

## Notary Liability over their Involvement in Document Falsification Crime

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### ABSTRACT

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*The presence of a notary in the Association of legal Communities is significant. Nevertheless, in carrying out its role and function, the Notary is very vulnerable in the vortex of deed against the law. Although in many instances, the public Notary can not be held accountable for the unlawful acts, in some cases, the Notary is unable to circumvent his involvement. This article presents two issues related to notary involvement in unlawful acts, especially the criminal offense. Each of these is: first, how is the form of notary involvement in criminal acts of document falsification? Secondly, can the public Notary be held accountable for his involvement in criminal acts of document falsification? This research was conducted through normative legal research. The results show that there are many forms of notary involvement in criminal acts of document counterfeiting. Secondly, the Notary may be held accountable and may be asked for criminal liability because of his involvement in criminal acts of document falsification.*

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### 1. INTRODUCTION

Almost certainly, in some of the legal relations that occur in the community, notary presence is required. In many legal relationships that arise in the community such as buying and selling, debt receivable in banks, home buying, buying, and selling of land, notary service is needed. Although primordial, humans have practiced simple covenants in the fulfillment framework of daily necessities, such as the exchange of goods.<sup>1</sup> Formally, there are two considerations in the law on the importance of public Notary in the community. Letter D in Consideration section of Law No. 30 of 2004 concerning Notary Law (hereinafter referred to Notary Law)<sup>2</sup>, that the notary services had become

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<sup>1</sup> Muhammad Natsir Asnawi, “Perlindungan Hukum Kontrak Dalam Perspektif Hukum Kontrak Kontemporer,” *Masalah-Masalah Hukum* 46, no. 1 (2018): 55–68, <https://doi.org/10.14710/mmh.46.1.2017.55-68>.

<sup>2</sup> Republik Indonesia, “Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris” (2004).

part of one of the community's legal needs. The importance of Public Notary in the legal association in the community is also reaffirmed in consideration of the part weighing letter B from Amendments to Notary Law. This rule aims to ensure certainty, order, and legal protection is required an authentic written proof tool of the deeds, agreements, assignments, and legal events created by facing the competent authority or made by the competent authority.

In terms of public law today, the presence of the Notary has become a necessity. Almost to be ensured in practically all legal relations, the public requires a notary presence. Legal action/deed of Notary is an authentication act of a document made by the parties. In private scope, the Notary has acted when he authorizes or makes written proof for the benefit of the parties.<sup>3</sup> In various legal relations such as trading, banking, property, the presence of the Notary should be unbiased. Nevertheless, in carrying out such roles and functions, the Notary cannot escape from the possibility of involvement in various criminal acts. Liliana Tedjosaputro states that the Notary was very susceptible to being charged with a crime.<sup>4</sup>

Legal Facts in the community also shows this problem, as happened to the Notary in West Sumatra who was determined as a suspect by the Directorate of Criminal Investigation of the West Sumatra Regional Police for alleged cases of falsification of documents by providing false information in an authentic deed.<sup>5</sup> Besides, it also happened to a Notary in Bangkalan, which was secured by the Bangkalan State Prosecutor's Office, Madura, East Java related to the crime of Forgery of Documents.<sup>6</sup> This article aims to investigate the form of notary involvement in a counterfeit criminal offense and their participation in carrying out his role and function as a Public Notary.

## 2. RESEARCH METHODS

This study uses a legal research approach, which will depart from textual studies, like acts and various doctrines of criminal law. This research is also a philosophical study because it explores the values contained in the act.<sup>7</sup> This study investigates the act in its appearance as ideas, ideals, values, morals, and fairness, which are referred to as ideological, philosophical, and moralistic legal concepts.<sup>8</sup>

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<sup>3</sup> Noel S. Cox, "The Public Notary The Third Arm of the Legal Profession," *SSRN Electronic Journal*, 2003, <https://doi.org/10.2139/ssrn.420749>.

<sup>4</sup> Liliana Tedjosaputro, "Akta Otentik Notaris Rentan Jerat Pidana," *SuaraKarya.id*, 2020.

<sup>5</sup> Posmetro Padang, "Palsukan Isi Akta Jual Beli Tanah, Notaris Catur Virgo Ditetapkan Tersangka Penipuan," [posmetropadang.co.id](http://posmetropadang.co.id), 2020.

