PENALIZATION THE AUTHORIZER BASED ON THE PARTICIPATION IN THE GRANTING OF POWER OF ATTORNEY

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Abstract

The granting of power of attorney is a common thing in the world of commerce and in daily activities. When a person is unable to directly carry out a legal relationship or a legal action, this act can be authorized to another person, as long as the person receiving the power of attorney is a capable person. The consequences arising from the granting of this power of attorney are borne by the power of attorney as long as the recipient of the power of attorney carries out the same actions as those authorized. Meanwhile, if the recipient of the power of attorney carries out an act that exceeds or is not in accordance with the authorized person, the consequences are borne by the recipient of the power of attorney and frees the power of attorney from the responsibility for the actions of the recipient of the power of attorney. This is clearly regulated in Chapter XVI of *Burgerlijk Wetboek* (BW) concerning the Granting of Power. However, in its implementation, especially in criminal acts of corruption, it is often the case that the power of attorney is also charged with responsibility for the criminal act of the Authorized Person who exceeds the limit of granting the power of attorney or deviates from the grant of the power of attorney given. The basis for punishing the Authorizer is to use the terms of participation (*deelneming*) or participation as regulated in the Criminal Code. This paper aims to provide a proper understanding of the position of the Authorizer so that there is no criminalization of the Authorizer for the actions of the Power of Attorney that exceed the powers granted, which lead to criminal acts. The writing method used is the normative juridical approach, which clarifies the understanding of the granting of power of attorney, the recipient of the power of attorney and the author of the power of attorney based on the provisions in the BW so that there are no errors in determining the perpetrators of criminal acts based on the Criminal Code. In this paper, firstly, the granting of power of attorney will be followed by participation and finally, criminal liability will be discussed, so that it can be understood that it is appropriate for the attorney to be subject to a crime based on the participation provisions stipulated in Article 55 paragraph (1) number 1e of the Criminal Code, as a result of criminal acts committed by the recipient of the power of attorney.

Keywords: ***authorizer, authorized person, participation.***

INTRODUCTION

Along with developments in the world of trade, business actors are sometimes unable to directly handle their business activities. Therefore, business actors need certain parties who can help complete activities in developing their business. The parties who help these business actors sometimes come from their own business colleagues or they can also come from professionals who specifically provide services for that.

The legal relationship between business actors and parties assisting business actors is a service-providing relationship that can take the form of a work agreement or power of attorney. If the relationship is in the form of a work agreement, the relationship between business actors and their employees is a subordinate relationship between superiors and subordinates. Meanwhile, if the relationship is granting power, then the relationship is not between superiors and subordinates but is an ordination relationship.

In the granting of power of attorney, the business actor as the giver of the power of attorney

must be responsible for the actions carried out by the recipient of the power of attorney as long as the act is in accordance with the authorized person. Therefore, even though the person carrying out the authorized act is the recipient of the power of attorney, the party in the act is the person giving the power of attorney. In this case, the party giving the power of attorney must be responsible for the act as long as its implementation is in accordance with the power given.

If the Authorized Person performs an act that exceeds or is beyond the authorized person, the consequences of such action will be the responsibility of the Authorized Person, not the Authorized Person. The actions that must be carried out by the recipient of the power of attorney are actions that are in accordance with those authorized and these actions are not unlawful acts or criminal acts, but all of them are civil actions regulated in laws and regulations, for example the power to sell or the power to buy, the power to collect or the power to receive, the power to carry out an activity or development work. Arrangements regarding the granting of power of attorney are in the area of civil law regulated in the Boergerlijk Wetboek or also known as the Civil Code.

In criminal law there are also criminal acts that sometimes require several people so that the criminal act is carried out in its entirety, for example theft by several people in one house. Some are in charge of guarding the front door, some are entering the house to steal and some are waiting on the car to prepare to bring their friends who are guarding at the door and who are stealing inside the house. The regulation of the criminal acts they committed in addition to theft is also a crime regulated in participation or participation, namely in Article 55 paragraph (1) letter 1e of the Criminal Code. Based on Article 55 paragraph (1) 1e of this Criminal Code, it can be concluded that there are 3 (three) names of perpetrators which alternatively can be in the form of:[1]

a. The person who commits (*pleger*) is someone who alone has done all the elements or elements of a criminal event.
b. The person who ordered to do it (*doen plegen*) is that in this crime the perpetrators are at least 2 (two) people, namely the one who ordered (*doen plegen*) and the one who was ordered (pleger), so it is not the main actor himself who commits the crime, but he orders or with the help of another person, even so, he is still seen and punished as a person who did it himself while the person who is ordered to do it must only be a tool, meaning that the person who is ordered cannot be punished if he cannot take responsibility for his actions.
c. People who participate in doing (*medepleger*) "doing" means doing together. In this crime, there must be at least two perpetrators, namely the one who did it and the one who participated in it and in the act both must carry out the act of implementation, so both of them commit the elements of the crime.

