACT BY HYNOSIS

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Abstract

Crimes by hypnosis are very common among the people. Hypnosis is a type of crime. This crime is also difficult to uncover because it has minimal evidence. This hypnotic crime needs to be included in the law as a criminal offense, because this crime is directly felt by the public. the method used is normative law by using several approaches namely the statute approach, the case approach, the comparative approach and the conceptual approach. A person who commits a criminal offense and has an error, then the person will be convicted. A criminal offense that can be accounted for is included in the element of intent or negligence / negligence. The act can be accounted for if the maker requires the condition, that the person who committed the criminal act had an error. then the defendant must use the theory of purpose of punishment which is appropriate for the perpetrators of criminal fraud by hypnosis. Crimes with hypnotic acts can be subject to fraud offenses. This is because the hypnotic act is intended to take advantage of the victim, using actions that move others to do something. Fraud crime is regulated in Article 378 of the Criminal Code, in an act of hypnosis the aim is to move others to give up something, to benefit themselves. Moving it is done by deception or a series of lies, which makes the victim do something. So the element of purpose and element of the way in this case meets to be categorized as fraud offense, so that hypnosis can be snared with the article fraud.

Keywords: *Criminal Liability; Fraud; Hypnosis*

INTRODUCTION

At this time various modes of fraud are increasingly developing in society. One form is fraud by means of hypnosis which is also one type of crime that is dif-

ficult to be snared because of the limitations of the rules in the Criminal Code. Crime Fraud committed is not just cheating with ordinary things but using a hypnotic mode. Law enforcement against

hypnosis crimes faces obstacles, in the form of legal substance that does not yet specifically regulate this hypnotic crime.

¹Hypnosis comes from the word "hypnos" which is the name of the Greek sleeping god. But it must be understood that the condition of hypnosis is not the same as sleep. People who are sleeping do not realize and can not hear the sounds around them. Whereas a person in hypnosis, even though his body is at rest (like sleeping), he can still hear clearly and respond to the information he received. While Hypnosis, according to the Big Indonesian Dictionary "KBBI" edition III is "making or causing someone to be in a hypnotic state; regarding hypnosis."² " Fraud or bedrog or in the doctrine is also called oplichting in the main form - by the legislators who have been regulated in Article 378 of the Criminal Code states:

"Whoever intends to benefit himself or others by violating the law either by using a false name or a false circumstance, either by deception, or by a series of lies, persuades people to give away an item or to make a debt or write off a debt, be con-

victed for fraud with imprisonment for up to four years"³

Various problems experienced in solving this problem are restrictions on the application of criminal law. In criminal law, a crime cannot be punished without pre-stipulation, or commonly known as *Nullum Delictum Nulla Poena sine prae-via lege poenali*, which is regulated in Article 1 paragraph (1) of the Criminal Code that there is no event can be convicted other than the provisions of the Act that preceded it. The absence of clear rules on this matter becomes an obstacle in the application of the legal function as a social control tool whereas the law should be responsive to new problems that occur in society so that the legal function as a "tool of social control" can be carried out. This lack of clarity is the problem in uncovering and resolving criminal cases that use new *modus operandi* such as hypnosis.

METHOD

The type of research used in this study is normative law research. To search and find answers Types of research that will be conducted using normative legal methods using several approaches, namely the statute approach, case approach, comparative approach and conceptual ap-

¹ Dianata Eka, (2010) *Rahasia Menangkal Kejahatan Hipnotis*. Jakarta: Titik media. p.67

² Alfitra. (2014). *Modus Operandi Pidana Khusus Di Luar KUHP*. Jakarta: RAS/Penebar

³ Lamintang. (2009). *Delik – delik khusus kejahatan terhadap harta kekayaan*. Jakarta: Sinar Grafika. P. 150

proach. The type of data used is secondary data and is qualitative or not numbers consisting of primary legal material and secondary legal material. After all data has been collected, either primary or secondary data, it will then be processed and analyzed using qualitative methods to better get a real picture which will then be presented descriptively.

ANALYSIS AND DISCUSSION

Criminal liability for perpetrators who commit crimes by means of hypnosis

Criminal liability is a method to measure whether the actions of an offender or defendant may be subject to a criminal act or not. Then in the concept of criminal law, it is required that an action can only be punished if there are rules that govern it first. The concept is commonly called the principle of legality. This is known and regulated in the provisions of Article 1 paragraph 1 of the Criminal Code.

Article 1 paragraph 1 of the Criminal Code:

"An act cannot be convicted, except based on the strength of existing criminal legislation"⁴

This is in line with the adage which reads *non obligate lex nisi promulgate* which means a law is not binding unless it has been enacted. This principle in the concept of criminal law responsibility must be aligned with the teaching of error which is based on monodualistic balance.

