

GOOD FAITH IN THE EXERCISE OF THE NOTARY OFFICE ACCORDING TO THE NOTARY OFFICE ACT IN CASES OF THE CRIMINAL OFFENSE OF DOCUMENT FORGERY

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Abstract

A notary is a public official authorized by the state to draw up authentic deeds which possess full evidentiary strength. This position makes the notary an essential part of the legal system in ensuring legal certainty, protection, and order in society. However, this significant responsibility also carries legal risks, one of which is the allegation of document forgery. In practice, forgery cases involving notaries generally arise from the misuse or falsification of documents submitted by the parties. A notary, who relies solely on the data and information provided by the appearers, is often implicated in criminal issues even though they are not directly involved in the act itself. This situation creates legal uncertainty and injustice for the notarial profession.

This study aims to analyze the implementation mechanisms and legal protection of the notary's office in cases of document forgery, as well as to identify the effectiveness and weaknesses of such legal protection. The approach used is normative legal research with a qualitative nature through literature studies, field surveys, and interviews with notaries and related parties.

The findings indicate that legal protection for notaries in cases of alleged document forgery has essentially been regulated under the Notary Office Act, particularly Article 66 of the Act. However, its implementation still faces obstacles in the form of unclear and imprecise provisions of the Act in protecting notaries during the criminal process, including investigation, inquiry, prosecution, and trial in court.

The results of this research are expected to provide input for improving or adding special articles to the Notary Office Act. Thus, effective legal protection for notaries not only safeguards the continuity of the profession but also supports the creation of a fair legal system and better legal services for society.

Keywords: Notary; Authentic deed; Legal Protection; Criminal act

Abstrak

Notaris adalah pejabat umum yang diberi kewenangan oleh negara untuk membuat akta otentik yang memiliki kekuatan pembuktian sempurna. Posisi ini menjadikan notaris sebagai bagian penting dari sistem hukum dalam menjamin kepastian, perlindungan, dan ketertiban hukum di masyarakat. Namun, tanggung jawab besar tersebut juga membawa konsekuensi risiko hukum, salah satunya tuduhan tindak pidana pemalsuan surat. Dalam praktiknya, pemalsuan surat yang melibatkan notaris umumnya berawal dari penyalahgunaan atau pemalsuan dokumen yang diajukan oleh para pihak. Notaris, yang hanya berlandaskan pada data dan keterangan yang diberikan penghadap, sering kali terseret dalam permasalahan pidana meskipun tidak terlibat langsung dalam perbuatan tersebut. Situasi ini menimbulkan ketidakpastian hukum dan keadilan bagi profesi notaris.

Penelitian ini bertujuan menganalisis mekanisme pelaksanaan serta perlindungan hukum terhadap jabatan notaris dalam kasus pemalsuan surat, sekaligus mengidentifikasi efektivitas dan kelemahan penerapan perlindungan hukum tersebut. Pendekatan yang digunakan adalah penelitian hukum normatif dengan sifat kualitatif melalui studi kepustakaan, survei lapangan, dan wawancara terhadap notaris serta pihak-pihak terkait.

Berdasarkan hasil penelitian, perlindungan hukum terhadap notaris dalam kasus dugaan tindak pidana pemalsuan surat pada dasarnya telah diatur dalam Undang-Undang Jabatan Notaris, khususnya Pasal 66 UUJN. Namun, pelaksanaannya masih menghadapi kendala berupa tidak jelas dan tidak tegasnya UUJN dalam melindungi Notaris dalam proses pidana baik dalam penyelidikan, penyidikan, penuntutan dan proses peradilan di Pengadilan.

Hasil penelitian diharapkan memberikan masukan untuk melakukan penyempurnaan atau penambahan pasal-pasal khusus pada UUJN. Dengan demikian, perlindungan hukum yang efektif terhadap notaris bukan hanya menjaga keberlangsungan profesi, tetapi juga mendukung terciptanya sistem hukum yang berkeadilan dan pelayanan hukum yang lebih baik kepada masyarakat.

Kata Kunci: *Notaris; Akta Otentik; Perlindungan Hukum; Tindak Pidana*

INTRODUCTION

A notary is a public official appointed by the state to carry out an important function in providing legal services to the public, particularly in the creation of authentic deeds. The deeds made by a notary have perfect evidentiary strength, making the presence of a notary essential in ensuring legal certainty. However, this great responsibility also exposes notaries to legal risks, including allegations of the criminal offense of document forgery. On the other hand, it is the state's obligation to provide legal certainty regarding land rights, although such rights remain limited by the interests of others, the public, and especially the state.¹

Cases of document forgery involving notaries generally occur due to the misuse of documents drafted at the request of the parties involved. In preparing deeds, a notary relies solely on the data and statements provided by the interested parties. When such data turns out to be false

or is used unlawfully, the notary often becomes entangled in legal disputes despite not being directly involved in the criminal act.

Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 on the Notary Office (UUJN) provides the legal basis for the protection of the notary profession. One of its provisions requires law enforcement officers to obtain approval from the Regional Supervisory Council (MPD) before summoning a notary in connection with a deed made in their official capacity. However, in practice, implementation of this provision often encounters obstacles due to a lack of understanding by law enforcement officers and the public regarding the role and responsibilities of notaries.²

Notaries often face negative stigma when associated with legal cases. The public frequently assumes that every document signed before a notary is entirely the notary's responsibility, without understanding that the notary only

¹ Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris.

² *Ibid.*

guarantees formality and legality based on the data provided by the parties. This worsens the situation when notaries must defend themselves in legal proceedings.

Weak supervision by the Supervisory Council is another factor that increases the legal risks faced by notaries. Many cases show that the Supervisory Council is not proactive in providing protection or assistance to notaries facing legal issues, even though it has an important role in ensuring that notaries can perform their duties professionally without fear of unfounded legal threats.³

Differences in interpretation of UUJN provisions by law enforcement authorities present another challenge. For instance, the requirement for MPD approval is often ignored, leading to legal proceedings against notaries without complying with the proper procedures set out in UUJN. This not only violates notary rights, but also creates a poor precedent in the enforcement of law in Indonesia.

In document forgery cases at the Pekanbaru District Court, notaries are often held criminally responsible for the contents of the deed they prepared, even though they were only carrying out their duties based on trust in the parties involved. This situation

indicates a gap in legal protection for notaries, who are supposed to be neutral public officials. As a consequence, many notaries feel anxious about the safety of their profession.⁴

The existence of clear and firm legal regulations is essential to protect notaries from unfair criminalization. Furthermore, it is important to improve public understanding of the notary's role and responsibilities, so they are not easily blamed for matters beyond their control. Legal education for the public and increased coordination between law enforcement and the Supervisory Council are strategic steps toward achieving this goal.

The Supervisory Council, as the institution authorized to oversee and protect notaries, needs to strengthen its role by providing adequate legal assistance. In addition, transparency and accountability in handling cases involving notaries must be improved to ensure justice for all parties involved.⁵

Through this proposal, it is expected that a comprehensive study can be produced regarding the legal protection mechanisms for notaries in document forgery cases at the Pekanbaru District

³ Pratama, R. (2018). *Peran Notaris dalam Kepastian Hukum di Indonesia*. Jakarta: Gramedia.

⁴ Jurnal Hukum Notariat Indonesia, Vol. 15, 2020.

⁵ *Ibid*.

Court. This study includes an analysis of existing regulations, identification of legal protection mechanisms based on UUJN, and recommendations for improving the current legal protection system.

Legal protection for the notary profession is not only important for the profession itself but also for legal certainty in society. When notaries can perform their duties without fear of unjust legal threats, the public will receive better legal services. For this reason, synergy among various parties, including the government, law enforcement authorities, and the public, is needed to create a fair legal system for notaries.⁶

In this context, the role of legal education is also important. The public needs to understand that notaries are not always the party to blame when legal disputes arise concerning a deed. Instead, the public must be aware that legal responsibility also lies with the parties who provide the data and information used in the deed.

In conclusion, legal protection for notaries in cases of document forgery must be based on the principles of justice, legal certainty, and protection of a profession that plays a vital role in the Indonesian legal

system. With a holistic approach, notaries are expected to carry out their duties optimally without facing unjust legal risks.

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Based on the matters described above, the writer is interested in further studying and researching the topic of: **“GOOD FAITH IN THE EXERCISE OF THE NOTARY OFFICE ACCORDING TO THE NOTARY OFFICE ACT IN CASES OF THE CRIMINAL OFFENSE OF DOCUMENT FORGERY.”**

RESEARCH PROBLEMS

Based on the background described above, the research problems can be formulated as follows:

1. What are the mechanisms for the implementation and legal protection of the Notary office in cases of document forgery?
2. How effective is the legal protection provided to Notaries in cases of document forgery, and what weaknesses exist in its implementation?