Doen Plegen or people who order to commit a criminal act in criminal law, are often considered as the author of the power of attorney in civil acts. In participation and in the granting of power of attorney, there are both elements or elements of carrying out the act of ordering but very different from the "action that is ordered to do". In some court decisions this is equated even though there is a very basic difference between inclusion in criminal law and the granting of power of attorney in civil law. Based on this explanation, the problem that will be discussed in this paper is whether the position of the Authorizer in granting power of attorney can be equated with the *Doen Plegen* in participation? and whether the Authorizer can be convicted of a criminal act by the recipient of the power of attorney in exercising the power given?

METHOD

In this paper, using the normative legal research method,[2] with a normative juridical approach.[3] The legal material in this writing is the Criminal Code, *Burgelijk Wetboek* (BW) or also known as the Civil Code.

RESULTS AND DISCUSSION

Power of Attorney

What is meant by Granting Power of Attorney according to Article 1792 BW is an agreement, whereby one person gives power to another person, who accepts it, to carry out an affair on his behalf.

[1] R. Soesilo, *Kitab Undang-Undang Hukum Pidana (KUHP), Serta Komentar-Komentarnya Lengkap Pasal demi Pasal*, Bogor: Politeia, 1995.
[2] Kadarudin, *Mengenal Riset dalam Bidang Ilmu Hukum, Tipologi, Metodologi, dan Kerangka*, Ponorogo: Uwais Inspirasi Indonesia, 2020, p. 151 See also Kadarudin, *Penelitian di Bidang Ilmu Hukum (Sebuah Pemahaman Awal)*, Formaci Press, Semarang, 2021.
[3] Irwansyah, *Penelitian Hukum, Pilihan Metode dan Praktik Penulisan Artikel*, Yogyakarta: Mirra Buana Media, 2020, p. 173

Authorization can be done by:
- In writing, either by notarial deed or by deed under the hand or in a letter.
- Oral.

Furthermore, the acceptance of a power of attorney can be done by:
- Firm, both in writing and orally
- secretly, it can be seen from the exercise of power by the recipient of the power of attorney.

According to Article 1794, there are 3 kinds of services for the recipient of the power of attorney, namely:
- for free / for free
- If the wages/honours are not clearly determined, then the honorariums/wages are:
  a. 3% of all income;
  b. 2% of all expenses;
  c. 1.5% of the amount of money they receive.
- clearly determined wages / honorariums.

The exercise of a power of attorney can be an act that is:
- Special, ie only to take care of one particular interest;
- General, which includes all interests of the Authorizer in terms of management actions.

Both the giver of the power of attorney and the recipient of the power of attorney, both must include people who are capable of carrying out legal actions.

Duties of the Authorized Person:
- Execute the power of attorney and bear all costs, losses and interest incurred (if any) because the power of attorney is not exercised;
- Complete all matters that have been carried out at the time the Authorizer dies, which if this is not done can cause losses.
- Responsible for acts committed intentionally or unintentionally (negligence) in exercising their power. The responsibility of the power of attorney who receives wages/honours in this case is heavier than the responsibility of the power of attorney who is free/free.
- Provide reports on what has been done and provide calculations to the Authorizer for what he has received based on the power of attorney, including the one he has received, even though it is not an obligation of the Authorizer.
- Responsible for the actions of the recipient of the substitution power of attorney appointed by him if:
  a. The Authorizer does not give the power to appoint another person as a substitute for the power of attorney.
  b. The Authorized Person is given the power to appoint another person as his successor but the Substituted Authorized Person is an incompetent or incompetent person.

The granting of power of attorney is always considered as a substitution for the management of objects that:
- located outside the territory of Indonesia or
- outside the island from the place of residence of the authorizer.
- Pay interest/principal money used for personal purposes, starting from the time the money is used and must be returned at the close of the calculation with the attorney.

