CRIMINAL RESPONSIBILITY FOR PERPETRATORS OF FRAUD BY MEANS OF HYPNOSIS

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ABSTRACT

This study aims to analyze the criminal liability of perpetrators of fraud by means of hypnosis. This research is a normative literature research as a legal material collection technique which is then analyzed qualitatively and presented descriptively. As for the results of this study, taking other people's goods by means of hypnosis can be categorized as a criminal act of fraud because of the fulfillment of one of the elements of the offense of fraud, namely the element of deception, which is an act of action carried out in such a way that the act creates trust or confidence in the truth of something to another person where it can influence people to move other people to hand over something to him to be his goal in owning other people's goods. And if done consciously and there are consequences caused by the act. Next, the theory of criminal responsibility that is appropriate to be applied in this case is the doctrine of the essential elements of crime, namely actus reus (physical element) mens rea (mental element), namely the state of mind. The dualism school, on the other hand, states that only the actus reus is an element of an offense, while the mens rea includes the responsibility of the maker. The crime of fraud with hypnosis in its enforcement efforts still has many obstacles, including people who are victims who are reluctant to report, legal substance factors, law enforcement factors, supporting facilities and facilities for crime prevention. And the factor of public awareness of the law.

Keywords: Criminal Responsibility. Fraud, Hypnotism.

1. INTRODUCTION

The many current problems that have always plagued our country have caused Indonesia's downturn in various fields at this time whether in the fields of Politics, Economics, Socio-Culture, Law or other fields, causing various problems that require serious handling. Crime is not a new problem, although the place and time are different but the modus operandi is considered the same. The longer the crime in big cities is increasing, as well as in some regions and small towns, even it has spread to villages. One form of crime that is very rampant in the community is Fraud by means of Hypnosis. It is possible to commit fraud simply by capitalizing on good communication skills so that a person can
convince others, either by using a false name or a false situation, clever reasoning (trickery) or an essay of false words.

At this time, Fraud by means of Hypnosis is increasingly developing in society. One type of crime that is difficult to be charged because of the limitations of the Criminal Code rules. Various information and science that is developing today was born at this time but modern Hypnosis is known to humans since the 18th century. The main figure is Franz Anton Mesmer, and followed by James Braid, Charcot, Liebault. Hypnosis is a region of the mind where in that region our sensory ability to criticize is turned off. It is in this condition that the hypnotized person will follow the will of the operator (hypnotist) to the extreme. This happens because this area is a transitional area between the area of consciousness and the area of unconsciousness so that our memory can still receive things captured by the five senses but cannot analyze or criticize because consciousness is not fully functional.

The crime of fraud regulated in Article 378 of the Criminal Code is commonly referred to as Oplichting. The provision of Article 378 of the Criminal Code states that "Any person who, with intent to unlawfully benefit himself or another, either by using a false name or a false representation of circumstances, either by deceit or by a series of lies, induces a person to give an article or to create a debt or to cancel a debt, shall, being guilty of fraud, be punished by a maximum imprisonment of four years".

The crime of Fraud in its principal form has two elements, namely the objective element consisting of (1) To persuade, (2) Another person, (3) To deliver an item/thing, and (4) To give a debt or write off a debt by using the power of using a false name or dignity by deceit and a series of lies. The second element is the subjective element which consists of (1) With intent, (2) To benefit oneself or others, and (3) Unlawfully.

Various problems experienced in solving this problem are the restrictions on the application of criminal law. In criminal law, a crime cannot be punished that has not been regulated beforehand, or commonly known as the principle of Nullum Delictum Nulla Poena sine praevia lege poenali, which is regulated in Article 1 paragraph (1) of the Criminal Code that no event can be punished other than the provisions of the Law that preceded it. The absence of clear rules on this matter is an obstacle in the application of the function of law as a tool of social control, whereas the law should be responsive to new problems that occur in society so that the function of law as "a tool of social control" can be carried out.

The lack of clarity of this regulation is a problem in uncovering and resolving criminal cases that use new modus operandi such as hypnosis. These are interesting matters, so that the author is interested in conducting legal research with the title "Criminal Liability for Perpetrators of Fraud by Hypnosis".