Then if it is associated with criminal liability in a criminal act of fraud by means of hypnosis, it must also refer to the concept as stated above, namely that there is an act that can be punished with the condition that the act has been regulated in advance by statutory provisions, plus the teaching of error. about whether there is a mistake in the sense of intentional or negligent that can be punished according to criminal law. In addition, in accordance with the teachings of criminal liability theory that in determining whether a person can be held accountable for a criminal offense or not, the 2012 RKUHP concept in Article 36 explicitly defines criminal liability as the continuing objective reproach of criminal acts and subjective to someone who meets the requirements of the law to be subject to criminal conduct because of his actions. In this RKUHP adheres to the principle of "no criminal

⁴ Anwar Yesmil (ed). (2008). *Pembaharuan hukum pidana reformasi hukum pidana*. Jakarta:Grasindo, p. 27

without error", so mistakes are the basis for determining criminal responsibility.⁵

Criminal liability is a person's responsibility for a crime committed. A prison sentence may not necessarily be carried out for someone who commits a crime. This means that someone who commits a crime and has a mistake will be convicted. Questions that can be responded to are questions that are unintentional or negligence / negligence then it can be explained that secure liability can adhere to the principle of accountability based on mistakes (accountability on the matter). that person who did the deed had a mistake. Therefore, the maker can be held accountable for his actions or in terms of his actions, can be held accountable for that person. The requirements for being able to account for legal subjects for criminal acts can be described by the author as follows:

- a. Deliberate and Negligence
- b. Culpa (negligence)
- c. There is no forgiving reason

Based on the description above, it is clear that all of the conditions have been met and fulfilled for the implementation of criminal liability on the accused perpe-

trators of criminal acts of fraud by means of hypnosis.⁶

One of the efforts to tackle crime is to use criminal law with sanctions in the form of punishment. Criminalization can be interpreted as the stage of determining sanctions and also the stage of giving sanctions in criminal law. The purpose of sanctions must pay attention to the welfare and protection of the community. Criminal sanctions that are threatened by the perpetrators of crime are a characteristic of the difference between criminal law and other types of law.

Associated with responsibility or conviction of perpetrators of criminal acts of fraud by means of hypnosis in the verdict. then the defendant must use the theory of purpose of punishment which is appropriate for the perpetrators of criminal acts of fraud by means of hypnosis, as for the theory of criminal acts is:

The theory of punishment is the relationship between criminal and strafbaarfeit as an act which is punishable by law, against the law, committed by a person who is guilty and that person is considered responsible for his actions.⁷

⁵ Agus Rusianto (2016). "Tindak Pidana dan Pertanggungjawaban Pidana". Jakarta: PT.Fajar Interpratama Mandiri, p. 36

⁶ Abdulajib Syawal. Anshar. (2010). "Pertanggungjawaban Pidana Komando Militer Pada Pelanggaran Berat Ham". Yogyakarta:LaksBang PRESSindo. P. 30-31

⁷ Indra haposan.(2015). "Tinjauan yuridis terhadap tindak pidana penipuan (studi kasus perkara nomor.153/PID.B/2013/PN.BKN)",1(1) : 6

- a. **Revenge Theory (Absolute / Retributive / Vergeldingstheorieen Theory)** According to absolute theory, crime is something that absolutely must be imposed on the existence of a crime. This theory considers that punishment is retaliation for the mistakes that have been made, so it is oriented to the actions and lies in the crime itself. Criminalization is given because the perpetrator must accept the sanction for the sake of his mistakes. According to this theory, the legal basis must be sought from the crime itself, because the crime causes suffering for others, in return (vergelding) the perpetrator must be given suffering. As well as crime must be followed by crime.⁸ Because the punishment is retaliation for the mistakes that have been made, so it is oriented to the deeds and lies in the crime itself. Penalty is given because the perpetrator must accept the sanction for his mistakes. The author believes that the basis of the punishment must be sought from the crime itself, because the crime has caused suffering for others, in return the perpetrator must be given suffering. This is of course in order to make the perpetrators of fraud by hypnosis feel deterrent from the criminal penalties handed down, or to retaliate for their actions.
- b. **Theory of Purpose (Relative / Utilitarian / Doeltheorieen Theory)** Goal theory justifies punishment based on or depends on the purpose of punishment, which is to protect the community or prevent crime.⁹ because the punishment of the offender must be viewed in terms of its benefits. In this case the punishment is not just retaliation, but to realize order in society. In addition, the punishment is also intended so that the perpetrators do not repeat their actions again and improve the moral quality and to be better in the future.
- c. **Combined Theory (Virenigingstheorieen)** This theory covers the basis of the relationship of absolute theory and relative theory, combined into one. According to this theory the legal basis is located in the crime itself, namely retaliation or torture. Besides, as the basis is the goal of

⁸ Dafit Supriyanto Daris Waristo.(2018).”Sistem Pemidanaan pelaku tindak pidana penyalahguna Narkoba”,1(1):37

⁹ Puteri Hikmawati.(2016).”Pidana pengawasan sebagai pengganti pidana bersyarat menuju keadilan restoratif”, 7(1):75

punishment.¹⁰ If this theory is seen from the purpose of punishment or punishment here it is intended not only as a gift of suffering and deterrent effect to the perpetrators, but the suffering given must be seen broadly, meaning that the patient is a cure for criminals in order to reflect on all their mistakes and repent immediately with repentance all the confidence not to repeat his actions again.

