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## Criminal Liability in Land Certificate Forgery at Bandar Lampung National Land Agency

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### Abstract

Forgery of documents is a prevalent crime that significantly impacts society. This research focuses on a specific case of document forgery outlined in court decision No: 139/Pid.B/2022/PN. Tjk, examining the legal rationale behind the sentencing of a defendant accused of forging letters, and exploring the criminal liability of the perpetrators. This research investigates the extent and nature of penalties for forgery, including imprisonment and fines, under the doctrine of mens rea, and examines the circumstances that may justify or mitigate such crimes. Employing a normative legal approach complemented by empirical research, this research analyzes both primary and secondary data through library research and field studies. The findings reveal that the judicial considerations in convicting the defendant were based on the fulfillment of the elements outlined in the prosecutor's first alternative indictment, leading to the revocation of a land deed. The defendant was ultimately found guilty of letter forgery, highlighting the application of Article 263(2) of the Criminal Code, which addresses the responsibilities and liabilities in forgery cases. Recommendations for future legislative enhancements suggest the adoption of criminal laws that reflect the aspirations and values of the nation, prioritizing restorative justice to reconcile the interests of both victims and perpetrators, thus fostering a more peaceful resolution without relying solely on punitive measures.



## A. Introduction

Law rapidly evolves alongside globalization and advancements in information technology, offering both significant benefits as well as challenges. Crimes are behaviors that violate legal norms that are prohibited and subject to sanctions considering the detrimental effects to the community<sup>1</sup>. The crime rate tends to increase as marked by higher occurrence of actions such as document forgery which should be proceed under firm legal frameworks.<sup>2</sup>

Document forgery, is often overlooked in scholarly research and discourse, potentially due to its perceived straightforwardness in legal handling and enforcement. However, it can be complex, sometimes overlapping with fraud, such as in business contracts. The historical context is essential here; the legal principles governing forgery in the Netherlands are deeply influenced by Roman law, which categorizes document forgery as "*de eigenlijke falsum*," or a true crime of forgery. Later expansions included "*quasi-falsum*" or pseudo-forgeries.<sup>3</sup>

Technological progress has led to a shift in societal behavior, transitioning from simplicity to a more consumption-oriented lifestyle. The pursuit of luxury items often drives individuals to seek various means to acquire them, driven by natural desires and varying economic capacities. However, the quest for luxury often requires substantial financial resources, leading to instances of crime or deception in the pursuit of consumption patterns.

The creation of fraudulent documents, such as fake letters, is a common consequence of this dynamic. A fake letter is one that is fabricated, containing wholly or partially false information. Conversely, forging involves altering an existing letter by modifying its contents, resulting in a forged document. These fraudulent practices undermine trust and integrity in various types of correspondence, including letters granting rights, issuing engagements, providing debt relief, or establishing specific facts or conditions.<sup>4</sup>

Legally, the forgery of letters is deemed a serious offense aimed at protecting public interests and ensuring the credibility of such documents. Making fake letters (*valschelijk opmaken*) and forging letters are prohibited actions for these two categories of correspondence (*vervalsen*).<sup>5</sup> Technological advancements has further facilitated criminal activities, with some individuals resorting to actions that contravene societal norms or legal statutes. Specifically, the fabrication or manipulation of letters or data falls under the purview of criminal law, as outlined in Articles 263 to 265 of the Criminal Code. As elucidated by R. Soesilo, letters encompass various forms of communication, including handwritten, printed, or typed documents.

Article 28H of the 1945 Constitution states that everyone has the right to own property, a right that must not be arbitrarily infringed upon. The state has an obligation to protect its citizens' rights, including property rights. Under Article 2 of Law No. 5 of 1960, the state has authority over land, water, and natural resources, enabling it to manage how these resources are used and how environmental interactions are governed.<sup>6</sup>

The land registration process concludes with the issuance of a land certificate, which provides the owner with verified details about the location, boundaries, and area of the land. This certification helps protect the land from external disputes and claims.<sup>7</sup> However, the

<sup>1</sup> Andi Hamzah, *Hukum Pidana Indonesia* (Jakarta: Sinar Grafika, 2017), hlm 23.

