

## Notary Staff Liability for Forgery of the Signature of the Deed of Power of Attorney to Sell

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### Abstract

A notary staff member was found to have participated in the criminal act of forgery of signatures together with the notary public on 4 Deeds of Power of Attorney to Sell. As a result, the owner of the Certificate of Ownership suffered losses. The problem in the decision focuses on the judge's decision to sentence only the notary public to a prison sentence of 1 year and 6 months and has become legally binding while the notary staff member is free from all legal charges. In fact, both the notary public and his staff were involved in the criminal act of forgery of authentic deeds. The difference in responsibility between the notary public and his staff is something that needs to be studied in relation to the implementation of the law regarding the crime of forgery of authentic deeds because the notary staff has fulfilled the requirements to be involved in the crime of forgery of deeds as regulated in the Criminal Code. Therefore, the purpose of this article is to discuss the actions of the notary staff member which constitutes a violation of the law by participating in the crime of forgery of authentic deeds. This research was conducted using normative legal research conducted through a review of literature sources. The approach applied to discuss the problems in this research is through a case approach. The method of collecting materials was carried out through library research. Data was then obtained from primary and secondary legal materials. The obtained materials were then analyzed using a qualitative analysis approach.

### Article History

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## Introduction

A notary is a public official who has the authority to make authentic deeds regarding all legal acts regulated by law, the contents of which contain the wishes of the interested parties to be expressed in a deed (Adjie, 2020). A deed made by a notary is considered authentic because it has full evidentiary power, so all parties involved must accept its truth. (Sri Devi & Westra, 2021). The authority, duties and responsibilities of a notary are regulated in Law Number 30 of 2004 concerning the Position of Notary and Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (hereinafter referred to as UUJN) (Indriat Pratiwi Wiranita Wiratmodja & Romlan, 2022).

Considering the large responsibility of a notary in carrying out his duties and authorities, the notary will be assisted by notary staff. (Simanjuntak & Putra, 2022). Notaries are required to have a minimum of two staff members as stipulated in Article 16 letter m of the UUJN, which is related to the preparation of deeds and witnessing the signing of deeds by the parties. The existence of a working relationship between notaries and their staff does not rule out the possibility and opens up opportunities for them to be involved in the crime of deed forgery, which means fictitiousizing the contents of the deed or forging signatures. Not a few notaries and their staff carry out client requests to create fictitious deeds that appear to be true for a particular purpose. Therefore, if a notary or their staff is proven to

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have committed the crime of deed forgery and caused losses, then they must be legally responsible for violating the provisions of Article 55 in conjunction with Article 264 of the Criminal Code. This is called legal accountability that is important to enforce against those who are proven to have committed unlawful acts.(Suryanto, 2024).

The unlawful acts committed by a notary and his staff were found in Decision Number 773/Pid.B/2021/PN SMG Jo Decision Number 153/Pid/2022/PT SMG Jo Decision Number 1209 K/Pid/2022. The notary and his staff were found guilty of committing the crime of forgery of signatures in an authentic deed. The problem in the decision focuses on the judge's decision to sentence only the notary to a prison sentence of 1 year and 6 months, which has become legally binding, while the notary's staff were acquitted of all legal charges. This is despite the fact that both the notary and his staff were involved in the crime of forgery of an authentic deed. The difference in accountability between the notary and his staff is something that needs to be examined in relation to the implementation of the law regarding the crime of forgery of an authentic deed. Therefore, the purpose of this article is to discuss the actions of notary staff, which constitute a violation of the law by participating in the crime of forgery of an authentic deed. The chronology of the decision can be explained as follows (Raihan & Hertanto, 2024).

A client named PA came to the Notary MH office to request a Deed of Power of Attorney to Sell 4 SHMs in the name of S, without thinking twice the notary then asked his staff named F to make the requested deeds. However, at the time of signing the deed, the power of attorney, S, was found to be absent and his signature was proven to be forged. As a result of this incident, PA was able to carry out legal actions, namely selling to a third party. MH as a notary and F as his staff actually knew that the owner of the 4 SHMs, S, had never been present to the notary's office when the deeds were made, but he still made and signed the four deeds and F as a staff member as well as a witness also confirmed the contents of the deed of power of attorney to sell and S's signature.

