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The Responsibility Of Notaries Who Perpetrate The Crime Of Forgery Of Deeds From The Aspects Of Criminal And Civil Law

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Abstract

In the implementation of the Notary's position in the authority to make deeds, there are still unlawful acts in the form of forgery of deeds because the person appears never appears, while the deed is still made by the Notary. Therefore, the Notary is legally responsible for his actions. This research is a normative legal research with research material sources in the form of secondary data collected through literature studies, using deductive conclusion drawing techniques. The results of this study indicate that, the legal responsibility of Notaries who committed the crime of forgery of deeds based on the Bekasi District Court Decision Number: 335/Pid.B/2022/PN Bks, in the criminal law aspect is sentenced to 5 (five) years in prison for violating Article 264 paragraph (1) of the Criminal Code, and from the civil law aspect is the potential for being sued in a civil court according to Article 1365 of the Civil Code.

Keywords: Deed; Forgery of Deed; Legal Responsibility; Notary

INTRODUCTION

Public officials in this case Notaries have the authority to make authentic deeds, which are not given to other public officials as regulated in Article 1 number 1 in conjunction with Article 15 paragraph (1) of Law Number 30 of 2004 concerning the Position of Notaries as amended by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position

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of Notaries (hereinafter written as UUJN). Deeds made by Notaries can be used as evidence if there are disputes inside and outside the court. The position of Notaries is not only as a recorder of statements from the parties, but also as a guardian of legal certainty and justice. Notaries are required to work independently, professionally, and uphold the code of ethics, because every deed they make can have broad legal consequences (Mulyadi, 2020).

Authentic deeds are expected to provide legal certainty and prevent future disputes. However, in practice, notarial deeds often cause legal problems when they contain false information that implies a forged deed (Rizky Amalia et al., 2021; Nesha Sakina & Budi Santoso, 2024). In reality, although notaries in carrying out their duties are based on applicable laws and regulations and codes of ethics, notaries are still found to be caught in criminal cases for the crime of document forgery, which is sometimes done intentionally by the notary (Ade Aktanotaria et al., 2025). If a notary commits the crime of forgery in the context of his work, the notary can be held criminally responsible for his actions (Muhammad Luthfi Irsyad et al., 2024).

In the Bekasi District Court Decision Number: 335/Pid.B/2022/PN Bks, a Notary with the initials ESW, in the chronology, witness Tan Madra offered 2 (two) land certificates covering an area of 3,700 M2 located on Jalan Cut Mutia, Bekasi City to witness Suwayanto Wanggana, and witness Suwayanto Wanggana agreed to buy if the certificate was in hand. The defendant as Notary then made 2 (two) Deeds of Sale and Purchase Agreement (PPJB Deed). But then, without the knowledge of witness Suwayanto Wanggana, a PPJB Deed had been made for the certificate between witness Tan Madra Pujianto and the certificate owner, until it was upgraded to a Sale and Purchase Deed (AJB) and the name had been changed to witness Tan Madra Pujianto.

The Panel of Judges, in the end, in their verdict decided to sentence the defendant to 3 (three) years in prison, because he was proven to have committed the crime of assisting in fraud, as according to the Second Indictment, namely according to Article 378 in conjunction with Article 56 paragraph (2) of the Criminal Code. This verdict was then revised according to the Decision of the Bandung High Court Number: 73/Pid/2023/PT BDG, where the defendant was more proven to have committed the crime of falsifying a deed according to Article 264 paragraph (1) of the Criminal Code, by being sentenced to 5 (five) years in prison, which was also confirmed at the cassation level based on the Decision of the Supreme Court Number: 933 K/Pid/2023.

In its development, the Criminal Code in this case is Law Number 1 of 1946 concerning Criminal Law Regulations which has been revoked with the ratification and enactment of Law Number 1 of 2023 concerning the Criminal Code (hereinafter written as the National Criminal

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Code), where the crime of falsifying authentic deeds is regulated and threatened with criminal penalties according to Article 392 paragraph (1) letter a of the National Criminal Code, which states: "Anyone who falsifies a letter against an authentic deed shall be punished with a maximum of 8 (eight) years imprisonment", so that the provisions regarding the threat of imprisonment are the same as the previous provisions according to Article 264 paragraph (1) of the Criminal Code, with a maximum prison sentence of 8 (eight) years.