RESEARCH METHOD

1. **Research Approach**

⁶ Pasal 67 UUJN.

⁷ Edukasi Hukum oleh Asosiasi Notaris Indonesia, 2021.

This study employs a normative legal research approach, in which the primary sources of data are derived from literature and documentary research. The approach is supported by theoretical findings and empirical observations related to the object of study, namely the Pekanbaru District Court.

2. Nature of the Research

The research is qualitative in nature, aiming to provide a comprehensive and detailed description of the subject studied. Data are obtained through surveys and interviews, then analyzed using doctrinal legal references to compare and identify similarities and differences, thereby enabling the researcher to formulate solutions to the legal issues examined.

3. Types and Sources of Data

a. Secondary Data

1. Primary legal sources, which constitute the main legal authority, including:
 - Legislation (Acts, Government Regulations, Presidential Regulations, etc.)
 - Court decisions (jurisprudence)
 - Applicable international treaties or conventions

2. Secondary legal sources, which provide interpretation or explanation of primary legal sources, including:

- Legal textbooks and scholarly literature
- Academic journal articles
- Prior legal research studies

3. Tertiary legal sources, which assist in understanding primary and secondary sources, including:

- Legal dictionaries
- Legal encyclopedias
- Legal directories and indexes

b. Primary Data

Primary data consist of information obtained directly by the researcher through field research, including surveys and interviews with respondents relevant to the case under study. The findings gathered are subsequently analyzed in conjunction with primary, secondary, and tertiary legal materials.

4. Data Collection Techniques

Data collection in this study is conducted through field surveys and structured interviews with relevant respondents, including Notary Officials and the Chief Judge of the Pekanbaru District

Court. In addition, data are collected through documentary and literature review.

5. Data Analysis Technique

This research applies a qualitative analytical method, integrating both primary and secondary data to draw conclusions. The data obtained from field observations and interviews are subjected to descriptive analysis and corroborated with normative legal sources to ensure accuracy and comprehensiveness.

HASIL PENELITIAN DAN PEMBAHASAN

1. What are the mechanisms of implementation and legal protection for the office of the Notary in cases of document forgery?

The position of a Notary as a public official places him or her as an individual vested with a portion of the state's authority through the issuance of authentic deeds. Because of this position, every action of the Notary must be grounded in the principle of good faith, which demands honesty, accuracy, and impartiality. This principle serves not only as an ethical guideline but also as a legal standard for assessing whether a deed fulfills formal requirements and whether a Notary may be held liable if

the deed is subsequently associated with a criminal act of forgery.⁸

In practice, however, in an effort to expedite administrative and procedural matters, some Notaries may engage in actions that potentially violate legal provisions, such as falsification of documents, forgery of signatures, and other similar acts. For such conduct, a Notary may be charged under Article 263 of the Indonesian Criminal Code (KUHP), which carries a maximum imprisonment of six (6) years and a fine of up to Rp. 2,000,000,000 (two billion rupiah) pursuant to Article 391 of Law No. 1 of 2023 on the Criminal Code.

A signature in a deed that is affixed by imitating a person's signature without their presence or consent shall be deemed false. According to Adam Chazawi, anyone who places another person's signature on a writing—even with the person's order and approval—has already committed the act of falsifying that document.⁹

One form of legal protection that may be undertaken by a Notary is by adding an additional clause before the closing section of the deed, serving as a legal safeguard for the Notary. The clause may read as follows: "The appearer or appearers hereby guarantee that all statements, data,

⁸ Pasal 16 ayat (1), UUJN.

⁹ Mayrsha Ayu Khairina, "*Pertanggung Jawaban Hukum Bagi Notaris Atas Tindak Pidana Yang*

Dilakukan Oleh Karyawan Notaris," *Officium Notarium*, Vol. 1, 2021, hal. 136.

and identity documents (including ID cards) submitted and presented to the Notary are true and accurate. Should any of the said information later prove to be false, forged, or invalid, the civil and criminal liability shall rest entirely upon the appearer(s), while the Notary shall be released from any civil claims or criminal charges arising therefrom.” In addition, Notaries may further enhance their own legal protection by ensuring that they possess a comprehensive and accurate understanding of applicable laws and regulations. They should avoid copying deed templates verbatim, as every legal case may differ from previous ones.¹⁰

The Notary Office Act (Undang-Undang Jabatan Notaris) provides a form of legal protection for Notaries in the exercise of their duties as public officials. This is reflected in Article 66 paragraph (1) of the UUJN, which states: For the purposes of judicial proceedings, investigators, public prosecutors, or judges—upon obtaining approval from the Notary Honorary Council—shall have the authority to:¹¹

- a) Obtain photocopies of the Minutes of Deed and/or documents attached to the

Minutes of Deed or the Notary Protocol in the custody of the Notary; and

- b) Summon the Notary to appear for examination in connection with a Deed or Notary Protocol in the Notary's custody.