<sup>6</sup> Mahmud, "Lakukan Pemalsuan Dokumen Tanah, Notaris Di Bangkalan Ditangkap Kejaksaaan Negeri Bangkalan," [koranmadura.com](http://koranmadura.com), 2019.

<sup>7</sup> Yusriadi, *Tebaran Pemikiran Kritis Hukum Dan Masyarakat* (Malang: Surya Pena Gemilang, 2009).

<sup>8</sup> Ronny Hanitijo Soemitro, *Perspektif Sosial Dalam Pemahaman Masalah-Masalah Hukum* (Semarang: CV Agung, 1989).

### 3. RESULTS AND DISCUSSION

#### 3.1. *Involvement of The Public Notary in Criminal Acts of Falsification*

##### 3.1.1. *General Involvement in Criminal Acts*

Normatively, the form of a person's involvement in a criminal offense is governed by the provisions in the Criminal Code in Articles 55 and 56 about the perpetrators and their participation in criminal acts (*daderschap en deelneming*). In detail, these provisions govern the forms of involvement of one's criminal acts. According to both chapters, there are many forms of involvement in criminal acts. The Criminal Code in Articles 55 contains provisions on the qualification of perpetrators. The provisions of the Criminal Code in Articles 55 determine who can qualify as the perpetrator of a criminal offense for his involvement in a criminal offense. The provisions of article 55 of the Criminal Code consist of two paragraphs, each of which regulates different qualifications and requirements. The provisions of the Criminal Code in Articles 55 shall fully declare:

1. Sentenced as perpetrators of criminal acts:

The First: those who did, who had done, and who participated in the criminal act.

The Second: are those who by giving or promising something, by abusing power or dignity, with violence, threats or misconduct, or by providing the opportunity, means or description, deliberately encouraging others to do deeds.

2. Against the organizer is only deliberately recommended act that is taken into account, along with its consequences.

Under the provisions of Criminal Code in Articles 55 paragraph (1) states that the form of involvement of someone in a criminal act can be qualified into four, namely:

1. A person who commits a criminal offense (*Plegen/Pleger*). A person's involvement in this qualification will occur when someone commits himself to create all criminal elements. The qualifying "person who performs" (*Pleger*) applies to everyone who commits himself to create all elements of the criminal act. Qualifying as a *Pleger* only happens if the person involved in the criminal act is only one person.
2. The person who ordered someone to commit a crime (*doen pleger*). Normatively, one can qualify as the person who tells, if he wants to do a criminal offense, but does not do so physically, but orders others to do so. A person's involvement in this qualification will occur if the person who is ordered is an unwilling subject (*Manus Ministra*).
3. The Person who participate in the act (*Mede pleger*). People can engage in a criminal offense in qualifying as a co-undertaking. There are at least two conditions that must be met, that is: have a collective will, and each perpetrator physically conduct themselves.
4. The Person who encourages others to do their actions (*uitloker*). The person who assists others is the same principle as the person who orders. In terms of the recommendation, the person who recommended to commit a criminal offense should

be a person who can be held liable. To promote it by using the means specified in article 55 (1), that is by giving or promising something, by abusing power or dignity, by force, threat or misappropriation, or by providing an opportunity.

Meanwhile, the provisions of Criminal Code in Articles 56 governing of who in the law can be qualified as a person who assists criminal acts. Doctrinally, assisting in committing criminal acts, is also qualified as a form of involvement in criminal acts. The provisions of the Criminal Code in Articles 56 shall complete: Convicted as a helper (Medeplichtige) something of a crime. First, who deliberately gave help at the time of the crime was done. The second are those who intentionally give an opportunity, a means or a description to commit a crime.

Based on the provisions of Criminal Code in Articles 55 and 56 above, it is generally a form of involvement of someone in a criminal offense at the age can be:

1. As a person who performs (*Pleger*).
2. As a person who is doing (*doen pleger*).
3. As a person who participates in (*Mede pleger*).
4. As the person who encourages others to conduct actions (*uitloker*).
5. As a person who deliberately assisted at the time of the crime, and;
6. As a person who deliberately gives the opportunity means or description to commit a crime.

