



Criminal Liability of Love Scam Perpetrators in the Perspective of Positive Law and Islamic Criminal Law

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Abstract: The criminal act of love scam is a form of fraud that has been transformed into the online realm. The fraud is the same as conventional fraud, but the difference is the place where the fraud occurs. Love scam cases occur because women who are often victims are lulled into love that is full of lies. This love scam case is very worrying because it blackmails the victim by loving them. The object of this research is focused on criminal liability for love scams from the perspective of positive law and Islamic criminal law. This research is empirical research, where researchers try and describe and analyze this practice with a normative approach, referring to the provisions of positive law and Islamic criminal law. Data collection by going directly into the field through interviews. Meanwhile, in analyzing the data, researchers used descriptive analysis. This research concludes that criminal liability for perpetrators of love scams is regulated in two statutory regulations, namely in Article 378 of the Criminal Code (KUHP) and Law Number 19 of 2016 concerning Information and Electronic Transactions. And accountability for perpetrators of fraud under the guise of romance according to Islamic criminal law is subject to ta'zir punishment and in its provisions depends on the judge's ijtihad.

Keywords: Criminal Liability, Love Scam, Islam.

1. Introduction

Along with the development of the times, the progress of information technology and social media at this time is like a sharp sword, why is that? Because information technology today can be a double-edged sword, because not only does it contribute to social transformation, progress and human civilization, the development of information technology and social media can be used as a container or facility to be able to carry out unlawful acts (Habibi & Liviani, 2020), (Java, nd). The more social media that is accessed by the public, the higher the threat of crime that can arise. (Arsyad, 2022), (Dewi, 2019).

The very rapid development of information technology has influenced all aspects of life, including applicable legal aspects. (Puspitasari, 2018), (Sudiantini, Naiwasha, Izzati, & Rindiani, 2023). The progress of information technology is marked by the widespread use of electronic media, ranging from the use of mobile phones to increasingly sophisticated computers. The use of electronic media involving techniques for collecting, preparing, storing, processing, announcing, analyzing and/or distributing information is something that is commonly done by someone in this modern era. (Hartati, 2020), (Lestyaningrum, Trisiana, Safitri, & Pratama, 2022).

With the increasingly rapid development of technology, criminal acts not only occur conventionally but can also occur in cyberspace. One form of crime that has transformed is fraud. (Maskun, 2022). The form of fraudulent crime that occurs in cyberspace that is currently causing a stir in society is fraud under the guise of romance or commonly called romance scam or love scam. (Sila & Taufik, 2023), (Ady, Nisrina, Ramadhani, & Irawan, 2022).

Love scam crimes are generally caused by economic problems that occur in the midst of people's lives. With the existence of economic factors and urgent needs of a person, so that crimes occur in cyberspace. (Setiawan, 2024), (Abiyyu, 2024). The majority

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of victims of this form of fraud are widows, mothers whose families are in disarray, women who have broken up, and do not have friends to confide in to vent their woes. (Yulia & Azhar, 2023), (Prasetyo, 2020).

This love scam is usually carried out in a planned manner by using a fake profile photo for themselves and pretending to be a friend of someone they think has the potential to be a victim. (Boby Iman, 2022). After they start to create an insincere friendship with their victims. This is done continuously until there is a sense of trust between the perpetrator and the victim. When the victim's trust has emerged, the fraudster begins to share an alibi so that the victim can be the perpetrator's financial assistance. (Sugino, 2022), (Rachman, 2022).

The crime of love scam is not specifically regulated in the laws and regulations in Indonesia, but law enforcement efforts against this love scam can still be carried out based on the provisions of the Criminal Code and the ITE Law. Basically, the crime of fraud has been regulated in the provisions of the Criminal Code, namely in Article 378 (Sudin, Magdalena, Priowirjanto, & Soeikromo, 2022). Article 378 defines fraud as an act of unlawfully benefiting oneself or another person, by using a false name or false dignity, by trickery, or a series of lies, to induce another person to hand over something to him, or to give a loan or write off a debt, and is subject to a maximum prison sentence of four years for fraud. (Aritama, 2022).

Based on the formulation above, trickery, what is meant by trickery is actions that are carried out in such a way that the action creates trust or belief in the truth of something to other people. In the case of love scam, the most relevant article is Article 28 paragraph (1) of the ITE Law which regulates fake news. This is because the crime of love scam generally involves falsifying identities and taking advantage of other people in a dishonest and detrimental way. (The Great, 2024).