**Literature Review**

**Criminal Liability**

**Definition of Criminal Liability**

The concept of criminal responsibility is actually not only a matter of law but also a matter of moral values or common decency adopted by a society or groups in society, this is done so that criminal responsibility is achieved by fulfilling justice.
In criminal law there are criminal acts, criminal responsibility, and punishment. The concept of responsibility in criminal law is a central concept known as the doctrine of fault (mens rea). The doctrine of mens rea is based on an act that does not cause someone to feel guilty unless the person's mind is evil. Criminal responsibility is a form of determining whether a suspect or defendant is responsible for a criminal offense that has occurred. In other words, criminal responsibility is a form that determines whether a person is acquitted or convicted. In criminal responsibility, the burden of responsibility is imposed on the perpetrator of a criminal offense related to the basis for imposing criminal sanctions. A person will have the nature of criminal responsibility if a thing or action committed by him is against the law, but a person can lose the nature of his responsibility if in him there is an element that causes the loss of criminal responsibility.

According to Chairul Huda, the basis of a criminal offense is the principle of legality, while the criminalization of the perpetrator is based on guilt, this means that a person will have criminal responsibility if he has committed an act that is wrong and contrary to the law. In essence, criminal liability is a form of mechanism created to react to the violation of certain agreed actions.

The element of guilt is the main element in criminal liability. The definition of criminal act does not include criminal liability, criminal act only refers to whether the act is against the law or prohibited by law, whether a person who commits a criminal act is then punished depends on whether the person who commits the criminal act has the element of guilt or not. Criminal responsibility in the common law system is always associated with mens rea and punishment. Criminal responsibility has a relationship with society, namely the relationship between responsibility and society as a fungus, the function here is that responsibility has the power to impose punishment so that responsibility here has a social control function so that in society no criminal acts occur.

In addition, criminal responsibility in the common law system is related to mens rea, that criminal responsibility is based on a mental state, namely as a guilty mind. Guilty mind means a subjective mistake, i.e. a person is declared guilty because the maker is considered to have a wrong mind, so that the person must be responsible. The existence of criminal responsibility is imposed on the perpetrator so that the perpetrator must be punished. The absence of a guilty mind means that there is no criminal responsibility and consequently the perpetrator is not convicted. Fault as part of mens rea is also defined as fault for violating rules, or violating statutory regulations. Every person who violates the law is obliged to be responsible for what has been done. Fault as an element of responsibility in this view makes a guarantee for a person and makes control of one's freedom against others. The existence of this guarantee makes a person will be protected from the actions of others who violate the law, and as a control because everyone who commits a violation of criminal law is burdened with criminal liability.

The Criminal Code does not clearly state the system of criminal responsibility adopted. Several articles in the Criminal Code often mention fault in the form of either intentionality or negligence, but unfortunately the definition of intentional or negligent fault is not explained by the Law. There is no further explanation regarding intentional
misconduct or negligence, but based on the doctrine and opinions of legal experts regarding the articles in the Criminal Code, it can be concluded that the articles contain elements of intentional misconduct or negligence that must be proven by the court, so that in order to punish the perpetrator who commits a criminal act, in addition to being proven to have committed a criminal act, the element of intentional misconduct or negligence must also be proven. This means that in terms of criminal responsibility, it is inseparable from the role of the judge to prove the elements of criminal responsibility itself because if these elements cannot be proven, then someone cannot be held accountable.

**Elements of Criminal Liability**

Responsibility is a form of determining whether a person will be released or convicted of a criminal offense that has occurred, in this case to say that someone has aspects of criminal responsibility, in that case there are several elements that must be fulfilled to state that the person can be held accountable. These elements are as follows:

1. **Capable of being held responsible**
   Criminal responsibility leads to the criminalization of the act, a criminal act has fulfilled its elements that have been determined in the law. The occurrence of an action is seen from the prohibited act, a person will be held criminally responsible for these actions if the action is against the law and there is no negation of the unlawful nature or rechtsvaardigingsground or justification for it. We can see from the point of view of the ability to be responsible that can be accounted for.

2. **Fault**
   Human actions considered to have fault are part of the elements of criminal responsibility. The principle used in criminal liability is that there is no punishment if there is no fault. The form of human action has two characteristics in terms of carrying out the act, namely intentionality and negligence. An act done intentionally is an act that is intended and carried out with full awareness. There are three types of intentionality, namely: 1) intentionality with intent 2) intentionality as certainty, necessity, and 3) intentionality as possibility.

