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## Notary Criminal Responsibility In Terms of Notary Workers Doing Criminal Following Letters

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### ABSTRACT

Writing this journal aims to analyze and examine how accountability notary in the case of workers committed the crime of forgery. In Article 1, paragraph 1 of Law notary mention that Notary Public Officials authorized to make authentic act and have more authority as referred to this Act or under another Act. Notary otherwise authorized by the attribution of the State through Law Notary. That is, authority attached to office of notary. Carrying out his duties as well as the Notary Public in general assisted by Notary workers. In terms of preparing everything what is needed in the manufacture of an authentic deed. One of the documents to be prepared by notary public workers is letter. Notary workers only be assistance in carrying out his job. Responsibility for authentic act remains the responsibility of notary. If the workers notary committed the crime of forgery that resulted his disability certificate is authentic, then it possible the notary must responsible. Forgery that can occur because the fake letter, fake powers and authority of the contents of the letter. Forms Criminal Liability Notary notary worker if proof acriminal act of forgery is acriminal participation in the crime of forgery contained in Article 55 Juncto Article 263 paragraph 1 and (2) Penal Code or Article 264 or Article 266 of the Criminal Code, and Article 56 paragraph 1 and Article 263 paragraph 1,2 Penal Code or Article 264 or 266 of the Criminal Code. Because Notary considered negligent in carrying out his duties as well.

**Key words:** criminal liability, notaries, notary public workers, forgery letter

### 1. INTRODUCTION

The notary public official authorized to make an authentic deed can be held liable for his actions in relation to his work in making the deed. The scope of the responsibility of the notary includes the material truth of the deed he made. Notaries who are public officials, based on the law are appointed by the government, and the government as a state organ appoints a notary not only for the benefit of the notary, but also for the benefit of the wider community. The services provided by a notary to the public are closely related to the issue of trust (trust) of a large notary, therefore it can be said that giving trust to a notary means that the notary inevitably bears responsibility for it. This responsibility can be either legal or moral.

Notary is a combination of theory and practice in an ideal level between theory and practice in line or sometimes not in line with each other. It means that not always the theory supports practice, a notary must be built not only taken and developed by or from existing legal science, but the notary must can develop their own theories to support the implementation of the duties of a notary public office and the experience available during carrying out the office of a notary public. Notaries in carrying out services in the field of services cannot work alone. A Notary

official generally has at least 2 (two) workers. Because usually in making a deed, a notary requires 2 (two) witnesses mentioned at the end of the deed.

The involvement of the notary office workers includes: making the deed technically means preparing the deeds that have been drafted by the Notary, then tidying up the deed files, communicating with parties or clients, or as in the provisions of article 16 of [Law Number 2 of 2014 concerning position the notary](#) in helping [the notary](#) to do his work is as follows:

Make a list of deeds (reportorium).

Making the bundle of minuta deed becomes one bundle.

Making a book listing waarmeding, list of legalization, and a list of other letters required by law.

Make a protest list book.

Noting in the botherorium the date of sending a list of wills every month.

Making book lists for clappers, legalization and waarmeding.

Not infrequently usually in carrying out his work, to speed up administration and administration, Notary workers do ways that violate the law, for example, falsification of letters or documents, both in terms of content and others such as falsification of signatures, and so forth. This does not rule out the possibility of being able to drag Notary as an employer, in an issue. Therefore in the formulation of the problem of this journal is how the criminal liability of a Notary in the case of a Notary worker committing a falsification of a letter.

## 2. DISCUSSION

In this journal the author will examine how the responsibility of a Notary Public if a Notary worker commits a falsification of a letter. In sub the first discussion, the researcher will divide into three parts of the discussion namely the first is forgery related to the contents of the letter, the second is related to the authority and the content of the authority and the third is related to the form of the letter.