By paying attention to the six things above, it is necessary to describe two critical matters. First, investigate the role and function of the notary in providing professional services, and the second is constructing the criminal qualification acts of falsification. Based on these two important things, there will be a form of a public notary in criminal acts of document falsification.

### **3.1.2. Notary Involvement in Criminal Acts of Falsification**

In carrying out its role and function, the notary has the authority as explicitly contained in the provisions of article 15 of Amendments to the Law concerning Notary Law, namely:

1. The Notary has the authority to make an authentic deed, agreements, and stipulation that is required to be expressed in the authentic deed, giving guarantee the date of the deed is made, storing deed, giving Grosse, copy, and deed quotation. All authority is not assigned to or excluded to any other officer/person stipulated by the Law.
2. In addition to the notary authority that has been outlined in paragraph (1), notary also has the following authority:
  - a. Confirm signatures and set the date of the underhand document by registering the document in a special book;
  - b. Record the under hand-document into the individual book;

- c. Make a copy of the under hand-document that contains the description contained in the document.
- d. Validate the suitability of copy with the original document;
- e. To give knowledge to the community about the making of the deed;
- f. Make a deed on the land or deed of the auction treatise.

Inevitably, in carrying out the role and function of the notary is not immune to the law. In practice, the notary is often involved in legal issues both as witnesses and as suspects.<sup>9</sup> As referred in article 15 paragraph (2) of Amendments to Notary Law, there is an opportunity for a notary to be involved in the falsification of a document. The involvement of a Public Notary in the falsification of a document may occur due to the notary's own mistake or the fault of the parties or one of the parties by giving incorrect information.<sup>10</sup>

The formulation of falsification of documents is regulated in article 263 of the criminal code which can provide an overview of the possibility of falsification of documents.

1. Whoever makes an incorrect or fake document that can cause any right, alliance or debt exemption, or that is provided as evidence of something, to use or to send others to use the document as if the content is true and not be denied, threatened, if such use can incur a loss, with imprisonment of six years long.
2. Threatened with the same criminal for people who deliberately use the document in the first paragraph, whose contents are not true or which are used as if accurate and not be denied, if the use of the document may incur losses

According to article 263 paragraph (1) and paragraph (2) of the Criminal Code, the crime elements of the criminal offense of the document are as follows:

1. Action, consisting of two forms of the deed, is to make a false and fake a document. According to R. Soesilo in the books of the Criminal Code explains that:
  - a. Making fake documents is a deed that makes the contents of the document be mistaken
  - b. Faking a document is to change the document in such a way that its contents become another original content. This action can be done in various ways by reducing, adding or changing something from the document.
2. An object of the document can cause a right, an alliance, a debt exemption, and provided evidence of something.

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<sup>9</sup> Habib Adjie, *Hukum Notaris Indonesia : Tafsir Tematik Terhadap Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris* (Bandung: PT. Refika Aditama, 2009).

<sup>10</sup> Abdul Jalal and Sri Endah Wahyuningsih, "Keterlibatan Pejabat Notaris Terhadap Perbuatan Melawan Hukum Dan Turut Serta Melakukan Tindak Kejahatan Dalam Pemalsuan Dokumen," *Jurnal Akta* 5, no. 1 (2018): 227–33, <https://doi.org/DOI: http://dx.doi.org/10.30659/akta.5.1.227%20-%20233>.

3. Its use may result in loss from the use of the document. The words "can" mean that there is no need for this loss, but it is quite likely that the loss is enough. It is considered "using," for example, submitting the document to another person who must apply further or send the document in the place where the document must be needed.
4. The purpose of the perpetrator is to tell others to use it as if the content is correct and not be denied. If it is linked to section 263 (2) of the Criminal Code, then the one convicted pursuant to this article is not only counterfeited but also deliberately use false documents. The person who uses it should know really that the document that he is using is false. If he does not know the falsehood, then he is free from the provisions of the law.

Referring to the provisions, if there is a notary unilaterally or in cooperation change the date of the document under the hand that will be declined, it can be declared involved in criminal acts of Falsification. Falsification is classified into white-collar crime groups because they relate to modifying documents to deceive others. Documents falsification cannot be separated to always be associated with the intent to commit fraud. Therefore, if a notary made a copy from the original document under the hand of a copy that contains the description as written and depicted in the document in question incorrectly, then the notary can also be declared involved in criminal acts of document falsification.

