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**RESEARCH ARTICLE**

**LEGAL CONSTRUCTION OF CRIMINAL LIABILITY IN PARTICIPATION OF THE CRIMINAL ACTION OF AUTHENTIC DEEDS PERFORMED BY NOTARY AND NOTARY STAFF (Decision Study Supreme Court Number 134 K/ Pdt /2020 and Decision Supreme Court Number 41 PK/ Pdt /2021)**

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In Gianyar Bali, one staff Notary and Notary must deal with law criminals Because suspects do follow Criminal Counterfeiting Defendant I Putu Adi Mahendra Putra SH MKn is staff from Notary Hartono SH MKn who works on orders, and instructions Notary Hartono as superior direct. Study This study is about the legal construction of inclusion criminal liability following criminal forgery authentic deeds are done by a notary and notary staff and analysis of the judge's legal considerations in deep Decision free on the Judgment Supreme Court Number 41 PK/ Pdt /2021. Research results point out that, the legal construction of inclusion criminal responsibility follows criminal forgery authentic deed done by a notary and notary staff is determined by the presence of errors. There are two entries done by a notary and notary staff, namely ordering do deeds (domeplegen) and those who participated do (Medeplegen). An analysis of the judge's legal considerations of the notary's criminal responsibility in the decision Supreme Court Number 41 PK/ Pdt /2021 which gives verdict free is Because Meaning from the material actions of the defendant Hartono did not meet the essential elements of the crime. Based on the results conclusion, then in a matter. This writer gives advice as well as staff Notary Public submit Reconsideration, besides the judge should be more observant in considering the facts fact judiciary, so No resulted loss for others.

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**Introduction:-**  
Notary Public as one official public have role trusted by the government and society For help government in serve public to ensure certainty, order, and protection law through deed authentic. Achmad Arif Kumaran stated that, it is not uncommon to do this work to speed up the administration and management of employees. The notary performs methods that violate the law, for example, falsification of letters or documents. Forgery is carried out on the contents of letters or documents, forgery of signatures, and so on. The employee's actions can drag the Notary as an employer in a legal matter.

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# LEGAL CONSTRUCTION OF CRIMINAL LIABILITY IN PARTICIPATION OF THE CRIMINAL ACTION OF AUTHENTIC DEEDS PERFORMED BY NOTARY AND NOTARY STAFF

*by* Rahadi Wasi Bintoro

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**Introduction:-**

Notary Public as one official public have role trusted by the government and society For help government in serve public in ensure certainty, order, and protection law through deed authentic. Achmad Arif Kurniawan stated that, it is not uncommon to do this work to speed up the administration and management of employees The notary performs methods that violate the law, for example, falsification of letters or documents. Forgery is carried out on the contents of letters or documents, forgery of signatures, and so on. The employee's actions can drag the Notary as an employer in a legal matter.

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**1** In Gianyar Bali one staff Notary and Notary must deal with Police Because suspected do follow Criminal Counterfeiting. Defendant I Putu Adi Mahendra Putra SH MKn is staff from Notary Hartono SH MKn who works on orders, and instructions Notary Hartono as superior direct. Consequence deed defendant together with Notary Hartono, SH and Hendro Nugroho Prawira Hartono who were accused make Meeting Minutes General Outside Shareholders Ordinary Limited Liability Company PT. Bali Rich Mandiri December 21, 2015, witness Hartati ( wife / widow / expert inheritance The late Rudy Dharmamulya experience loss that is switch PT shares Bali Rich Mandiri to witness Asral, witness Tri Endang Astuti and witness Suryady Alias Suryady Aziz along the assets namely Villa Ubud which is located in the Regency Gianyar, Province of Bali and has changed Name become Assoka Tree Resort or not enough more 38,000,000,000 IDR ( three twenty eight billion rupiahs).