Notary liability encompasses not only legal aspects, including criminal and civil liability, but also administrative liability. This means that when a Notary intentionally creates a deed that results in a forged deed, the legal risks that arise include not only the potential for a civil lawsuit from the injured party, but also administrative sanctions in the form of ethical code sanctions, which impact the future performance of the Notary's office and the evidentiary power of the forged deed (Eka Putri Hardianti, 2022; Selvi Dhian Padma Sari, 2021).

Based on the background as described, the formulation of the problem in this study, among others: first, how is the legal responsibility of the Notary who committed the crime of forgery of a deed from the aspects of criminal law and civil law based on the Decision of the Bekasi District Court Number: 335/Pid.B/2022/PN Bks? and second, what are the legal consequences of the decision on the crime of forgery of a deed that has permanent legal force on the evidentiary power of the deed?

RESEARCH METHODS

This type of research is normative legal research using statutory, futuristic, and conceptual approaches. The type and sources of research materials are obtained from secondary data collected through literature studies, analyzed qualitatively, processed through inventory and systematization, and using deductive conclusion-drawing techniques.

RESULTS AND DISCUSSION

Legal Liability of Notaries Perpetrating the Crime of Forgery of Deeds from the Aspects of Criminal and Civil Law Based on the Decision of the Bekasi District Court Number: 335/Pid.B/2022/PN Bks

In terms of criminal responsibility or within the scope of criminal law, the defendant ESW was proven to have committed the crime of falsifying a deed, as the case was examined and decided based on the Decision of the Bekasi District Court Number:335/Pid.B/2022/PNBks. In the

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chronology, witness Tan Madra offered 2 (two) land certificates measuring 3,700 M2 located on Jalan Cut Mutia, Bekasi City to witness Suwayanto Wanggana, and witness Suwayanto Wanggana agreed to buy once the certificates were in hand. The defendant, as Notary, then made 2 (two) Deeds of Sale and Purchase Agreement (PPJB Deeds)

The signing of the PPJB 27 Deed made by Notary Aristiawan Dwi Putranto, SH, M.Kn., was carried out in Bekasi City and was signed by the parties, then the defendant showed Notary Aristiawan Dwi Putranto, SH, M.Kn. photo documentation when the parties signed the 4 (four) minutes of the authentic deed. Next, Notary Aristiawan Dwi Putranto, SH, M.Kn. signed the minutes of the said deed. But then, without the knowledge of witness Suwayanto Wanggana, for SHM 994 and SHM 4371, a PPJB Deed was made between witness Tan Madra Pujianto and the certificate owner, as in PPJB Deed Number 01 dated September 1, 2011 and Number 01 dated April 11, 2013 made by Notary ESW (defendant), and both PPJB deeds have been upgraded to Sale and Purchase Deeds (AJB) and the names of both SHMs have been changed to witness Tan Madra Pujianto.

The Public Prosecutor demanded that the defendantproven guilty of committing the crime of assisting in committing fraud, as regulated and threatened with criminal penalties according to Article 378 in conjunction with Article 56 paragraph (2) of the Criminal Code with a prison sentence of 3 (three) years and 6 (six) months. The Panel of Judges, based on the indictment and demands of the Public Prosecutor, ultimately in its verdict decided to sentence the defendant to 3 (three) years in prison, because he was proven to have committed the crime of assisting in committing fraud, as according to the Second Indictment, namely according to Article 378 in conjunction with Article 56 paragraph (2) of the Criminal Code.

Based on the decision of the first instance court, the Public Prosecutor made an appeal, which then according to the Decision of the Bandung High Court Number:73/Pid/2023/PTBDG, the defendant was proven to have committed the crime of falsifying an authentic deed as per the First Charge according to Article 264 paragraph (1) of the Criminal Code, with a prison sentence of 5 (five) years, which was also confirmed at the cassation level based on Supreme Court Decision Number:933 K/Pid/2023.

The provisions of Article 264 paragraph (1) 1 of the Criminal Code threaten a maximum prison sentence of 8 (eight) years for forgery of documents carried out in authentic deeds. Based on these provisions, this means that there is a threat of criminal sanctions as a punishment for perpetrators who have fulfilled the elements of a crime, as a manifestation of criminal

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responsibility. Responsibility in the criminal law aspect is also interpreted as criminal liability, namely the imposition of punishment on the maker for actions that violate prohibitions or create prohibited conditions (Din, 2019; Fadilan, 2020).