<sup>2</sup> Andi Muhammad Sofyan dan M H SH, *Hukum Acara Pidana* (Jakarta: Prenada Media, 2020), hlm 76.

<sup>3</sup> Mahrus Ali, *Dasar-Dasar Hukum Pidana* (Jakarta: Sinar Grafika, 2022), hlm 12.

<sup>4</sup> Aruan Sakidjo dan Bambang Poernomo, "Hukum Pidana, Dasar Aturan Hukum Pidana Kodifikasi" (Jakarta: Ghalia, 1990), hlm 54.

<sup>5</sup> S H Moeljatno, *Asas-Asas Hukum Pidana* (Jakarta: Rineka Cipta, 2002), hlm 30.

<sup>6</sup> Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

<sup>7</sup> Wayan Santosa, "Interprestasi Kerugian Dalam Tindak Pidana Pemalsuan Surat," *Jurnal Komisi Yuridis Republik Indonesia* 3, no. 5 (2016).

security promised by this certificate is not absolute. The Basic Agrarian Law (*UUPA*) acknowledges the certificate, yet there remains potential for legal challenges, whether through general courts or the State Administrative Court against the Head of the National Land Agency (BPN).<sup>8</sup>

This vulnerability is exacerbated by the fact that a land certificate has both a civil aspect and serves as an administrative decision (*beschiking*) made by the Head of the Land Office. This duality allows for legal disputes initiated by various stakeholders, including village heads and other local officials who might engage in illegal activities such as moving boundary markers or providing false information. Those who falsify land registration documents, particularly during the issuance of certificates by the BPN, are legally accountable for their actions.<sup>9</sup>

The research reviews a case from Tanjung Karang District Court, No: 139/pid.B/2022/PN TJK as "using purposefully using a falsified letter as if it were an original letter even though the used letter can cause harm". This act falls under Article 263(2) of the Indonesian Penal Code, allowing the criminal law to be applied at the first indictment. This type of offense is categorized alongside other serious crimes that disrupt public order or *les crimes et delits contre la paix publique* as outlined in Book II of the Criminal Code under Chapter XII, which covers Forgery of Documents.<sup>10</sup>

Before this criminal activity, the defendant, referred to as S, secured a loan using a falsified land deed (No. 1256/Su.H) for land measuring 16,338 m<sup>2</sup>, under the name Prima Kusuma Wardhani. However, S failed to repay this debt. Consequently, in 2015, S filed a civil lawsuit against witness S and several others at Tanjung Karang District Court on October 2, under case number 152/Pdt.G/2015/PN.Tjk. The lawsuit demanded a sum of IDR 360,000,000 and asserted additional ownership rights over the same plot of land. During the proceedings, the lawsuit was discontinued by S's attorney.<sup>11</sup>

The concept of criminal liability revolves around the idea of a 'mistake,' which can either be intentional (*opzet*) or negligent (*culpa*). Discussing mistakes is central to understanding accountability within criminal law. According to legal scholar Idema, mistakes are the core of criminal law, emphasizing that establishing the occurrence of a crime leads directly to proving guilt and assigning appropriate punishment.

This research critically analyzes the judicial considerations in sentencing perpetrators involved in the crime of document forgery, particularly when used to illegitimately alter the named owner on land deeds. Initially, the defendant was charged under the first alternative indictment by the prosecutor but was ultimately convicted for the act of document forgery during the trial. This analysis focuses on the legal foundations and unmet judicial elements of the crime of forgery under Article 263, paragraph (2) of the Criminal Code.

In 2018, the defendant illicitly changed the name on a property certificate at the Bandar Lampung City Land Agency office without consent or knowledge of the rightful owner. The defendant claimed this change was based on a preliminary decision (No. 152/Pdt.G/2015/PN.Tjk); however, further investigation revealed that Tanjung Karang District Court, which supposedly issued the decision, had never actually made such an interim ruling, but had only resolved case No. 152/Pdt.G/2015/PN.YK. The discrepancy led the victim to report the suspected forgery of the decision letter used to justify the transfer of title (No. 1256/Su. H).

