

NOTARY'S RESPONSIBILITY FOR THE CRIMINAL ACT OF FORGERY OF LETTER IN MAKING AUTHENTIC DEEDS

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ABSTRACT

Forgery of letters often becomes a legal problem for parties or individuals from an irresponsible institution. The formulation of the problem in this thesis is how to regulate the criminal act of forgery of letters in making authentic deeds carried out by a Notary, how the making of authentic deeds by or before a notary as a public official is categorized as a criminal act of forgery of letters, how is the notary's responsibility due to the criminal act of forgery of letters in making authentic deeds. The notary's liability due to the crime of forgery of letters in making authentic deeds can be held criminally responsible if it meets the elements of error, namely being able to be responsible, there is a spiritual relationship in the form of intent and there is no reason that eliminates the error. So that a Notary who is fully aware of intentionally or involved in making a fake authentic deed can be held accountable under criminal law. Meanwhile, if the elements of the error are not fulfilled, the Notary cannot be punished

1. Introduction

As demands for legal certainty grow, the need for written proof in the form of authentic deeds is increasing. Authentic deeds clearly define rights and obligations, guarantee legal certainty, avoid disputes, and contribute to easy and expeditious resolution of cases.

A deed is a signed document, serving as evidence, containing the events that form the basis of a right or obligation, and is created from the outset intentionally for the purpose of proof. The requirement for a signature serves to distinguish one deed from another or from deeds prepared by another person. The function of a signature is to identify or individualize a deed.

The authenticity of a deed is not determined solely by an official (notary). However, there are also procedures for creating an authentic deed that must comply with statutory provisions. A deed drawn up by or before an official without the authority and ability to do so, or without meeting the requirements, cannot be considered an authentic deed. However, it has the force of a private deed if signed by the parties concerned.

A notary, as a public official authorized to draw up authentic deeds, is responsible for their actions in connection with the work of drawing up the deed. The scope of a notary's responsibility includes ensuring the material accuracy of the deed, both in civil and criminal matters. Legally, unlawful acts have a broad scope, potentially encompassing any act as long as it harms another party and is causally related to the notary's office.

Regarding material responsibility for deeds drawn up by a notary, the authority of a notary to draw up authentic deeds does not mean that the notary can freely draw up authentic deeds without the parties requesting the deed. Therefore, a notarial deed is truly a deed of the interested parties, not a deed of the notary concerned.

Therefore, based on the legal construction of unlawful acts, it can be said that if a notary, in carrying out their duties, intentionally commits an act that harms one or both parties, or the parties appearing before them in a deed, if it is discovered and proven that the notary's actions are unlawful, the notary may be subject to sanctions in the form of threats as stipulated in the law. The notary may be held civilly liable for the material truth of the deed drawn up before the notary.

Notary involvement in a criminal case is generally caused by notary negligence, which is usually exploited by parties by falsifying material evidence, such as identity documents and so on. However, it is not impossible that notaries are also involved in criminal acts involving deeds.

Forgery is a form of crime, defined as an act that is contrary to legal interests. The causes and consequences of this crime are a primary concern for various parties, with research conducted using scientific methods to obtain certainty in determining the extent and classification of the crime. The consequences of document forgery include harm and suffering for others, both those directly affected by the forgery and the general public. Public trust in a service or agency will be reduced, and this can lead to even worse consequences, including social chaos.

2. Research Method

This research is descriptive, a method aimed at describing existing phenomena, whether present or past. This research will describe the application of the law to perpetrators of forgery.

This paper employs normative juridical legal research, referring to legal norms, specifically library or secondary sources. This research is analytically descriptive, revealing laws and regulations related to the legal theories that are the object of the study.



The data collection tool used in this study is Library Research. Data were obtained from various sources, including scientific journals, laws and regulations, and other documentation such as magazines, the internet, and other theoretical sources related to the application of the law to perpetrators of forgery of marriage identity.

The collected data will be thoroughly analyzed using qualitative analysis or described in sentences. Qualitative analysis is an analysis based on the paradigm of the dynamic relationship between theory, concepts and data which is a constant feedback or modification of theory and concepts based on the data collected.

3. Results And Discussion

Results

The crime of forgery is a crime involving an element of untruth or falsity in an object, which appears to be true from the outside when in fact, it is the opposite. Forgery is the act of altering a document in any way by an unauthorized person, resulting in some or all of its contents being different from the original.

