

# The Juridical Determination of Criminal Acts of Forgiveness and Circulation of Fake Money with Implications of the Impact of Domestic Security Stability Conditions

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## Abstract.

*The purpose of this study is to identify and analyze the juridical determination of the crime of counterfeiting and circulation of counterfeit money with implications for the stability of domestic security. In this paper, the author uses a normative juridical method with research specifications in the form of descriptive analysis. The object to be analyzed is the legal norm. Based on the discussion, it is concluded that the legal instruments that regulate currency aspects and crimes against currency consist of 2 (two) laws, namely Act No. 23 of 1999 concerning Bank Indonesia as amended by Act Number 3 2004 and the Criminal Code (KUHP). Regulations in Act Number 23 of 1999 concerning Bank Indonesia, namely Articles 2, 3, 19 to 23, as well as 65 and 66 of the Criminal Code in Chapter X concerning counterfeiting of currency and banknotes in Articles 244 to 252 which regulate offenses against currency and criminal threats. Criminal law provisions against the crime of counterfeiting money are also regulated in Act No. 7 of 2011 concerning Currency, namely Chapter X concerning the criminal provisions, namely Article 33 paragraph (2) and Article 34-Article 37. Provisions for the crime of currency counterfeiting are regulated in in the Criminal Code, it is considered that it has not comprehensively regulated the types of acts and sanctions that are threatened. With this premise, a new legal regulation was born that discusses the Rupiah as a currency in Indonesia as a special regulation (lex specialist). The provisions for the crime of currency counterfeiting regulated in the Criminal Code are considered not to have comprehensively regulated the types of acts and sanctions that are threatened. With this premise, a new legal regulation was born that discusses the Rupiah as a currency in Indonesia as a special regulation (lex specialist). The provisions for the criminal act of counterfeiting currency as regulated in the Criminal Code are considered not to have comprehensively regulated the types of acts and sanctions that are threatened. With this premise, a new legal regulation was born that discusses the Rupiah as a currency in Indonesia as a special regulation (lex specialist).*

*Keywords: Determination; Money; Stability.*

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## 1. Introduction

The Third Amendment to the 1945 Constitution of the Republic of Indonesia has added the norm regarding the rule of law in Article 1 paragraph (3) of the Third Amendment to the 1945 Constitution of the Republic of Indonesia which reads: "The State of Indonesia is a state of law".<sup>1</sup> This provision is a form of normalization that comes from the content in the Elucidation of the 1945 Constitution of the Republic

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<sup>1</sup>Ahmad Firmanto Prasedyomukti and Rakhmat Bowo Suharto, *The Role of Judicial Commission on Supervision of Judge's Crime in Indonesia*, Jurnal Daulat Hukum Volume 1 Issue 4 December 2018, url:<http://jurnal.unissula.ac.id/index.php/RH/article/view/3931/2793>

of Indonesia which states "The Indonesian state is based on law (Rechtsstaat) not based on mere power (Machtsstaat)". With the inclusion in the norms of the 1945 Constitution of the Republic of Indonesia, the concept of the rule of law in the Elucidation of the 1945 Constitution of the Republic of Indonesia has binding legal force as the highest norm in the national legal system of the Indonesian state.<sup>2</sup>

Terminologically, the term "state of law" in the provisions of Article 1 paragraph (3) of the Third Amendment to the 1945 Constitution of the Republic of Indonesia does not refer specifically to one of the main concepts in the Western legal tradition, both Rechtsstaat and the Rule of Law. This means that the term "state of law" in the 1945 Constitution of the Republic of Indonesia is a relatively 'neutral' concept that opens up space for interpretation for new understandings in accordance with the paradigm and reality of the Republic of Indonesia.<sup>3</sup>

In the era of increasingly rapid development, every country certainly demands to carry out development in various sectors in order to keep up with the pace of international development, not least for Indonesia, which is a developing country, with the hope of being able to compete and be on par with other countries. Based on this, Indonesia formed a government to carry out development. National Development has many aspects and dimensions, such as political, economic, social, legal, cultural, and defense and security.

Among these aspects and dimensions, economic development is the most visible development because the impact of sustainability is very much felt in human life, namely regarding daily needs.<sup>4</sup>In the implementation of national development, especially in the economic sector, efforts are needed to continue to improve, expand, strengthen and secure the economy, both trade in goods and services as well as matters related to the monetary sector, as well as improve and maintain the stability of the national economy.<sup>5</sup>

Starting from the above principles, it is appropriate that all developments, changes and other global trends that are expected to affect the stability of the national economy and the achievement of national goals, need to be carefully pursued so that early and appropriate steps can be taken to overcome them in economic development, money can have a role in overcoming the economy that facilitates the exchange of goods in trade to replace by barter.