### **Notary Criminal Liability in the case of a Notary Worker Committing Falsification of Letters**

The general public only understands that the notary is what makes an authentic deed. They do not understand that the information contained in the authentic deed is their own information as the parties in accordance with what they want in making an agreement. The notary as the official in charge of making the deed who understands the law of the agreement, when the reading of the deed must be done, it is best to explain the position or capacity of each with all the consequences, especially concerning rights and obligations and the consequences that arise in the future, without giving rise to the impression that if the Notary has a particular interest, because it is not uncommon now to make a deed before a Notary, there are certain parties who direct to make a deed before a

Notary that has been prepared, so that a client feels uncertain about his notion that the prepared Notary might defend the interests of certain parties by abusing the situation in making the deed and even more dangerous if the notary is misused by his client.

Notary is not a person who makes a deed or a person who has a job to make a deed, but a notary in carrying out his position is based on or equipped with a variety of legal knowledge and other sciences that must be mastered in an integrated manner by a notary and the deed made before or by a notary has a position as evidence, thus the notary must have good intellectual capital in carrying out the duties of his position. An examination of a notary is inadequate if carried out by those who have not yet studied the world of notaries, meaning that those who will examine the notary public must be able to prove the wrongdoing of the notary properly according to the Law of Notary Position and not to use power and interests for certain parties.

Falsification of the contents of the letter that often occurs by notary workers, for example in the case of signing of letters that should have been signed by a more authorized person. It is also possible for a notary worker to make a fake letter against a letter that should have been made by another agency authorized for that. Where the letter is as a complementary condition in making an authentic deed. In the decision Number 535 / Pid.B / 2013 / PN.Pdg, the falsification of the letter made by a Notary worker is the falsification of the power of attorney. In the power of attorney made by the defendant who is also a notary worker, there is a falsification of the signature by the notary worker.

Making fake letters can also occur if there is an incorrect signature. This can happen in terms of for example making by imitating the signature of someone who has no one, such as someone who has died. It can also be interpreted that an incorrect signature is by imitating the signatures of others whether they agree or not.<sup>1</sup> In the book of falsified crime a letter written by Adami Chazawi stated that there was an Arrest HR (14-4-1913) stating that "whoever under an article affixes the signature of another person even if at the instruction and agreement of the person has falsified the writing".<sup>2</sup> Notary is not a person who makes a deed or a person who has a job to make a deed, but a notary in carrying out his position is based on or equipped with a variety of legal knowledge and other sciences that must be mastered in an integrated manner by a notary and the deed made before or by a notary has a position as evidence, thus the notary must have good intellectual capital in carrying out the duties of his position. An examination of a notary is inadequate if carried out by those who have not yet studied the world of notaries, meaning that those who will examine the notary must be able to prove the wrongdoing of the notary properly

<sup>11</sup>

<sup>1</sup> Adami Chazawi, *Kejahatan Mengenai Pemalsuan*, (Jakarta : RajaGrafindo Persada, 2005), hlm. 100.

<sup>2</sup> *Ibid.*, hlm. 101.



according to the Law of the Notary Position and not only use power and interests for certain parties.

As the author has explained in the literature review chapter that the nature of the authority given by a notary to employees is assisting, so the notary must be thorough and always check the letters which later as the basis for making an authentic deed. So the notary worker only helps to complete the documents needed in making the deed to be made. For example, a Deed of Purchase will be made for a land and building object in the area of a notary public office. So what must be prepared in relation to the object by the notary worker is the original object's land certificate, the land and building tax of the object as well as proof of income tax payment for the transfer of land and or building (PPH) or what is commonly referred to as seller's tax and rights acquisition fees on land and buildings or what is commonly referred to as BPHTB.

Falsification of the contents of the letter that often occurs by notary workers, for example in the case of signing of letters that should have been signed by a more authorized person. It is also possible for a notary worker to make a fake letter against a letter that should have been made by another agency authorized for that. Where the letter is as a complementary condition in making an authentic deed.