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<sup>8</sup> Annisa Aulia and I Made Udiana, "Perlindungan Hukum Bagi Pemegang Sah Hak Atas Tanah Dengan Adanya Sertifikat Ganda Hak Atas Tanah," *Kertha Semaya: Journal Ilmu Hukum* 5, no. 2 (2016).

<sup>9</sup> Erick M Zougira, "Tindak Pidana Pemalsuan Akta Autentik Berdasarkan KUHP," *Lex Crimen* 6, no. 7 (2017).

<sup>10</sup> Edel Joshua Siagian, "Kajian Hukum Tindak Pidana Pemalsuan Sertifikat Hak Milik Tanah," *LEX CRIMEN* 10, no. 6 (2021).

<sup>11</sup> Kitab Undang-Undang Hukum Pidana.

The current study, titled "The Crime of Forgery of Documents through the Deliberate Use of Falsified Documents as Genuine: A Case of Substantial Financial Loss (Decision Research No: 139/Pid.B/2022/PN TJK)", aims to uncover why the initial charges were not aligned with substantive criminal law regarding document forgery. This research also seeks to understand the rationale behind the judicial panel's decision, particularly focusing on cases of sporadic land certificate forgeries at the National Land Agency (BPN) in Lampung. This investigation builds on findings from the previous research by Roland Aldini Hutahaeen, "Legal Research of Decisions Apart from All Lawsuits in the Crime of Forgery of Documents (Research of Decisions of the Padang District Court Number 341/Pid.B/2017/PN PdG)", to further explore discrepancies in the application and interpretation of legal statutes in similar cases.

## B. Discussion

### 1. Criminal Liability Against Perpetrators of Criminal Acts of Forgery of Letters

Document forging crime is increasingly prevalent, reflecting diverse forms and complexities that challenge legal frameworks. Classified as a crime due to its contradiction to legal interests, forgery prompts concerns due to its implications and motivations. Thorough research is essential to understand the scope and categorization of such offenses, which range in intellectual sophistication and are influenced by various motivations, ultimately impacting the legal system's approach to these crimes.

Criminal liability, integral to the legal handling of forgery, operates under a monodualistic model that balances the principle of fault with the principle of legality, ensuring justice and certainty. This liability holds individuals accountable for acts defined as criminal under law, contingent upon fulfilling specific legal conditions. The determination of criminal liability involves assessing intent ("*opzet*") and negligence ("*culpa*"), crucial for categorizing the fault and guiding sentencing.

The theoretical framework of criminal liability includes both ministic and dualistic perspectives. The ministic approach evaluates both the action and the perpetrator, advocating for punishment if an offense is confirmed, integrating subjective and objective elements in assessing responsibility.<sup>12</sup> Alternatively, the dualistic perspective distinguishes between the elements of the offense and those of liability, focusing separately on the actions (objective elements) and the accountability (subjective elements).<sup>13</sup> This distinction aids judges in making informed decisions, as under the Criminal Procedure Code, a defendant must meet specific sentencing guidelines to be found guilty, emphasizing the need for clear criteria in determining criminal responsibility.

The imposition of criminal liability on perpetrators requires meeting specific prerequisites to justify punishment. This liability hinges on the fault—either intentional or negligent—behind the crime. Legal scholar Ruslan Saleh notes that neither intentionality nor negligence can be assigned if an individual lacks the capacity to be held responsible, highlighting a crucial aspect of criminal law. In cases like forgery, where deceit is crafted to seem legitimate, every individual involved, whether in crafting or assisting in the forgery, must be held criminally accountable according to their roles.<sup>14</sup>

Central to determining criminal liability is the doctrine of *mens rea*, or 'guilty mind,' which posits that an act alone does not render a person guilty without malicious intent. This principle

<sup>12</sup> Pahmi Syaripudin, "Analisis Terhadap Tindak Pidana Pemalsuan Dokumen Dan Persyaratan Administrasi Perkawinan Dikaji Menurut Pasal 263 Dan Pasal 264 Kitab Undang-Undang Hukum Pidana," *Journal Justiciabalen (JJ)* 1, no. 1 (2021).