The Criminalistic Laboratory Examination Report at the Semarang Branch Forensic Laboratory revealed an important fact, namely the signature listed in the name of S in the Deed of Power of Attorney to Sell turned out to be a different signature from the original signature of the person concerned, in other words it was forged. As a result of the actions of the notary and his staff who made the Deed of Power of Attorney to Sell without the approval and forgery of the signature of the party granting the power of attorney, it caused a loss of Rp. 1,750,000,000 which was the result of the sale of 2 (two) SHMs carried out by PA. As a result, S also lost the right of ownership and control of the other 2 (two) SHMs. This violation is a forgery of documents, because the object that was forged is included in the category of authentic deeds, so this act falls into the category of violation of Article 264 paragraph (1) of the Criminal Code which stipulates a maximum prison sentence of 8 (eight) years for the perpetrator of forgery of authentic deeds in conjunction with Article 55 paragraph (1) of the Criminal Code.

Based on the two articles in the Criminal Code, the Judge decided to sentence notary MH to 1 year and 6 months in prison, while F, as the notary's staff, was acquitted of all legal charges. However, the chronology clearly shows that the notary's staff participated in the crime together with the notary concerned. Therefore, this study focuses on the difference in the implementation of law enforcement for the crime of forgery of deeds committed by notaries and their staff in Decision Number 773/Pid.B/2021/PN SMG Jo Decision Number 153/Pid/2022/PT SMG Jo Decision Number 1209 K/Pid/2022.

## Methods

Normative legal research is a process for finding legal rules, legal principles and legal doctrines to answer legal issues, thereby producing new arguments to solve the problems faced (Marzuki, 2010). The approach applied to address the problems in this research is a case study. This approach involves examining cases related to the issue at hand. Data collection methods include library research. Data analysis materials are then obtained from primary and secondary legal materials. The collected data are then analyzed using a qualitative analysis approach. Qualitative research is descriptive in nature. The collected data is presented in the form of words and images. Analysis in qualitative research tends to be inductive (Romlah, 2021).

## Discussion

A notary is a public official appointed by an authorized official and has the rights and obligations as a representative of the state in civil matters. (Asufie & Impron, 2021). The position of notary is basically a public official appointed by the general authority to serve the needs of the community in creating authentic evidence that can provide certainty in various civil legal relationships. (Mutriadi, 2021). Based on Article 16 letter m of the UUJN, a notary is assisted by at least two staff members who are required to be witnesses in a deed. A notary must select staff with good performance to provide maximum assistance (Perdana et al., 2023). However, in Decision Number 773/Pid.B/2021/PN SMG Jo Decision Number 153/Pid/2022/PT SMG Jo Decision Number 1209 K/Pid/2022, it was proven that the notary and his staff jointly committed the crime of falsifying signatures on 4 (four) Deeds of Power of Attorney to Sell, so that the existence of these deeds caused losses to the grantor of the power of attorney. Because of these facts, there must be legal accountability by the notary and her staff.

Based on the 3 (three) decisions, it can be understood that the notary was sentenced to 1 year and 6 months in prison as a form of legal responsibility, while the notary staff was freed from all legal charges. In the chronology, it can be analyzed that they were jointly involved in the forgery of signatures. The notary as the perpetrator and the notary staff participated in the crime by preparing all the necessary documents, making a deed of power of attorney to sell, and also signing the deed as if the deed were true. During the signing process by the notary, notary staff, and the party receiving the power of attorney, it was discovered that the party granting the power of attorney was not present at the notary's office, so the signature was forged to make it appear as if the deed was valid and could be used by the PA as the party receiving the power of attorney to carry out legal acts using the deed.

If someone commits a crime, they must accept criminal responsibility, provided that their actions fulfill the elements of the crime as defined in the law. From the perspective of a person's capacity to be responsible, only those who possess the capacity to be responsible can be held accountable for their actions (Wahyuni, 2017). Criminal liability means giving punishment to the perpetrator for committing an unlawful act (Fadlian, 2020). Therefore, all parties involved in the forgery of the deed should be held accountable because they are competent to carry out legal acts and have the ability to be responsible.