In general explanation of <sup>10</sup> Law Number 30 Year 2004 in conjunction with Law Number 2 Year 2014 concerning the Position of Notary, it is stated that authentic Deed contains essentially formal truth <sup>7</sup> in accordance with what the parties have notified the notary. However, the Notary has the obligation to include that what is contained in the Notarial Deed is truly understood and in accordance with the wishes of the parties, namely by reading it so that it becomes clear the contents of the Notary Deed.<sup>3</sup> This means that even though the notary's responsibility is limited to the formal responsibility for the deed he made, the notary in making an authentic deed must be careful in expressing the wishes of the parties into the contents of the deed he made.

In the case of a notary worker committing the falsification of a letter against a deed to be made by a notary, the notary must be careful and pay close attention to all letters used as material in making authentic deeds. Because if negligent and falsified criminal acts are proven by a notary worker, it is possible for the notary to be responsible for what is done by the workers.

### Counterfeiting Related to Authorization and Content of Authority

There is almost no notary in carrying out his duties and positions, he works alone. In general, notaries are assisted by notary workers. Both in terms of internal office and external office. In the case of an internal office, the intention is that the notary worker assists the notary in

<sup>13</sup> Penjelasan Umum Undang-undang Nomor 30 Tahun 2004 *juncto* Undang Undang Nomor 2 Tahun 2014 tentang Jabatan Notaris.

administering the notarial deeds, preparing the deed documents to be made, recording the deed in the deed register book and so forth. Whereas in the external office, for example, arrangements are related to other agencies, for example the <sup>3</sup> Office of the National Land Agency (BPN), the Tax Office, the Regional Revenue Service (Dispenda), the Licensing Office, and so forth.

The notary takes responsibility for every work given by the client to him. Every job will always be accompanied by things that are its responsibility. The responsibility according to the Indonesian dictionary is human awareness of their intentional or unintentional behavior or actions.<sup>4</sup> Responsibility also means acting as an expression of awareness of its obligations. Responsibility can also be interpreted by acting appropriately without needing to be warned. Whereas responsibility is an independent attitude and sensitivity towards others. It can also be interpreted that responsibility is an awareness that exists in a person that every action will affect other people or on himself.

Hans Kelsen divides responsibility into 4 (four) types, that is:<sup>5</sup>

Accountability of an individual, that is, an individual is responsible for the violations he committed himself.

Collective responsibility means that an individual is responsible for an offense committed by another person.

Liability is based on mistakes which means that an individual is responsible for an offense that was committed intentionally and is expected with the aim of causing harm.

Absolute liability which means that an individual is responsible for violations he committed because of accidental and unexpected.

This concept of liability if associated with the position of a Notary, then the Notary can be held accountable for his mistakes and omissions in carrying out his duties and positions. The notary is not responsible for the contents of the deed made before him, but the notary is only responsible for the formal form of the authentic deed as stipulated by the law. Unless in making the authentic deed, there is an element of falsification of the letter in it which is done by a notary or notary worker.

Regarding the authority and content of the authority, as the researcher has explained, it is not certain that the person facing the notary office who is a legal subject has the authority to take legal action in the deed that will be made by the notary. Likewise with regard to taking care of and addressing the officials of the relevant agencies, not necessarily also the notary worker authorized

<sup>16</sup>

<sup>4</sup> Pusat Bahasa Departemen Pendidikan Nasional Republik Indonesia. Kamus Besar Bahasa Indonesia.

<sup>5</sup> Hans Kelsen, Terjemahan Raisul Mutaqien, *Teori Hukum Murni*, (Bandung: Nuansa & Nusamedia, 2006), hlm. 140.



to appear. What often happens in the case of falsification of the letter of authority and the contents of the authority is the falsification of the power of attorney.

Notary workers who make fake power of attorney to obtain authority to face officials in connection with helping to arrange in related agencies, is one form of counterfeiting of authority and contents of authority. Also notary workers can make fake letters that result in someone obtaining the authority to appear before the competent authority.