Again, based on the case of the criminal act of falsifying authentic documents by a Notary as previously described, it was found that the defendant was punished because the defendant could be held criminally responsible through the fulfillment of the elements of the criminal act of falsifying authentic documents and therefore a punishment must be carried out, namely the imposition of criminal sanctions, namely in the form of imprisonment in accordance with Article 264 paragraph (1) ke-1 of the Criminal Code, namely a maximum imprisonment of 8 (eight) years, where in the verdict the defendant was sentenced to imprisonment for 1 (one) year.

According to Habib Adjie, the limits on criminal penalties for notaries can be applied if (Adjie, 2009):

a. There is legal action by the Notary regarding the external, formal and material aspects of the deed which is deliberate, full of awareness and realization and planned, that the deed made before the Notary or by the Notary together with (agreement) the parties to be used as a basis for committing a criminal act;
b. There is a legal action by a Notary in making a deed before or by a Notary which, if measured based on the UUJN, is not in accordance with the authorized agency; and
c. The Notary's actions were also not appropriate according to the agency authorized to assess the Notary's actions, in this case the Notary Supervisory Board.

Based on Habib Adjie's opinion above, the defendant must be held responsible for his actions and must be punished according to criminal law because his actions constitute a crime that was carried out intentionally and is contrary to the law, violating the provisions.Article 16 paragraph (1) letter m in conjunction with Article 16 paragraph (9) UUJN, and admitted his actions before the Notary Honorary Council (MKN). In line with that, for the defendant who is a Notary public official, criminal responsibility for the defendant is criminal responsibility which is based on the regulations and criminal threats according to the Criminal Code when he is a legal subject in his position as a Notary. Criminal punishment applies to anyone who commits a crime regardless of their background, including if he is a public official such as a Notary (Syafrizal, 2016, p. 30). This means that a Notary who commits the crime of falsifying authentic documents in his position as a Notary, must still be punished or be held responsible for his actions. This is in accordance with the regulations in the Criminal Code regarding the limits of the application of

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criminal provisions in statutory regulations, especially in Article 1 paragraph (1) and Article 2 of the Criminal Code, which respectively state:

"An act cannot be punished except by virtue of existing criminal law provisions."

"Criminal provisions in Indonesian legislation are applied to anyone who commits a crime in Indonesia."

The provisions of Article 1 paragraph (1) and Article 2 of the Criminal Code above are in line with Article 1 paragraph (1) of the National Criminal Code and Article 4 of the National Criminal Code, which respectively state:

"No act can be subject to criminal sanctions and/or action, except by virtue of criminal regulations in existing laws and regulations before the act was committed."

"The criminal provisions in the Law apply to any person who commits:

a. Criminal Acts in the territory of the Unitary State of the Republic of Indonesia;
b. Criminal Acts on Indonesian Ships or on Indonesian Aircraft; or
c. Criminal acts in the field of information technology or other criminal acts the consequences of which are experienced or occur in the territory of the Unitary State of the Republic of Indonesia or on Indonesian ships and on Indonesian aircraft."

Considering that the crime of falsifying authentic documents has been regulated and is subject to criminal penalties in Article 264 paragraph (1) 1 of the Criminal Code, in relation to the two articles above, the defendant can be punished because the law regulates this. In addition, regarding the phrase "every person", it again has the meaning that anyone, including a Notary, can be punished if proven to have committed a crime.

If the deed is false because it was made without the presence of the person appearing, while this is an obligation for the Notary, then the Notary has violated his obligation to carry out his duties diligently, which ultimately results in the interests of the parties involved in the deed not being protected. This obligation is as stated in the provisions of Article 16 paragraph (1) letter a of the UUJN, that in carrying out his duties, the Notary is obliged to act honestly, diligently, independently, impartially, and protect the interests of the parties involved in legal actions.

Based on the concept of civil liability, the Notary's liability for a deed he made that is false because it was made without the presence of the person appearing while the act could not have been initiated by him personally consciously and intentionally, can result in the Notary being sued in civil court (Nico, 2003, p. 40). The legal basis used in civil liability for a deed made by a Notary is the construction of an unlawful act, which in the provisions of Article 1365 of the Civil Code

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(KUHPerd) states that every act against or violating the law that results in loss to another person, requires the person whose fault it is to issue the loss or compensate for the loss.