The power of attorney is not responsible for actions taken with third/other parties based on the power of attorney, if in carrying out the power of attorney the attorney has notified his position only as a proxy unless the power of attorney personally binds himself. The Recipient of the Power of Attorney is prohibited from committing acts that exceed the power given to him. If the Authorized Person performs an act that exceeds his/her power of attorney, the legal consequences of the act are the personal responsibility of the power of attorney, not the responsibility of the attorney.

The appointment/appointment of several proxies in a power of attorney does not result in the birth of an agreement of responsibility between the recipients of the power of attorney for the power of attorney unless this is expressly stated in the power of attorney. against an Authorized Person and the consequences of the granting of such power of attorney.

Obligations of the Authorizer:

1. Fulfill the agreements made by the power of attorney based on the power given and not

outside of that unless the Authorizer agrees to it either expressly or tacitly.
2. Return to the Authorized Person the costs that have been incurred by him/her to carry out the power of attorney, including the proxy's wages/honor if it has been agreed upon, even though the power of attorney did not work but not due to the negligence/error of the proxy.
3. Pay compensation to the Authorized Person for the losses suffered not due to his negligence in exercising his power of attorney.
4. Paying the Proxy interest on the advance that has been issued by the Proxy starting from the day the advance is issued. (Art. 1810 BW)

Authorization Rights:
- The power of attorney has the right to sue directly the parties who are directly related to the power of attorney, including demanding the fulfillment of the agreement;
- The power of attorney has the right to directly sue the recipient of the substitution power.
- The Authorizer has the right to retain all property belonging to the recipient of the power of attorney that is in his hands until the Authorized Person carries out his obligations to pay all what is required as a result of the granting of the power of attorney. However, the Authorizer has no right to sue the incompetent Authorized Person for acts committed for the benefit of the Authorizer.

End of Power of Attorney:
Article 1813 BW: An Authorization may terminate because:
- The power of attorney is withdrawn by the Authorizer;
- There is a notice of termination of the Power of Attorney by the Authorizer;
- Death of the Authorizer/Authorized Person;
- Bankruptcy of the Authorizer/Proxy;
- The Authorizer/Authorized Person is placed under custody.

The Authorizer has the right to withdraw his/her power of attorney if desired and there is a reason for that and to force the Authorized Person to return the power he/she holds. Withdrawal of Power of Attorney which is only given to the Proxy does not apply to third parties related to the Proxy because they do not know that the Proxy has been revoked. In this case, the Authorizer still has the right to sue the Authorized Person. The appointment of a new power of attorney to carry out the same thing as the old power of attorney will result in the withdrawal of the old power of attorney as of the date of notification to the new power of attorney. The Authorized Person may terminate/release himself/herself as a proxy by notification of termination of the power of attorney to the Authorizer.

If the notification of termination is made without regard to time, or for any other reason because of the fault of the Authorized Person causing the Authorizer to lose, the Power of Attorney must pay compensation to the Authorizer unless the Power of Attorney continues the power of attorney which will result in a major loss to the Authorizer.

What has been done by the power of attorney in a state of not knowing that the Authorizer has died or that there are other causes that can end the granting of the power of attorney, his ignorance is still valid and all engagements that have been made by the power of attorney with third parties with good intentions must still be fulfilled. The heirs of the power of attorney are obliged to notify the power of attorney about the death of the power of attorney if the heirs become aware of the grant of power of attorney and meanwhile take necessary actions according to the circumstances for the benefit of the attorney on the threat of compensation for costs, losses and interest if there is a reason for that.

Participation

The definition of participation is not regulated in the Criminal Code (KUHP) only on the criteria for parties including participation. In Article 55 paragraph (1) to 1e of the Criminal Code, it is regulated as follows "Punished as a person who commits a criminal act, a person who commits, who orders to do or who participates in committing the act".

Based on Article 55 paragraph (1) 1e of the Criminal Code, it can be concluded that there are 3 (three) names of perpetrators which alternatively can be in the form of:
1. People who do (*pleger*)
2. The person who ordered to do (*doen plegen*)
3. People who participate (*medepleger*)

The definition of inclusion (*deelneming*) according to Adami Chazawi, is an understanding that includes all forms of participation/involvement of a person or persons both psychologically and

physically by doing each act so that it gives birth to a criminal act[4]. The people who are involved in the cooperation that manifests the crime, the actions of each of them are different from one another, as well as what is in their inner attitude towards the crime and towards the other participants. But from the differences that exist in each of them there is a relationship that is in such a close manner, where one act supports the actions of another, all of which lead to the realization of a crime[5].

