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Criminal Liability of Notary in Criminal Act Committed by Notary Signing Agent

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ABSTRACT

This research aims to analyze and examine how the responsibility of a notary in the case of a notary's signing agents commits the crime of document forgery. Article 1 paragraph (1) of Notary Office Law states that a Notary is a Public Official authorized to do authentic deeds and has other authorities as referred to in this Law or based on other laws. The notaries get authority attribution from the state through the Law on Notary Positions. This authority is attached to the position of a notary. In conducting these duties and positions, a Notary is generally assisted by Notary signing agents. In this research, Normative Law is used because it tries to find the location of coherence, namely legal rules and legal norms. Notary workers are only assistants in their work, and the responsibility for authentic deeds remains to the Notary. When the Notary signing agents commit document forgery, resulting in defects in the authentic deed, it is possible that Notary must hold responsible for this. The forgery of letters can occur due to fake contents of the letter or fake authority and contents of authority in the letter. The forms of Notary Criminal Liability, if it is proven that the notary worker committed the crime of forging letters, is a crime of participation in the crime of forging letters because the Notary is considered negligent in conducting his duties and position.

Keywords: *Criminal Liability, Forgery of Letters, Notary, Notary Signing Agents*

INTRODUCTION

As a public official with authority to create genuine deeds, a notary may be held accountable for creating the deed. The material truth of the deed made by the notary is included in his obligation range. Nico Winanto's perspective on this notary's obligations can be divided into four categories, including Civil notary accountability for the factual accuracy of the deed he made, The notary's criminal liability for the genuineness of the deed he made, The notary's accountability for the material truth of the deed he made following the notary's position regulations and The responsibility of a notary in conducting his duties is based on the notary's code of ethics.¹

According to Muhammad Erwin and Amrullah Arpan,² notaries have a professional ethic, which is a moral code created specifically for the good performance of the profession itself. This is because every profession or job has a unique identity, nature, or characteristics, as well as professional standards that are in line with the requirements of each profession. When providing services in the service industry, notaries cannot operate independently. Due to the fact that a Notary typically needs 2 (two) witnesses who are named at the end of a deed, a Notary official typically employs at least 2 (two) people. The employees of notary's office are involved in preparing the drafted deeds, organizing the deed files, and communicating with parties or clients. As stated in Article 16 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 regarding the Position of a Notary (JN Amendment Law), providing the notary with the following assistance in performing his duties:

1. Make a list of deeds (reportorium).
2. Arrange minuta deed bundle into a single bundle.
3. Create a book of waarmeding lists, legalization lists, and lists of other documents required by law.
4. Create a protest list book.
5. Record the date of wills list every month in repertorium.
6. Create a book of check-off lists for waarmeding and legality.

Apart from administrative matters, the notary workers are also employed in dealing with third parties. An example is the processing of files at National Land Agency (BPN), from submitting files until the completion of files at BPN or for processing taxes at the tax office, permits at related licensing services, and so on. in conducting these administrative duties, sometimes the notary doing the methods that violate the law, like falsifying letters or documents by faking signatures and so on that will cause the problem in the future. In the Criminal

¹ Tyas Fidelia, "Tanggung Jawab Notaris Terhadap Ketidaksesuaian Akta Salinan Dengan Minuta Akta," *Kosmik Hukum* 20, no. 1 (August 19, 2020): 35, <http://jurnalnasional.ump.ac.id/index.php/KOSMIK/article/view/5410>.

² Muhammad Erwin and Amrullah Arpan, *Filsafat Hukum: Mencari Hakikat Hukum*, Edisi Revi. (Palembang: Universitas Sriwijaya, 2008).