The explanation of the above article has a broad scope. This means that anyone who harms another party due to their actions can be held accountable, and the person who made the mistake must compensate for the losses suffered. Based on the provisions of Article 1365 of the Indonesian Civil Code, a person can be said to have violated the law if they meet the following elements: the existence of an unlawful act; the existence of an error; and the existence of a loss resulting from the error or negligence (Ghofur, 2009, p. 34).

Based on the provisions above, it is clear that a Notary who makes a false deed while another party suffers a loss, then the Notary can be sued for compensation through a lawsuit to the Court in the qualification of an unlawful act as stipulated in Article 1365 of the Civil Code. A lawsuit in the qualification of an unlawful act against a Notary with a demand for compensation is appropriate, because the victim who never appeared before each defendant, due to the defendant's actions suffered material losses. In addition, criminal and sentencing processes do not eliminate civil liability to compensate for losses.

Legal Consequences of a Final and Enforceable Criminal Decision for Forgery of a Deed on the Evidentiary Power of the Deed

According to Sudikno Mertokusumo, a deed is a signed letter containing events that form the basis of a right or obligation, which was made from the beginning intentionally for proof (Mertokusumo, 2008, p. 116). Based on its form, deeds are divided into deeds (authentic writing) and private writing. The legal basis is Article 1867 of the Civil Code, namely that proof by writing is carried out with authentic writings or private writings. Authentic writing is a deed made by an official authorized to do so by the authorities, according to the provisions that have been determined, either with or without the assistance of the interested party, which records what is requested to be included in it by the interested party. The deed mainly contains the statement of an official, who explains what he did and saw before him (Mertokusumo, 2008, p. 117). A private agreement is a written agreement made and signed by the parties to a contract or between the interested parties only. According to Sudikno Mertokusumo, a private agreement is a written agreement deliberately created for evidence by the parties without the assistance of an official. Therefore, it is made solely between the interested parties (Mertokusumo, 2008, p. 125).

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A deed in its making must meet the requirements both formally and materially. On the other hand, a deed can be said to contain formal and/or material defects. According to Habib Adjie, an authentic deed has perfect evidentiary value formally, meaning that the deed must provide certainty that the events and facts in the deed were actually carried out by the Notary or the parties appearing at the time written in the deed in accordance with the established rules for making a deed. Formally, to ensure the truth and certainty of the day, date, month, year, time (time) of the parties appearing, the parties appearing, the initials or signatures of the parties, witnesses, Notary, as well as proving what was seen, witnessed, heard by the Notary (in the official deed or minutes), also records and statements from the parties (in the party deed) (Adjie, 2009, p. 72). On the other hand, if the deed fulfills these elements while in fact one of the parties or parties is not present, then the deed contains formal defects.

Regarding material defects, this is an error in the material/content of the deed, where initially the deed was made in accordance with the law and the contents of the deed had been agreed upon by the parties, but there was a default or unlawful act from one of the parties which resulted in the deed not having full evidentiary power as a deed and in this case the Notary, if not consciously and intentionally involved, cannot be blamed because the Notary has made the deed in accordance with the applicable laws and regulations.

A material error is an error in the contents of a deed due to a party smuggling in an unlawful act which results in the deed not having material evidentiary force even though it is outwardly and formally in accordance with the provisions stipulated by law, then a deed which has one of the elements of error can immediately be legally invalidated.

In line with the explanation regarding material errors above and according to Herlin Budiono, it can be concluded that the criteria for a deed as an authentic writing that contains material errors are (Budiono, 2007, p. 370):

1. There are errors in the contents of the notarial deed, namely errors that occur in the contents of the deed can occur if the parties provide information that was considered correct at the time the deed was made, but later turned out to be incorrect.
2. Because of defective will, namely an agreement born from an agreement from the meeting of offer and acceptance, under normal conditions there is a correspondence between will and statement, but it does not rule out the possibility that an agreement is formed by the presence of an element of defective will (wilsgebreke). Agreements whose formation process is influenced by the element of defective will have legal consequences that can be canceled

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(vernietigbaar). In the Civil Code there are 3 things that can be used as reasons for canceling an agreement based on defective will, namely:

a. Error or error (dwaling), which is the occurrence of an error or error. This relates to the nature of an object or person, and the opposing party must know, or at least be aware of, the nature or condition that causes the error to the other party is crucial, related to the conditions for being recognizable or known.
b. Coercion (dwang) arises when someone is moved to close an agreement or enter into an agreement under the threat of violating the law.
c. Fraud (bedrog) is a qualified form of error. Qualified error means that one party has indeed committed an error, but this error is intentional on the part of the other party. Therefore, the similarity between error and fraud is the presence of a party who is misled, while the difference lies in the element of intention to mislead in fraud.

