

Juridical Analysis of the Judge's Reasons for Not Imposing Criminal Liability on a Notary in a Case of Forgery of a Will Deed

(A Study of the Surabaya High Court Decision No. 920/PID/2024/PT SBY)

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This study aims to explain the juridical reasons why the Surabaya High Court Decision No. 920/PID/2024/PT.SBY did not impose criminal liability on Notary Dedi Wijaya in a case involving the forgery of a will deed committed by the defendant, King Finder Wong. This research employed a prescriptive normative legal method using statutory and case approaches. The analysis focused on the coherence of legal norms, principles, and their application in the court's decision. The primary legal materials consisted of the Indonesian Criminal Code (KUHP), the Law on the Office of Notary (UU Jabatan Notaris), the Indonesian Code of Criminal Procedure (KUHAP), and relevant court decisions, while the secondary legal materials included legal doctrines concerning authority and criminal liability. The findings indicate that the panel of judges concentrated its examination and ruling on the defendant as the accused party, whereas the notary was considered only within the factual evidentiary context concerning the deed-making process and the circumstances subsequently revealed, without establishing any element of criminal intent on the part of the notary. Procedural irregularities during the verification of identity and supporting documents were deemed more appropriately classified as breaches of professional prudence and disciplinary obligations rather than as fulfillment of the constituent elements of a criminal offense required for criminal punishment. The study recommends strengthening minimum verification standards for high-risk notarial deeds, requiring adequate documentation of clients' identities, postponing the execution of deeds when risk indicators arise, and enhancing professional supervision through continuous guidance and compliance audits. These findings provide guidance on the limits of a notary's criminal liability and offer directions for strengthening professional disciplinary enforcement to better protect users of notarial services.

Keywords: Notary, Will Deed, Criminal Liability

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1. Introduction

A notary is a public official appointed by the state to prepare authentic deeds and bears legal responsibility for the deeds executed in the course of office. The legal status of a notary as a public official is stipulated in Article 1 paragraph (1) of Law No. 2 of 2014 concerning the Amendment to Law No. 30 of 2004 on the Office of Notary (UUJN), which defines a notary as a public official authorized to prepare authentic deeds and obligated to ensure the formal validity of such deeds. Consequently, a notary is accountable not only administratively for the deeds prepared but also legally, ethically, and professionally to the parties concerned, society, and the state for the authenticity and legal validity of the deeds.

The authority of a notary to execute authentic deeds extends to various areas of civil law. One form of authentic deed that may be prepared by a notary is a will deed, which contains a person's declaration regarding the distribution of his or her property after death. Under the Indonesian civil law system, wills are regulated in Articles 875 to 940 of the Indonesian Civil Code (KUH Perdata). A will executed before a notary is known as a public will (algemene testament) and holds significant legal importance because it determines the rights of heirs and provides legal certainty concerning the deceased's estate. Such a deed serves as a

Juridical Analysis of the Judge's Reasons for Not Imposing Criminal Liability on a Notary in a Case of Forgery of a Will Deed. Popi Yoniawati et al

legal instrument that guarantees justice and legal certainty in inheritance matters, as a lawfully executed will possesses full evidentiary value before the court.

A notarial will deed must satisfy both formal and substantive legal requirements to be considered legally valid. The formal requirements relate to the official procedures governing the preparation of the deed, including its execution before a competent notary, the inclusion of the date and place of execution, and the signature of the testator. The notary is also required to ensure that the contents of the deed have been read aloud and clearly understood by the testator before signing. Failure to comply with these formal requirements may render the deed legally defective and void pursuant to Article 1869 of the Indonesian Civil Code.

The substantive requirements concern the contents of the will and the genuine intention of the testator. The will must represent the free and voluntary intention of the testator without coercion, manipulation, or undue influence from any party. Furthermore, its contents must not violate the law, morality, or public order. The testator must possess legal capacity, meaning that he or she is of legal age and mentally competent when expressing the testamentary intention. In addition, the property disposed of through the will must be clearly identified and legally owned by the testator. Failure to satisfy any of these substantive requirements may result in the cancellation of the will through a court decision.