Notary Staff at First Level Decision stated free from all demands, with reason The defendant (I Putu Adi Mahendra Putra, SH, M.Kn ) was not Can requested accountability criminal Because Defendant only is staff from Notary Hartono, SH deep carry out his job based on order from Notary Hartono, SH as his boss including prepare whole deeds / documents related to PT Bali Rich Mandiri. However in Decision Supreme Court Number 134 K/ Pid /2020, staff Notary Public actually stated guilty. So as otherwise, on the Judgment Number 149/ Pid.B /2019/PN Gin stated guilty, then appeal through Decision Denpasar High Court Number 78/PID/2019/PT.DPS stated free, however **1** then based on P messenger RI Supreme Court Number 534 K/ Pid /2020 declared guilty, and in the end through Decision Supreme Court Number 41 PK/ Pid /2021 declared No guilty and acquitted. With thereby happen comparable conditions upside down, This naturally need studied in a manner normative Good construction the law nor judge 's consideration convict or liberate defendant

Based on this, the author tries to examine that, on a more or less the same legal basis, namely forgery authentic deed there is criminal liability and what factors distinguish these differences, how far is the notary's responsibility and how far is it the personal respons **1** lity of the notary's staff, while the staff are in the same notary's office. Therefore the author tries to examine the legal construction of inclusion criminal responsibility follow criminal forgery authentic deed done by a notary and notary staff.

#### Formula Problem

Based on **1**roduction such, then can taken something formula problem namely :

- 1.How is the legal construction of inclusion criminal responsibility follow criminal forgery authentic deed done by a notary and notary sta **1** ?
- 2.What are the judge's legal considerations in drop Decision free on the Judgment Supreme Court Number 41 PK/ Pid /2021 ?

#### Discussion:-

1.Construction of Participation Criminal Liability follow Criminal Counterfeiting Authentic Deed done by Notary and Notary Staff

Formulation about follow criminal forgery letter done staff a notary together with a notary is carried out by reviewing several judge's decisions. Judge has very important role in prove something case criminal. H.P Panggabean state that There are 3 roles of judges in the judge including the role of judges legalistic, the role of the judge is intuitive courts and the role of criminal judges in application law proof.

**1** The judge must can construct deed perpetrator, accordingly fact inside law trial. kindly factual the defendant I Putu Adi Mahendra Putra is staff at the office Notary Hartono, SH. task Defendant I Putu Adi Mahendra Putra as staff at the office The defendant Hartono is make and carry the deeds to be read by the Defendant Hartono, in front client. With thereby between the defendant I Putu Adi Mahendra Putra and the defendant Hartono owned connection job. Based on matter also, there is connection superiors and subordinates between the defendant I Putu Adi Mahendra Putra and the defendant Hartono.inclusion is something circumstances Where there is something deed follow crime committed some people. because That in identify exists something inclusion can studied through analysis roles involved parties in forgery letter. With thereby will seen exists types postulated participation \_ in do enforcement law to follow criminal forgery letter.

Based on fact law in Decision Decision Number 148/ Pid.B /2019/PN Gin. related service to client namely PT Bali Rich Mandiri Defendant I Putu Mahendra as staff Notary Public perform Actions as following :

- 1.Ordered by the defendant Hartono, for prepare all the document.

2. Defendant I Putu Adi Mahendra Putra only typing just as staff notary.

3. Whole deeds / documents signed by the parties dated 19 June 2015 prepared by Defendant I Putu Adi Mahendra Putra above order Hartono the accused.

Based on roles such, then construction law inclusion follow **1** criminal forgery authentic deed done by Notaries and Notary Staff can distinguished based on kind as makers and makers. With the provisions of Article 55 Paragraph (1) 1st of the Criminal Code, those who are classified as actors ( dader ) or makers ( mededader )

The criminal responsibility of participating in the crime of forging authentic deeds carried out by a notary in several decisions has a different legal construction at the legal level. District Court, can be described as follows:

No	Indicator	Decision No 149/ Pid.B /2019/PN Gin	Verdict No 14 8 / Pid.B /2019/PN Gin
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1. position Notary Public Notary staff

