

**CRIMINAL ACCOUNTABILITY FOR CIVIL SERVANT (CPNS)  
ADMISSION FRAUD**

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**Abstract**

*Several instances of misconduct have occurred, wherein certain individuals have taken advantage of public interest surrounding the CPNS registration process. In 2018, Defendants AD and SH profited IDR 200 million. In 2019, Defendant HB gained a profit of up to 5.7 billion Rupiah through the CPNS Recruitment mode, and in 2021, (ON) amassed a profit of 9.7 billion Rupiah. This research aims to analyze the application of the law to cases of fraud perpetrated against Candidates for Civil Servants (CPNS), and propose preventive measures to curb instances of fraud under the guise of a special pathway. The study is conducted through both normative and sociological legal research, utilizing a sociological interpretive approach. The Statute Approach and Case Approach are employed in this study. Legal material is gathered using library techniques, and the analysis of legal materials is performed using qualitative methods. The study's findings reveal that: (1) CPNS registration is strictly free of charge, and any claims suggesting the availability of internal routes for assistance are baseless. Perpetrators of such acts are subject to charges under Article 378 of the Criminal Code, which involves deceiving and causing harm to others. (2) Candidates applying for CPNS positions need not seek any special means to pass the selection process, as the principle of Bureaucratic Reform within the state civil apparatus prohibits any form of illicit practice.*

**Keywords:** Civil Servant, Fraud, Recruitment

## 1. INTRODUCTION

Indonesia, as stated in Article 1, Paragraph 3 of the 1945 Constitution, is a state founded on the principles of law. Hence, it is imperative that the rule of law, not politics or economics, be the governing force in the life of the nation. The principle of the rule of law, known as "*The Rule of Law, Not of Man*," underscores the importance of basing state power and policies on established legal frameworks, rather than the desires of specific individuals or groups, including those in positions of authority or leadership.

The ineffectiveness within the justice system is apparent in the prevalence of criminal cases, particularly those involving fraud. Instances of fraud in Indonesia have instilled a sense of unease within society, leading to a lack of trust among individuals, whether they are new acquaintances or long-standing associates (Kusomo et al., 2020). Presently, fraud knows no boundaries of gender, status, or age, and can occur at any place and time. According to Putra (2021), fraud is defined as an act that inflicts harm on another individual, often falling within the ambit of criminal law. It encompasses the manipulation, falsification, or concealment of information with the intention of benefiting oneself or another party, resulting in loss to the aggrieved party. This form of fraudulent behavior is not confined to the business realm but has also infiltrated the process of selecting Candidates for Civil Servants (CPNS).

The majority of Indonesian people who dream of working as Civil Servants (PNS) think that being a PNS can provide security and guarantees in old age. In addition, the assumption that in retirement, the future of the family can also be protected. Civil

Servants (PNS) are state apparatuses who have a strategic position, authority and responsibility in administering the government and development system in obedience and full loyalty to Pancasila, the 1945 Constitution, the State and the government. However, the hope of becoming civil servants is often taken advantage of by irresponsible elements by making promises of convenience to Candidates for Civil Servants (CPNS) both in urban and remote areas (Ekawati et al., 2020)

Several cases were carried out by irresponsible individuals in taking advantage of public interest regarding the opening of CPNS registration including in 2018 (Defendant AD and SH) reaped a profit of 200 million Rupiah where the victim was lured into an official job in a government area, but after 3 years the work was not realized and the victim had not received a call to work as a civil servant in the area. Furthermore, in 2019 (Defendant HB) made a profit of up to 5.7 billion Rupiah with the CPNS Recruitment mode where the defendant claimed to have access to the State Civil Service Agency (BKN). Actions carried out by HB killed up to 99 people. Then in 2021 (ON) made a profit of 9.7 billion Rupiah where ON, who is the son of singer ND, at first only provided tutoring facilities to the victim, but in fact there were victims who complained about getting a fake SK from the defendant ON.

The law that regulates the crime of fraud in the registration of CPNS selection is Article 378 of the Criminal Code which reads "Anyone with the intention to unlawfully benefit himself or others, by using a false name or fake dignity, with deception, or a series of lies, incites another person to hand over something to him, or to make another person pay a debt or write off the debt, shall be punished by a maximum imprisonment of four years (Kitab Hukum Acara Pidana - Buku Kesatu: Aturan Umum, 1981).