In performing their duties and exercising their authority, notaries are required to ensure that every deed complies with applicable legal provisions and is free from legal defects. Article 16 paragraph (1) of the UUJN requires notaries to act honestly, carefully, independently, impartially, and in the best interests of the parties involved. In practice, however, violations of these principles occasionally occur, including the falsification of authentic deeds. Forgery of an authentic deed by a notary constitutes a serious abuse of official authority. Under Article 263 paragraphs (1) and (2) of the Indonesian Criminal Code (KUHP), document forgery is a criminal offense punishable by imprisonment of up to six years, particularly when the forgery involves an authentic deed.

Forgery of authentic deeds not only violates criminal law but also undermines the integrity and dignity of the notarial profession as a public office founded upon public trust. When a notary is proven to have participated in the falsification of a deed, criminal liability may arise in addition to administrative and ethical sanctions as provided under the UUJN and the Code of Ethics of the Indonesian Notary Association (Ikatan Notaris Indonesia). Administrative sanctions may include verbal or written warnings, temporary suspension, or dismissal with dishonor, while ethical sanctions may include suspension or revocation of membership in the Indonesian Notary Association.

The issues surrounding a notary's legal responsibility are illustrated in the Surabaya High Court Decision No. 920/PID/2024/PT.SBY. In this case, King Finder Wong visited the office of Notary Dedi Wijaya, S.H., M.Kn., in Surabaya accompanied by a woman who falsely impersonated Aprilia Okadjaja. Before the notary, the woman executed Will Deed No. 67 declaring that all of Aprilia's assets would be inherited by King Finder Wong. In reality, however, the woman was not the genuine Aprilia Okadjaja. Unaware of the impersonation, the notary proceeded to execute the deed despite several irregularities, including the signatory's refusal to be photographed during the signing process, refusal to provide a thumbprint, failure to submit a divorce certificate despite claiming to be divorced, and failure to present a copy of the certificate of title to the property. Following Aprilia's death, the defendant attempted to use the fraudulent will to withdraw funds from several banks. The attempts were rejected because of legal disputes concerning the validity of the inheritance documents, resulting in substantial losses to the lawful heirs, who were unable to access the estate that rightfully belonged to them.

After discovering that the individual who had appeared before him was not the real Aprilia Okadjaja, the notary officially revoked the will deed. In connection with the incident, the notary received only a formal warning and was advised by the Notary Honorary Council to cancel the deed. This case illustrates the legal consequences arising from deficiencies in the verification process during the execution of a notarial deed. The deed was subsequently used as the basis for an attempted unlawful transfer of inheritance rights, causing significant losses to other parties. Such circumstances indicate potential non-compliance with Article 16 paragraph (1)(a) of the UUJN, which obliges notaries to act honestly, carefully, independently, impartially, and in the interests of the parties involved.

The forgery case examined in the Surabaya High Court Decision No. 920/PID/2024/PT.SBY presents an important juridical issue in notarial practice, particularly where an authentic deed is challenged because it allegedly contains false information. Although the appellate court imposed criminal liability upon the defendant, no criminal sanction was imposed upon the notary involved in preparing the deed. This legal situation raises important questions concerning the limits of judicial authority in criminal adjudication, the scope of the indictment as the basis of judicial examination, and the legal requirements for establishing criminal liability against a notary. Accordingly, this study seeks to answer the following research question: Why did the Surabaya High Court, in Decision No. 920/PID/2024/PT.SBY, refrain from imposing criminal liability on the notary involved in the forgery of the will deed? In line with this objective, the study is entitled "Juridical Analysis of the Judge's Reasons for Not Imposing Criminal Liability on a Notary in a Case of Forgery of a Will Deed (A Study of the Surabaya High Court Decision No. 920/PID/2024/PT.SBY)."

2. Research Method

This study employed a prescriptive normative legal research method, with the court decision serving as the primary object of analysis, supported by the examination of statutory regulations and legal doctrines. The statutory approach was used to analyze the legal norms governing the office of notary, the standards of due diligence required in the preparation of authentic deeds, and the criminal provisions relating to forgery and false statements in authentic deeds. The case approach was applied to examine the ratio decidendi of the Surabaya High Court Decision No. 920/PID/2024/PT.SBY, particularly concerning the limitation of subjects who may be held criminally liable, the judicial assessment of evidence, and the determination of criminal culpability.

The primary legal materials consisted of relevant legislation and court decisions, while the secondary legal materials comprised scholarly books and journal articles supporting the theoretical framework on notarial authority and criminal liability. The legal analysis was conducted using a deductive method through legal syllogism, positioning legal norms and doctrines as the major premise, the legal facts established in the court decision as the minor premise, and drawing conclusions consistent with the research problem.