2. Authority Make Deed Sell Buy Shares ( Article 15 paragraph (1) Law 2/2014

( Notary ) typing deed, prepare deed

3. Form inclusion Ordered do deed ( doenplegen ),

And

Medeplegen (one who participates do ) Maker messenger ( doenpleger )

And

Medepleger (person who makes participant )

4. Description Deeds Defendant Hartono ordered witness I Putu Adi Mahendra Putra for make calendar against 2 (two) deed Sell Buy stamped shares paste IDR 6,000.00 ( six thousand rupiah) on behalf of Party First Madam Dowager Property and Parties Both Mrs. Tri Endang Astuti dated December 21 2015 and deed Sell Buy stamped shares paste IDR 6,000.00 ( six thousand rupiah) above Name Party First Madam Dowager Property and Parties Second Suryady dated 21 December 2015 and made calendar to Meeting Minutes General Outside Shareholders Usually PT. Bali Rich Mandiri dated December 21, 2015 **2** well place held Meeting General Outside Shareholders Usually PT. Bali Rich Mandiri dated 21 December 2015 at the Company's Office, Tanggayuda, Kedewatan, Ubud, Gianyar, Bali

Meeting Minutes General Outside Shareholders Normal PT. Bali Rich Mandiri dated December 21, 2015 contains information which is not Correct Because Meeting General Outside Shareholders Usually PT. Bali Rich Mandiri dated December 21, 2015 no Once There is Defendant I Putu Adi Mahendra Putra made calendar against 2 (two) deed Sell Buy stamped shares paste IDR 6,000.00 ( six thousand rupiah) on behalf of Party First Madam Dowager Property and Parties Both Mrs. Tri Endang Astuti dated December 21 2015 and deed Sell Buy stamped shares paste IDR 6,000.00 ( six thousand rupiah) above Name Party First Madam Dowager Property and Parties Second Suryady dated 21 December 2015 and made calendar to Meeting Minutes General Outside Shareholders Usually PT. Bali Rich Mandiri dated December 21, 2015 **2**s well place held Meeting General Outside Shareholders Usually PT. Bali Rich Mandiri dated 21 December 2015 at the Company's Office, Tanggayuda, Kedewatan, Ubud, Gianyar, Bali

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5. Indictment indictment Prosecutor general shaped alternatives, namely **7**:

FIRST : breaking Article 263 Paragraph (1) of the Criminal Code Jo. Article 55 Paragraph (1) 1st Criminal Code;

OR :

SECOND : **2** violate Article 264 Paragraph (1) 1st Criminal Code; Prosecutor General with indictment single as arranged in Article 263 paragraph (1) of the Criminal Code jo. Article 55 paragraph (1) 1st of the Criminal Code

6. Proven deed \_ Ordered do Defendant I Putu Adi Mahendra Putra has fulfilled in deed Defendant

**5**

Article 263 Paragraph (1) of the Criminal Code Jo. Article 55 Paragraph (1) 1st Criminal Code Defendant appointed by Notary Hartono, SH for handle deeds / documents related PT Bali Rich Mandiri and all deeds / documents related to PT. Bali Rich Mandiri which was signed by the parties on June 19, 2015 prepared by the Defendant on order from Notary Hartono, SH thus between Defendant with Notary Hartono, SH **2** There is cooperation between Defendant with Notary Hartono, deep sh do deed. With thereby element from Article 263 paragraph (1) of the Criminal Code jo. Article 55 paragraph (1) 1st of the Criminal Code has fulfilled

7.Length of Punishment Criminal imprisonment for 2 (two) years off all demands

Based on matrix the so seen There is clear difference between construction law to notary and staff notary. on one side Notary Public imposed criminal Because ordered do forgery However staff the notary did order the free from all demands. this because it's based on Article 65 of the Law Number 2 of 2014 concerning Amendments to Laws Number 30 of 2004 concerning Position Notary and connected with facts law as well as opinion expert as described above so to Defendant no Can requested accountability criminal Because Defendant only is staff from Notary Hartono, deep carry out his job based on order from The defendant Hartono, as his boss including prepare whole deeds / documents related to PT Bali Rich Mandiri which was prepared by the Defendant all of them is on order from The defendant Hartono, and therefore to deeds / documents the based on responsible for the description above answer is The Defendant Hartono

Draft teachings inclusion in follow criminal tightly relation with actions and accountability criminal, concept base accountability criminal is draft A deed criminal. So Teaching inclusion Criminal and Liability Criminal in law always stem reject from teachings inclusion Criminal and Deeds Criminal with dimensions role in inclusion deed criminal in something follow criminal.