The definition of the Notary Honorary Council (Majelis Kehormatan Notaris) according to Article 1 number 1 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 7 of 2016 concerning the Notary Honorary Council is A body vested with the authority to conduct guidance for Notaries and with the obligation to grant approval or refusal for investigative and judicial purposes regarding the retrieval of photocopies of minutes of deeds and the summoning of Notaries for examination related to deeds or Notarial protocols in the Notary's custody.¹²

The Notary Honorary Council has the following duties and functions regarding supervision and guidance:¹³

- a) To supervise Notaries in the implementation of the duties and

¹⁰ Muhammad Nasir Juliana, Husni, “*Perlindungan Hukum Bagi Notaris Atas Tindak Pidana Pemalsuan Surat Yang Dilakukan Oleh Pegawai Notaris Pada Putusan Nomor 36/PID.B/2021/PN.KRG*,” Jurnal Ilmiah Mahasiswa Fakultas Hukum (JIMFH) Vol. 8, no. 2 (2025): hal. 449–450.

¹¹ Pasal 66 ayat (1), UUJN.

¹² Pasal 1 ayat (1), Permenham Nomor 25 Tahun 2020 tentang Tugas dan Fungsi, Syarat dan Tata Cara Pengangkatan dan Pemberhentian, Struktur Organisasi, Tata Kerja, dan Anggaran Majelis Kehormatan Notaris.

¹³ Pasal 21 ayat (1) dan (2), *Ibid*.

functions of the Regional Notary Honorary Council; and

- b) To supervise the Regional Notary Honorary Council in carrying out its respective duties and functions.

In performing its supervisory function, the Central Notary Honorary Council is responsible for:

- a) Conducting socialization and training for Notaries concerning the duties and functions of the Notary Honorary Council; and
- b) Monitoring and overseeing the performance of the Regional Notary Honorary Council.

Legal protection under the above provisions must also extend to Substitute Notaries, Temporary Notary Officials, and Notaries emeritus (retired Notaries), as in practice it remains common for investigators to summon former Notaries for examination in relation to deeds they executed during their tenure. The UUJN is expected to ensure that the Notary Honorary Council provides legal protection for all individuals who currently hold or have previously held the office of Notary.¹⁴

¹⁴ I Gusti Agung Oka Diatmika, "Perindungan Hukum Terhadap Jabatan Notaris Berkaitan Dengan Adanya Dugaan Malpraktek Dalam Proses Pembuatan Akta Otentik," Jurnal Ilmiah Prodi Magister Kenotariatan, 2016 - 2017, Vol. 1 (2017): hal. 158.

Article 66A of the Notary Office Act explicitly stipulates the establishment of the Notary Honorary Council as a legal protection body for Notaries. This body functions to conduct preliminary examinations within professional organizational hearings, with the authority to grant or refuse approval to investigators, prosecutors, or judges seeking to summon a Notary for judicial examination. The Council is also authorized to provide guidance to Notaries in the performance of their duties as public officials. In addition, the Indonesian Notary Association (Ikatan Notaris Indonesia/INI) provides legal protection by accompanying and assisting Notaries throughout proceedings before the Notary Honorary Council.¹⁵

2. What are the effectiveness and weaknesses in the implementation of legal protection granted to Notaries in cases of document forgery?

Legal protection for Notaries is essential, considering their position as public officials who carry out public service functions in the field of authentic deed drafting. The existence of legal protection is intended not only to safeguard the dignity, authority, and

¹⁵ Pretty Oktaviana, "Perindungan Hukum Bagi Notaris Terhadap Pemalsuan Surat Oleh Para Penghadap," Dinamika, Jurnal Ilmiah Ilmu Hukum Vol. 26, no. 6, 2020, hal. 606.

independence of the Notary, but also to ensure security in the performance of their official duties, including when a Notary is suspected of being involved in a criminal case such as document forgery as regulated under Article 263 of the Indonesian Criminal Code (KUHP).