Islam prohibits all forms of criminal acts, including all forms of criminal acts of fraud. Fraud is a crime committed by someone by deceiving others or deceiving others.³ As stated in the Qur'an Surah Al-Baqarah verse 188: *وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ* on God willing

"And do not let some of you consume the property of others among you in a false way and (do not) bring (the affairs of) that property to the judge, so that you can consume part of the property of others by (doing) sin, even though you know."

This verse explains that consuming other people's property in a false way or in other words in a forbidden way is not permitted in Islamic teachings and is clearly sinful. Its relation to the crime of fraud is that Islamic law also forbids the crime of fraud by saying that it is forbidden to consume property obtained in a way that is not permitted in Islam. (Hasibuan, Panjaitan, & Sativa, 2024).

For sanctions against criminal acts of fraud according to Islamic criminal law, the penalty is ta'zir crime, because in the Qur'an and As-Sunnah there is no detailed and clear explanation regarding the punishment for perpetrators of this criminal act of fraud, so that the sanctions for this fraud are left to human ijtihad or Ulil Amri based on the welfare of the community according to the circumstances, time, and place.⁴

Ta'zir punishment is a punishment imposed for crimes that are not clearly defined by the sharia, namely hadd, qishas, and diyat crimes. There are many of these punishments, starting from the lightest to the most severe, so that the judge is given the authority to choose between these punishments, namely the punishment that is appropriate to the circumstances of the crime and the perpetrator.

One example of a case occurred in Deli Serdang, he was deceived by a man who pretended to be a fake TNI. Their acquaintance began when they were together in a WA group. At that time, the fake TNI admitted to the victim that he was on duty in Kalimantan, the victim was very sure because the attributes the perpetrator used were similar to the real TNI. Because he felt sure of the teachings of Islam and was clearly sinful. The relationship with this criminal act of fraud is that Islamic law also forbids the crime of fraud by saying that it is forbidden to eat wealth obtained in a way that is not justified in Islam (Hasibuan, 2022).

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Suspicion began to arise when the victim's older brother saw the perpetrator's profile photo wearing a Lieutenant uniform while the uniform worn when met was a Sergeant. Suspicion continued when the perpetrator went to the shop to buy something, but when the perpetrator went to the shop he was wearing a TNI field service uniform (PDL) even though he was not on duty. Because the suspicion grew, the victim's older brother finally asked for help from residents to catch the perpetrator and interrogate him and initially the perpetrator remained silent but because he was forced to admit his actions he finally admitted that he was a fake TNI from the perpetrator's statement he said that he worked at a private company in the Kalimantan area. According to the victim's statement, the perpetrator was always asked for money with a range of 300 thousand to 500 thousand a day, the victim's job was a beverage seller and when the victim did not send money to the perpetrator, the perpetrator said rudely to the victim and scolded him. The victim's uncle who is now the head of the hamlet in the village when asked for information said that this case was true and happened last year. According to the hamlet head, they planned to get married but the wedding was canceled because of this incident.

2. Materials and Methods

This research is an empirical research. Empirical legal research is a legal research method that seeks to see the law in a real sense or can be said to see, examine how the law works in society, which then uses a research approach, this type of approach is a qualitative approach.⁶ Qualitative approaches are usually used to produce descriptive data in the form of written or spoken words from people or observed behavior, and then strengthened by primary data sources and secondary data. The technique for collecting data from this study is through existing documents.⁷

In addition to interviews and information can also be obtained through facts stored in the form of letters, diaries, archives, photos, activity journals and so on. Data in the form of documents like this can be used to dig up information that occurred in the past.

3. Results and Discussion

3.1. Legal Regulations for Love Scam Crimes in Indonesia

a. Love scam concept

Fundamentally, the crime of romance scam or commonly called love scam is an act of fraud committed by someone by using the charm and desire of others to find a partner or life partner. The perpetrator of the crime of love scam only pretends to love the victim, because the purpose of the perpetrator of the crime of love scam is only to take property from the victim.

The victims of this love scam crime are usually trapped in feelings of love or a desire to have a more intimate relationship with the perpetrator. The perpetrator then takes the opportunity to ask the victim for some money, and the perpetrator also talks about an urgent need, such as money

medical, plane tickets and even threaten victims if they do not meet their needs. Victims are often unaware that they have been deceived. From year to year, love scam crimes have become more common with the development of technology and society's dependence on social media.