Referring to Decision Number 773/Pid.B/2021/PN SMG that notary staff F is notary staff MH who on December 28, 2013 was proven to have prepared documents and typed 4 Deeds of Power of Attorney to Sell Number 53, 54, 55 and 58 for 4 SHM Number 5435, SHM Number 5436, SHM Number 5437 and SHM Number 5438 in the name of S to PA. Furthermore, the deeds were signed by the notary, PA as the party receiving the power of attorney, and the notary staff as a witness who confirmed the contents of the deed of power of attorney to sell. Meanwhile, the signature of the party granting the power of attorney alias S was forged which was not explained in the decision by who committed the forgery. In the chronology, notary staff F knew that on the day and date as stated in the deed, S was never present to sign the 4 (four) deeds of power of attorney to sell. However, during the signing, the notary staff, acting as witnesses, did not take any preventative measures to prevent the crime of signature forgery. Therefore, the act constitutes an act of complicity in the crime of deed forgery.

The act of participation or inclusion in criminal law occurs when a crime is committed together by several people, also known as *deelneming*. Participation (*deelneming*) includes all forms of participation or involvement of a person, both physically and psychologically, by carrying out certain actions that result in a crime (Baehaqi, 2022). This occurs because the pattern of relationships in participating in committing a crime has become increasingly complex in practice, but is not followed by the development of adequate doctrinal teachings in court decisions so that they are less able to explain the position of the perpetrators in participating in committing a crime (Santriana & Muthahir, 2021). Thus, in Article 55 paragraphs 1 and 2 of the Criminal Code concerning participation in criminal acts, several forms of participation have been distinguished. The problem of *deelneming* is basically to determine the extent of responsibility for each person who commits a crime. Thus, it must also be proven that each person's relationship to the crime is, such as several people who together commit a crime, one person who has the intention and plans a crime, but the crime is not carried out alone, but uses other people to carry it out, or one person who commits a crime, while other people help carry out the crime to make it run more smoothly (Pratiwi, 2022).

In general, participation can be interpreted as a criminal act committed by more than one person. Therefore, determining the legal status of the perpetrator in a criminal act is very important. In general, the perpetrator in the sense of *plegen* is distinguished from the perpetrator in the formulation of Article 55 paragraph (1). Therefore, the boundaries between the perpetrator (*dader*) in the form of those who do (*plegen*), those who order to do (*doenplegen*), those who participate in doing (*mededader*) and those who encourage others to do (*uitlokken*) must be clearly outlined. Each form of participation (*deelneming*) can still be held criminally responsible even if it does not fulfill all the elements of a criminal act (Hariyanto et al., 2021). The crime of assistance is stated in Article 56 of the Criminal Code and is divided into 2 parts, namely those who provide assistance at the time the crime is committed and those who provide assistance before the crime is committed by providing opportunities, means and information (Hariyanto, 2020).

The actions carried out by F, the notary staff, included preparing documents, making the four deeds of power of attorney for sale, and co-signing the deeds to make them appear valid, even though S, as the principal, was never present at the notary's office. This constitutes the crime of complicity (*mededader*) because both the notary, the notary staff, and the party receiving the power of attorney knew that S's signature was forged so that PA, as the client and the party receiving the power of attorney, could carry out certain legal actions using the deeds of power of attorney for sale and cause losses to S, as the original owner of the SHM. Based on these actions, F's actions have fulfilled the requirements for the crime of complicity, namely (a) participating in the act; (b) making a false document; (c) causing losses; (d) having the same intention and an element of intent; (e) there is cooperation; and (f) there is a real act by each perpetrator. *Memorie Van Toelichting* defines intent as a desire. There must be three elements of a deliberate criminal act, namely a prohibited act, the consequences of which are the root cause of the prohibition, and the fact that the act violates the law (Nasution et al., 2022).

The crime of forgery of documents and signatures is one of the most difficult crimes to uncover and prove, because handwriting and signatures are synonymous with a person's personality. Therefore, the process of proving this requires the use of supporting science (forensic science). Forensic science is the science of examining and collecting physical evidence found at the scene of a crime and then presenting it in court (Novita Anggriani Lahabu et al., 2023). In proving that S's signature was indeed forged by referring to the Criminalistic Laboratory Examination Report No. Lab: 1403/DTF/2019 dated June 24, 2019 which was made and signed by the Examiner at the Semarang Branch Forensic Laboratory. So it is true that S's signature as the principal was forged so that PA as the power of attorney could sell the SHM whose deed was made by notary MH and F as his staff. The form of forgery of letters is regulated in Chapter XII Book II Article 263 of the Criminal Code, especially forgery of authentic deeds is regulated in Article 264 of the Criminal Code, which includes forgery of signatures and is included in the *Dolce Crime* or a crime that contains elements of intent. Intentional means agreeing and knowing what is being done for a certain purpose.