Article 66 paragraph (1) of Law Number 2 of 2014 concerning the Position of Notary explicitly states that the summoning of a Notary for the purposes of investigation must obtain prior approval from the Notary Honorary Council (Majelis Kehormatan Notaris / MKN).¹⁶ This provision is effective as a form of due process of law to ensure Notaries are not immediately criminalized. In several cases, the MKN has rejected the summoning of Notaries where no indication of wrongdoing was found.

Theoretically, a Notary is only responsible for the formal truth of the deed, not the material truth of the statements made by the parties.¹⁷ This serves as the basis of legal protection that a Notary cannot automatically be charged with document forgery if the error originates from the parties

involved. Nevertheless, weaknesses remain in the legal protection system, such as investigators frequently assuming that the Notary participated in forgery when the parties falsified their identity or documents. In fact, according to legal doctrine, a Notary cannot be held liable if they were unaware of such forgery.¹⁸

Even though Law No. 2 of 2014 concerning the Position of Notary mandates that the summoning of a Notary must be conducted through the Notary Honorary Council, in practice investigators often summon Notaries directly without adhering to that mechanism. This illustrates the weakness of the normative implementation of legal protection.¹⁹ Existing legal protection also does not guarantee the restoration of a Notary's reputation once they are involved in a legal process. In many cases, even when proven not guilty, the Notary's reputation remains damaged and affects the continuity of their profession.²⁰

Although legal protection has been formally regulated in the Notary Law (UUJN), its effectiveness is still

¹⁶ Pasal 66 ayat (1), UUJN.

¹⁷ Tan Thong Kie, *Studi Notaris dan PPAT*, Jakarta, Ichtiar Baru van Hoeve, 2011, hal. 211.

¹⁸ Habib Adjie, *Hukum Notaris Indonesia* (Bandung: Refika Aditama, 2014), hal. 56.

¹⁹ Muhamad Djumhana, *Hukum Profesi Notaris*, Bandung, Citra Aditya Bakti, 2010, hal. 175.

²⁰ Supriadi, *Etika dan Tanggung Jawab Profesi Hukum*, Jakarta, Sinar Grafika, 2016, hal. 143.

hindered by limited understanding among law enforcement officials, differing interpretations regarding the scope of a Notary's responsibility, and a supervisory system that is not yet fully functional. Legal protection can only be considered effective if it can:

- Filter legal processes objectively
- Guarantee the constitutional rights of Notaries
- Protect the profession from excessive criminalization
- Ensure that supervisory mechanisms operate in accordance with the principle of legal certainty

In reality, however, the existing legal protection has not yet fully provided a sense of security for Notaries and has not been able to prevent the misuse of legal procedures in cases of document forgery.

CONCLUSION

The position of the Notary as a public official grants state legitimacy to every deed they execute, thereby requiring the Notary to act in accordance with the principles of good faith, due care, and impartiality. In the context of document forgery, a Notary may be subject to criminal liability if it is proven that they falsified the content of the deed, signatures, or attached documents. Normatively, Article 263 of the

Indonesian Criminal Code (KUHP), as well as the provisions under Law No. 1 of 2023 concerning the Criminal Code, constitute the legal basis for criminal sanctions related to document forgery, including when committed by a Notary.

The Notary Law (UUJN) provides legal protection mechanisms through the requirement of approval from the Notary Honorary Council (Majelis Kehormatan Notaris/MKN) as stipulated in Article 66 paragraph (1) of the UUJN. This mechanism is intended to serve as a filter ensuring that Notaries are not subjected to immediate criminalization without proper procedure. Theoretically, a Notary is only responsible for the formal validity of the deed they draft, and not for the substantive truth of the statements made by the parties appearing before them. Therefore, a Notary should not be held liable for forgery committed by the parties without their knowledge.

Nevertheless, in practice several weaknesses continue to hinder the effectiveness of legal protection, including: investigators who bypass the requirement of MKN approval, differing interpretations regarding the scope of a Notary's liability, and the absence of guarantees for the restoration of reputation after legal proceedings conclude. Even when a Notary is ultimately found not guilty, their

reputation remains at risk, potentially affecting the continuity of their profession.

Overall, legal protection for Notaries has not yet functioned optimally. Such protection can only be deemed effective if it is able to objectively filter legal proceedings, ensure due process of law, prevent criminalization of the profession, and guarantee legal certainty for Notaries. To achieve this, there is a need to strengthen the role of the MKN, enhance law enforcement understanding, and provide clearer regulation regarding the boundaries of a Notary's responsibility, so that legal protection is not merely normative but genuinely capable of providing a sense of security for Notaries in carrying out their duties.

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