Forgery is classified as a fraudulent crime when someone provides a description of an item as if it were genuine or true, when in fact, they do not possess such authenticity. Because of this description, others are deceived into believing that the condition described in the item/document/data is true or authentic. Forgery of writing/data occurs when the content or data is false. Forgery is a crime regulated in Chapter XII, Book II of the Criminal Code. Forgery is defined as limited to written works, including forgery of signatures, as regulated in Articles 263 and 276 of the Criminal Code. Frequent crimes are those under Article 263 of the Criminal Code (creating or falsifying a document); Article 264 (falsifying authentic documents); and Article 266 of the Criminal Code (ordering the insertion of false information into an authentic document).

The reason for this is not the content of the document, but rather the name (including the signature) of the person who wrote the document, which appears to be the person whose real name appears on the document. For example, A might create a letter as if it were written by or originated by B, because B's name and signature are included in the letter, but the actual signer is A himself, imitating B's signature. It's also possible that the person might not imitate B's signature, but instead create a fake signature by fabricating it to appear as B's.

Forgery of a letter is committed by making unauthorized changes (without the permission of the authorized party) to a letter or writing. Regardless of whether

the original content was false or true, changing the content from false to true constitutes forgery.

Forgery is the act of creating a letter that previously did not exist, with some or all of its contents false. A forged letter resulting from this act is called a forgery. Meanwhile, forgery is any act directed at an existing letter by deleting, changing, or replacing any of its contents so that it differs from the original. This letter is called a forged letter.

The crime of document forgery was established with the aim of protecting the public's legal interest regarding the trust in the truth of the contents of four types of documents: letters that create rights; letters that issue obligations; letters that provide for release from debt; and letters created to prove a particular matter/condition. Meanwhile, the prohibited acts for these two types of documents are the act of creating a forged document (*valschelijk opmaaken*) and falsifying it (*vervalsen*).

In contrast to document forgery, a document already exists before this act is committed, called an original document. Then, the contents (including the signature and name of the original author) of this original document are forged, resulting in the document, which is originally true, becoming contradictory or false.

4. Discussion

The preparation of certain authentic deeds is required by law to create legal certainty, order, and protection. Authentic deeds are not only made by or before a notary, but also because they are desired by interested parties to ensure the rights and obligations of the parties concerned, ensuring legal certainty, order, and protection for them and for society as a whole.

One of the reforms in the UUJN (National Law) concerns sanctions against notaries in carrying out their duties if they violate certain articles in the UUJN, and supervision of notaries is carried out by a Supervisory Board consisting of representatives from notaries, the government, and academics.

Sanctions are an important concluding element of the law. These sanctions are intended to ensure that notaries act correctly in accordance with the UUJN, so that the notary's product, an authentic deed, can provide protection and legal certainty to the parties in need.

In practice, it has been found that violations committed by a Notary Public may actually be subject to administrative or civil sanctions or the Notary's code of ethics, but are later withdrawn or classified as a criminal offense. If a Notarial deed is disputed by the parties or other parties, the Notary Public is often

accused of being an accomplice or accomplice in the crime, namely by making or providing false information in the Notarial deed.

The recent phenomenon of many Notaries being caught up in legal issues, such as being summoned by the police regarding deeds they have drawn up, demonstrates the still unclear position of accountability for the Notary Public. This raises concerns about Notaries in carrying out their duties, as they could be sued at any time by various parties, and even face the possibility of criminal prosecution. These concerns are unnecessary as long as the Notary Public has carried out their duties and authorities in accordance with applicable law.

Criminal provisions are not regulated in the UUJN. The UUJN only regulates sanctions for violations committed by Notaries against the UUJN, which can be civil sanctions (Article 84 of the UUJN) or administrative sanctions (Article 85 of the UUJN). Meanwhile, criminal liability for Notaries is regulated in the Criminal Code if the Notary commits the crime of falsifying documents.

The Criminal Code (KUHP) defines crimes closely related to the role of a notary in the preparation of authentic deeds as general document forgery (Article 263 paragraph 1), aggravated document forgery (Article 264 paragraph 1), and ordering the insertion of false information into an authentic deed (Article 266 paragraph 1).

The preparation of an authentic deed by a notary public, categorized as document forgery, is an act that meets the elements outlined in Article 263 paragraph 1, Article 264 paragraph 1, and Article 266 paragraph 1 of the Criminal Code.

Article 263 paragraph 1 of the Criminal Code states: Anyone who creates a false document or falsifies a document that can give rise to a right, obligation, or debt relief, or is intended as evidence of something with the intent to use or instruct another person to use the document as if its contents were true and unfalsified, shall be punished if such use can cause harm, due to the falsification of the document, with a maximum imprisonment of 6 years.