In general, the love scam crimes committed by the perpetrators are divided into two.⁹ The first is by the perpetrator pretending to be developing his business so that he needs financial support. The perpetrator persuades the victim to provide a capital loan and promises to return the capital along with a fairly large interest. The second way, the perpetrator will persuade the victim to send photos or videos of the victim's sensitive body parts and after the photos are sent, the perpetrator will threaten the victim that if he does not send money, the victim's photos or videos will be spread on social media.

There are several main factors that influence the rampant occurrence of love scam crimes, namely the community factor itself, a community that easily trusts the perpetrators of the crime, so that victims can easily be exploited by the perpetrators of love scam crimes. The carelessness of the community makes the perpetrators increasingly rampant with the tricks they use.

b. Criminal Act of Love Scam Based on the Provisions of the Criminal Code (KUHP)

Fraud is defined as an act carried out with the intention of deceiving another person or a legal entity by providing false or misleading information and with the intention of obtaining benefits for oneself or another person.

Law Number 1 of 1946 concerning the Criminal Code (KUHP) regulates in Book II Chapter XXV concerning fraudulent acts or in a broad sense this criminal act is called *bedrog*. In Chapter XXV *bedrog* consists of various forms of criminal acts of fraud which are regulated in several articles including Article 378 of the Criminal Code to Article 395 of the Criminal Code.¹⁰

Fraud regulated in the Criminal Code needs to be viewed from at least two sides. The first side, the perpetrator of the crime directly commits fraud against people. The second side, the method regulated in Article 378 of the Criminal Code is limited and expanded, namely using a false name, false dignity, trickery, a series of lies. The meaning of limitative is that the method determined by Article 378 of the Criminal Code only has four methods and no other methods are mentioned. However, trickery and a series of lies expand the methods regulated.

The case of love scam crime falls under the provisions of complaint offenses, not general offenses. This means that victims who feel they have been harmed must report the action.love scam to the authorities, because if there is no complaint from the victim then no legal process will be carried out

3.2 Love scam crime based on the provisions of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions

That UU ITE is a law that regulates information technology in general. UU ITE is important to understand for anyone involved in the use of information technology, both

as users and developers. This is because several actions related to information technology are defined as prohibited acts, in this law.

The rapid advancement of information technology allows human activities not only in the real world, but also allows for internet activities that operate virtually. There has been rapid global progress in the field of information technology and media, as reflected in the proliferation of new technologies and Indonesia is one of the countries that contributes to this development.

Therefore, as in the real world, human activities and behavior in cyberspace should not be separated from the regulation and restrictions by law. Regulation and restrictions by law are deemed necessary, because everyone has obligations to their community and in addition, in its implementation, the rights and powers that each person has can only be limited by law, which aims to guarantee proper recognition and respect for the rights and freedoms of others.

In the case of love scams, the most relevant article is Article 28 paragraph (1) of the ITE Law which regulates fake news. This is because the crime of love scamming generally involves falsifying identities and taking advantage of others in a dishonest and detrimental manner. The following is the text of the provision: "Any person who intentionally and without right spreads fake and misleading news that results in consumer losses in Electronic Transactions."

Then, people who violate the provisions of Article 28 paragraph (1) of the ITE Law are potentially subject to criminal penalties as regulated in Article 45A paragraph (1) of Law 19/2016 which reads: "Any person who intentionally and without the right to spread false and misleading news that results in consumer losses in Electronic Transactions as referred to in Article 28 paragraph (1) of the ITE Law shall be subject to a maximum prison sentence of 6 years and/or a maximum fine of IDR 1 billion."

Based on the provisions above, there are at least three elements that must be observed, namely: (a) The element of intent and without right, (b) The element of spreading false and misleading news, (c) The element of causing consumer losses in electronic transactions.

In the case of the crime of love scam, Article 28 paragraph (1) of the ITE Law in conjunction with Article 45 A paragraph (1) of Law 19/2016 has more specific elemental characteristics compared to Article 378 of the Criminal Code.

3.3 Criminal Liability of Love Scam Perpetrators from the Perspective of Positive Law and Islamic Criminal Law

a. Criminal Responsibility According to Positive Law

Legal Criminal liability in English is called responsibility, or criminal liability. In the concept of criminal liability, it is not only about the law but also about moral values or general morality adopted by a society or groups in society, this is done so that criminal liability is achieved by fulfilling justice.¹³ Criminal liability is a form to determine whether a suspect or defendant is held responsible for a crime that has occurred. In other words, criminal liability is a form that determines whether a person is acquitted or convicted.