Kindly schematic For request accountability criminal to maker offense or criminal shared to be 2 (two), viz First, the person in charge full and secondly, the person in charge partially. Person in charge full penalty criminal is those who belong father as person responsible independent ;medadader as person responsible together ; medeplegen as person responsible as well as ; doenplegen as person responsible messenger ; and uitlokken as person responsible persuader or planner. Whereas person responsible part is those who belong as poger as person responsible test deed criminal and medeplichtige as person responsible giver help in do deed criminal.

In Decision No 149/Pid.B/2019/PN Gin, the panel of judges constructed two investments at a time that is, to do something ( doenplegen ), and Medeplegen (one who participates do ). Though, construction wake up end jury is Medeplegen with the sentence " With thereby the 4th element " Tell do deed ", has fulfilled in deed Defendant so that the defendant Hartono violated Article 263 Paragraph (1) of the Criminal Code Jo. Article 55 Paragraph (1) 1st Criminal Code.

Effort law by the Defendant and the Prosecutor general it turns out own significant influence against each of the defendants. Defendant I Putu Adi Mehendra Putra who was originally sentenced off, become convicted during 2 (two) years based on Decision Number 134 K/ Pid /2020. On the other hand, the defendant Hartono was sentenced free based on Decision Review Number 41 PK/ Pid / 2021. this naturally things that are the opposite and odd, because of Verdict Number 134 K/ Pid /2020 the Panel of Judges stated Defendant I Putu Adi Mahendra Putra, SH, M.Kn., has proven in a manner valid and convincing guilty do follow criminal " Forgery letter done in a manner together ". Then with defendant do matter in the condition Together, meanwhile Decision Review Number 41 PK/ Pid / 2021 notary actually sentenced free.

Based on phenomenon the, analysis construction the law of participation criminal liability follow criminal forgery authentic deed done by a notary and notary staff can served as following :

No.IndikatorDecision Review Number 41 PK/ Pid / 2021Decision Number 134 K/ Pid /2020

- 1.positionNotary Public Notary Staff
- 2.Form inclusion-Maker messenger ( doenpleger )
- 3.Description Deeds-Defendant has change Meeting Minutes General Outside Shareholders Usually PT Bali Rich Mandiri December 21, 2015 so No in accordance with circumstances Actually Good content nor sign hand witness Treasure ( owner of 80% shares ).
- 4.Length of Punishment Free Criminal prison for 2 (two) years

Based on Decision Judicial Review Number 41 PK/ Pid /2021 the panel of judges did not decipher wrong deed. Order the accused on his staff named Putu Adi Mehendra Putra for process the making of deeds in matter This Not yet enter date, accordingly with statement by I Putu Adi Mahendra that, dated 19 June 2015 third letter the Already there and already finished typed, letters all Already there is, but related date and place PT still blank, including letters Inheritance Information from Treasure not yet there.

2. Analysis <sup>1</sup> Judges ' Legal Considerations Drop Decision Free on the Judgment Supreme Court Number 41 PK/ Pid /2021

Judge is personification from system judiciary ;in take decision to something judge's case is expected can reflects a sense of justice, guarantee certainty legal, and useful for public besides own Skills necessary intellectual. Based on Article 53 Law Power Justice, formulate that :

- (1) In check and disconnect case, the judge is responsible answer on decisions and decisions made. \_
- (2) Determination and verdict as referred to in paragraph (1) must load consideration judge's law based on reason and basis right and true laws. \_

This is what it becomes base law for an inside judge operate his job decide something matter, that must based on variety possible consideration accepted all parties and no deviate from rules existing law, the so -called with consideration law or legal reasoning.