<sup>13</sup> Daffa Ladro Kusworo and Rini Fathonah, "Analisis Implementasi Diversi Dalam Penyelesaian Perkara Anak Pelaku Tindak Pidana Pencurian (Studi Kasus Pengadilan Negeri Liwa)," *Inovasi Pembangunan: Jurnal Kelitbangan* 10, no. 2 (2022).

<sup>14</sup> Nanang Sugianto, "Problematis Yuridis Tindak Pidana Pemalsuan Surat (Telaah Kasus Atas Laporan Polisi Nomor: LP/263/X/2015/Polres Kediri Kota)," *Mizan: Jurnal Ilmu Hukum* 8, no. 2 (2019).

underscores the moral and legal responsibility that accompanies criminal actions, integrating societal values and legal standards. In criminal law, this concept extends beyond the mere legality of actions to embrace broader societal norms and ethics, affirming that accountability is not only a legal obligation but also a moral duty widely recognized by the community. Therefore, the assessment of criminal liability involves a complex interplay between individual intentions, legal frameworks, and collective moral judgment, pivotal in rendering judicial decisions on guilt or innocence.

The perpetrator of a crime typically balances the risk of detection against the potential gain from targeting a specific item. Forged official documents are often high-value targets in these crimes. The prevalent issue of document fraud in society is deeply concerning, as it poses a significant risk to ordinary people who could become victims. Initially, these crimes emerged from the criminals' desire to profit. Document fraud has serious consequences, causing both tangible and intangible losses to victims and the broader community. A certificate is deemed a credible proof of ownership when the physical and legal details it contains align with those in the associated measurement letter and land title book. When a certificate is issued in the name of a person or legal entity that has lawfully acquired control of the land through a bona fide purchase, any conflicting claims to rights over that land become invalid if they are not legally pursued within five years of the certificate's issuance.

Sudarto highlighted that merely committing an unlawful act does not automatically warrant a sentence; the perpetrator must also be found at fault or guilty. This aligns with the legal principle that there can be no punishment without fault (*nulla poena sine culpa*). Criminal liability typically involves three key elements: the perpetrator's capacity to be held responsible, a specific mental state regarding the act—whether intentional or negligent—and the absence of any justifiable reason to exonerate the perpetrator's guilt or criminal liability.<sup>15</sup>

For the specific crime of document forgery, one essential requirement is the intent to use or direct others to use a falsified document as if it were authentic. Additionally, it must be plausible that someone could suffer losses due to the use of the forged document—actual loss need not occur, the possibility of loss suffices. Not only those who create forged documents but also those who knowingly use them are liable for punishment. A user of a forged document is considered deliberate if they are fully aware of the document's inauthenticity.

The Criminal Code outlines the legal framework for crimes, including forgery, in Chapter XII Book II, with Articles 263 to 276 specifically addressing the forging of documents. Common violations under this section involve the fabrication of documents, making false statements, or instructing others to record false information.<sup>16</sup> An act is classified as criminal if it is legally prohibited and punishable, thereby violating societal norms and disrupting social order, as described by Moeljatno.

Forgery disrupts the foundational values of truth and reliability for personal gain. According to Aria Veronica, a judge at Tanjung Karang District Court, determining accountability is crucial in deciding whether an individual should be acquitted or convicted of a crime. The elements necessary for establishing criminal liability must be present to hold an individual accountable for their actions.<sup>17</sup>

In case 139/pid.B/2022/PN TJK, the judge issued a sentence under Article 263(2) of the Criminal Code, which states: "Anyone who intentionally uses a forged document as if it were genuine shall be subjected to the same penalties if the use of such a document results in losses." This legal stipulation applied to the defendant, who was found guilty of using a falsified

<sup>15</sup> Christellia G N Lamatenggo, "Kajian Yuridis Pemalsuan Surat Sederhana (Pasal 263 KUHP) Dalam Kaitannya Dengan Pemalsuan Akta Otentik (Pasal 264 Ayat (1) Ke 1 KUHP)," *Lex Crimen* 10, no. 1 (2021).