3. **No excuse**
   Regarding justification and excuse, this distinction is actually not important for the perpetrator himself, because if it turns out that there is a reason for the elimination of punishment, then obviously he will not be punished. Provisions that have the form of actions as excuses in the provisions of the Criminal Code are as follows: 1) regarding incomplete or disturbed mental growth; 2) regarding coercion 3) regarding forced defense 4) regarding carrying out unlawful official orders. If one of the aforementioned provisions is met, then the act committed is a criminal offense, but must be released from all legal charges or cannot be held criminally liable.

**Definition of Actus reus and Mens rea**

No act of a person can be punished, if the act is not punishable by law and is guilty. In England, where the monist school of offense is adopted (the same in most other countries),
it is stated that the essential element of crime is actus reus (physical element) mens rea (mental element), namely the state of mind. The dualist school, on the other hand, states that only the actus reus is an element of an offense, while mens rea includes the responsibility of the maker. actus reus, or Criminal act, is one of the essential parts of the legal principle of actus non facit reum nisi means sit rea. This means that "an act cannot make a person guilty unless it is committed with malicious intent". From this sentence, it can be concluded that in a criminal offense, it is an important issue to be considered and proven. Mens rea, if the actus reus concerns an unlawful act, then mens rea includes the elements of the maker of the offense, namely the inner attitude, which is called the subjective element of an offense by the monistic view of the offense or the psychological state of the maker.

Criminal responsibility is determined based on the fault of the perpetrator and not only by the fulfillment of all elements of a criminal offense. Fault is placed as the determining factor of criminal liability and is not merely seen as an element in the criminal offense. Whether or not the perpetrator is convicted does not depend on whether or not there is an act, but on whether or not the defendant is blameworthy because not committing a criminal offense is the principle of legaliteit, which is the principle that determines that an act is prohibited by punishment for whoever commits it, while the basis for the criminalization of the perpetrator is the principle of "no punishment without fault". A person cannot be punished if he does not commit a criminal act. But even if he commits a criminal act, it is not always that he can be punished if he has a mistake. Criminal responsibility leads to the punishment of the perpetrator, if he has committed a criminal offense and fulfills the elements determined by the Law.

**Theory of Punishment**

The relationship between criminal act and Starfbaar Feit within the scope of similarity of understanding, and use in the scientific repertoire of criminal law, has a difference in meaning. Criminal act is a language transfer from Dutch to Indonesian. Starfbaar Feit is used in the Netherlands with a monistic view, which, among others, was put forward by Simon who formulated "Starfbaar Feit" as an act threatened by law with punishment, contrary law, committed by a guilty person and that person is considered responsible for his actions. Therefore, it can be concluded that the elements of Starfbaar Feit include both the elements of the act commonly referred to as objective, as well as subjective elements mixed together, so that Starfbaar Feit is the same as the conditions for imposing punishment, so it is as if it is considered that if a Starfbaar Feit occurs, the perpetrator can definitely be convicted.

**The Crime of Fraud**

Based on the theory in criminal law regarding fraud, there are two perspectives that can certainly be considered, namely according to linguistic understanding and juridical understanding. In the sense of language, the basic word of fraud is "Tipu" which is "dishonest actions or words (lies, fakes, etc.) with the intention of misleading, outsmarting, or making a profit."
Furthermore, in a juridical sense, the notion of fraud is included in the formulation of criminal offenses in the Criminal Code, however, it is a formulation in criminal offenses in the Criminal Code, not a definition but only to determine the elements of an act so that it can be said to be fraud and the perpetrator can be punished. The offense of Fraud is regulated in Article 378 of the Criminal Code with the following elements of the offense: "Whoever, with intent to unlawfully benefit himself or another, by using a false legal name or false dignity, by deceit, or a series of lies, moves another person to deliver something to him or to give debt or to cancel a debt, shall, being guilty of fraud, be punished by a maximum imprisonment of four years." This part of the offense (delicts bestanddelen) of fraud is: - With intent to benefit oneself or another person - Unlawfully By means of a false name or false dignity, by deceit, or by a series of false words; - To induce another person - To deliver goods to him or to give debts or receivables.