The criminal liability for forgery under Article 263 of the Criminal Code reads as follows.

Anyone who creates a forged document or alters a document that could establish a right, obligation, or debt relief, or that is intended as evidence of a matter, with the intent to use or cause another person to use such document as if its contents were true and not forged, shall be punished, if such use could cause harm, for forgery of a document, with imprisonment for a maximum of 6 years.

Anyone who intentionally uses a forged document or a document that has been forged as if it were genuine, if the use of the document can cause loss, shall be punished with the same penalty.

In addition, criminal forgery is also described in Article 264 of the Criminal Code.

Forgery of documents is punishable by imprisonment for a maximum of 8 years, if committed against:

Authentic deeds

Debt letters or debt certificates from a country or part thereof or from a public institution

Promissory notes or debt certificates or promissory note certificates or debt certificates from

associations, foundations, corporations, or companies

Coupon stubs, dividend or interest certificates from any of the documents mentioned in 2 and 3, or certificates issued as substitutes for such documents

Credit notes or commercial documents intended for circulation

Any person who knowingly uses the documents referred to in paragraph 1, whose contents are not genuine or have been forged to appear genuine and not forged, shall be punished with the same penalty if the use of such documents may cause loss.

Returning to the case raised in this topic, notary F's staff carried out an order to prepare four deeds of power of attorney for sale by notary MH based on the request of client PA as the authorized representative. While this was taking place, the notary knew that the authorized representative was never present at the office until the signing of the deeds. However, the notary delegated the power of attorney to him, even to the point of witnessing the signing. This indicates that the notary was consciously and actively involved in preparing the deeds of power of attorney for sale and witnessing the signing process, so he cannot simply rely on the pretext of "only carrying out orders." Therefore, delegation of responsibility has limits, especially when the order or instruction deviates from the law or leads to a criminal offense. The notary staff still has the moral and legal independence to refuse an order that is contrary to the law, and if he persists in doing so, he can be held personally criminally responsible for the act of participating in the crime of falsifying signatures on authentic deeds.

The involvement of notary staff in the forgery of deeds according to the author fulfills the elements of Article 55 paragraph 1 of the Criminal Code that the notary staff participated in the act of forgery of deeds by preparing 4 deeds of power of attorney to sell, intentionally signing the deeds as witnesses confirming the contents of the deeds even though they knew at that time that the grantor of the power of attorney was not present to sign, did not take precautions when the forgery of signatures occurred so that it clearly indicates that there was a common intention between the notary, notary staff and their client. The role of participation in the Criminal Code is also defined as the active and conscious involvement of two or more parties in committing the same crime. This means that each perpetrator has the same intention (*mens rea*) and carries out part of the act (*actus reus*) which leads to results prohibited by criminal law. The notary staff actively participated in the planning and implementation of the forgery of the deeds, so they are no longer only considered as administrative assistants to prepare the necessary documents, but as part of the criminal act of forgery of deeds. So in this case, it is not only about who signed the deed but also who prepared the document and consciously collaborated in creating the fake deed.

## Conclusion

Based on the above analysis, F, as a notary staff member, fulfills the elements of participation in the crime of deed forgery by actively participating in the act to achieve the client's goals and indicating a deliberate element or shared intention, resulting in losses for S, the principal in the deed he drafted. Therefore, in Decision Number 773/Pid.B/2021/PN SMG, the notary staff member can be held criminally liable for imprisonment of 1 year and 4 months. However, in Decision Number 153/Pid/2022/PT SMG in conjunction with Decision Number 1209 K/Pid/2022, the notary staff member is acquitted of all legal actions. Therefore, this decision does not implement the legal basis of Articles 263 and 264 in conjunction with Article 55 of the Criminal Code concerning the crime of participation in the forgery of authentic deeds.

A notary staff in carrying out the duties assigned by the notary should always use the principle of caution so that every action or decision must be careful, precise, and thorough to prevent any risks or negative impacts that can harm themselves and have the courage to refuse orders if the delegated task is known to be contrary to applicable law. Thus, the principle of caution is not just an ethic carried out while working but as an important foundation for notary staff in carrying out their duties to provide the best service and protect the interests of all parties involved.



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