Money is something that is very important in human life. In the history of human civilization, money has played its role, both as a legal tender in a country, as well as a symbol of the state becoming a unifying tool, or it can also be a tool for economic control or economic growth. Money is generally defined as a generally accepted medium of exchange. Regarding the definition of rupiah currency in Article

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<sup>2</sup>Nur Dwi Edie W, and Gunarto, *Analysis of Judicial Policy in Deciding Criminal Acts Based Alternative Indictment (Case Study Decision Number 82 / Pid.B / 2019 / PN.Blora)*, Jurnal Daulat Hukum Volume 3 Issue 1, March 2020, url:<http://jurnal.unissula.ac.id/index.php/RH/article/view/8429/4063>

<sup>3</sup>Beno, Gunarto and Sri Kusriyah, *Implementation of Fully Required Elements in the Crime of Planning Murder (Case Study in Blora State Court)*, Jurnal Daulat Hukum Volume 3 Issue 1, March 2020, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8404/4058>

<sup>4</sup>Ayu Alifiandri Z, 2015, *Peran Bank Indonesia Dalam Menanggulangi Peredaran Uang Palsu di Indonesia Berdasarkan Pasal 244 dan 245 KUHP*, Makasar: Fakultas Hukum Universitas Hasanudin Makasar, p. 1.

<sup>5</sup>Romli Atmassasmita, (1995), *Kapita Selekta Hukum Pidana dan Kriminologi*, Mandar Maju, Bandung, p. 152-153

2 paragraph (1) of Act No. 23 of 1999 concerning Bank Indonesia, it is a tool legal payments in the territory of the Republic of Indonesia. Money is an object that is used by the general public or the world's population as an intermediary tool to facilitate the exchange process so that with the existence of money it is easier to transact when compared to the barter system, inefficient and less suitable for use by the modern economic system because people need something the same desire for exchange as well as difficulty in determining value. Therefore, in everyday human life, money is an integral part that cannot be separated from human life itself.<sup>6</sup>

Money as a valuable item is certainly the goal of everyone. Everyone is trying to get the money, so in addition to getting the money in a lawful way or not violating the law, of course there will always be someone looking for shortcuts trying to get it in a deviant way. Such deviation in legal language is identified as a criminal act.<sup>7</sup> Currency counterfeiting has a very broad impact and is certainly very detrimental to society. The prevailing currency in Indonesia which is circulated by Bank Indonesia is regulated in Act No. 7 of 2011 concerning Currency (Currency Law). Article 2 paragraph (1) of the Currency Law which states that the currency of the Unitary State of the Republic of Indonesia is Rupiah. Rupiah has characteristics on each rupiah that is determined with the aim of showing identity, differentiating prices or nominal values, and securing the rupiah from counterfeiting. The special characteristics contained in rupiah are regulated in Article 5 paragraphs (3) and (4) of the Currency Law, where these special characteristics are intended as security and are contained in the design, materials and printing techniques of the rupiah. The nature of this special characteristic is open, semi-closed, and closed.<sup>8</sup>

From the things described above, this study aims to determine and analyze the juridical determination of the crime of counterfeiting and circulating counterfeit money with implications for the stability of domestic security.

## 2. Research Methods

To conduct an assessment in this writing, the author uses a normative juridical method, with an emphasis on literature study. As a normative-based juridical writing, this writing is based on an analysis of legal norms, both law in the sense of law as it is written in the books (in the rule of law) and law in the sense of decided by judge thought judicial process (court decisions). ). Thus, the object analyzed is legal norms, both in laws and regulations and those that have been concretely determined by judges in cases decided in court.

## 3. Results and Discussion

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<sup>6</sup>Bagas Pandega Hariyanto Putro, Eko Suponyono, *Kebijakan Hukum Pidana Dalam Penanggulangan Tindak Pidana Pemalsuan Uang di Semarang*, Jurnal Law Form, Volume 11, Nomor 2, 2015, p. 158

<sup>7</sup>Hartono Hadisoeparto, (2001), *Pengantar Tata Hukum Indonesia*, Edisi 4, Liberty, Yogyakarta, p. 120

<sup>8</sup>Hassan Shadily, (2000), *Kamus Besar Bahasa Indonesia*, PT.Gramedia, Jakarta, p. 369.