Furthermore, according to Satochid Kartanegara[6], in deelneming on a strafbaar feit or delict there is a provision: "If in a delict several people or more than one person are involved." Therefore, it must be understood how the 'relationship' of each participant is to the offense, because the relationship varies, including:

a. Several people together do a delict.
b. Maybe only one person has the 'will' and 'plans' the delict, but the delict is not done alone, and he uses other people to carry out the delict.
c. It can also happen that one person commits the delict, while another person assists the person in carrying out the delict.

The relationship of each participant to the offense has various forms, so the definition of participation is based on 'determining the participant's responsibility for the offense'. In this case, the participant actors are required to have two kinds of cooperation, namely:

a. Consciously.
b. Directly.

Conscious cooperation means that each participant actor knows each other or is aware of the actions of the other participating actors, without the condition that there has been a prior agreement. Even though the agreement just happened close before or at the time of the criminal act, the problem is that it includes 'consciously' cooperation.[7] Meanwhile, 'direct' cooperation is the embodiment of a criminal act as a result of the actions of the participating actors, not in the manner specified in Article 56 of the Criminal Code. For example, A breaks brandkast and B takes the money, both of which are directly a crime of theft. If C has committed the murder together, then it doesn't matter whose blow caused the death of the victim, because he is still a co-participant in conscious cooperation. Arrest HR 28 August 1933 determined that each of the participating actors was to take part 'directly'. So, the form of the participant must be accompanied by implementing actions. If the participant takes part in the implementation action, then he is the participant Actor, but if the participant participates in the implementation action that has just been prepared, then he is an Assistant, even though it is difficult to draw a clear line between the implementation action and the implementation that is being prepared[8].

The terms of cooperation 'consciously' are more likely to be applied to a criminal act that is 'deliberately' or a deliberate offense. However, Arrest HR November 14, 1921 decided that participation in an 'accidental' crime (delict of negligence) occurred where participation occurred. For example, in a train accident, the defendants were involved, among others: the head of the station and the train travel organizer, because the accident occurred because of cooperation in the sense of 'negligence' of the two defendants.

In the inclusion, it is known that there are 2 kinds of teachings, namely subjective teachings and objective teachings. Subjective teaching is based on and weighs its views on the inner attitude of the maker, providing a measure that a person involved in a criminal act committed by more than one person is if he wishes, has goals and interests for the realization of a criminal act. Whoever has the strongest will and or has the greatest interest in the crime, he is the one who is charged with greater criminal responsibility. While the objective teaching focuses on the form of the act and the extent to which the role and contribution and the positive influence of the form of the act on the emergence of the intended crime, which determines how heavy the responsibility is imposed on the occurrence of a criminal act.

The system of imposing criminal responsibility in inclusion as known in the doctrine of criminal law, there are 2, namely:

1. Which says that every person who is jointly involved in a criminal act is seen and accounted

[4] Adami Chazawi, *Percobaan dan Penyertaan*, Jakarta: PT RajaGrafindo Persada, 2002, p. 73
[5] *Ibid.*, p. 73
[6] Satochid Kartanegara, *Hukum Pidana: Kumpulan Kuliah dan Pendapat-Pendapat para Ahli Hukum Terkemuka*, Bagian Satu, Balai Lektur Mahasiswa, 1998, p. 1
[7] Andi Zainal Abidin, *Hukum Pidana*, Jakarta: Sinar Grafika, 1995, p. 92
[8] S.R. Sianturi, *Tindak Pidana Di KUHP*, Jakarta: AHM-PTHAM, 1983, p. 76

for in the same way as a person who alone (dader) commits a crime, without being discriminated against both for the actions he has committed and what is in his inner captivity.

2. Which says that each person who is jointly involved in a criminal act is viewed and accounted for differently, the severity of which is in accordance with the form and breadth of the form of each person's actions in realizing the crime.

The forms of participation are regulated in Article 55 and Article 56 of the Criminal Code.
In Article 55 of the Criminal Code:
Paragraph (1), it is stipulated that the forms of participation are:

1. People who do (*pleger*);
2. The person who ordered to do (*doen plegen*);
   A person who is ordered to commit a criminal act cannot be punished because he cannot be held responsible for his actions, for example the person who was ordered to do so;
   - is a madman;
   - forced to do because of the power that can not be avoided;
   - carry out an order of office which he does not know that the order is invalid;
   - perform actions with no mistakes at all or without negligence.
3. People who participate (*medepleger*)

Paragraph (2), the form of participation is:
A person who by giving, agreeing, misuses power or influence, violence, threats or deception or by giving an opportunity, effort or information, intentionally induces to do an act.
The actions taken in the participation are:

- Crime (crimes and violations)
- The participant's criminal threat unless ordered is the maximum one
- After the implementation of Article 163 bis, the participant is in the independent form.
- That the element of intent to commit certain criminal acts is present in every Participant, except for the person instructed
- Each Participant, except for those who have been ordered to be responsible or deemed to have participated in committing all the elements of the Objective and certain criminal acts, even though they may have only partially or not participated in doing so (instructors and movers).