Thus, the intention of benefiting oneself or others, which means that there is intentionality as an intention (oogmerk). The act is committed unlawfully, which means, among other things, that he does not have the right to enjoy the benefit. Using a false name, for example, claiming to be a name well known to the person defrauded. False dignity, for example, claiming to be a cleric, by deception, for example, claiming to buy very cheap goods to the person being deceived. A series of lies means many things, the point is that the lies are intended as an attempt to deceive.

The punishment for the offense of fraud is a maximum imprisonment of four years without an alternative fine. Thus, according to Cleiren, the offense of fraud is an offense with consequences (gevolgsdelicten) and an offense of commission (gedragsdelicten). The legislator viewed the offense of fraud as the most important fraud offense. It is the prototype fraud offense based on the history of the law. The formulation of the offense of fraud has been changed several times in the Netherlands. Behind the words "to induce another person to provide goods" are the words to control data that has a monetary value in the course of trade. What is strange is also definitely intentional, the criminal penalty for fraud offenses in the Netherlands, especially imprisonment, is lower than theft offenses, but the criminal penalty is higher, namely category V (one hundred thousand guilders), while the fine for theft offenses is a maximum of category IV (twenty-five thousand guilders).

The Evil of Hypnosis

How to Avoid Unwanted Hypnosis. As mentioned earlier, hypnosis is one of the most popular crime methods in Indonesia. Usually, the perpetrators will perform certain actions to influence their victims, such as giving food, patting the shoulder, or looking into the eyes. Here are some effective ways to avoid hypnosis:

a. Always Be Alert When in Public Places

The first way is to always be alert when you are in public places such as train stations, terminals, airports, or others. Make sure you keep in mind what your purpose is in that public place.

Also, be careful if there are people who crowd you suddenly for no apparent reason. Some hypnotist fraudsters often carry out their actions in groups.
b. Don't Look at the Outside Appearance
   Don't be easily fooled by the outward appearance of strangers who try to approach you. The reason is that criminals can have unexpected appearances such as beautiful women, pious people, or others.

c. Avoid Talking at Length with Strangers
   If suddenly someone starts a conversation or asks you many things, you should not need to answer at length. Usually the hypnotist will ask questions that can provoke your empathy and get you trapped in it.
   If you are in such a situation, do not hesitate to stop the conversation right away.

Another way that you might be able to do this is by managing the flow of the conversation so as not to fall into the hypnotist's trap.

a. Be Calm When Patted Suddenly
   If someone suddenly pats you, you should remain calm and not be surprised. Also try not to get into a conversation with that person.

b. Always Pray
   If you have already spoken and it is difficult to find a moment to stop the conversation, increase your awareness by praying silently. The goal is to keep your awareness awake.

c. Don't Travel Alone
   When going to a public place, you should not go alone. Invite some people you trust to accompany you. This will make you feel safer and more protected.

d. Avoid Food and Drink from Strangers
   Also avoid consuming or taking food and drinks from strangers. Most hypnotic crimes start from anesthesia through food or drink.

Characteristics of Hypnotist

Public places are always a favorite of hypnotists to carry out their actions. So that you can avoid hypnosis, you should recognize the characteristics of hypnotists in public places below.

a. Familiar
   Hypnotists usually always chat with potential victims before launching the action. This is done while reading the situation around and assessing the target. If the situation is deemed favorable and the target is suitable, then the perpetrator will continue the action. But if the target is not suitable and looks difficult to hypnotize, he will cancel the action. So always increase your awareness when there are people who pretend to know you in public places.

b. Following the Victim
   Hypnotists tend to follow their potential victims. Therefore, if you are in a public place and feel that someone is following you then immediately look for a crowded place. If necessary, approach people who are in groups.

c. Trying to Attract Attention
The next characteristic of the hypnotist is trying to attract the victim's attention. This is done by telling various kinds of things while trying to make potential victims believe in him.

The story told is usually made as interesting as possible so that it sounds interesting and makes the victim happy to listen to the story.