### 3.1. Juridical Determination of the Crime of Counterfeiting and Circulation of Counterfeit Money with Implications for the Impact of Domestic Security Stability Conditions

Crime according to Prof. Moeljatno, namely "actions that are prohibited by a prohibition law which are accompanied by threats (sanctions) in the form of certain crimes, for anyone who violates the prohibition. According to E. Utrecht, the definition of a crime with the term criminal event which is often also called an offense, because the event is an act (*handelen* or *positive doen*) or a neglect (negative natality), as well as the consequences (conditions caused by the act or neglect).<sup>9</sup>

Criminal liability implies that anyone who commits a crime or violates the law, as formulated in the law, then that person should be held accountable for his actions according to his mistakes.<sup>10</sup> The basis of responsibility is the error contained in the soul of the perpetrator in relation to his behavior which can be criminalized and based on his psychology the perpetrator can be reproached because of his behavior. In other words, only with this inner connection can the prohibited act be held accountable to the perpetrator.

Mabbot views, punishment is a natural consequence caused not from the law, but from a violation of the law. That is, evil or not evil, if someone has been guilty of violating the law then that person must be punished. Some of the criminal law experts are well aware that the issue of sentencing is not just a matter of a simple process of convicting someone by putting him in prison. Even the smallest reflection, easily shows that convicting actually includes a pattern of revocation (abolition), including the court process itself. Therefore, agreement on what the punishment is is important before placing orders (judgments) on various applications of public coercion on individuals, for example in the name of health, education, or public welfare.<sup>11</sup>

The crime of falsification or in short the crime of forgery is a crime which contains a system of untruth or false something (object) which looks from the outside as if it were true, when in fact it is contrary to the truth. So in general, the crime of counterfeiting money is an activity of imitating the authenticity of a currency value in which it contains untruths to be widely circulated in the community.<sup>12</sup>

The definition of counterfeit money in the Criminal Code (KUHP) is not explicitly regulated, but based on the explanation of the articles in the Criminal Code, matters relating to counterfeit money are:

- Counterfeit money;
- Imitation money;
- Currency that is deducted in value or value;

<sup>9</sup>Yulies Tiena Masriani, (2004), *Pengantar Hukum Indonesia*, Penerbit Sinar Grafika, Jakarta, p. 60.

<sup>10</sup>Adami Chazawi, (2002), *Pelajaran Hukum Pidana (Stelsel Tindak Pidana, Teori-Teori Pemidanaan & Batas Berlakunya Hukum Pidana)*, Raja Grafindo Persada, p. 79.

<sup>11</sup>Teguh Prasetyo and Abdul Halim Barkatullah, (2005), *Politik Hukum Pidana Kajian Kebijakan Kriminalisasi dan Dekriminalisasi*, Yogyakarta: Pustaka Pelajar, p. 73-74

<sup>12</sup>Tim Perundang-Undangan dan Pengkajian Hukum, (2005), *Paradigma Baru dalam Menghadapi Kejahatan Mata Uang Pola Pikir, Pengaturan, dan Penegakan Hukum*, Direktorat Hukum Bank Indonesia, Jakarta, p.1

- Items such as currency or the like which the government does not recognize as legal tender.

In the formulation of Article 20 of Act No. 23 of 1999 concerning Bank Indonesia, it is explained that: "*Bank Indonesia is the only institution authorized to issue and circulate rupiah currency as well as revoke, withdraw and destroy the money in question from circulation*".

Based on the article, it means that anyone other than Bank Indonesia has no right to issue, circulate, revoke, withdraw and destroy rupiah currency the money is a legal tender, then the party is treated the same as the maker or counterfeiter and dealer of counterfeit money.<sup>13</sup>

In order for the existence of money in a country to always function in accordance with its objectives, it is necessary to prevent counterfeit money both preventively and repressively. Counterfeiting of money is motivated by a slumping economic situation, causing many people who want to get a lot of money to meet their needs in an easy way. This becomes one of the strong motivations for counterfeiters in carrying out their actions, in addition to other motivations such as political motivation to disrupt the country's economy.