One of the studies that has raised a similar topic is Livia Kusumo's research which in her research explains that the causal factor for fraud is the lack of appropriate punishment which can make perpetrators deterrent and afraid of the law; maximum prison sentence of 4 years and often given leniency in court. If examined from the point of view of society, the factors found are poverty and environmental factors, such as Thomas More's explanation that severe punishments imposed on criminals at times when due to poverty, will not have much impact on eliminating the crimes that have occurred. So prevention and prevention of crime is needed in dealing with crime. The profits from the criminal act of CPNS fraud are very large, but the sanctions and accountability that can be said to be very minimal, so perpetrators of this type of fraud rarely and almost never get a deterrent effect from this act, so the government should provide new policies by imposing penalties which is bigger, and also considering that this CPNS fraud can damage the character and morals of the nation.

Therefore, based on this research, research will be continued with similar topics but with a different point of view through the research title "Criminal Responsibility for Fraud in Accepting Candidates for Civil Servants (CPNS)". Furthermore, the objectives to be achieved through this research are as follows: (1) To analyze in depth the application of law to criminal acts of fraud for Prospective Civil Servants (CPNS). (2) To find a solution to prevent the occurrence of criminal cases of fraud for Candidates for Civil Servants (CPNS) under the guise of a special line so that they do not become more widespread in Indonesia.

## **2. LITERATURE REVIEW**

### **2.1. Faud Crime**

In the legal system, punishment or restraint is used to prevent behavior that can damage or harm society, in addition to protecting the community from violations of the law and rehabilitating perpetrators in the hope that criminal offenders will be deterred and learn from their current mistakes and will not commit similar violations in the future (Wahyuni, 2017). The difference between punishment and punishment lies in formal provisions, where punishment is based on the provisions of the law while punishment is broader and not always based on the law, such as a child who is punished by his parents or a student who is punished by his teacher for making a mistake. Therefore, the punishment given to perpetrators who break the law is of course to cause suffering and has been adapted to the Criminal Code (KUHP) (Soekanto, 1984).

Criminal cases that are currently rife are criminal fraud. Fraud that occurs in Indonesia causes unrest in society because they feel insecure and do not trust the people they meet, both new people and people they have known before. Even today, fraud does not look at gender, status, or age, which can happen anywhere and anytime (Ekawati et al., 2020). The definition of fraud is an act of harming another person that may be subject to criminal law, involving manipulation, falsification or concealment of information with the aim of benefiting oneself or another party, resulting in loss to the other party.

### **2.2. The Concept of Rule of Law**

Indonesia is a constitutional state in accordance with the 1945 Constitution article 1 Paragraph 3 so that it is idealized that law should be the commander in chief in the life of the state, not politics or economics. Therefore, in mentioning the principles of the rule of law are: "The Rule of Law, Not of Man" means that in the context of the rule of law it emphasizes that in a country, power and policies must be based on established laws, not based on the wishes of certain individuals or groups, including rulers or leaders. Everyone, including the government and its leaders, is subject to and obeys applicable laws, no one is above the law and all are treated equally before the law. This is an important principle in maintaining justice and avoiding abuse of power (Ashiddiqie, 2011).

### **2.3. Criminal Justice System Theory**

The criminal justice system was formed as a system that has the goal of controlling crime in society, because according to a legal expert, namely Benedict S. Alper found the fact that the oldest social problems in society are related to crime problems and have been recorded at more than 80 international conferences since years 1825 – 1970 (Abdullah, 2003). The whole process of the justice system worked sequentially and could not skip one stage to another, so that each institution in the subsystem was interrelated and influenced one another. A legal figure, Alan Coffey, explained that: "Criminal justice can function systematically only to the extent that each segment of a system takes into account all other segments. In other words, the system is not more systematic than the relationship between the Police and the Prosecutor's Office, the Police and the Prosecution and Correctional Courts, Corrections and the Law, and so on. In the absence of functional relationships between segments, the criminal justice system is very susceptible to fragmentation and ineffectiveness", meaning that in the criminal justice system, different segments such as law enforcement (such as the police), prosecution (such as prosecutors),

justice (such as judges and courts), and victim services must be interconnected and work together effectively to achieve common goals, namely law enforcement and justice. If there is no functional relationship between these segments, then the criminal justice system can be vulnerable to fragmentation and ineffectiveness. Fragmentation refers to a condition in which each segment operates independently and isolated from the others, which can result in communication and coordination failures, causing delays or imbalances in handling cases, and then impacting public trust in the criminal justice system. Meanwhile, ineffectiveness is the inability of the criminal justice system to achieve its goals, such as crime prevention, community protection, or victim recovery. If there is no coordination and cooperation between segments, then each segment is not able to perform its function properly, which can result in the overall system being ineffective (Nursyamsudin & Samud, 2022).