2. RESEARCH METHOD

The research method as a type of scientific thinking used in the research and assessment of this thesis, has the ultimate goal of achieving objectivity from the writing of this thesis. The research method is used as a systematic way to search, find, develop, analyze a problem, test the truth objectively and optimally and carry out the correct method in research. This research uses normative juridical research methods. Normative legal research is legal research that examines written law from various aspects, namely aspects of theory, history, philosophy, comparison, structure and composition, scope of material, and consistency. In other literature, it is stated that normative legal research consists of: research on legal principles, research on legal systematics, research on the level of legal synchronization, legal history, and comparative legal research. Normative legal research is conducted by examining written law that is binding from all aspects related to the subject matter under study.

This research uses descriptive research. Descriptive research is intended to provide data that is as accurate as possible about humans, circumstances or other symptoms which aims to obtain data about the relationship between a symptom and other symptoms. This research uses normative juridical research. The focus of attention of normative legal science as a practical science is to change the situation and offer solutions to concrete and potential societal problems. As a normological practical science, normative legal science is directly related to legal practice which concerns two main aspects, namely the formation of law and the realization of law.

3. RESULTS AND DISCUSSION

Criminal Liability Towards the Perpetrator of Fraud by Hypnotism

Various forms of fraud crimes, especially with the hypnosis mode, have always made the community uneasy, these crimes not only occur in urban communities but also occur in rural areas. In the event that you're looking for the most effective way to get the most out of your home, then you've come to the right place. With the problems with the law that are growing and more and more new types of crimes, law enforcement is less than optimal due to the absence of laws governing these crimes. In the criminal act of fraud with the modus operandi of hypnosis there are two kinds of forms, namely directly and through electronic devices.

The following can be intentionally done to a person with a condition that resembles sleep, the person can answer all the questions asked and accept suggestions with no resistance at all is called hypnosis. What needs to be understood is that being hypnotized is not the same as being asleep. Sleeping people cannot listen to the sounds around them.
Although his body is like sleeping, a hypnotized person can still hear clearly and respond to the information he receives when hypnotized.

Indonesia, which is a state of law, must uphold the law and justice. Indonesia adheres to the principle of legality and legal certainty in criminal law. Similar to the Dutch, in the Indonesian Criminal Code, the principle of legality is formulated in Article 1 paragraph (1): "no act can be punished, except for criminal legislation that has existed before the act was committed". In criminal law, there are several general principles of interpretation.

The problem in the context of criminal law is the application of juridical rules to a concrete event that is general in nature. By interpretation or analogy, it is a big problem in legal discovery in criminal law. Therefore, it is necessary to know the general principles of interpretation, namely: First, in the principle of regulation there are two main principles that are interrelated, the principle of proportionality which is a balance of the means and objectives achieved by a law. And the principle of subsidiarity, which is if in a problem it is difficult to come up with an alternative solution, then the solution that causes the least harm must be chosen.

Secondly, in criminal law, the applicability of the law which only concerns a deviation in the social behavior of society which basically gets a reaction and correction from the point of view of criminal law is in principle the principle of relevance in criminal law itself.

Third, juridical logic must be tested by propriety, in principle this is Maarten Luther's view of the principle of propriety. Van Der Ven In the use of a legal logic for efforts to explain legislation, by detaching from mere logic, it can run efficiently the provisions of formal legislation are mechanistic for all human needs in society and in the systematization of social relations in society.

Fourth, if there is doubt in the process of sentencing, then a provision that is most favorable to the defendant must be decided, this is the principle of the principle of in dubio pro reo.

Fifth, if there is a deviation from the general rule, then the deviation that occurs must be interpreted more narrowly, in accordance with the adage exeprio frimat vim legis in casibus nin exceptis. Midalnya in the development of criminal law in recent times has given rise to many acts that are classified as criminal acts outside the codification in a law.

Sixth, the title of a statute is decisive, the statutory section is decisive, both of which constitute the principle titulus est lex rubric est lex. For example, the crime of abortion. Actions that can be processed criminally only against the fetus or fruit of the womb that is already alive and not against the fruit of the womb that is not yet alive. Seventh, an ideal or ideal of law that contains unwritten rules and refers to important social and ethical values is contained in the material principle. Judges must pay attention to these material principles when interpreting a statutory rule as long as the principle is recognized in the legal world and is contained in doctrine or jurisprudence.