Forging a deed of deed means that the four things that must be authentically confirmed above are untrue or contradictory to the truth. The act of falsifying a document is the act of altering a document in any way by an unauthorized person, resulting in part or all of its contents being different from the original contents. It does not matter whether the alteration makes the contents true or not or contradicts the truth or not; if the act of altering is carried out by an unauthorized person, falsification has occurred. The unauthorized person is someone other than the person who made the document. Similar to creating a forged document, forgery can occur not only in part or all of the contents of the document, but also in the signature of the person who wrote it.

The Notary Law explains that the contents of a notarial deed may not be altered or added to, whether by overwriting, inserting, crossing out, or deleting or replacing it with something else. However, there are exceptions: changes in a notarial deed, such as additions, replacements, or deletions, may be made. These changes are only valid if they are initialed or otherwise validated by the parties, witnesses, and the notary.

Generally, a document does not directly create a right; rather, that right arises from a legal obligation (agreement) contained therein. However, there are certain documents, known as formal documents, that directly create a right, such as checks, giro bills, money orders, driver's licenses, diplomas, and so on. A document containing an obligation is essentially a document that, through that agreement, creates a right. For example, a sales and purchase agreement creates the seller's right to receive payment for the item, and the buyer has the right to acquire or receive the item purchased.

The same applies to a debt waiver. The granting of debt waiver is essentially due to and in connection with an agreement. For example, a receipt contains the transfer of a certain amount of money in connection with a sale, debt, or other transaction.

Article 1870 of the Civil Code states that an authentic deed constitutes perfect evidence for the parties, their heirs, or any person entitled to it. Documents considered authentic and having perfect evidentiary force are those drawn up by or before an authorized official and in a form prescribed by law. Documents with this kind of evidentiary force include authentic deeds drawn up by or before a notary.

The concept of criminal responsibility is not solely a legal issue but also concerns the moral values or general decency embraced by a society or groups within society. This is done to ensure that criminal responsibility is achieved by fulfilling justice. Criminal responsibility is a form of determining whether a suspect or defendant is held accountable for a crime that has occurred. In other words, criminal responsibility is a form of determining whether an individual is acquitted or convicted.

The burden of responsibility is placed on the perpetrator of a criminal offense in relation to the basis for imposing criminal sanctions. A person will be criminally responsible if an act or action they commit is unlawful, but a person can lose their sense of responsibility if an element is found within them that causes them to lose their capacity to take responsibility.

According to Chairul Huda, the basis for a crime is legality, while the perpetrator's punishment is based on fault. This means that a person will be criminally responsible if they have committed an act that is wrong and contrary

to the law. In essence, criminal liability is a mechanism created to respond to violations of a specific, agreed-upon act.

Criminal liability requires the perpetrator to be capable of taking responsibility. It is impossible to hold someone accountable if they are unable to do so. The destruction of detention centers (detention centers) and facilities, when viewed from the perspective of positive Indonesian criminal law, can be categorized as a crime.

Furthermore, criminal liability in the common law system is related to *mens rea*, where criminal liability is based on a mental state, namely a guilty mind. Guilty mind implies subjective error, meaning a person is found guilty because the perpetrator is deemed to have a guilty mind, thus requiring that person to be held responsible. If criminal liability is imposed on the perpetrator, the perpetrator must be punished. The absence of a guilty mind means no criminal liability and results in the perpetrator not being punished.

A notary, as a public official (*openbaar ambtenaar*) authorized to draw up authentic deeds, can be held responsible for the performance of their official duties in drawing up such deeds. One of the responsibilities of a notary is criminal liability for the deeds they create. Criminal liability for notaries is regulated by the Criminal Code if a notary commits the crime of document forgery.

5. Conclusion

The criminal offense of document forgery in the preparation of authentic deeds committed by a notary is contained in Chapters IX through XII of the Criminal Code (KUHP). The criminal offense of forgery regulated in the KUHP encompasses not only the forgery of a single document, but also several other types of forgery, one of which is the forgery of documents in the preparation of authentic deeds.

The preparation of an authentic deed by or before a notary, as a public official, is categorized as a criminal offense of document forgery if it meets the elements of the criminal offense defined in the Criminal Code (KUHP), namely Article 263 paragraph 1 of the KUHP, Article 264 paragraph 1 of the KUHP, and Article 266 paragraph 1 in conjunction with Article 55 of the KUHP.

A notary's liability for the crime of falsifying documents in the preparation of an authentic deed can be held criminally liable if the elements of a mistake are met, namely being capable of being responsible, having a spiritual connection in the form of intent, and not having any excuse to eliminate the mistake. Therefore, a notary who knowingly, intentionally, or is involved in the preparation of a false



authentic deed can be held criminally liable. However, if these elements of a mistake are not met, the notary cannot be punished.

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