Criminal liability is not actually stated directly in the Criminal Code, but there are several articles in the Criminal Code that include several elements of criminal liability, such as the word intent in Article 378 which reads:

"Anyone who with the intention of unlawfully benefiting himself or another person, by using a false name or false dignity, by trickery, or a series of lies, induces another person to hand over something to him, or to grant a loan or to write off a debt, is threatened with fraud with a prison sentence of 4 years."

By looking at the text of Article 378 of the Criminal Code, it can be concluded that the form of criminal responsibility for perpetrators of fraud under the guise of romance is with the threat of imprisonment for 4 years.

Meanwhile, the crime of online fraud itself is regulated in Article 28 Paragraph (1) of Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law) as amended by Law Number 19 of 2006 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, which reads as follows:

"Any person who intentionally and without right spreads false and misleading news that results in consumer losses in electronic transactions shall be punished with imprisonment of up to 6 years and/or a maximum fine of Rp. 1,000,000,000 (One Billion Rupiah)."

Based on the articles above related to the crime of fraud, there are differences in the responsibilities that can be imposed, as in the following table:

Article 378	Article 28 Paragraph (1) of the ITE Law
1. Responsibility is imposed on parties who intentionally benefit themselves unlawfully by weaving together lies and tricks so that other people will hand over goods. or his property	1. Accountability imposed on parties who deliberately spread false news that is misleading and causes losses in transactions electronic.
2. The penalty is imprisonment for up to 4 years.	2. The penalty is imprisonment for 6 years and/or a fine of Rp. 1,000,000,000 (one billion rupiah)

Note: Comparison of criminal penalties regarding Article 378 of the Criminal Code and Article 28 Paragraph (1) of the ITE Law in the Crime of Fraud

Based on the table above, we can see that criminal liability for fraud is broader in scope compared to embezzlement. Article 28 paragraph 1 aims to provide protection for consumer rights and interests and the spread of hoaxes. Article 28 paragraph 1 is somewhat similar to Article 378 of the Criminal Code. The difference in principle in the Criminal Code is the element of "benefiting oneself" in Article 378 of the Criminal Code which is no longer included in Article 28 paragraph 1 of the ITE Law.

With the legal consequence that whether or not the perpetrator of fraud benefits, does not eliminate the criminal element of the act with the provision that the act is proven to cause harm to others. So based on the forms of responsibility in the table above and also based on the fraudulent act that has been carried out, it is legally and convincingly held accountable based on Article 378 of the Criminal Code.

3.4 Criminal Responsibility According to Islamic Criminal Law

Criminal liability in Islam (sharia) is the burden of a person with the consequences of an act or omission that he/she does (objective element) of his/her own will, where the person knows the intent and consequences of his/her act (subjective element).¹⁴ The burden is because the act that is done has caused something that is contrary to the law, in the sense of an act that is prohibited by sharia, either prohibited from doing or prohibited from leaving. The burden is also because the act itself is done based on the desire and will that arises within him/her, not an urge caused by someone else by force (coercion).

So it can be concluded that in Islamic law, responsibility is based on three things: (a) There is a prohibited act, (b) The act is done of one's own will, (c) The perpetrator knows the consequences of the act.

If the three things above are present, then the responsibility lies with the person who committed the crime (crime), if otherwise then there is no act that can be accounted for. Therefore, criminal responsibility cannot be held for a mad person, children who have not reached puberty or a person who is forced to commit a crime, which results in their life being threatened.

In terms of criminal liability, Islamic law only imposes punishment on people who are still alive and mukallaf, Islamic law also forgives children from the punishment that should be imposed on adults unless they have reached puberty. This is based on a hadith of the Prophet Muhammad SAW saying:

“The stipulations are removed from three things; from a sleeping person until he wakes up, from a mad person until he recovers and from a small child until he becomes an adult.”

Criminal liability also contains the meaning that a person is responsible for a criminal act that is legally and has been regulated by the text (syar'i). It can be said that the punishment can be imposed legally means that for this action there are rules in a certain legal system and the legal system has been in effect and is binding on the act. In short, it can be said that this action is justified by the legal system. This is the concept of criminal liability.

The fuqaha formulated a rule that states, before there is a provision of a text, there is no law for the actions of rational people. From this rule, it can be understood that an action or attitude is not considered a jarimah, unless there is a text that clearly prohibits the action. If there is no such text, there is no demand or punishment for the perpetrator.¹⁶ So from these two rules it can be concluded that there is no jarimah and no punishment, except with a text.

In Islamic jurisprudence, criminal responsibility is based on three principles: First; Committing a prohibited act and/or abandoning an obligatory act; Second; The act is done of one's own free will, meaning the perpetrator has a free choice to carry out or not carry out the act; Third; The perpetrator knows the consequences of the act committed.