The forms of participation in Article 56 of the Criminal Code are:
1e. A person who knowingly helps commit a crime;
Here the perpetrator must intentionally provide assistance in committing the crime at or before the crime was committed. If assistance is given after the crime has been committed, it is not included in the form of participation, but the perpetrator commits an act of conspiracy or detention.
2e. A person who intentionally provides an opportunity, effort or information to commit a crime.
Judging from "there is someone who orders them to do it" then the form of participation as regulated in Article 55 paragraph (1) 1e of the Criminal Code is almost the same as the granting of power of attorney regulated in the BW or the Civil Code. The form of participation as regulated in Article 55 paragraph (1) 1e of the Criminal Code, there are 3 kinds, including the person who ordered to do it (doen plegen). In the form of participation in the Doen Plegen, there must be at least 2 people, namely those who ordered and those who were ordered. This is the same as the form of power of attorney in civil law, where there must also be 2 parties, namely the giver of power and the recipient of the power of attorney. The power of attorney instructs the recipient of the power of attorney to perform an action that has been stated in the power of attorney. So the similarities in this case are both participation and power of attorney, both there are parties who order and there are parties who are ordered to.
Another similarity is that the person who is asked to participate cannot be punished under any circumstances, because the person who is ordered is only a tool of the person who ordered it. What causes the person who was ordered to be unable to be punished because this person cannot be accounted for, for example, is insane, there is power that cannot be avoided, there is no mistake/negligence. So that all criminal responsibility is borne by the person who ordered it. Likewise, in the granting of power of attorney, the recipient of the power of attorney is the person who carries out the actions mentioned in the power of attorney and the recipient of this power of attorney cannot be held responsible for the consequences of the power exercised as long as the power is carried out in accordance with the power given. However, there is a very principal difference, namely in granting

power of attorney, the recipient of the power of attorney must be a capable person or person who is able to take responsibility for the actions committed, not the instrument of the person who ordered, in this case the power of attorney. The power of attorney can be released from the responsibilities carried out by the recipient of the power of attorney if the recipient of the power of attorney does not carry out the power of attorney or exceeds that of the authorized person. This situation does not exist at all in doen plegen, namely the person who ordered to do it. In participation, the doen plegen must always be responsible for the actions of the person he is ordered to do. There is no gap for Doen Plegen to release responsibility.

The following difference which is no less striking between the granting of power of attorney and participation, in this case doen plegen, is that in participation, the act ordered is always a criminal act, whereas in the granting of power of attorney, the act authorized is always in the form of a civil relationship and is not an act that violates law.

From the description of the similarities and differences between participation in this case doen plegen and the granting of power of attorney, then the use of participation provisions in imposing a penalty on the power of attorney is not appropriate. One example of this is in a tender for the construction of state school X, contractor A came out as the winner. Subsequently, a written work agreement was made to build a school between the principal of state school X and contractor A. Because contractor A was carrying out a project that could not be left behind, A gave written authorization to B, a fellow contractor, to build the state school X. When the completion date was due, it turned out that the construction of the school had not been completed while the project funds were no longer available because B was less careful in managing the budget. If in civil law, it is clear that B has defaulted and B must be responsible, not A as the power of attorney. Because A has authorized B to carry out the construction of state school X with a period and budget that has been determined from the start. If it is due and the public school building has not been completed, then this means that B did not exercise his power of attorney properly so that the result of the improper exercise of power is the responsibility of B as the beneficiary. However, it turns out that B's actions were criminalized with corruption, even A was also convicted on the basis of participation. A is considered to have ordered B to do an act which is finally considered a corruption crime. Even though the act authorized by A to B from the start was not a criminal act. If in participation, the act committed is a criminal act from the beginning, the act will be carried out until the act occurs and the act is completed. Therefore, the inclusion provisions are not appropriate to be used to criminalize A as the power of attorney. If B is considered to have committed a criminal act of corruption, then only B should have been convicted, not A. A as the power of attorney in this case example cannot be equated with *doen plegen* because B is not an incompetent person or a person who is unable to refuse so that B cannot be released from responsibility for his actions and B must be punished, not A as the party who ordered to do what is considered a *doen plegen.*