<sup>16</sup> Kitab Undang-Undang Hukum Acara Pidana.

<sup>17</sup> Hasanul Mulkan, "Sanksi Hukum Terhadap Advokat Yang Melakukan Tindak Pidana Pemalsuan Dokumen Klien Di Pengadilan," *Jurnal Kepastian Hukum Dan Keadilan* 1, no. 1 (2020).

document. The judge also considered both aggravating and mitigating circumstances before determining the appropriate sentence, recognizing that such factors must be weighed carefully.

The defendant's actions clearly meet the criteria of criminal liability, as the wrongdoing was intentional, directly attributable to the perpetrator, and there were no justifiable reasons for the actions. Article 263(2) of the Criminal Code, under which the individual was prosecuted, specifies a potential maximum sentence of six years in prison for using a forged document that results in losses.<sup>18</sup>

## **2. Judge's Considerations When Sentenced to a Defendant for the Crime of Forgery of Letters in the Case of Decision No: 139/Pid.B/2022/PN Tjk**

In their decision-making, most judges in Indonesia employ both legal and non-legal reasoning. Legal considerations in judgments are judicial in nature, involving the judge's deliberations based on factors presented during the trial and defined by law. These factors include the prosecutor's indictment, testimonies, information about the accused, evidence, and relevant legal statutes. Non-legal or non-juridical considerations by judges involve aspects not governed by statutory laws, such as sociological factors and other elements revealed during the trial that are not formally codified in law.<sup>19</sup>

The crime of letter forgery has evolved into a complex area of law, encompassing various forms of forgery. Given that the object of forgery is often a document or letter, the implications under Indonesian law are significantly broad. The Indonesian Criminal Code (*KUHP*) specifically addresses the crime of forgery. The act of forgery often causes resentment, which is why it is considered a criminal offense and is regulated accordingly. While these crimes are interconnected, they are also distinct, occurring at different times and places and potentially involving different perpetrators. The two primary acts involved in forgery are creating a fake letter and forging. The act of creating a fake letter typically involves producing a document where none existed before, filling it with information that is entirely or partly untrue. These fake letters, or letters that lack authenticity, result from the act of creating fake letters.<sup>20</sup>

The monistic perspective on criminal law asserts that the criteria for criminal liability are identical to the conditions for imposing criminal penalties, essentially arguing that if an offense is committed, the perpetrator should be punished. In contrast, the dualistic approach differentiates between the person performing an action and the action itself. Under this framework, the concept of intent is linked to criminal liability, whereas the physical act is associated with the offense itself. This approach divides criminal liability into objective elements (delicts/crimes) and subjective elements (accountability), a distinction that is central to this study. To facilitate judicial decision-making, the Criminal Procedure Code outlines clear sentencing guidelines, stating that adherence to these guidelines is necessary for establishing criminal responsibility.

Evidence is crucial in a criminal trial, reflecting the overarching aim of criminal law to uncover and ascertain material truth. Legal requirements stipulate that at least two valid pieces of evidence are necessary for a conviction. Based on substantial evidence, a judge can determine whether a crime has been committed and if the defendant is guilty. The implications of actions like forgery, which involve creating or using a forged document, must also be considered as they can result in widespread losses, affecting individuals or the public. Acts of forgery require a deliberate intention (*opzetalsoogmerk*), or at least a limited intent, usually with the goal of personal or commercial gain.

<sup>18</sup> Arief Wisnu Wardhana, "Analisis Pertanggungjawaban Pidana Terhadap Pemalsuan Surat Dalam Dokumen Kontrak," *Doctrinal* 4, no. 1 (2019).