3. Discussion

In the appellate proceedings, the Surabaya High Court Decision No. 920/PID/2024/PT.SBY expressly examined and adjudicated KING FINDER WONG as the sole defendant named in the indictment. The defendant's identity was explicitly stated at the beginning of the judgment and remained the central focus throughout the trial. The indictment described the execution of Will Deed No. 67 dated 30 November 2019 at the office of Notary Dedi Wijaya, S.H., M.Kn., explaining that the defendant arrived with a woman claiming to be Aprilia Okadjaja for the purpose of executing a will. In the deed, Aprilia Okadjaja was designated as the testator, King Finder Wong as the beneficiary, Dedi Wijaya as the notary preparing the deed, and Mustika Fadila as the attesting witness. This structure demonstrates that the criminal prosecution

was directed from the outset toward the individual who introduced the purported testator to the notary, namely the defendant.

The factual findings of the judgment indicate that the will transferred various assets to the defendant, including immovable property and deposits held in several banks. Following the death of the deceased on 27 April 2020, the defendant used the will for various administrative and civil purposes, including attempts to withdraw funds and obtain control over the inherited assets. The panel of judges considered this use of the document as an attempt to employ the deed as though it were genuine, thereby creating the potential for financial loss to the lawful heirs. This sequence of events establishes a direct connection between the defendant's conduct, the use of the forged deed, and the resulting legal consequences.

The judgment further explains that members of the deceased's family subsequently visited the office of Notary Dedi Wijaya while carrying photographs of Aprilia Okadjaja. It was then discovered that the woman who had appeared before the notary together with the defendant was not the real Aprilia Okadjaja. Additional irregularities were recorded in the deed of cancellation later prepared by Notary Agus Wiyono, S.H., M.Kn., including the submission of information regarding a divorce without supporting documentary evidence, the refusal of the purported testator to be photographed, the refusal to provide a thumbprint, and the failure to submit a copy of the certificate of title relating to the property disposed of by the will. These circumstances demonstrate weaknesses in the verification of identity and supporting documents during the preparation of the deed. Nevertheless, the appellate court treated these matters as part of the factual chronology explaining how the defendant was able to use the document, rather than as evidence establishing the criminal liability of the notary.

From an academic perspective, the absence of criminal sanctions against the notary should be analyzed from two legal dimensions: the doctrine of authority and the doctrine of criminal liability.

From the perspective of legal authority, Philipus M. Hadjon argues that authority constitutes formal legal power derived from statutory provisions and may only be exercised within the limits prescribed by law. In criminal proceedings, the authority of the court is limited by the indictment and by the individual formally designated as the defendant. The Indonesian Code of Criminal Procedure (KUHAP) recognizes the indictment as the legal basis for judicial examination and evidentiary assessment, and a criminal judgment may only be rendered against the accused whose guilt has been proven beyond reasonable doubt. Consequently, a criminal court has no authority to impose criminal sanctions upon an individual who has not been charged as a defendant in the same criminal proceeding. In the present case, Notary Dedi Wijaya appeared only as a person referred to in the factual description and as a witness, rather than as a defendant. Accordingly, there was no procedural or legal basis upon which the appellate court could impose criminal punishment upon the notary.

The second dimension concerns the fulfillment of the constituent elements of criminal offenses as stipulated in Articles 266(1) and 263(1) of the Indonesian Criminal Code. Article 266(1) criminalizes any person who intentionally causes false information to be inserted into an authentic deed concerning matters whose truth must be certified by that deed, with the intention that the deed be used as though the information were true, where such use may result in legal harm. This provision identifies the person who intentionally orders the insertion of false information as the principal offender. The facts established in the judgment demonstrate that the defendant brought an impersonator before the notary and subsequently used the deed for various legal purposes. Accordingly, both the act of causing false information to be incorporated into the authentic deed and the intention to use that deed as genuine were attributed to the defendant.

Article 263(1) of the Indonesian Criminal Code further provides that any person who creates or falsifies a document capable of giving rise to legal rights, obligations, or evidentiary consequences, with the intention

Juridical Analysis of the Judge's Reasons for Not Imposing Criminal Liability on a Notary in a Case of Forgery of a Will Deed. Popi Yoniawati et.al

that the document be used as though genuine, commits the offense of document forgery where such use may cause legal harm. In the present case, the discussion of forged documents primarily concerned the false police report and supporting documents used in connection with insurance claims. These actions related directly to the defendant's conduct before the police authorities, medical institutions, and insurance companies. The judgment contains no evidentiary construction demonstrating that Notary Dedi Wijaya prepared or falsified any document with the intention of unlawfully using it for personal benefit.