Furthermore, exclusion by society with regard to ethical standards applies at certain times to anyone who commits deviations in behavior that can basically be avoided, this is
the definition of fault according to Rammelink Mezger also defines the definition of fault as a comprehensive requirement which basically excludes human individuals from legal actions. People who do wrong will essentially be attached to a mistake.

Meanwhile, the relationship between fault and liability, Van Bemmelen and Van Hattum argue as follows, "Het ruimste schuldbegrip, waarindus alle bestanddelen zijn opgenomen welke iemand voor een wederrechttelijke gedraging strafrechtelijk aansprakelijk maken, omvat, al het geen psychisch is aan dat complex, dat bestaat uit een strafbaar feit en zijn deswege strafbare dader" (Unlawful acts include all elements of fault for which a person is liable and include all matters of a psychic nature in a complex form, namely the criminal act as well as the criminal offender himself).

The first element of fault is culpability or toerekeningsvatbaarheid. Van Hamel provides a measure of the ability to be responsible which includes three things: First, being able to truly understand the consequences of one's actions. Second, being able to realize that the act is contrary to the public order. Third, the ability to determine the will to act.

The three abilities are cumulative. This means that if one of the capabilities of responsibility is not fulfilled, then a person is considered not accountable. Crimes that use the modus operandi of hypnosis are one of the modes that can rarely be revealed, because the victim when under the influence of hypnosis is not aware, and only realizes when the effect disappears and takes a long time, there is also no visible element of violence so it is difficult to detect by other people who witness it and usually there are rarely witnesses who see the incident. With this mode, it appears as if the victim voluntarily gives the goods to the perpetrator.18

Furthermore, in several cases of criminal acts of fraud with hypnosis mode using electronic media, the perpetrator uses the profile of another person and is generally carried out by the perpetrator by making a voice call via the WhatsApp application to the victim, after which the perpetrator claims to be an old friend of the victim, then the perpetrator asks the perpetrator where he is and makes sure the victim is alone. After that the perpetrator invites the victim to talk and immediately hypnotizes the victim so that the victim obeys the perpetrator's orders. The perpetrator told the victim to transfer some money to the perpetrator's account. It is possible for hypnosis to occur through eye gaze or touch, but not with hypnosis that uses electronic media as a device to launch the action.

Next, the victim of a hypnotic crime is usually unconscious when hypnotized and only wakes up after a while, the victim does not experience any element of violence, this modus operandi is not a fact that can rarely be revealed because the time needed to hypnotize is relatively short, especially if there are no witnesses who witness it, making it as if the victim voluntarily gives his goods voluntarily and is not aware of it.

Next, there is a difference with the way hypnosis works in general. In hypnotic criminal acts that use electronic media, the way it works, namely looking at the victim or touching the victim, does not apply, because the way it works is different. That is by knowing the potential victim and convincing the victim, then putting pressure on the victim about a certain problem, after that if the victim has been suggested then the perpetrator takes action to launch the action.
The author argues that every action taken to hypnotize, there are positive aspects and negative aspects, it depends on the person who does it. What is emphasized here is the act of hypnosis used for crimes in the form of fraud. Where the hypnotized person experiences a decrease in consciousness so that the brain function does not work optimally and cannot do his own will but will do all orders by the person who hypnotized him by utilizing the suggestion of the hypnotized person.

In general, the frequency of communication carried out by the perpetrator on every occasion with a high frequency is likely to increase the level of trust and seriousness that is perceived as reality and is very likely to increase the victim's confidence in the perpetrator.

Comparison of the offense of theft, the offense of embezzlement and the offense of fraud with the mode of hypnosis in the Criminal Code and article 28 paragraph (1) of the ITE Law relating to crimes against goods in accordance with the object under study.

**Theft**

Juridically, it is regulated in Article 362 with the following provisions: "Any person who takes property, wholly or partially belonging to another, with intent to possess it unlawfully, shall, being guilty of theft, be punished by a maximum imprisonment of five years or a maximum fine of six hundred rupiahs". The elements of the provisions of Article 362 above are:

a. The act committed, namely taking
b. What is taken in the form of goods
c. The goods taken belong to another person partly or wholly.