3. An unlawful act (onrechtmatige daad) is an act that causes harm, and normatively, this act is subject to the provisions of Article 1365 of the Civil Code.

The legal consequences of a deed that has formal and material defects in principle are that the deed can be degraded in its evidentiary power as a private writing, can be null and void, can be canceled or non-existent, that is, it results in the legal act being invalid or the legal act having no legal consequences (Damayanti et al., 2020, p. 17). The point of difference is the time when the cancellation takes effect, namely:

1. Null and void, as a result of which the legal act carried out has no legal consequences since the legal act occurred or has retroactive effect (ex tunc). In practice, null and void is based on a court decision that has permanent legal force.
2. Can be canceled, as a result of which the legal act carried out has no legal consequences since the cancellation occurred and where the cancellation or ratification of the legal act depends on a certain party causing the legal act to be canceled. A deed whose sanctions can be canceled, remains valid and binding as long as there is no court decision that has permanent legal force that cancels the deed.
3. *Non-existent*, as a result of which the legal act carried out does not exist or is non-existent due to the failure to fulfill the essentials of an agreement or failure to fulfill one or all elements in a particular legal act. Non-existent sanctions dogmatically do not require a court decision, but in practice a court decision that has permanent legal force is still required and the implications are the same as being null and void.

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According to Philipus M. Hadjon, every government action must be based on legitimate authority, which is obtained through three sources, namely attribution, delegation, and mandate. Attribution authority is usually outlined through the division of state power by the constitution, while delegation and mandate authority are authorities derived from delegation (Hadjon, 2005, p. 31). Therefore, in line with the theory of the Notary's position, a Notary is a Public Official who is given the authority and obligation to serve the public in certain matters by the state, in this case to declare the existence of a legal relationship between the parties in an authentic deed (state document). The Notary is appointed and dismissed by the general authority (government), and therefore the Notary participates in carrying out the authority of the government (Soesanto, 2002, p. 75). The granting of authority to make authentic deeds to a Notary by the government through the UUJN is a source of Notary authority obtained through attribution. This is because this authority is created and granted by the Law.

In line with the theory of the Notary's position above, in carrying out his authority to make a deed, the Notary is obliged to read the deed before it is signed by the parties, the Notary, and witnesses, so that in a special sense it is obligatory for the person appearing to be present. In the context of the evidentiary power and the nullity of a deed that has been notarized, then if the deed is made without the presence of the person appearing, then the deed does not have perfect evidentiary power, because it contains material errors, because in particular there is a defect in the will in the form of an error and error by the Notary as an unlawful act, and therefore the deed containing material errors becomes null and void by law. This is normatively confirmed in the provisions of Article 16 paragraph (9) UUJN-P which regulates that if one of the conditions as referred to in paragraph (1) letter m regarding the obligation for the deed to be read by a Notary is not fulfilled, while in fact the person appearing has never been present and signed so that it has never been read, then the deed in question only has evidentiary power as a private writing.

CONCLUSION

Based on the research results and all the previous discussion descriptions, it can be concluded thatpertanggungjawaban hukum Notaris pelaku tindak pidana pemalsuan akta dari aspek hukum pidana dan perdata berdasarkan Putusan Pengadilan Negeri Bekasi Nomor : 335/Pid.B/2022/PN Bks dari aspek hukum pidana adalah dipidana penjara selama 5 (lima) tahun atas pelanggaran Pasal 264 ayat (1) KUHP dengan potensi digugat secara keperdataan oleh pihak yang dirugikan berdasarkan Pasal 1365 KUHPerd mengenai perbuatan melawan hukum. Akibat

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hukum putusan tindak pidana pemalsuan akta yang telah berkekuatan hukum tetap terhadap kekuatan pembuktian akta adalah menjadi tidak sempurna atau terdegradasi sebagai tulisan di bawah tangan sehingga batal demi hukum, dikarenakan mengandung kesalahan materiil, terkait terdapat cacat kehendak berupa kesesatan Notaris sebagai perbuatan melawan hukum, sebagaimana ketentuan Pasal 16 ayat (9) UUJN.

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