#### **2.4. Criminal Justice System Theory**

Legal certainty is also needed to realize the principles of equality before the law without discrimination. From the word certainty, it has a meaning that is closely related to the principle of truth. That is, the word certainty in legal certainty is something that can be strictly syllogized in a formal legal way. The theory of legal certainty is one of the objectives of law and it can be said that legal certainty is part of the effort to realize justice. Legal certainty itself has a real form, namely the implementation and law enforcement of an action that does not look at who the individual is doing. Through legal certainty, everyone is able to predict what he will experience if he takes a certain legal action. With legal certainty, it will guarantee that someone can carry out a behavior that is in accordance with the provisions of the applicable law and vice versa. Without legal certainty, an individual cannot have a standard provision to carry out a behavior. In line with these objectives, Gustav Radbruch also explained that legal certainty is one of the objectives of the law itself (Bobonis & Morrow, 2014).

### **3. RESEARCH METHODS**

The study's design focuses on elucidating the pervasiveness of fraud within the realm of Candidates for Civil Servants (CPNS) and subsequently scrutinizes this phenomenon through the lens of criminal law, drawing on insights from various legal experts. Legal research encompasses two main branches, namely normative legal research and sociological legal research. This particular study adopts a sociological legal research approach, emphasizing the dynamic interplay between law and society, delving into how legal structures impact society and conversely, how societal dynamics influence legal frameworks (Putra, 2021). Employing a sociological interpretive approach, the research aims to comprehend how individuals and groups perceive and ascribe significance to legal norms and practices. Methodologies such as ethnographic observations, interviews, and text analyses are anticipated in order to capture individual viewpoints and subjective experiences (Putra, 2021).

The study relies on a comprehensive array of legal sources, including primary legal materials encompassing a collection of fraud cases related to Prospective Civil Servants (CPNS) within Indonesia over recent years, and secondary legal materials such as pertinent journals, books, and laws pertinent to CPNS fraud cases. The collection of legal materials follows a meticulous library-based approach, encompassing the systematic

acquisition, evaluation, and analysis of written sources pertinent to the research topic, drawing upon laws and regulations, academic journals, and other relevant publications. Analysis of these legal materials adopts qualitative techniques, involving the collation and interpretation of non-numeric data to discern underlying concepts, opinions, and experiences, employing methodologies such as case study procedures, observations, and document analyses (Putra, 2021).

## **4. RESULTS AND DISCUSSION**

### **4.1. State Officials and Civil Servants**

Law Number 5 of 2014 Concerning State Civil Apparatus legislation governing the Civil Service in Indonesia, Civil Servants basically occupy state positions, while state positions are occupied by State Officials. The terms between the country and the state indicate a difference in the scope of duties and the scope of the area of authority and the nature of the position.

According to Jimly Asshidique, State Officials are "political appointees" while State Officials are "administrative appointees". This means that the State Officials are appointed or elected because of political considerations, while the state officials are chosen purely for administrative considerations or reasons. In addition to this, it is also related to the periodization of office, for State Officials the form of accountability is directly to the public with an election mechanism, so that their term of office will be evaluated by an election mechanism which is temporary in nature, while for civil servants the responsibility is to the leadership, even in terms of employment it is tiered in nature by using a rank and career system, the periodization is quite long, namely from recruitment to retirement which can take up to 40 (forty) years.

The conclusion is that State Officials and Civil Servants are two different aspects of governance, namely governance in a broad sense and governance in a narrow sense. The state with all its complementary functions (Executive, Legislative and Judiciary) is the notion of government in a broad sense. Meanwhile, the definition of government in a narrow sense only refers to one function, namely the executive function. In this context, state officials are in fact distinguished from officials or civil servants (state civil servants), who incidentally are government officials in a narrow sense. At the beginning, it was mentioned regarding state officials as political appointees as expressed by Jimly Asshidique. In the context of a democratic country, placement and position of office are based on people's sovereignty (politics) and community service (public).

The identification of state officials in the context of state politics is functionally related to their electability system through general elections (by the people) as well as through a political mechanism (fit and proper test by the DPR). The term political official was indeed only known in the reform era because many positions were born through political mechanisms. Unlike the case with the New Order which only recognized the term State Official. Apart from being synonymous with political officials, state officials are also identified as public officials in the context of the public service system or public interest.

## **4.2. Appointment of Civil Servants**

Public services (public services) and administration of government is a function of various factors. One of them is the human resource factor, namely Civil Servants (PNS). It can be said that the good or bad of a state bureaucracy is greatly influenced by the quality of civil servants. One of the state civil service reform agenda that is urgent to be carried out immediately is reform in the procurement (recruitment) of Candidates for Civil Servants (CPNS). This is because the CPNS procurement process is the most critical and risky process in the entire PNS management process in Indonesia. It is referred to as the most critical process considering that this process is very decisive in forming a profile of civil servants who are reliable, qualified and relevant to the needs of the organization or vice versa, namely civil servants who are counter-productive to the organization.