The theory of criminal liability under Indonesian criminal law, as explained by Moeljatno, establishes that criminal punishment must be founded upon personal fault. A person may only be held criminally liable where culpability exists in the form of intent (*dolus*) or negligence (*culpa*) satisfying all constituent elements of the offense. In this judgment, the court did not construct any legal reasoning indicating that the notary intentionally participated in the forgery or knowingly caused false information to be inserted into the authentic deed. The notary was never portrayed as possessing criminal intent (*mens rea*), nor as sharing a common criminal purpose with the defendant. Instead, the evidentiary assessment focused entirely upon the defendant as the individual who initiated the fraudulent scheme and subsequently benefited from the forged will.

The evidentiary assessment undertaken by the appellate court demonstrates that witness testimony was evaluated by considering its consistency with other legally admissible evidence, as required under the Indonesian Code of Criminal Procedure. The notary testified regarding the process of executing the deed, the chronology of the parties' attendance before the notary, and the circumstances that became known only after clarification by the deceased's family. The court therefore relied upon the notary's testimony solely to reconstruct the sequence of events and strengthen the evidentiary basis against the defendant. Since no admissible evidence established the personal criminal fault of the notary, the requirements for imposing criminal liability upon him were not satisfied.

The appellate judgment contains no finding that Notary Dedi Wijaya intentionally committed a criminal offense. There is no indication that the court found evidence of fraudulent intent, conspiracy, or any active participation by the notary in inserting false statements into the deed or falsifying documents for an unlawful purpose. Throughout the judgment, the notary remained within the sphere of factual evidence concerning the execution of the deed and the subsequent discovery of the identity fraud. This judicial approach clearly distinguishes the role of the notary as a public official responsible for preparing authentic deeds from the role of the criminal actor responsible for orchestrating the forgery. Consequently, the court maintained the principle that criminal responsibility must remain attached only to the individual formally charged and proven guilty.

Accordingly, the Surabaya High Court did not impose criminal punishment upon Notary Dedi Wijaya in Decision No. 920/PID/2024/PT.SBY because of both the procedural limits of the court's adjudicative authority and the absence of the substantive requirements for criminal liability. From the outset, the indictment designated KING FINDER WONG as the sole defendant, thereby confining the scope of judicial examination and evidentiary assessment to his conduct and criminal culpability. Although deficiencies in verifying the identity of the appearing party and the completeness of supporting documents were identified during the execution of the will, these shortcomings were properly characterized as issues of professional prudence and disciplinary responsibility rather than proof of criminal intent (*mens rea*) on the part of the notary. This reasoning reaffirms that criminal sanctions cannot be imposed upon a person who is neither the subject of the indictment nor proven to possess criminal culpability, while simultaneously preserving the principles of legality, personal culpability, and legal certainty within the Indonesian criminal justice system.

4. Conclusion

This study concludes that the Surabaya High Court Decision No. 920/PID/2024/PT.SBY attributed criminal liability exclusively to KING FINDER WONG as the defendant, while Notary Dedi Wijaya was positioned solely as a witness providing factual testimony concerning the execution of the will deed and the circumstances that emerged following clarification by the deceased's family. Accordingly, the notary's testimony was utilized to strengthen the evidentiary case against the defendant rather than to establish the notary's own criminal liability. The court's reasoning did not demonstrate sufficient evidence that the notary had intentionally and knowingly committed a criminal offense. Furthermore, the scope of judicial examination was confined to the indictment, which identified only the defendant as the subject of criminal prosecution. Consequently, neither procedural nor substantive legal grounds existed for imposing criminal sanctions upon the notary in the present case.

The study recommends strengthening the standard of professional due diligence in the preparation of high-risk notarial deeds by implementing more rigorous identity verification procedures, postponing or refusing the execution of deeds whenever significant risk indicators are present—such as the refusal to be photographed, refusal to provide a thumbprint, or failure to submit essential supporting documents. In addition, professional oversight should be reinforced through continuous guidance, compliance audits, and the development of technical verification guidelines by the competent supervisory authorities. These measures are expected to enhance the protection of lawful heirs while improving legal certainty for users of notarial services.

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