Code, R. Soesilo claims that the element of "making a fake letter" requires proof that there was no letter before the act was committed and when the letter was made, in whole or in part contained the fake statements, whereas falsifying a signature is including in falsifying a letter.³ A notary must enforce the law at all times since they are state officials. This means that they are respecting the law when doing their profession as they keep the pledge they made when doing his notarial responsibilities as stated in Article 4 Paragraph 2 of UUJN. A notary is required to take the following oath before performing his notarial duties, such as:

1. That I will obey and be loyal to Republic Indonesia, Pancasila and the 1945 Constitution of Republic Indonesia.
2. Notary Office Law, as well as other laws and regulations.
3. That I will conduct my duties in a trustful, honest, thorough, independent and impartial manner.
4. That I will maintain my attitude, behavior, and will conduct my obligations in accordance with the professional code of ethics, honor, dignity, and my responsibilities as a Notary.
5. That I will keep the contents of the deed and the information obtained in the implementation of my confidential position.
6. That in order to be appointed to this position, either directly or indirectly, with any name or argument, I have never and will not give or promise anything to anyone

According to Habib Adjie, there are two things that need to be acknowledged in the oath of notary, namely:

1. Notaries are obliged to be responsible to God, because oaths are made based on their respective religions, thus meaning that everything that is done by a notary in conducting his duties will be held accountable in the God wills.
2. The notary is obliged to be responsible to the state and society since the state trust the notary in doing his duties in the field of civil law, namely in making evidence in the form of a deed that has evidentiary power. The notary also responsible to the public who believe that the notary formulates his will in the form of a notary deed and the notary is able to keep secret and all the information or remarks given by the society.⁴

³ Geovan Valentino Kaligis, "Putusan Hakim Terhadap Tindak Pidana Pemalsuan Surat Menurut Pasal 263 KUHP," *Lex Privatum IX IX*, no. 4 (2021): 175–182.

⁴ Habib Adjie, *Hukum Kenotariatan Indonesia Tafsiran Tematik Terhadap Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris*, Bandung: Cetakan Ketiga. Refikaditama, Cetakan ke. (Bandung: Refikaditama, 2011).

RESEARCH METHODOLOGY

Legal research is a scientific activity based on specific methods, systematics, and thoughts to study one or several legal issues by analyzing and conducting an in-depth examination of legal facts to solve the problems arising in relevant legal issues.⁵ Normative law is a methodology of this research because it tries to find the coherence of legal rules and legal norms in the form of orders or prohibitions following legal principles of legal norms, not just legal rules or related to legal rules.

RESULT AND DISCUSSION

In the theory of criminal liability, criminal responsibility is intended to determine whether a person is held accountable for a crime that has occurred or not. This means that a person must be held criminally responsible when he is proven to have violated the law and shows the wrongdoing of the offender in the form of intentional or negligence.

Regarding a notary's liability in the case that a notary employee falsifies letters, it is important to understand the employee's offense before addressing the notary's liability. According to the idea of authority, notaries get attributive power from the state through legislation, where this authority cannot be given to other persons, in this instance notary workers. Notary workers are only help in supporting notaries in conducting their duties and positions. Therefore, the notary can and should be suspected of negligence for criminal negligence when the notary worker, who assists the notary in doing the notary's duties and positions commits a crime related to deed-making, which is the notary's authority. Notaries as employers have responsibilities to notary workers who assist them. In conducting his duties and positions, the notary is always assisted by his workers in preparing documents related to the deed that will be made.

When a notary's employee is found to have forged letters, the notary may be held criminally liable because they may have been complicit in the crime. When there is proof that a notary intended for one of his employees to conduct the crime of document forgery, this may occur. The notaries must be aware and comprehend the duties of notary publics. It can be argued that the notary, as the employer, has declared as Criminal negligence (*culpa*) in conducting his duties and position when he is unaware of what his employee is doing.

Criminal Negligence (*culpa*) positioned between intentional and accidental. However, *culpa* is viewed lighter than intentional that the *culpa* is a quasi-delicet (*quasidelict*) that can reduced the penalty. The *culpa* contains two kinds, namely the negligence which causes consequences and which does not cause

⁵ ADCO Law, "Legal Research Methods in Legal Problem Solving," *ADCO Law*, last modified 2022, <https://adcolaw.com/blog/legal-research-methods-in-legal-problem-solving/>.

consequences. The act that punishable by crime is the imprudence act, meanwhile the act that do not need to cause consequences by negligence itself is already threatened with criminal penalties. The element requirements that must be present in the negligence are:

- 1) Not establishing the legally presumptions shows that the defendant believes there won't be any consequences for his actions, even though this belief is false. The error is caused by a misguided idea or viewpoint that needs to be disavowed. The defendant had no intention that his conduct may have an effect that was banned. The mistake resides in not giving any consideration to the possibility that a consequence may occur, which is a risky approach.
- 2) Not taking precautions as required by law, in this matter refers to not conducting research on policies, skills/preventive efforts that turn out to be in certain circumstances/in the way of committing acts.