In addition, through the CPNS procurement process, an initial (general) description of the CPNS that will be obtained (raw material) is known, in order to anticipate the expression that says garbage in garbage out (GIGO). In other words, the CPNS procurement process is a starting point that can describe what and how the desired CPNS profile is in accordance with organizational needs. Furthermore, the CPNS procurement process is called risky, meaning that it contains long-term consequences for asset investment in the future, considering that CPNS who will later be appointed as PNS are not only important organizational assets, but are also organizational partners who need and must be managed properly, because it determines organizational effectiveness. . In addition, the CPNS procurement process is full of risks from KKN (collusion, corruption and nepotism) practices carried out by certain parties and the community. In other words, the CPNS procurement process often causes many problems because there is a lot of public dissatisfaction with the CPNS procurement process that is being carried out. One of the dominant factors why most civil servants in Indonesia are ineffective and have not made an optimal contribution, especially in providing services to the community, even giving the impression of being underemployed (disguised unemployment), because the policy of procuring CPNS in government agencies in the past was not based on planning. workforce, but based more on factors of political interests and power.

For decades, the bureaucracy (PNS) has often been used as a tool for power and politics, thus ignoring the quality and requirements for job analysis or job analysis. As a result, the human resources of the apparatus in the organizational unit become redundant and not in accordance with the real needs or existing workload, giving rise to pressure to immediately rationalize civil servants. The problematic situation in the procurement of Civil Servant Candidates, as outlined above, both originating from internal and external forces, however, cannot be allowed to continue like this on an ongoing basis, given the long-term risks and impacts. Therefore, in the future it is necessary to pursue various breakthrough efforts, including through the formulation of alternative CPNS procurement strategies that can produce CPNS who will later be appointed as qualified civil servants.

Registration is free of charge, if there is someone on behalf of being able to help with the internal route, then you can be sure that this is not true. Because everything is direct connectivity through the website and the original address of the ministry office that opens employee appointments.

## **4.3. Concept of Criminal Liability**

Criminal liability, can be interpreted as responsibility or liability. This concept originates from the concept of criminal law which consists of 3 (three) things, namely:

(1) Formulation of criminal law which contains criminal acts (criminal acts); (2) Criminal liability (criminal liability or criminal responsibility), both of which are forms of substantive criminal law; (3) The procedure before the trial for people who have committed criminal acts as alleged, which is called formal criminal law (criminal procedure).

If these three elements have been fulfilled then the perpetrator concerned can be declared to have committed a crime so that the ability to be responsible arises. On the basis of the three things mentioned above, the meaning of criminal responsibility is attached to the perpetrators of the crime itself unless there are reasons that abort the ability to be responsible for the perpetrators of the crime itself. That is, a criminal act based on error (both intentional and negligent) will always be attached to criminal responsibility.

The system of criminal responsibility in law adheres to the principle of error as one of the principles in addition to the principle of legality. Criminal liability is a form of action by the perpetrator of a crime against the mistakes he has made. Thus, criminal liability occurs because there is a mistake which is a crime committed by someone, and there are already rules governing the crime. Criminal responsibility, cannot be separated from one or two aspects that must be seen with philosophical views. One of them is justice, so that the discussion on criminal responsibility will provide clearer contours. Criminal responsibility as a matter of criminal law is intertwined with justice as a matter of philosophy (Sirajuddin, 2013).

Someone who commits an action that is prohibited by law, then someone will be held accountable for these actions if the action is against the law (and there is no elimination of unlawful nature or *rechtsvaardigingsgrond* or justification reasons) for that person from the point of view of being responsible, then Only someone who is capable of being responsible can be held criminally accountable, right? Criminal liability is an act that is disgraceful to the public that must be held accountable to the perpetrator for the actions committed. By being responsible for the despicable act of the creator, is the creator also blamed or is the creator not blamed? In the first case, the creator is certainly punished, while in the second case, the maker is certainly not punished<sup>24</sup>. Mistakes in the broadest sense can be equated with the notion of responsibility in criminal law. It contains the meaning that the maker can be blamed for his actions. So that if someone is declared to have committed a crime, then that person must be held accountable.