Based on the description above, it can be stated that in order to tackle currency crimes, from a material legal point of view, currently it is sufficient to anticipate currency crimes, both contained in the Criminal Code and in the Bank Indonesia Law. However, in terms of formal law, it is necessary to pay attention to several things related to the professionalism of the apparatus, facilities and infrastructure. In the context of preventing currency crimes, particularly those related to counterfeiting and circulation, Bank Indonesia is an institution that plays an important role. This is because Bank Indonesia has the right and has full authority to determine whether or not the money in circulation is counterfeit.

Materially, the regulation regarding the types and prices of currency in the Bank Indonesia Law and the Criminal Code is deemed sufficient, but in its development, such regulation is deemed inappropriate and inconsistent with the spirit of the 1945 Constitution of the Republic of Indonesia which mandates its regulation by a separate Act which specifically specifically regulate the material. There are legal, normative, sociological and historical reasons that can be used as the basis for currency regulation to be set forth in a separate law, apart from the Bank Indonesia Law.<sup>14</sup>

One of the enforcement efforts is to emphasize that the rupiah is the only legal tender for the entire territory of the Republic of Indonesia, which means that its use is mandatory in any transaction and anyone while in the territory of Indonesia with criminal consequences for those who violate it. Exceptions to the principle "Rupiah is the only legal tender in Indonesia" are only allowed for border areas, international transactions, and tourist areas, with restrictions set out in government regulations. With regard to law enforcement on the mandatory use of rupiah currency,

The regulations regarding currency in the current positive law are briefly:

<sup>13</sup>F.X.Bambang Irawan, (2008), *Bencana Uang Palsu*, Els Treba, Yogyakarta, p. 37

<sup>14</sup>Erna Dewi, *Penegakan Hukum Terhadap Pelaku Tindak Pidana Pemalsuan Uang dan Pengedar Uang Palsu di Kota Bandar Lampung*, Universitas Lampung, KEADILAN PROGRESIF, Volume 5 Nomor 1, March 2014, p.76



- Regulations in Act Number 23 of 1999 concerning Bank Indonesia, namely Articles 2, 3, 19 to 23, and 65 and 66 are as follows:
  - Article 2 of the BI Law stipulates that (i) the currency unit of the Republic of Indonesia is the Rupiah; (ii) rupiah currency as legal tender; (iii) the obligation to use rupiah currency for payment and prohibition to refuse rupiah currency for payment for any person or entity within the territory of the Republic of Indonesia; and (iv) Exemption from the use of rupiah currency.
  - Article 3, prohibition of carrying rupiah in a certain amount out of or entering the customs area. This article is not mandated by Article 77 A of the BI Law to be regulated in a separate law.
  - Articles 19, 20, 22 and 23 of the BI Law regulate the authority of BI to: (i) determine the types, prices, characteristics, materials, and the date of entry into force; (ii) issue, circulate, withdraw, withdraw and destroy money; (iii) does not provide compensation for lost/destroyed money; (iv) provide replacement with the same value for money that is withdrawn from circulation within a certain time limit. In addition, Article 21 of the BI Law regulates the exemption of money from stamp duty.
  - Article 65 and Article 66 of the BI Law formulate the form of violation as well as criminal threats and administrative sanctions, namely: (i) intentional violation of the obligation to use rupiah currency is punishable by imprisonment for a minimum of 1 (one) month and a maximum of 3 (three) month, as well as a fine of a minimum of IDR2,000,000.00 (two million rupiah) and a maximum of IDR6,000,000.00 (six million rupiah); and (ii) violation of deliberately refusing rupiah currency is punishable by imprisonment for a minimum of 1 (one) year and a maximum of 3 (three) years, as well as a fine of a minimum of IDR1,000,000,000.00 (one billion rupiah) and a maximum of IDR3. ,000,000,000.00 (three billion rupiah).
  - Article 2 Paragraph (2) of Act No. 24 of 1999 concerning Foreign Exchange Traffic and the Exchange Rate System which regulates the use of foreign exchange for the purposes of domestic transactions, must pay attention to the provisions regarding legal payment instruments as regulated in the BI Law.
- The Criminal Code in Chapter X concerning counterfeiting currency and banknotes in Articles 244 to 252 which regulates offenses against currency and criminal threats, as follows:
  - Article 244: Whoever imitates or falsifies currency or banknotes with the intention of circulating or ordering circulation, is threatened with a maximum imprisonment of 15 (fifteen) years.
  - Article 245: Deliberately circulating, storing, entering, and ordering to circulate counterfeit money, is punishable by a maximum imprisonment of 15 (fifteen) years.
  - Article 246: Reducing the value of currency with the intention of issuing or ordering circulation, is threatened with destroying money, is punishable by a maximum imprisonment of 12 (twelve) years.
  - Article 247: Deliberately circulating currency that is reduced in value or storing or importing with the intention of circulating or ordering circulation, is punishable by a maximum imprisonment of 12 (twelve) years.