Forgery of letters is often conducted by notary workers and is frequently mistrusted by the parties or other parties who participate in committing or helping to commit a crime for making or providing false information in a notarial deed. According to Habib Adjie, the qualification relates to aspects are:

1. Certainty of day, date and time;
2. The parties who dealing with the notary;
3. The signatures of the parties involved
4. The copy of the deed does not match the minutes of the deed;
5. There is a copy of the deed without writing the minuta deed; and
6. The minutes of the deed were not completely signed, but a copy of the deed was issued.

The notary workers often falsify the aspects mentioned above, and notaries generally consider this to be an ordinary administrative violation. However, when investigated more depth, the act committed by a notary worker can be qualified as a crime. According to Habib Adjie, in criminal cases, notaries are often charged with the following articles in the Criminal Code:

1. Making fake/forged letters and using fake/forged letters (Article 263 paragraphs (1) and (2) of the Criminal Code).
2. Falsifying an authentic deed (Article 264 of the Criminal Code)
3. Stipulated to include false statements in an authentic deed (Article 266 of the Criminal Code).
4. Conducting, ordering to do, participating in doing (Article 55 Jo. Article 263 paragraph (1) and (2) of Criminal Code or Article 264 or Article 266 of Criminal Code).
5. Assisting in making fake/or forged letters and using fake/falsified letters (Article 56 paragraphs (1) and (2) Jo. Article 263 paragraphs (1) and (2) of Criminal Code or Article 264 or Article 266 of Criminal Code).

In Article 263 paragraph (1) in conjunction with Article 55 paragraph (1) of Criminal Code, there are elements that must be fulfilled including:

1. Parties involved
2. Making fake letters
3. Authorizes to issue a right
4. With the intention of using the letter as if it were genuine and not forged
5. Which can bring losses.

Participating in something can also be interpreted as "doing together" (medepleger). A criminal act must be conducted by at least two individuals—the perpetrator (pleger) and the participant (medepleger), in this case are the notary and notary personnel. In addition to being subject to Article 263 paragraph (1) in conjunction with Article 55 paragraph (1) 1st of the Criminal Code. Notaries can also be subject to sanctions under Article 264 of the Criminal Code when they are proven to have forged the authentic deeds. The Article 264 formulates as follows:

1. Explains that forging letters is penalized by a maximum of eight (8) years in jail when it conducted against:
 - a. Authentic deed;
 - b. Debt certificates of debt from a country or from a public institution;
 - c. Letter of interest or debt or certificate of interest or debt from an association, foundation, company or airline;
 - d. Talon, proof of dividends or interest from one of the letters described in 2 and 3 or proof issued of said letters.
 - e. Letter of credit or trade letter provided for circulation.
2. Anyone who knowingly makes use of the letter in the first paragraph, the contents of which are false or which are falsely represented as true and not forged, must be penalized with the same punishment, if the falsification of said letter can result in harm.

Thus, it is evident that the issue of the types of letters played a role in what led to the aggravation of letter fabrication in Article 264 above. Certain letters that are used as evidence in crimes are letters that have a higher degree of truth than typical letters because they are written with a great deal of trust in their accuracy. The severity of the penalty is increased by the increased belief in the veracity of various letters' contents.⁶

Forging a letter has the same meaning as making a fake letter. The only difference is in the type of letter as an crime object. It is this factor in the types of certain documents that causes the crime formation which stands alone and constitutes forgery of letters that is more serious than the basic form (Article

⁶ Windi, "Perlindungan Hukum Terhadap Notaris Yang Akta Otentiknya Berindikasi Sebagai Alat Pencucian Uang," *DIVERSI : Jurnal Hukum* 2, no. 2 (May 2018): 395.