### Forms of Notary Criminal Liability in the Case of a Notary Worker Committing a Letter Falsification Crime

Criminal responsibility, in foreign terms, is also called criminal responsibility which leads to the criminal punishment of the offender with a view to determining whether a suspect or defendant is responsible for a criminal offense or not. Criminal acts refer to prohibited acts. The basis for a criminal act is the principle of legality, the principle that determines that an action is prohibited and is threatened by criminal whoever commits it.

Accountability contains the principle of error (the principle of culpability), which is based on a monodualistic balance that the principle of error based on the value of justice must be aligned in pairs with the principle of legality based on the value of certainty.

Although the concept is based on the principle that criminal liability is based on mistakes, in some cases it does not rule out the possibility of vicarious liability and strict liability. The problem of error (error) both error about the situation (error facti) and error regarding the law in accordance with the concept of forgiving reasons so that the perpetrators are not convicted unless the error is worthy of blame.<sup>6</sup> In the case of the Notary as the employer has the responsibility to the notary worker who helped him. In carrying out their duties and positions, the Notary is always assisted by his workers, both in preparing the documents relating to the deed that will be made by the Notary. That is, the Notary is fully responsible for what the notary worker does.

The notary criminal liability if the notary worker is proven to have committed the crime of falsification of the letter is a notary public can be entangled in the criminal act. Because notaries are supposed to understand and know what the notary worker does. If the notary does not know what the employee is doing, it can be said that the notary as the employer has committed negligence (culpa) in carrying out their duties and positions.

Negligence (culpa) lies between intentional and accidental, however culpa is considered lighter than intentionally, therefore culik offense, culpa is an apparent offense (quasideliet) so that criminal deduction is held. Culik offense contains two kinds, namely negligence offense that

<sup>9</sup>  
<sup>6</sup> Nawawi Arief Barda. *Masalah Penegakan Hukum dan Kebijakan Penanggulangan Kejahatan*. (Bandung: Citra Aditya Bakti, 2001), hlm. 23.

causes an effect and which does not cause an effect, but which is threatened with crime is the act of carelessness itself, the difference between the two is very easy to understand namely negligence that results from the occurrence of that effect then creates offense negligence, for those who do not need to cause consequences with negligence itself has been threatened with crime.<sup>7</sup> The scope of the responsibility of the notary includes the material truth of the deed he made. The notary is not responsible for the invalidity of the contents of the deed made before him based on the statements of the parties. The notary is responsible for the formal form of the authentic deed as required by the law.

However, the Notary may not be negligent and must be careful in pouring all formal evidence into the deed. The notary, with his legal knowledge and intellect as an official, must be clever in analyzing logically and critically on the letter or formal evidence submitted to the Notary by the parties. Especially in preparing the Notary agreement file assisted by the workers, who are scientifically and intellectually under the Notary, the Notary as the employer must be careful and careful of what is done by the workers.

In the example of <sup>6</sup> decision number 535 / Pid.B / 2013 / PN.Pdg. The power of attorney forged by his notary worker, is a power of attorney containing the certificate and its retrieval with the Transfer of Right Registration process for a parcel of land. The next element is to intend to use the letter as if it were authentic and not forged. This can happen if after the falsification of the letter, the letter is used to deceive others about the truth of the letter. For example in <sup>6</sup> decision number 535 / Pid.B / 2013 / PN.Pdg. The power of attorney is used for the transfer of land rights in the land office, so that where the letter is used, it is as if the signature of the notary worker in accordance with the truth is proven legally and convincingly.

The last element is causing harm. the losses referred to in this element are not only material losses, but also moral losses in the form of losses in the field of society as well as losses of decency, honor and so forth. While the loss does not need to be really there, it is enough if only then there is a possibility that there will be a loss.

The notary liability aspect arises because of negligence (culpa) which results in an error (schuld) made by a notary worker in carrying out a position assignment and the error causes harm to others who request the services of a Notary (Client) service. So that the act against the law (wederrechtelijk) for the negligence of the notary can be held accountable <sup>20</sup> from the point of view of civil, administrative and from the point of view of criminal law even though the Law does not regulate criminal sanctions.