Decision Number 41 PK/ Pid /2021 states that, judex juris verdict Supreme Court Number 534K/ Pid /2020 dated 30 June 2020 which canceled decision Denpasar High Court Number 78/PID/2019/PT DPS dated 21 January 2020, and stated Defendant proven in a manner valid and convincing guilty of doing follow criminal " also as well as do forgery letter authentic" and drop criminal prison to Defendant for 4 ( four ) years, whether show something judge's oversight, no obvious errors and oversights in disconnect case a quo, because decision judex juris proven made based on conclusions and considerations Wrong law, no according and No based on facts relevant laws in a manner revealed juridical in advance hearing with right and right.

Problems inclusion December 21, 2015 in the Minutes of the External GMS Ordinary Limited Liability Company PT. Bali Rich Mandiri, in the deed below Hand sales of 300 ( three hundred) pieces share from Treasure to Tri Endang Astuti, in the deed below Hand sale of 200 (two hundred) pieces share from Treasure to Suryadi, in the deed below Hand sales of 100 ( one hundred ) sheets share from Treasure to Djarius Haryanto, in the deed below Hand sales of 100 ( one hundred ) sheets share from Treasure to Applicant Judicial Review / Convict and inclusion December 30, 2015 in the Deed Number 112 about Outer GMS Decision Statement Usually PT. Bali Rich Independent.

Based on fact relevant laws revealed up front trial, nothing else caused Because exists a number of obligation witness reporter Treasure that has not fulfilled, like Still There is debt late husband witness reporter Not yet paid paid off, still happening difference counting lack payment of PT assets. Bali Rich Mandiri, lack payment Villa tax by witness complainants, witnesses reporter No report in a manner Honest mark real assets of PT. Bali Rich Mandiri and PT. Bali Rich Villa Ubud to Notary and there a number of other demands of the experts inheritance late husband witness reporter Treasure that is not promised before. So that Notary Hartono, SH, not yet pleased put the " date " on the Deed Number 112 Concerning Outer GMS Decision Statement Usually PT. Bali Rich Mandiri, Minutes of External GMS Usually PT. Bali Rich Mandiri and the Deeds Below Hand Sale of Shares, and listing date on the deed the postponed until witness reporter fulfil all his obligations. Whereas as has considered above that the External GMS Usually PT. Bali Rich Mandiri held at the Company's Office of PT. Bali Rich Mandiri in Banjar TunggayudaKedawetan-UbudGianyar on June 19, 2015. Maka therefore problem inclusion date on some the above deed, nothing but is problem technical administration sheer, because There is a number of obligation witness reporter Treasure that has not fulfilled as considered above. \_judge must consider about obtained facts and circumstances from inspection in the trial to be base determination error defendant. There must be statement has fulfillment all element in formula deed criminal accompanied qualification as provision Article 197 letter d of the Criminal Code. Then in nature matter the court decides something case will drop criminal to the accused, then especially first the judge who examined case the must do considerations about factor what can burdensome or relieve punishment to be he dropped to the defendant ( Article 197 letter f of the Criminal Code).

Decision cassation Number <sup>1</sup> 4 K/ Pid /2020 in comparison backwards with Decision Number 41 PK/ Pid /2021. Decision cassation Number Number 134 K/ Pid /2020 basically complete Decision Supreme Court Number 534 K/ Pid /2020 dated 30 June 2020 which canceled <sup>10</sup> Decision Denpasar High Court Number 78/PID/2019/PT.DPS dated 21 January 2020 and confirmed Decision Gianyar <sup>4</sup> District Court Number 149/ Pid.B /2019/PN Gin dated 13 November 2019 where The defendant Hartono, SH has proven in a manner valid and convincing guilty do follow criminal act of " Participating in Committing Forgery of Letters and sentenced to 4 years prison. It means Good Decision cassation Number 134 K/ Pid / 2020, Decision Supreme Court Number 534 K/ Pid /2020 and Decision

Gianyar District Court Number 149/ Pid.B /2019/PN Gin is the same The same confess the existence of " Participating Doing Letter forgery.