263).⁷ The formulation of Article 264 paragraph (2) of Criminal Code is the same as the formulation of Article 263 paragraph (2) of the Criminal Code. The difference is only in the type of letter used. Article 263 paragraph (2) of the Criminal Code is a letter in general, while Article 264 paragraph (2) of the Criminal Code is certain letters that have a higher degree of truth and greater trust than ordinary letters. Meanwhile, the perpetrator who ask the notary to make a fake deed can be subject to criminal sanctions under Article 266 of the Criminal Code. A client orders a Notary to enter false information into an authentic deed:

Article 266 of the Criminal Code

- 1) Articles pertaining to an issue whose truth must be declared by said deed, with the intent to use said deed or to command someone else to use said deed as if the statement is in conformity with the truth, shall be punished. When the use caused a harm, shall be punished with a maximum sentence pf 7 years in jail. The deed is void if its contents fail to satisfy certain criteria, such as those related to the agreement's terms or to the subject matter of the parties' proposed legal action, which must include a specific matter and permissible grounds, such as who authorized the information into an authentic deed.
- 2) Anyone who purposefully performs an act as if its contents are accurate and has the potential to cause losses is punished with the same sentence.

There are 2 crimes in Article 266 of the Criminal Code, each of which is formulated in article (1) and (2). Article (1) has the following elements:

1. Objective Elements:
 - a. Action: to ask for entering
 - b. Object: fraud statement;
 - c. In authentic deeds;
 - d. Regarding the truth that must be stated in the deed;
 - e. When its use can caused the loss;
2. Subjective Elements: With the intention to use or order to use as if the statements is truth.

Article (2) has the following elements:

Objective Elements:

- a. The act of use
- b. Object: The Authentic Deed as in article (1);
- c. As the statement is accurate;

The individual who was given the command to write the false statement is not identified in the formulation above, but it can be determined from the

⁷ Subiyantana Subiyantana and Nynda Fatmawati Octarina, "Pertanggungjawaban Pidana Terhadap Notaris Yang Membuat Keterangan Palsu Dalam Akta Otentik," *JURNAL RECHTENS* 9, no. 2 (December 2020): 93–106.

elements or words in legitimate deed in Article (1), that the individual is the one who actually created the legitimate act. It has been explained that an authentic deed is made by a public official who has the authority to make it according to the law, for example a Notary, Civil Registry Officer, and Land Deed Making Officer (PPAT) that making an authentic deed based on the request. The person who requesting this is what is meant by the person whose ask to write the false information in the following elements:

1. The initiative or intention to make a deed, which contains of object regarding a matter or event that is asked to be written into it comes from the person who asked it, not the official who made the authentic deed;
2. In relation to the origin of the initiative of the person asking for an authentic deed to be drawn up, the words/element of ordering to include it means that person in reality provided false or fake information about something.
3. The official who made the authentic deed did not know that the information submitted by the person who asked the information to be submitted to him was incorrect.
4. Since the official who made the authentic deed did not know about the untruthfulness of the statement, he cannot be held accountable for his actions in making the authentic deed which has the false information, and therefore he cannot be punished.⁸

Article 55 and article 56 number 1 and number 2 of the Criminal Code which formulate participation in a crime can be imposed on a notary when the notary signing agents commits a crime. The participation in a crime occurs when several people or more than one person are involved in one crime.⁹ The relationship are including:

1. Several persons jointly commit inone crime;
2. Maybe only one person has the will and plans for the crime, but he uses another person to commit the crime jointly with him;
3. It can also happen that one person commits a crime, but he uses the other person in conducting the crime.¹⁰

When the official who made the request receives information about an occurrence after entering it into an authentic deed, but the deed itself has not been created or the information surrounding the incident has not been included in the deed, merely an attempted crime has occurred rather than the whole crime. The element of error in the crime of Article 266 (1) of the Criminal Code is the

⁸ Risa Hermawati, "Pemalsuan Akta Autentik Yang Dilakukan Oleh Notaris (Studi Kasus Putusan Nomor 1003 K/Pid/2015)," *Otentik's : Jurnal Hukum Kenotariatan* 2, no. 2 (2020): 160–177.