The falsification of a letter which is often done by a notary worker and is often disputed by the parties or other parties as a party participating in committing or assisting in committing a

<sup>7</sup> Ibid, hlm. 48.



criminal offense, namely making or giving false information into a notarial deed. According to Habib Adjie, the qualification is related to aspects such as:<sup>8</sup>

Certainty of day, date and time

The parties facing the notary public

Signature of the parties

The copy of the deed does not match the minutes of the deed

A copy of the deed exists without making a deed of minutes

Minutes of deed are not signed in full, but a copy of the deed is issued.

Notary workers often falsify these aspects, and notaries generally consider this to be an ordinary administrative violation. However, if investigated more deeply, what is done by a notary worker can be qualified to be a criminal offense. According to Habib Adjie, in criminal cases often Notaries are ensnared by the articles in the Criminal Code as follows:<sup>9</sup>

Making fake / forged letters and using fake / forged letters (<sup>4</sup>Article 263 paragraph (1) and (2) of the Criminal Code).

Falsifying an authentic deed (<sup>8</sup>Article 264 of the Criminal Code)

Asking to include false information in an authentic deed (Article 266 of the Criminal Code).

Conduct, order to do, participate in doing (<sup>4</sup>Article 55 Jo. Article 263 paragraph (1) and (2) of the Criminal Code or Article 264 or Article 266 of the Criminal Code).

Help make fake / or falsified letters and use fake / falsified letters (Article 56 paragraphs (1) and (2) Jo. Article 263 paragraphs (1) and (2) of the Criminal Code or Article 264 or Article 266 of the Criminal Code).

If a notary worker commits the falsification of a letter, the notary can <sup>4</sup>be charged under Article 55 Jo. Article 263 paragraph (1) and (2) of the Criminal Code or Article 264 or Article 266 of the Criminal Code, and Article 56 paragraphs (1) and (2) Jo. Article 263 paragraph (1) and (2) of the Criminal Code or Article 264 or Article 266 <sup>14</sup>of the Criminal Code.

Article 55 and article 56 number (1) and number (2) of the Criminal Code which formulates the inclusion in a criminal offense can be applied to a notary public if a notary worker commits a criminal offense. Inclusion in a crime exists if in one crime several or more people are involved.

The relationship:<sup>10</sup>

Some people commit come together.

<sup>15</sup>  
<sup>8</sup> Habib Adjie, Buku I, *op.cit.*, hlm. 48.

<sup>9</sup> Habib Adjie, Buku I, *op.cit.*, hlm. 67.

<sup>10</sup> Didik Endro P, *Hukum Pidana*, (Surabaya: Khusus untuk mahasiswa Fakultas Hukum Universitas Airlangga, 2007), hlm. 55.

Maybe only one person has a "will" and "plans" a crime, but the crime is not done alone, but he uses someone else to commit the crime.

It can also happen that only one person commits a crime, but he uses that other person to carry out the crime.

If after providing information regarding an event requested by inserting it into an authentic deed to the official maker, while the deed itself has not been made or the information regarding the incident has not been entered into the deed, the crime has not occurred perfectly, but only a crime trial has just taken place. The object of this crime is false information, meaning a statement that is contrary to the truth, which information about something / event. Not all things / events apply here, but events that must be proven by the authentic deed. Similar to the object of the letter intended to prove a matter from Article 263 of the Criminal Code, the element of something from this article is the same as a matter of Article 266 of the Criminal Code. A thing or event intended is something that is the main content of the authentic deed made. Like the marriage certificate, the main content is marriage, the sale and purchase certificate of the main content is about the sale and purchase, birth certificate of the main content is about the birth and not about things outside of the main contents of the deed. For example in a marriage certificate or marriage certificate proves that there is a marriage between a woman and a man, a sale and purchase certificate between two people / parties regarding an object and in the birth certificate proves the birth of a baby from a mother.