<sup>19</sup> Eko Adi Susanto and Gunarto Gunarto, "Pertanggungjawaban Pidana Yang Memakai Surat Palsu Ditinjau Dari Pasal 263 Ayat (2) KUHP," *Jurnal Daulat Hukum* 1, no. 1 (2018).

<sup>20</sup> Yohan Armindo Yoseph, "Kajian Yuridis Pengaturan Daluwarsa Dalam Tindak Pidana Pemalsuan Surat," *Jurnal Sosial Teknologi* 1, no. 7 (2021).

Judges play a crucial role in addressing legal issues. They bear the significant responsibility of making decisions that can impact a person's fate. A judge has the discretion to determine guilt and assess the severity of the crimes committed. In Indonesia, judges also select applicable laws and regulations when reviewing cases. As pillars of the judiciary, they are the final recourse for those seeking justice and must ensure that justice is both upheld and administered.<sup>21</sup>

The concept of judicial balance is essential for achieving fair judicial decisions. It encompasses justice (*ex aequo et bono*), legal certainty, and benefits for all parties involved. Thus, judicial decisions must be approached with careful consideration and prudence. If a judge's examination is incomplete or inadequate, the decision may be overturned by higher courts such as the High Court or the Supreme Court.

Regarding the forgery of documents, only four specific types of documents are recognized as potential objects of forgery crimes. These classifications are based on the content of the documents, not merely the format or the accuracy of the information they contain. Documents serve as evidence and have the authority to establish rights, form agreements, settle debts, and release parties from obligations. According to Article 263, paragraph (1), the use of a forged document could result in harm, although the exact likelihood of loss when using such a document.<sup>22</sup>

The judiciary in the Indonesian constitutional system operates as an independent branch, wielded by the Supreme Court and its subordinate courts, as well as the Constitutional Court. Its primary role is to adjudicate cases, enforce the law, and ensure the administration of justice. According to Jimly Asshiddiqie, the independence of the judiciary, termed "*merdeka*," encompasses both functional and institutional dimensions, guarding it against the influence of government power.

Aria Veronica, a judge at Tanjung Karang District Court, explained that judicial decisions, particularly in criminal cases, are based on the collective belief of the panel of judges. This belief is formed through the evaluation of evidence and information presented during the trial. As stipulated by Article 183 of the Criminal Procedure Code, a conviction requires at least two pieces of evidence that affirm the defendant's compliance with the elements of the accused crime. Conversely, if these elements are not proven, the accused must be acquitted. The decisions made by judges are pivotal, embodying the principles of fairness and the ultimate pursuit of truth. They reflect not only on human rights and the competence of legal arguments but also the ethics, mentality, and morals of the judges involved. Decisions by qualified judges are founded on sound legal reasoning aligned with the facts and evidence presented in court. These decisions are made independently, free from external and internal pressures, ensuring accountability, truth, and justice.<sup>23</sup>

Bandar Lampung Police investigator Toni Suherman has concluded that defendant SHS is responsible for the crime stipulated in Article 263(2) of the Criminal Code, which concerns "deliberately using a fake letter as if it were genuine, where its use causes harm." The judge's decision in this case must reflect clear reasoning, as these rationales serve as the foundation for justice in the judgment. This requirement is also outlined in Article 14(2) of Law No. 48 of 2009, which mandates that judges provide their considerations and opinions in writing during advisory trials.

Regarding the crime of forgery under Article 263 of the Criminal Code, it is crucial for the judge to consider all elements specified in the article when investigating and adjudicating the

<sup>21</sup> Eva Achjani Zulfa, "Menghancurkan Kepalsuan (Studi Tentang Tindak Pidana Pemalsuan Dan Problema Penerapannya)," *Jurnal Hukum & Pembangunan* 48, no. 2 (2018).

<sup>22</sup> Anta Rini Utami, Dahlan Ali, and Mohd Din, "Pertanggungjawaban Pidana Pejabat Notaris Terhadap Tindak Pidana Pemalsuan Akta Autentik," *Jurnal Ilmu Hukum* 4, no. 2 (2016).