⁹ Vany Nur Fakhiryah, "Tindak Pidana Memasukkan Keterangan Palsu Ke Dalam Akta Otentik Dalam Perspektif Hukum Pidana Di Indonesia (Putusan Mahkamah Agung Nomor 602 K/PID/2016)," *Jurnal Hukum Media Justitia Nusantara* 10, no. 2 (2020): 35–56.

¹⁰ Mayrsha Ayu Khairina, "Pertanggung Jawaban Hukum Bagi Notaris Atas Tindak Pidana Yang Dilakukan Oleh Karyawan Notaris," *Jurnal Officium Notarium* 1, no. 1 (April 2021).

intention to use a deed containing the false incident as if the statement is truth. Likewise, regarding the element "when the use causes harm, it has been sufficiently explained in the discussions on Articles 263 and 264 of the Criminal Code. The crime in paragraph (2) of Article 266, it is same as the crime in paragraph (2) of Article 263 and paragraph (2) of Article 264 of the Criminal Code. The same elements are:

- 1) The action is to use
- 2) The element of guilt is intentional, and
- 3) Pemakaian surat tersebut dapat menimbulkan kerugian.
- 4) The use of the letters can cause losses.

The difference is in the crime object. In Article 263 (2) of the Criminal Code, called fake letters and forged letters, Article 264 (2) of the Criminal Code are certain deeds forged and Article 266 (2) of the Criminal Code is an authentic deed whose contain a forged incident in its contents. Thus the punishment of a notary can only be implemented with limitations when:

1. There is a legal action from the notary against the formal aspect of the deed which is intentional, full of awareness and planned, that the deed made before a notary or by a notary jointly (agrees) to be used as a basis for committing a criminal act;
2. There is a legal action from a notary in making a deed when measured based on Notary's Position Law, is not in accordance with the Amendment Law on the UUJN and;
3. The notary's actions are not appropriate according to the competent authority to assess a notary's action as stated in Notary Supervisory Board.¹¹

A clause in notary's area of authority reads, "Everyone who comes to the notary has said the proper thing. Then, speaking the truth is closely correlated with the truth of the information. It is the obligation of the person speaking if what is stated appropriately does not directly translate into telling the truth, such as by telling a lie or providing misleading information. The notary frequently reports such incidents to the police. Since the notary was the one who made the fraudulent statement, the notary was asked several questions during the inspection.¹² The imposition of criminal sanctions against a notary can be implemented as long as the limitations as mentioned above are violated, meaning that in addition in fulfilling the violations stated in Law on Notary Position (UU Amendment to UUJN) and the Ethics Code for the profession of Notary Office which must also fulfill the formulation in the Book of Laws Criminal Law (KUHP).

¹¹ Adi Utama Pandapotan Lubis, "Analisis Yuridis Pertanggungjawaban Notaris Terhadap Pemalsuan Tanda Tangan Oleh Penghadap Dalam Akta Autentik," *Jurnal SOMASI (Sosial Humaniora Komunikasi)* 1, no. 1 (July 2020): 116–128.

¹² Fakhiryah, "Tindak Pidana Memasukkan Keterangan Palsu Ke Dalam Akta Otentik Dalam Perspektif Hukum Pidana Di Indonesia (Putusan Mahkamah Agung Nomor 602 K/PID/2016)."

It is either conceivable or impossible for notary signing agents to forge letters when performing their obligations with the party requesting the deed. This occurs when a notary signing agent fails to comprehend and uphold the notary profession's code of ethics, or when he does nothing more than deviate from UUJN legal requirements in order to benefit one of the parties and assist other parties in the creation of a document that contains false information. When a notary signing agents commits forgery of letters that result in committing deviations from a deed he made and become a criminal case, the notary must be criminally responsible for what the worker has done. The criminal responsibility arises with the continuation of objective reproach (*verwijbaarheid*) for actions that are declared as criminal acts based on the applicable Criminal Law, and subjectively to perpetrators who meet the requirements to be subject to punishment for their actions.¹³ This is based on the principle of not being punished when there is no mistake or "*actus non facit reum nisi mens sit rea*". It is impossible for a person to be held accountable and sentenced if he has not made a mistake. However, someone who commits a criminal act may not necessarily be punished. The individual commits a criminal act will be punished based on his fault.