- Article 249: Deliberately circulating counterfeit or tampered with money is threatened, except as provided for in Articles 245 and 247, with a maximum imprisonment of four months and two weeks or a maximum fine of three hundred rupiahs.
- Article 250: Making or having stock of materials or objects to imitate, falsify or reduce the value of currency, is punishable by a maximum imprisonment of six years or a maximum fine of three hundred rupiahs.
- Article 250: In the case of a conviction for one of the crimes described in this chapter, the currency is counterfeit, counterfeited or tampered with; counterfeit or counterfeit state or bank notes; materials or objects which by their nature are used to imitate, forge or reduce the value of currency or paper money, as long as they are used for or become objects in committing a crime, are also confiscated if the goods do not belong to the convict.
- Article 251: Deliberately without the permission of the Government, storing or importing pieces or pieces of silver to be considered as money, is punishable by a maximum imprisonment of 1 (one) year or a maximum fine of ten thousand rupiahs.
- Article 252: In the case of being sentenced for one of the crimes described in Articles 244-247, the rights mentioned in Article 35 Numbers 1 – 4 can be revoked, namely: (i) the right to hold office in general or a certain position; (ii) the right to enter the armed forces; (iii) the right to vote and be elected in elections held by general rules; (iv) the right to become an advisor or administrator according to law, the right to become a guardian, supervisory guardian, supervisor or supervisory supervisor over a person who is not his own child.

The regulation of criminal sanctions against these types of criminal acts is formulated in 2 forms, namely the formulation of single sanctions (only one type of crime, namely imprisonment) and alternatively, namely imprisonment or fines. The types of criminal sanctions that are threatened in addition to imprisonment and fines are also sanctions for confiscation of counterfeit or damaged money or materials used to counterfeit money and revocation of the defendant's rights.<sup>15</sup>

Criminal law provisions against the crime of counterfeiting money are also regulated in Act No. 7 of 2011 concerning Currency, namely Chapter X concerning the criminal provisions, namely Article 33 paragraph (2) and Article 34-Article 37. Provisions for the crime of currency counterfeiting are regulated in in the Criminal Code, it is considered that it has not comprehensively regulated the types of acts and sanctions that are threatened. With this premise, a new legal regulation was born that discusses the Rupiah as a currency in Indonesia as a special regulation (lex specialist). This law is expected to be a new step in efforts to eradicate the crime of counterfeiting and circulation of counterfeit money in Indonesia.

#### 4. Clossing

There are several things regarding the crime of currency counterfeiting within the framework of the perpetrator's responsibility based on the results of the

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<sup>15</sup>Suwarjo, *Penegakan Hukum Dalam Tindak Pidana Pemalsuan Mata Uang Dollar*, UNSA, Journal: RECHSTAAT, Vol. 8 no. 1, March 2014, p. 9

investigation conducted by the investigator, namely the perpetrator. Consists of makers which include idea originators (actors), financiers, print experts, print storage places, suppliers of raw materials (paper, plastic, ink, printing equipment and so on), distributors consisting of distribution agents, ordinary dealers, Relations between actors makers or distributors are always disconnected (cell system) or it could be dealer agents including groups of producers, victims which include individuals including the community/people, traders, shops, markets, institutions: Government institutions (state banks), government agencies, Private institutions (private banks), Money Changers and private companies, the motivations of the perpetrators include personal or group interests (seeking profit), certain interests (politics/economics), to disrupt economic stability and reduce confidence in legal currencies, subversion, the modus operandi of the perpetrators include the maker of counterfeiting currency by screen printing, splitting and transferring colors (mixing colors), painting, photocopying, offset printing and printer printing. The perpetrator acts as a dealer by inserting real money between piles, shopping at night and the time is short and exchanging it with real money offset printing and printer printing. The perpetrator acts as a dealer by inserting real money between piles, shopping at night and the time is short and exchanging it with real money offset printing and printer printing. The perpetrator acts as a dealer by inserting real money between piles, shopping at night and the time is short and exchanging it with real money

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