With notice details the expected drop criminal more proportional and more understood Why the crime as dropped it.

Judge basically own construction law Alone with researching such shape evidence and events law that happens, good evaluate case Notary Public nor case staff Notary Public in a professional and proportionate manner. But judges are also humans who don't escape from error or oversight. because That come up conception effort law review.

Effort PK law in principle is effort law outside normal (extraordinary remedy ) against decision court that has strength law fixed ( inkracht van gewijsde ). Effort PK law aims For give justice law, and can filed by the litigants Good For case criminal nor case civil. PK is right convict during serving time in prison institution penitentiary. Verdict given to staff Notary Public no fair, p This Because Considered notary falsify letter precisely sentenced free, meanwhile staff Notary Public precisely convicted whereas staff Notary Public convicted Because construction law follow criminal inclusion.

### Conclusion:-

Based on results research and discussion, then can concluded as following :

a. Legal construction of inclusion criminal liability follow criminal forgery authentic deed done by a notary and notary staff is determined by the presence of errors. There is two entries done by a notary and notary staff that is ordered to do the deed ( doenplegen ) and those who participated do ( Medeplegen ) among others:

1) In Decision No. 149/Pid.B/ 2019 /PN Gin ( Notary ), the panel of judges ordered to commit an act ( doenplegen )  
2) Verdict No 14 8 /Pid.B/2019/PN Gin ( staff Notary ) construction the law is people who participate do ( Medeplegen ).

3) On Verdict Supreme Court Number 41 PK/ Pid /2021 considered the material actions of the defendant Hartono did not meet the essential elements criminal act forgery letter i.e. Making Minutes of Laboratory Examination Criminalistics Number Lab.3741/DTF/2017 dated 24 October 2017, turned out and proved contrary to and does not fulfill the provisions of Article 81 Paragraph (1) letter a Regulation of the Chief of Police of the Republic of Indonesia Number 10 of 2009, which resulted element follow criminal forgery letter No proved, so give decision free.

4) On Verdict cassation Number Number 134 K/ Pid /2020 provides decision guilty do follow criminal " Forgery letter done in a manner together ( Medeplegen ) and sentenced to 2 years prison, but I Putu Adi Mahendra ( staff Notary ) no submit Rec consideration. \_

b. Analysis the judge's legal considerations of the notary's criminal responsibility in the decision Supreme Court Number 41 PK/ Pid /2021 which gives verdict free is Because Meaning from the material actions of the defendant Hartono did not meet the essential elements criminal offense "Making a fake letter or falsifying a letter that can giving rise to a right or intended as evidence of something rights, with the intention to use or order others to use the letter, as if the contents are true and not fake, if its use may cause a loss" Article 263 Paragraph (1) Criminal Code juncto Article 55 Paragraph (1) 1st Criminal Code on alternative charges first.

Based on results conclusion such, then in matter This writer give advice as well as staff Notary Public submit Review with based on the Judgment Number 41 PK/ Pid /2021 on behalf of Hartono, Decision RI Supreme Court number 24 PK/ Pid /2021 above Name defendant Asral Bin H Muhamad Sholeh, number 25 PK/ Pid /2021 above Name Defendant I Hendro Nugroho Prawiro Hartono, Decision No. 26 PK/ Pid /2021 on Name defendant Suryady alias SuryadyAzis and PK Decision Number 39 PK/ Pid /2021 above the name Tri Endang Astuti binti SolexSutrisno as novum or proof new, because Decision cassation Number Number 134 K/ Pid /2020 provides decision blame on the staff Notary Public that is do follow criminal " Forgery letter done in a manner together ( Medeplegen ), while people who are with him free. Besides it is better for the judge to be more observant in considering the facts fact judiciary, so No resulted loss for others.

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