The occurrence of punishment against a notary based on a deed drawn up by or before a notary as part of duties implementation of a notary's office or authority, without focusing on legal regulations relating to procedures for doing deeds and only based on the provisions of the Criminal Code. It indicates that there has been a misunderstanding of the notary's position, while an authentic deed made by a notary is used as evidence in civil law. The criminal sanctions are *ultimum remedium*, called the last remedy when the sanctions or efforts in law are incapacitated or deemed ineffective.¹⁴ A Notary must be able to position himself by doing his duties with care and professionalism in order to avoid this circumstance as much as feasible. However, there is a flaw in an agreement when the deed has been made in front of him, indicating that one of the parties has abused the circumstance or the notary worker has engaged in criminal activity by forging letters to find expedient ways to complete the deed, something the notary has never done. Allegations that the notary had created a false deed or fabricated a deed resulted from the fact that it was known in advance. This accusation was also caused by the actions of the notary himself when making the deed that never reading and explaining to the parties as referred to in Articles 15 and 16 of Law on Amendments to JN that causing losses to interested parties. In imposing sanctions on a notary, there are several conditions required, such as the notary's actions must fulfill the formulation of the act being prohibited by law, there are

¹³ Dwidja Priyatno, *Kebijakan Legislasi Tentang Sistem Pertanggung Jawaban Pidana Korporasi Di Indonesia*, 1st ed. (Bandung Utomo, 2009).

¹⁴ Lubis, "Analisis Yuridis Pertanggungjawaban Notaris Terhadap Pemalsuan Tanda Tangan Oleh Penghadap Dalam Akta Autentik."

losses suffered from the notary's actions and the act must be against the law, both formal and material based on the law and must be re-examined by the code of ethics, UUJN and its amendments.

A notary has the authority to knowingly, purposefully direct an assistant to carry out a legal action that is against the law or to provide employees instructions to do so. If this is done, in addition to hurting the notary, the parties and ultimately the person performing their duties as a notary will be regarded as people who consistently break the law.¹⁵ According to Hennin Hediati Koeswadji, an offense or deed that is prohibited and punishable by law has the objective and subjective elements. The objective elements is an elements that exist outside of humans which can be in the form of an action or behavior that is prohibited and threatened with sanctions, such as forging letters, perjury, and theft. A certain result that is prohibited and punishable by criminal sanctions by law are murder, persecution, and so on. While, the circumstances or things that are specifically prohibited and subject to criminal sanctions by law are inciting and violating the public decency. Then, the subjective elements are accountable elements contained in humans. (toerekeningsvatbczarlzeit) and errors (schuld).¹⁶

CONCLUSION

Based on the research result, it can be concluded that criminal liability for a notary is proven that the notary signing agent committed the crime of forging letters. It is proven that this is known by the notary, the notary can be included in participating criminal act of forging letters. Because criminal sanctions are the ultimum remedium, or final remedy, when civil, administrative, or ethical sanctions of a Notary are ineffective in punishing a Notary or having a deterrent effect for Notaries to not commit acts against the law in the future, they are regarded as the most potent sanctions for unlawful acts committed by Notaries. A legally binding court judgment that sentences the Notary to serve a particular sentence forms the basis for the process of implementing criminal sanctions. The criminal liability for a Notary who conducts an unlawful act is then established by imposing criminal sanctions on a Notary who commits an unlawful act.

¹⁵ Marchelina Rante and Hernita Matana, "Pertanggungjawaban Pidana Notaris Terhadap Indikasi Pemalsuan Akta Otentik Yang Dibuat," *Paulus Law Journal* 3, no. 1 (December 2021): 29–38.

¹⁶ Liliana Tedjosaputro, *Malpraktek Notaris Dan Hukum Pidana* (Semarang: Agung, 1991).

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