Islamic criminal law views that fraud is the same as a criminal act of ta'zir crime related to public interest, namely crimes such as fraudulent signature and stamp forgery, there is a similarity between stamp fraud and the crime of fraud using a fake identity that disturbs the public interest. From both crimes there are similarities in the act, namely that there has been an act, in the process or method of fraud there is an object, where the object can be the identity of the perpetrator, trickery. Even looking at cases of fraud using fake identities, this often happens, usually to people who want to get a job.

In Islamic law there is no specific explanation regarding the crime of fraud under the guise of romance. However, it does not mean that there are no provisions that can be used as a basis for prohibiting this crime of fraud, considering that Islamic law is a law that is built on human understanding of the texts of the Quran and the Sunnah, to regulate human life that applies universally, relevant to every era and human being.

Islamic law strongly condemns acts that contain elements of lies and losses due to the bad consequences that arise, for example, acts of perjury and false testimony. In the previous explanation, it has been explained that the crime of fraud using the guise of romance is in accordance with the fraud of forging the Baitul Mal stamp that occurred during the time of Umar, so that this crime of fraud can be classified as a ta'zir crime.

Ta'zir punishment is a punishment that has not been determined by sharia and is left entirely to the ulil amri to determine.¹⁸ So it can be concluded briefly that ta'zir punishment is a punishment that has not been determined by sharia but is left to the ulil amri.

In determining the punishment, the judge is allowed to consider both the form of punishment to be imposed and its level. The form of punishment with this policy affects changes in special considerations about various factors that influence social change in human civilization used by the court or the type of crime that can be indicated in the Law.

The granting of power in determining the form of this crime to the ruler so that they feel free to regulate the government according to the conditions and situations of their

region, as well as the welfare of their respective regions. The purpose of carrying out ta'zir punishment is so that the perpetrators of the crime will stop their crimes and the law of Allah is not violated.

Violations that can be punished by this method are those that disturb the lives and property of others and the peace and tranquility of society. Abdul Qadir Al-Audah argued that the principle of legality is completely submitted to be obeyed even in ta'zir violations, because the policies of the rulers and judges are limited by several texts in general principles and sharia.

In the view of scholars, there are differences in the minimum and maximum limits for imposing a volume in ta'zir crimes. Imam Abu Yusuf said that it should not be more than 39 (thirty-nine) times, and the lowest limit must be able to provide preventive and repressive impacts. Meanwhile, Imam Abu Yusuf is of the opinion that the maximum limit is 79 (seventy-nine) times, and Syafi'iyah scholars are of the opinion that the maximum limit of volume in ta'zir may exceed the limit as long as it contains benefits.

Based on the description above, it is clear that the punishment that can be given to the perpetrators of fraud under the guise of romance according to Islamic criminal law is in the form of ta'zir punishment. As was done by the caliph Umar Ibn Khatab who had exiled Mua'an Ibn Zaidah who cheated by forging the Bai-al-Maal stamp and was sentenced to 100 (one hundred) lashes.

4. Conclusions

Love scam is a fraudulent mode under the guise of romance through online sites, either as a boyfriend or as a life partner. According to the criminal law in Indonesia, the crime of love scam is regulated in two laws and regulations, namely in Article 378 of the Criminal Code (KUHP) and Law Number 19 of 2016 concerning Information and Electronic Transactions. However, in its application, the legal basis for the crime of love scam is Article 28 paragraph (1) in conjunction with Article 45A paragraph (1) of Law Number 19 of 2016 concerning Information and Electronic Transactions. Meanwhile, Article 378 of the Criminal Code is applied to cases of fraud without using electronic media.

The concept of Islamic law regarding cases of love scams under the guise of romance has not been specifically explained, the punishment that can be given to perpetrators of love scams who use fake identities is in the form of ta'zir punishment, namely in the imposition of punishment according to the *ijtihad* of the judge who resolves the problem.

Criminal liability for fraud is regulated in the Criminal Code (KUHP) in Article 378 with a maximum prison sentence of 4 years, and criminal liability in Islamic law is the burden of a person with the results (consequences) of actions (or no actions) that he does of his own free will, where he knows the intentions and consequences of his actions. Criminal liability in Islamic law can occur if three principles/basis are met, namely; 1). There is an act that is prohibited/against the law. 2). The act was done of his own free will, and 3). The perpetrator knows the consequences of his actions. two conditions are met. Then the criminal liability for the perpetrator of this fraud is in the form of exile and a sentence of volume.

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