<sup>23</sup> Undang-Undang Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman (Lembaran Negara Republik Indonesia Tahun 2009 Nomor 157, Anotasi 5076).

case. The Criminal Code serves as a critical guideline for judges in the handling of criminal cases. In general, criminal cases should be handled transparently in court.

In his ruling, the judge at Tanjung Karang District Court sentenced the defendant to::

- a) Declare that Defendant SHS has been legally and persuasively found guilty of the crime of "using fake documents" as stipulated in the first alternative indictment;
- b) Sentenced the defendant to 1 year in prison.
- c) Declare that the sentence of imprisonment and the period of confinement served by the defendant reduce all of them as long as the sentence is dropped;
- d) Declare that the accused remains in custody;
- e) Indication of evidence: 1 photocopy of the application letter for transfer of property rights No. 1256/su.h photocopy of temporary stipulation No. 152/PDT.G/2015/ PN.TJK, 1 determination file No.152/PDT.G/2015/PN.TJK, 1 letter No.1256/su. H. On behalf of S. Hasto Sukendro Muchliat 1 certificate of ownership No. 3013 on behalf of S. Hasto Sukendro Muchliat and 1 certificate of ownership No. 3014 on behalf of S. Hasto Sukendro Muchliat; returned to the accused;
- f) Demanded that the defendant pay court fees of IDR 2,000;

Toni Suherman has effectively handled the criminal case involving defendant SHS, who was conclusively proven to have committed the crime of "intentionally using fake documents as if they were genuine, thereby causing harm," as specified under Article 263(2) of the Criminal Code. This conclusion was supported by the public prosecutor's indictment, which detailed that SHS had, by final and binding judgment, been found guilty of "intentionally sending a fake letter as genuine, resulting in loss," aligning with the stipulations of Article 263(2) of the Criminal Code.<sup>24</sup>

Judge Aria Veronica of Tanjung Karang District Court articulated that forgery involves the falsification of elements or objects, creating a façade of authenticity that fundamentally contradicts the truth. As a crime, forgery can lead to penalties, reflecting breaches of security or trust that include actions as follows.

- 1) The perpetrator has the intention or intent to use something that is not true by describing the state of things that are not true as if they are true, or something that is not real as if it is real, to make other people believe that the item is true and genuine because other people are deceived. The element of intent or purpose does not have to follow the element of benefit for oneself or others (as opposed to various types of fraudulent acts).
- 2) But there must be a general danger arising from the said act, especially in the case of forgery of letters or letters, etc., namely that "possible loss" must be associated with the type of writing or letter said.<sup>25</sup>

Moch Rifani Agustam, attorney for the Bandar Lampung District Prosecutor's Office, elaborated on a case involving the defendant and a debt that began in 2014. The defendant had lent Witness S a sum of IDR 360,000,000, secured with a Land Ownership Certificate 1256/Su.H, registered to Prima Kusuma Wardhani, covering an area of 16,338 m<sup>2</sup>. Despite the agreement, the debt remained unpaid. Subsequently, on October 2, 2015, the defendant initiated a civil lawsuit at Tanjung Karang District Court under the registration number: 152/Pdt.G/2015/PN.Tjk. The lawsuit accused Witness S and other involved parties of defaulting on the IDR 360,000,000 debt, including additional rights over the aforementioned land area in the village of Sukadanaham, Tanjung Karang Barat, Bandar Lampung. However,

<sup>24</sup> Nur Cahyanti, Budi Raharjo, dan Sri Endah Wahyuningsih, "Sanksi Terhadap Notaris Yang Melakukan Tindak Pidana Menurut Peraturan Perundang-Undangan Di Indonesia," *Jurnal Akta* 5, no. 1 (2018).

<sup>25</sup> Danang Sucahyo and Sularto Purwoto, "Disparitas Penjatuhan Pidana Terhadap Tindak Pidana Pemalsuan Surat," *Diponegoro Law Journal* 2, no. 3 (2013).

during the trial, the defendant chose not to proceed and, through their attorney, withdrew the lawsuit.