The element of error in crime Article 266 (1) of the Criminal Code is with the intention to use a deed containing such a false event as if the information in the word is in accordance with the truth. Regarding this element of error is basically the same as the element of error in Article 263 (1) of the Criminal Code that has been explained on the front. Likewise with regard to the element "If the use causes losses, it has been explained sufficiently in the discussion of [Articles 263 and 264 of the Criminal Code](#). In the scope of the Notary we know the adage that "Everyone who came before the Notary had properly said. So that true saying is directly proportional to saying true ". If it is true to say, it is not directly proportional to telling the truth which means a lie or giving false information, then that becomes the responsibility of the person concerned. If something like that happens, then often the Notary is reported to the authorities in this case is the Police Apparatus. In the examination of a Notary Public, it is lashed with various questions, which in essence, the Notary is herded as the party making false statements.

The imposition of a criminal sanction against a notary can be carried out as long as the limitations mentioned above are violated, meaning that besides fulfilling the formulation of the violation mentioned in the Notary Position Act (Amendment Law to UUJN) and the Notary Position professional code of Ethics which must also fulfill the formulation in the Law Book Criminal Law (KUHP). With the explanation above the notary can be punished criminal, if it can

be proven in court, that intentionally the Notary together with his workers to make a deed with the intent and purpose to benefit the party or the tapping party by harming the other tapping parties. If this is proven, then the parties that harm other parties and the notary must be punished.

The notary can be said to have committed acts of inclusion and committed acts against the law in the context of the Criminal Law while also violating the code of ethics and the Amendment Law on UUJN, so that the criminal penalties become stronger. If this is not accompanied by a violation of the code of ethics or even justified by the Amendment Law to the UUJN, then this may be able to eliminate the unlawful nature of an act with a justification. The criminal prosecution of a Notary may be carried out with the following restrictions:

5 There is a legal action from a Notary Worker on the formal aspects of the deed which are intentional, full of awareness and conviction and planned, that the deed made before the Notary Public or by a Notary together (agreed) to be used as a basis for committing a crime.

There is a legal action by a notary worker in helping the notary to make a deed in front of or by a notary who if measured under the Amendment Act on UUJN is not in accordance with the Amendment Act on UUJN.

5 The act of a notary worker results in the notary being negligent so that it is not appropriate according to the authorized institution to assess the actions of a notary public, in this case MPN.<sup>11</sup>

If a notary worker falsifies a letter so as to cause the notary to deviate from a deed he made so as to cause a criminal case, the Notary must be held criminally responsible for what the worker has done. 1 Criminal liability is born with the continued reproach (verwijbaarheid) of an act declared as a 17 criminal offense under applicable Criminal Law, and subjectively to an offender who fulfills the requirements for being subject to a criminal offense for his actions.<sup>12</sup> This is based on the principle of not being convicted if there is no error or "actus non facit reum nisi mens sit rea". People may not be held accountable and convicted of a criminal if they do not make a mistake. However, someone who commits a criminal offense, may not be convicted. those who commit criminal acts will be convicted if he has a mistake.<sup>13</sup>

A notary who is proven to know that his employees commit the crime of falsification of letters, the notary in carrying out his profession is obliged to account for the deeds he did. The magnitude of the responsibility of the Notary in carrying out his profession requires the Notary to always be careful and careful in all his actions. However, as a normal human being, of course, a Notary in carrying out his duties and positions is sometimes not free from mistakes either because of deliberate or because of negligence which can then harm other parties. In imposing sanctions on

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<sup>11</sup> Habib Adjie I, *op.cit.*, hlm. 124-125.

<sup>12</sup> Dwidja Priyatno, *Kebijakan Legislasi tentang Sistem Pertanggungjawaban Pidana Korporasi di Indonesia*, (Bandung: Utomo, 2004), hlm. 30.

<sup>13</sup> *Ibid.*, hlm. 56.