The definition of a criminal act does not include accountability. Criminal action only refers to the prohibition of action. Whether the person who has committed the act is subsequently also punished depends on the question of whether he actually made a mistake in committing the act or not. If the person who committed the crime did have a mistake, then of course he will be punished. Criminal liability leads to the punishment of the offender, if he has committed a crime and fulfills the elements specified in the law. Seen from the point of view of a criminal act occurring by someone, then someone will be responsible for these actions if the action is against the law for that. From the point of view of the ability to be responsible, only someone who is capable of being responsible can be subject to criminal responsibility.

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substantive criminal law; (3) The procedure before the trial for people who have committed criminal acts as alleged, which is called formal criminal law (criminal procedure).

Criminal liability that can be imposed on perpetrators of criminal acts cannot be separated from the principle of *geen straf zonder schuld* (no punishment without fault). So that for a mistake to occur, the following conditions must be fulfilled, namely (1) There is the ability to be responsible for the perpetrator of the crime with a normal mental condition; (2) The mental relationship between the perpetrators of the crime and the crime is intentional or negligent as a form of error; (3) There is no excuse that erases the mistake or there is no excuse for forgiveness (Efrida et al., 2017)

Criminal liability will determine whether or not a perpetrator of a crime can be held accountable for the actions he has committed. Being able to take responsibility is a condition of error, so it is not part of the error itself. Therefore to the subject of human law, being able to take responsibility is an element of criminal responsibility, as well as a condition for mistakes. Unaccountability results in not being subject to criminal prosecution. Means, when there is a sign that a person is unable to be held accountable and is therefore seen as irresponsible in criminal law, the accountability process stops here. The person can only be subject to action, but cannot be subject to punishment.

#### **4.4. CPNS Test Fraud Crime**

Fraud committed jointly” as stipulated and subject to criminal penalties in Article 378 of the Criminal Code Jo. Article 55 Paragraph (1) 1st Criminal Code. Provisions regarding the offense of fraud (the main crime) are contained in Article 378 of the Criminal Code which reads as follows: “Whoever with the intent to benefit himself or others by violating the law, by using a false name or false prestige, by deception or by a series of lies moves another person to hand over something to him, or to give a debt or write off a debt, is threatened because fraud with a maximum imprisonment of 4 (four) years”.

In 2018 (Defendant AD and SH) made a profit of 200 million Rupiah where the victim was lured into a service job in a government area, but after 3 years the work was not realized and the victim had not received a call to work as a civil servant in that area. In 2019 (Defendant HB) made a profit of up to 5.7 billion Rupiah with the CPNS Recruitment mode where the defendant claimed to have access to the State Civil Service Agency (BKN). Actions carried out by HB killed up to 99 people. In 2021 (ON) made a profit of 9.7 billion Rupiah where ON, who is the son of singer ND, at first only provided tutoring facilities to victims, but in fact there were victims who complained about getting a fake SK from the defendant ON.

Article 55 paragraph (1) of the Criminal Code, those who commit, order to do or who participate in doing and those who with gifts, promises, by abusing power or appearance, with violence, threats or by causing misunderstandings or by providing opportunities, means -means or information, intentionally inciting other people to commit the crime in question. The perpetrator was subject to a fraud article in accordance with Article 378 of the Criminal Code which moves someone to do something by deception and harm others.

## **5. CONCLUSION**

The conclusion of the research is 1) Registration for CPNS is free of charge, if there is someone on behalf of being able to help with the internal route, then you can be sure that this is not true. Because everything is direct connectivity through the website and the original address of the ministry office that opens employee appointments. The perpetrator was subject to a fraud article in accordance with Article 378 of the Criminal Code which moves someone to do something by deception and harm others. Article 55 paragraph (1) of the Criminal Code, those who commit, order to do or who participate in doing and those who with gifts, promises, by abusing power or appearance, with violence, threats or by causing misunderstandings or by providing opportunities, means -means or information, intentionally inciting other people to commit the crime in question. 2) Candidates for CPNS applicants do not need to look for links in order to pass the selection, the spirit of Bureaucratic Reform in the state civil apparatus is not carried out in dirty ways. All tests are carried out based on ability, because the tests are carried out using a computerized method that scores immediately appear and can be accessed by everyone. If there are people acting on behalf of insiders or special channels to pass the selection, then it is not true because the current recruitment system is very open and accountable.

While the advice obtained is 1) The rules that are made must be strict and sanctions are not only regulated in the Criminal Code related to the fraud article, but there must also be special regulations related to the inner lane game mode or special lanes to pass CPNS. 2) Each ministry must openly and clearly inform on the official website so that the information is clear that the CPNS selection is free of charge. The government must firmly eradicate brokers or mobsters who promise to receive special pathways, especially individuals in the government who play a role in the selection of CPNS.

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