Crimes with hypnotic acts can be subject to fraud offenses. This is because the hypnotic act is intended to take advantage of the victim, using actions that move others to do something.

Fraud is regulated in article 378 of the Criminal Code :

*"Anyone who intends to benefit himself or others by violating the law either by using a false name or a false circumstance, either by deception, or by a series of lies, persuades people to give away an item or to make a debt or write off a debt, be convicted for fraud with imprisonment for up to four years."*¹¹

From this article, we can conclude that some important elements in fraud fraud are:

1. with the intention of circumventing oneself or others unlawfully. Here the element is intentional. The doer realizes / wants an advantage for himself / others. He also realized his actions in the form of moving it.

2. with a fake name or false dignity or guile or a series of lies.

3. persuade others to give up goods or give debt or write off receivables. The so-called persuasion is the absence of requests with pressure, despite the attitude of doubt or rejection of the victim.¹²

In a hypnotic act the aim is to move others to give up something, to benefit themselves. Moving it is done by deception or a series of lies, which makes the victim do something. So the element of purpose and element of the way in this case meets to be categorized as fraud offense, so that hypnosis can be snared with the article fraud.

CONCLUSION

Conclusion In terms of the dropping of criminal liability against the perpetra-

¹⁰ Ibid,76

¹¹ R.Soesilo.(1995).*"Kitab Undang – Undang Hukum Pidana (KUHP)"*.Bogor:Politeia. p. 260

¹² Mulyana N Asep.(2019).*Deferred Prosecution Agreement dalam kejahatan bisnis*. Jakarta : PT Grasindo, p. 76

tors of criminal acts of fraud by means of hypnosis that is by fulfilling the elements in the offense of fraud and it can be proven that the act was done intentionally with the condition that the act was violated by the law. The purpose of hypnosis is to move other people to give up something, to benefit themselves. The movement is done by deception or a series of lies, which makes the victim do something. So, the element of purpose and element of the way in this case fulfill to be categorized as fraud offense, so that hypnosis can be snared with the article concerning fraud, namely Article 378 of the Criminal Code.

Suggestion

Based on these conclusions, the authors try to propose the following suggestions:

This article of fraud is a material offense, the application must be supported by factors that there has been a process of deception, false names, and false circumstances, lies, against rights, so that the person provides the goods. The number of weaknesses or gaps in our law is a serious challenge for the people legal scientists. Law should not be monitored too much in its static (Law in books), but also must be monitored in its operational form (law in action) or in other words how the reality

of the operation of the law in society. This is because the role of the law or not can only be seen in the law in action of the law itself. This must be carried out properly so that the legal function can be fulfilled. At this time a variety of criminal fraud by means of hypnosis is increasingly widespread in the community. And Special laws must be given for hypnotic acts so that sanctions given to perpetrators are clearer.

BIBLIOGRAPHY

Book

- Abdulajib Sya-
wal. Anshar. (2010). *Pertanggungjawaban Pidana Komando Militer Pada Pelanggaran Berat Ham*. Yogyakarta: LaksBang PRESSindo.
- Agus Rusianto (2016). *Tindak Pidana dan Pertanggungjawaban Pidana*. Jakarta: PT. Fajar Interpratama Mandiri
- Alfitra. (2014). *Modus Operandi Pidana Khusus Di Luar KUHP*. Jakarta: RAS/Penebar
- Anwar Yesmil (ed). (2008). *Pembaharuan hukum pidana reformasi hukum pidana*. Jakarta: Grasindo
- Dianata Eka, (2010) *Rahasia Menangkal Kejahatan Hipnotis*. Jakarta: Titik media

- Lamintang.(2009).*Delik – delik khusus kejahatan terhadap harta kekayaan*. Jakarta: Sinar Grafika
- R.Soesilo.(1995).*Kitab Undang – Undang Hukum Pidana (KUHP)*.Bogor:Politeia
- Indra haposan.(2015).”Tinjauan yuridis terhadap tindak pidana penipuan (studi kasus perkara nomor.153/PID.B/2013/PN.BKN)”*Jurnal Hukum*, 1(1) : 6
- Puteri Hikmawati.(2016).”Pidana pengawasan sebagai pengganti pidana bersyarat menuju keadilan restoratif” *Jurnal Negara Hukum*, 7(1):75
- Journal Article**
- Dafit Supriyanto Daris Waristo.(2018).”*Sistem Pemidanaan pelaku tindak pidana penyalahguna Narkoba*” *Jurnal Daulat Hukum*,1(1):37
- Laws and regulations**
- Criminal Code