Criminal Liability

According to Roeslan Saleh[9], Criminal liability is defined as the continuation of objective reproach that exists in a criminal act and subjectively fulfills the requirements to be convicted for that act. The purpose of objective reproach is that the act committed by a person is indeed an act that is prohibited. Criminal liability is intended to determine whether a person can be held accountable for his crime or not, for the actions committed[10]. According to Roeslan Saleh, being responsible for a criminal act means that the person concerned can legally be subject to a crime because of that act.[11]

The definition of a criminal act does not include accountability. Criminal acts only refer to the prohibition of the act. Whether the person who has committed the act is then also sentenced to depend on the matter, whether he or she has committed the act has an error or not. If the person who committed the crime did have an error, then of course he would be punished. However, when he has no guilt, even though he has committed a forbidden and despicable act, he is not punished. The unwritten principle: "Not being punished if there is no mistake (*Green Straf Zonder Schuld*)", is the basis of being convicted or not of the maker.[12] So criminal liability can only occur if someone has committed a crime so that the basis for criminalizing the perpetrator is on the principle of error.

Initially in criminal law, errors were focused on actions (*Daadstrafrecht*) then developed in a direction that focused on people who committed crimes (*Daderstrafrecht*), without leaving at all the nature of *daadstrafrecht*. so that the existing criminal law is referred to as *Dual-daderstrafrecht*, namely

[9] Roeslan Saleh, *Perbuatan Pidana dan Pertanggungjawaban Pidana; Dua Pengertian Dasar dalam Hukum Pidana*, Jakarta: Aksara Baru, 1983, p. 20-23
[10] S.R. Sianturi, *Asas-Asas Hukum Pidana Indonesia dan Penerapannya*, Jakarta, 1996, p. 245
[11] Roeslan Saleh, *Pikiran-Pikiran tentang Pertanggungjawaban Pidana*, Jakarta: Ghalia Indonesia, 1982, p. 33
[12] *Op.Cit*., Ruslan Saleh, p. 75

criminal law that is based on the act and the perpetrator.

In criminal law the concept of responsibility is a central concept known as the teaching of error. or in Latin called mens rea. There are 2 conditions that must be met in order to be able to convict someone, namely the existence of a forbidden outward act/criminal act (*actus reus*) and an evil/deplorable inner attitude (*mens rea*).[13] Furthermore, there is a doctrine from English law called *Mens-Rea* and *Actus Reus* which in its entirety reads: Actus non facit reum, nisi mens sit rea. meaning, that "an act cannot make a person guilty unless it is done with evil intentions". From that sentence, it can be concluded that in a criminal act an important issue to be considered and proven is:

1. Existence of outward actions as the embodiment of the will (*actus reus*);
   Actus reus is based on whether the act was wrong or not. In Indonesia, to consider an act to be wrong or not, the principle of legality is used, which essentially stipulates that an act will not be considered wrong if there is no regulation.
2. The condition of the soul, the evil intention that underlies the act (*Mens-Rea*).

The *Mens Rea* doctrine is based on the subjective element (which refers to the perpetrator) meaning that if an act is committed with malicious intent, then it is absolute for criminal liability. So criminal liability is determined based on the mistake of the maker and not just by the fulfillment of all elements of a criminal act, so that there is no crime without error. In the Indonesian Criminal Law system, there are known forgiving reasons and justifications for releasing the perpetrator from a crime.

Based on criminal liability, the Authorizer who does not have mens rea and whose actions are not actus reus cannot be punished simply because of a crime committed by the recipient of the power of attorney when exercising the power given. Therefore, the sentence imposed on the power of attorney due to the criminal act of the recipient of the power of attorney in exercising the power given is not appropriate, as long as it is not proven that this power of attorney has mens rea and his actions are *actus reus*.

CONCLUSION

The position of the Authorizer in granting power of attorney cannot be equated with doen plegen in participation because the act authorized in granting power of attorney is an act that does not violate the law while the act in doen plegen is a criminal act. The power of attorney is also sentenced to criminal acts committed by the recipient of the power of attorney because it is based on the participation as regulated in Article 55 paragraph (1) number 1e of the Criminal Code. This is not appropriate because in criminal liability it is known that there is no punishment if there is no mistake and the act authorized to the recipient of the power of attorney is a civil act which is not an unlawful act.

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