The unlawful element in the provisions of Article 362 of the Criminal Code is classified into a special unlawful nature because it is explicitly listed in the formulation of the article. The unlawful element has various meanings that are different from the unlawful elements contained in other articles. Against the law in the formulation of Article 362 concerning the crime of theft, every act of taking someone else's property with the intention of possessing it is carried out unlawfully based on the evil intent of the perpetrator. Contrary to the subjective rights of others and contrary to the provisions of the law.

The comparison that distinguishes between theft offenses and fraud offenses is that theft is committed without obtaining permission from the owner of the goods, while fraud is with the permission of the owner of the goods. The unlawful element contained in the theft and fraud articles is the difference between with the owner's permission and without the owner's permission, this is a reference to the unlawful element in the provisions of the theft article and the fraud article.

**Embezzlement**

Meanwhile, this offense is formulated in the provisions of Article 372 of the Criminal Code: "Any person who deliberately and unlawfully possesses property which wholly or partially belongs to another, but which is in his possession by reason of no crime, shall, being guilty of embezzlement, be punished by a maximum imprisonment of four years or a maximum fine of six hundred rupiahs."

Based on the provisions of the formulation of Article 372 above, the author is of the view that the provisions are almost similar to the formulation of the theft article, it's just
that the difference lies in the element of goods that are not obtained by crime. If interpreted with the actions of people who take other people's goods by means of hypnosis, of course this element cannot ensnare the hypnotic act. In the crime with hypnosis mode, the goods in the possession of the perpetrator are obtained by crime, therefore it cannot be classified as embezzlement.

**Fraud**

Meanwhile, this offense is formulated in the provisions of Article 378 of the Criminal Code which Based on the provisions of the article, the analysis of the elements of the offense of fraud is as follows:

A. With the intention of the perpetrator to benefit himself or others;
B. The action must be against the law or deprive the victim of his/her rights.
C. There must be an act of inducing the victim
D. Some of the ways that perpetrators use to persuade their victims:
   a. Using a false name
   b. Using deception
   c. With a series of lies
   d. Mobilizing others

Based on the formulation of the offense of fraud above, not all acts of taking other people's goods by means of hypnosis are fraud if in practice there are elements of the elements in the offense of fraud above that are not fulfilled. In general, persuasion is an element that sometimes cannot be fulfilled because in general, to be able to hypnotize someone, a hypnotist does not need to use persuasion to launch his action. However, if a perpetrator in launching his action does not use deception, a series of lies and moves other people to hand over goods to him, it can be said to be fraud. therefore there must be a legal update that regulates this hypnosis so that das sollen and das sein are balanced.

Because in the criminal act of fraud by hypnosis, generally the electronic media used is a cellular communication device or cellular cellphone. The media used has not been regulated in the provisions of the law, so that there is an overlap of law between general criminal offenses and criminal offenses that use special media, and the methods used are certainly different from crimes in general.

If a sharp and strict separation is not made between legal interpretation and law making, legal interpretation is placed above law making, meaning that the law is only a guideline that can generally be broken. From this, the school of realism was born. This is our inability to accept all regulations that are essentially felt to be unfair and we prefer to do liberation, avoiding the circle of an existing regulation. Broadly speaking, there are four common and frequently used methods of interpretation, namely:

First, grammatical interpretation, which is the meaning of the provisions of an existing law and is interpreted through a way of parsing it based on commonly used everyday language. In a decision, the judge may explicitly affirm the meaning of a statutory text in ordinary language or in terms of commonly used juridical techniques.

Second, logical or systemic interpretation, linking statutory provisions with other legal regulations or laws with all existing legal systems as a whole by way of interpretation.
This means that if you want to do an interpretation, not only the articles to be interpreted are made as a reference. We must also look at all articles in the same law or other laws, even all legal systems as a whole as a unit.

**Obstacles in Law Enforcement Against Perpetrators of Fraud with Hypnosis**

Next, in law enforcement against perpetrators of criminal acts of fraud with hypnotic mode through electronics, there are several factors that hinder, including:

First, the offense of fraud is a relative complaint offense, victims of fraud with hypnotic mode, generally rarely report so that law enforcement officials are difficult to take action against the perpetrator who has committed a criminal offense against him according to legal provisions. In the criminal justice process, ordinary offenses and complaints have a very important meaning. The majority of offenses contained in the Criminal Code are ordinary offenses and no complaint is required to carry out legal proceedings, but there are several offenses that require a complaint to process the case.