Notaries, there are several conditions that must be fulfilled, namely acts The notary must fulfill the formulation of the act which is prohibited by law, the <sup>15</sup> loss caused by the act of the Notary and the act must be against the law, both formal and material. Formally this has been fulfilled because it has fulfilled the formula in the law, but materially must be tested again with a code of ethics, the Amendment Law on UUJN. A notary may knowingly, intentionally to work together with the workers to carry out or assist or order the worker to take a legal action which he knows is illegal. If this is done, in addition to harming the Notary, the parties, and in the end the person who carries out his job as a Notary, is welcomed as a person who always violates the law.<sup>14</sup>

With the explanation above the notary can be punished criminal, if it can be proven in court, that intentionally the Notary together with his workers to make a deed with the intent and purpose to benefit the party or the tapping party by harming the other tapping parties. If this is proven, then the parties that harm other parties and the notary must be punished.

The notary can be said to have committed acts of inclusion and committed acts against the law in the context of the Criminal Law while also violating the code of ethics and the Amendment Law on UUJN, so that the criminal penalties become stronger. If this is not accompanied by a violation of the code of ethics or even justified by the Amendment Law to the UUJN, then this may be able to eliminate the unlawful nature of an act with a justification.

<sup>4</sup> In Article 263 paragraph (1) Jo Article 55 paragraph (1) of the Criminal Code there are elements that must be fulfilled, including:

Participate in doing

Making fake letters

Can issue a right

With the intention of using the letter as if it were authentic and not fake

That can bring harm.

Medepleger can also be meant in the sense of the word "together do". At least there must be two people consisting of people who commit (pleger) and people who take part (medepleger) for a criminal act. In this case the notary and notary workers. The element of making a fake letter. Whereas before the act was committed, there were no letters, and the letters made were entirely or partially contrary to the truth; and as in the previous explanation that falsifying signatures means <sup>6</sup> faking letters. In the sample decision number 535 / Pid.B / 2013 / PN.Pdg. the notary worker falsifies the power of attorney in this case the signature in the contents of the letter.

Element issues a right. In the example of <sup>6</sup> decision number 535 / Pid.B / 2013 / PN.Pdg. The power of attorney forged by his notary worker, is a power of attorney containing the certificate

<sup>14</sup> Habib Adjie I, *op.cit.*, hlm. 124.

and its retrieval with the Transfer of Rights registration process for a parcel of land. The next element is to intend to use the letter as if it were authentic and not forged. This can happen if after the falsification of a letter, the letter is used to deceive others about the truth of the letter. For example in <sup>6</sup> decision number 535 / Pid.B / 2013 / PN.Pdg. <sup>6</sup> The power of attorney is used for the transfer of land rights in the land office, so that where the letter is used, it is as if the signature of the notary worker in accordance with the truth is proven legally and convincingly.

The last element is causing harm. the losses referred to in this element are not only material losses, but also moral losses in the form of losses in the field of society as well as losses of decency, honor and so forth. While the loss does not need to be really there, it will be enough if it is new it's likely that there will be a loss.

Whereas those who order a notary public to make a false deed may be subject to criminal sanctions <sup>19</sup> under Article 266 of the Criminal Code. As in the <sup>18</sup> decision Number: 535 / Pid.B / 2013 / PN.Pdg. A client tells the Notary to do <sup>18</sup> false information in an authentic deed:

#### <sup>3</sup> Article 266 of the Criminal Code

1) <sup>3</sup> Articles concerning something whose truth must be stated by the deed, <sup>3</sup> with the intention to use or order others to use the deed as if the statement is in accordance with the truth, is convicted. If <sup>8</sup> the use can cause harm, with a maximum imprisonment of 7 years. The deed becomes null and void if the contents of the deed do not meet the objective conditions, namely the conditions relating to the agreement itself or relating to the object which is made a legal act by the parties, which consists of a certain thing and a reason that is not prohibited, namely who is asking <sup>8</sup> to enter information into in an authentic deed

2) Convicted of <sup>3</sup> the same crime, whoever intentionally uses the deed as if the contents are in accordance with the truth, if due to such use it can cause a loss.