### **3.2. Notary Liability for Involvement in Criminal Acts of Counterfeiting Crimes**

The role and function of the public notary in making authentic deeds are so crucial in realizing the legal certainty<sup>11</sup>, order law, and protection of the law. According to notary Darusman, it is often said to be a position of trust.<sup>12</sup> Given its strategic role and function, ideally, there is the great hope of society, to carry out the role and function of the notary can be spared from various deeds. The notary can not escape the possibility of involvement of various misdeeds, such as the criminal act of falsification of documents. The involvement of a notary in the criminal offense as stipulated in The Criminal Code in Articles 263 may be in various forms of involvement as stipulated in The Criminal Code in Articles 55 (1) as already stated above.

Referring to the provisions of The Criminal Code in Article The Criminal Code in Articles 263, liability can be requested from the notary for his involvement in the criminal act either as the person who commits, conducts, participates and conducts,

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<sup>11</sup> Anang Ade Irawan, A. Rachmad Budiono, and Herlin Wijayanti, "Pertanggungjawaban Ahli Waris Notaris Sebagai Pejabat Umum Atas Akta Notaris Yang Menimbulkan Kerugian Para Pihak," *Lentera Hukum* 5, no. 2 (July 2018): 322, <https://doi.org/10.19184/ejlh.v5i2.6992>.

<sup>12</sup> Edwar Edwar, Faisal A.Rani, and Dahlan Ali, "Kedudukan Notaris Sebagai Pejabat Umum Ditinjau Dari Konsep Equality Before The Law," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 8, no. 2 (July 2019): 207, <https://doi.org/10.24843/JMHU.2019.v08.i02.p05>.

encourages others to do, provide assistance in the event of a criminal offense, and give the opportunity, means or description to commit crimes. A notary person can be held accountable for his involvement in the criminal act of falsification. When examined carefully, in the Notary Law, there is not a single article that protects the notary if involved in criminal matters.<sup>13</sup> Any action that has been identified as a criminal offense is automatically then the person can be subject to criminal liability. There are three elements to eliminate the existence of criminal liability, namely: 1) They can prove that they do not do the deeds prohibited by the law; 2) They proved that they had no intention that could be blamed before the law, or 3) they can perform deeds regardless of the forbidden deeds and the intent to be inscribed. Thus, if in the role of roles and duties of a notarial proved to be involved in a criminal Act by qualifying the provisions stipulated in article 55 (1) of KUHP Jo provision of article 263 Criminal Code concerning criminal acts of document falsification and notaries cannot prove otherwise, the notary will be asked for his Accountability under applicable provisions. This means there are no exceptions to the possibility of notary's liability if they are involved in criminal acts, including criminal acts of document falsification.

#### 4. CONCLUSION

Legally, there are many types of notary involvement in the falsification of documents. Various types of notary involvement in the falsification of a document can be referred to among others as a person who commits, orders, participates in committing, encourages others to engage, provides assistance in the event of a crime, and gives opportunity, means or information to commit a crime. The various forms of notary involvement in the actual falsification of a document are not much different from the general public. In general, the involvement of people in general in crime has been regulated in the provisions of Article 55 (1) of the Criminal Code. Likewise, a Public Notary is also open to the possibility of being involved in the criminal act of falsifying documents in the form of involvement as regulated in the provisions of Article 55 (1) of the Criminal Code. Secondly, by taking into account the possibility of his involvement in the criminal act of falsifying documents, the notary may be held liable for criminal liability because he participates in the criminal act of falsifying documents. That is, from the perspective of criminal law, notaries can also be held liable for criminal offenses if involved in criminal acts.

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<sup>13</sup> Andi Muhammad Rahmat, "Perlindungan Hukum Terhadap Notaris Yang Beritikad Baik Membuat Akta Jual Beli Saham Dalam Kasus Tindak Pidana Pencucian Uang," *Lentera Hukum* 6, no. 1 (April 2019): 95, <https://doi.org/10.19184/ejhl.v6i1.9669>.

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