The decision of the panel of judges in this case was influenced by three core elements: legal certainty, justice, and expediency. Legal certainty is achieved when the panel of judges applies the correct law, ensuring that the decision accurately reflects the construction or application of the law throughout the adjudication process. This ensures that the outcome of the trial is based on diligently examined facts and evidence, providing a foundation of legal certainty. Judicial decisions must not only be legally sound but also just and expedient, aligning with the broader principles of law enforcement. It is crucial for judges to interpret laws and regulations thoughtfully and precisely, tailoring their application to the specific circumstances of each case.<sup>26</sup>

In this case, the Public Prosecutor opted for an alternative form of indictment, leading the judiciary to prioritize the initial charge under Article 263(2) of the Criminal Code. This article addresses the crime of intentionally using falsified documents as though their contents were truthful, particularly when such use may cause harm. Analysis of the case shows that the defendant indeed used a falsified letter, presenting it as authentic, which ultimately led to a loss. This conviction was grounded on substantial evidence and testimonies provided during the trial, aligning with the facts ascertained through judicial proceedings. The maximum penalty for document forgery under this statute is six years' imprisonment. Given the evidence and the judge's conviction, this sentence was deemed appropriate. According to Article 5 of Law Number 48 of 2009 Concerning Judicial Power, judges must explore, follow, and understand the legal values and sense of justice prevalent within society. This provision ensures that judges actively engage in the judicial process, applying the law while considering societal norms and values.

The issue of letter forgery, as governed by Article 263 of the Criminal Code, suggests potential legal gaps that may inadequately protect the rights of individuals adversely affected by such crimes. This observation leads to a call for the government to scrutinize and possibly amend the laws regulating letter forgery, ensuring they effectively deter offenders and safeguard the rights and interests of all parties involved. Enhanced legislative attention to the nuances of forgery laws could reinforce their deterrent effect, preventing harm and promoting justice in society.

### **C. Conclusion**

The research discussed herein highlights the judicial considerations in cases of forgery, as exemplified by Decision No: 139/Pid.B/2022/Pn Tjk. The court's verdict relied on demonstrating that the defendant's actions met the criteria set forth in the prosecutor's first alternative indictment, conclusively proving the defendant's guilt in the crime of forging documentation used to erroneously alter land registry records. Consequently, the court imposed penalties under Article 263(2) of the Criminal Code, which addresses the deliberate use of falsified documents as authentic to inflict harm, thereby fulfilling the requisite elements of criminal liability including the presence of intent or negligence, and the absence of any justifiable defense by the perpetrator.

In response to the prevalent issue of document forgery, especially concerning vital documents like land ownership certificates, there is an imperative need to educate the public about the significance and procedures related to such essential documents. Enhancing public awareness and participation in matters concerning document use could mitigate the risks associated with document-related crimes. It is crucial for citizens to understand not only the

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<sup>26</sup> I Gede Eka Suanara, I Nyoman Gede Sugiarta, and Ni Made Sukaryati Karma, "Kajian Yuridis Tindak Pidana Pemalsuan Surat Secara Bersama-Sama (Studi Kasus Putusan Pengadilan Negeri Jakarta Timur Nomor 305/Pid. B/2021/PN Jkt. Timur)," *Jurnal Preferensi Hukum* 3, no. 1 (2022).

legal implications of such acts but also the underlying legal principles, such as the doctrine of *mens rea*, which emphasizes that a crime consists of both a physical act ('actus reus') and a culpable mental state ('mens rea'). In this case, the court determined that the defendant indeed possessed the requisite malicious intent, thus satisfying the *mens rea* component of the crime.

Educational initiatives that foster a deeper understanding of legal documents and their handling can serve as a deterrent to forgery and help safeguard the community against potential fraud and legal disputes. As such, there is a profound need for continuous legal education and proactive community engagement to enhance document security and uphold the rule of law.

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