There are 2 crimes <sup>8</sup> in Article 266 of the Criminal Code (KUHP), each formulated in paragraphs (1) and (2). Paragraph (1) has the following elements:<sup>15</sup>

#### 1. Objective Elements:

Deeds: Telling To Enter

The object: Fake information;

<sup>3</sup> In the Authentic Deed;

Regarding something whose truth must be stated with the deed;

If its use can cause harm;

2. Subjective Elements: <sup>3</sup> With the intention to use or order to use as if the information is in accordance with the truth. Paragraph (2) has the following elements:

Objective Elements:

<sup>15</sup> Adami chazawi, *Op.Cit*, hal. 112



Z's use

The object: the Authentic Deed paragraph (1);

As if the contents are true;

Subjective Elements: on purpose.

In the formulation above, it is not stated who is told to enter the false information, but can be known from the elements / sentences into the authentic deed in the formulation of paragraph (1). That the person is the authentic deed. As above it has been explained that the authentic deed was made by a public official who according to the Act is authorized to make it, for example a Notary, Civil Registry Officer, Land Deed Making Officer (PPAT). This official in making an authentic deed is fulfilling the request. The person who asked for this is what is meant by the person who ordered to enter false information. The act of ordering to include contains the following elements: Initiative or the will to make a deed, which deed contains what (Object namely: regarding something or event) which is put into it is from people who enter, not and the official official of the certificate;

In connection with the origin of the initiative of the person asking for an authentic deed, then in the words / element of asking to enter means that person in fact he is giving information about something, which is contrary to the truth or false.

The official who makes an authentic deed does not know that the information submitted by the person who ordered him to submit information is incorrect.

Because the official of the authentic deed maker does not know about the incorrect information about something, he cannot be held accountable for his actions which gave birth to an authentic deed. whose contents are false, and therefore they cannot be convicted. Article 55 and article 56 number (1) and number (2) of the Criminal Code which formulates the inclusion in a criminal offense can be applied to a notary public if a notary worker commits a criminal offense. Inclusion in a crime exists if in one crime several or more people are involved. The relationship:<sup>16</sup>

Some people together commit one crime;

Maybe only one person has a "will" and "plans" a crime, but the crime is not done alone, but he uses someone else to commit the crime;

It can also happen that only one person commits a crime, but he uses that other person to carry out the crime.

If after providing information regarding an event requested by inserting it into an authentic deed to the official maker, while the deed itself has not been made or the information regarding the

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<sup>16</sup> Didik Endro P, *op.cit.*, hlm. 55,

incident has not been entered into the deed, the crime has not occurred perfectly, but only a crime trial has just taken place.

The object of this crime is false information, meaning a statement that is contrary to the truth, which information about something / event. Not all things / events apply here, but events that must be proven by the authentic deed. Similar to the object of the letter intended to prove a matter from Article 263 of the Criminal Code, the element of something from this article is the same as a matter of Article 266 of the Criminal Code. A thing or event intended is something that is the main content of the authentic deed made. Like the marriage certificate, the main content is marriage, the sale and purchase certificate of the main content is about the sale and purchase, birth certificate of the main content is about the birth and not about things outside of the main contents of the deed. For example in a marriage certificate or marriage certificate proves that there is a marriage between a woman and a man, a sale and purchase certificate between two people / parties regarding an object and in the birth certificate proves the birth of a baby from a mother.

#### Conclusion

The author is of the opinion that criminal liability for a notary public is proven to be a notary worker committing the crime of falsifying letters. In this case if the notary worker falsifies a letter both on the contents of the letter and relates to the authority and content of the authority of the letter forged by the notary worker.

That the authority of notary workers in carrying out work to help notaries carry out their duties and positions is the principle of assistance. While the notary himself gets attributive authority from the law, so the notary is personally responsible for what is his duty and authority. With regard to criminal liability, a notary public may be subject to inclusion in Article 55 and Article 56 (1) and (2), due to his negligence on the falsification of the letter carried out by a notary worker.

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