Second, the factor of the substance of the governing law. The law in question is the legislation itself which is still not effective regarding the provisions that regulate it. The existence of a legal vacuum makes it difficult for perpetrators of criminal acts to be charged by law. The application of existing articles is no longer in accordance with technological developments and the growing problems with the law. In principle, offenses and crimes regulated in criminal law develop faster, therefore criminal law is required to be more dynamic than other branches of law.

Third, law enforcement officials, especially the police, whose duties, duties and functions include law enforcement, still have obstacles experienced, namely experts, crimes using electronic media with these problems, the resolution cannot run quickly so that it is hampered a lot. Victims of hypnotic crimes are generally witnesses as well as victims of what they experience, so it is difficult for the police to find evidence that occurred when the perpetrator launched his action.

In general, it is uncertain to determine who the perpetrator is because they do it through electronic media that can be accessed anywhere without being limited by space, distance and time, so that there are no witnesses who see/witness directly at the time of the crime directly. For victims of criminal acts of fraud with hypnosis mode through electronic media, the effect is felt directly by the victim, because even though in Indonesia the quality of information technology is very good, the security guarantee for its users is not comparable to that. So that it can cause public concern about this.

Fourth, supporting facilities and means of overcoming criminal acts, to be able to keep up with the dynamic development of technology and information, supporting legal facilities and infrastructure are needed to keep up with this because of the high crime rate and increasingly diverse modus operandi. namely by using penal means and non-penal means, penal means, namely by examining the substance of criminal acts using information technology today. In an effort to overcome criminal acts through penal means, it should be considered how to formulate an appropriate juridical rule to be able to prevent criminal acts using electronic media in the future and be able to apply juridical policies in criminal law
enforcement. Non-penal means, namely by increasing the delivery of information so that people avoid crime, the goal is very clear, namely so that people are more observant and careful and always alert and do not become victims of criminal acts.

Fifth, the factor of public awareness of the law. People are generally reluctant to report cases that happen to them because some people think that they do not question material losses with a nominal amount that is not too large. The community considers that if the problem is taken to court, they are afraid that they will incur more costs than the losses experienced. Actually, the community should not hesitate to report criminal acts of fraud with the hypnotic mode in order to help law enforcement officials, especially the police, to be able to eradicate the perpetrators who have long been troubling and roaming to launch their actions.

4. CONCLUSION

The conclusions in this research are as follows:

1. Enforcement against perpetrators of fraud with hypnotic mode is still not effective and has not been achieved optimally, because there is a legal vacuum where fraud with hypnotic mode has not been regulated in the legislation, especially if it uses electronic media as a medium for committing crimes, law number 19 of 2016. It only refers to the provisions of article 378 of the Criminal Code. The existing law is considered unable to accommodate law enforcement according to what is aspired to. The principle of legality in criminal law applies fundamentally. The Criminal Code, which is a relic of the Dutch Colonial, should be replaced by a new Criminal Code, the Criminal Code Bill should be ratified immediately and made into positive Indonesian law, the concept of the Criminal Code Bill has been made by reliable legal experts whose abilities are no longer in doubt. With the legalization of the Criminal Code concept, the Dutch Colonial Criminal Code can be replaced which is more effective in supporting legal interests and achieving legal objectives.

2. The crime of fraud with hypnosis in its enforcement efforts still has many obstacles including the people who are victims are reluctant to report, legal substance factors, law enforcement factors, facilities and supporting facilities for crime prevention. And the factor of public awareness of the law. These various factors are very influential in criminal law enforcement in Indonesia. The State should be able to overcome these obstacles and fix everything that becomes an obstacle in law enforcement in Indonesia.

REFERENSI


Holyone Singadimedja, et al. (2017), Indonesian Criminal Law System, pp. 75
Marzuki, Peter Mahmud, (2015), Legal Research Methods, Kencana Prenada Media Group, Jakarta.
Prasetya, Prasetya, (2013), Criminal Law, PT Raja Grafindo Persada, Jakarta.
Sunggono, Bambang, (2013), Legal Research Methodology, Raja Grafindo Persada, Jakarta.