

The Offense Between Negligence of the State Civil Apparatus and the Criminal Act Of Forgery Of Letters In Making Certificates Of Ownership Rights

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Abstract

The State Civil Apparatus (ASN) is a profession in government agencies responsible for providing public services based on good governance principles. However, the actual delivery of these services may not always meet public expectations. Maladministration, including negligence, abuse of authority, and neglect of legal obligations, can create opportunities for criminal acts, such as forgery of letters. This research focuses on the correlation between ASN negligence and the crime of letter forgery in the issuance of certificates of ownership. Through a qualitative approach and case study, the study reveals that deviations from the principles of good governance by ASN could be contributing factors to document forgery. Document forgery reflects the elements of an unlawful act and malicious intent. Despite the availability of legal measures in Indonesia, weak supervision and integrity of human resources hinder prevention and prosecution. The study also examines criminal law in India and the Netherlands to assess the Indonesian legal system.

Keywords: Maladministration, Forgery, Comparative Criminal Law

A. Introduction

The Civil Service, better known as ASN, is the term used to refer to the profession of civil servants in government agencies in general. Indeed, all ASNs have the duty and obligation to assist the public in obtaining administrative services, as regulated in Chapter IV of Law Number 5 of 2014, which discusses the functions, duties, and roles of an ASN. These administrative services are organized in various social fields such as the Health Social Security Agency (BPJS Kesehatan), the Employment Social Security Agency (BPJS Ketenagakerjaan), the Indonesian Railways (KAI), and others. In practice, civil servants often commit negligence that can have a negative impact on public services and public trust. Civil servant negligence can take the form of administrative errors, delays, or lack of clarity in decision-making.

The Ombudsman of the Republic of Indonesia, hereinafter referred to as the Ombudsman, is a state institution with the authority to oversee the provision of public services, whether organized by state and government administrators, including those organized by State-Owned Enterprises, Regionally-Owned Enterprises, and State-Owned Legal Entities, as well as private or individual entities tasked with organizing certain public

services, some or all of whose funds are sourced from the state budget and/or regional budget.

The AAUPB conception according to Crinle Roy includes: the principles of legal certainty, balance, due care, motivation for every decision of a government agency, the principle of not mixing up authorities, the principle of equality in decision-making, the principle of fair play, the principle of justice or reasonableness, the principle of responding to reasonable expectations, the principle of eliminating the consequences of a cancelled decision, and the principle of protection of personal views of life. Koentjoro added two more principles, namely: the principle of discretion and the principle of administering the public interest.

The negligence of the civil servant will be compared with the cases of land title certificate disputes in India and the Netherlands, which turned out to involve the criminal offense of forgery. The phenomenon of civil servant negligence intersecting with criminal law, specifically in the crime of forgery, also occurs in Indonesia. Although the crime of document forgery already has a law, what distinguishes Indonesia and India from the Netherlands, where there are almost no similar cases, is the reason.

Taken from the State Administrative Dispute in Decision Number 22/G/2024/PTUN. SRG, ASN, especially the Tangerang City Land Agency, which has neglected to issue Certificates of Ownership (SHM) for land, causing losses due to the negligence of ASN in carrying out its duties and obligations as the authority responsible for issuing SHM, can be seen in terms of mens rea and actus reus. The factor of negligence in the intention or actus reus is found in the failure of the State Civil Apparatus or the State Administrative Court in carrying out its obligation to protect Muhamad Madi's personal documents, which should only have been in his possession. The State Civil Apparatus failed to carry out its obligation to check the supporting data for the issuance of the SHM, thus affecting various individuals who were harmed.

In contrast to Gayatri, Seputra, and Suryani (2021) who exclusively focused on the cancellation of Land Title Certificates due to administrative defects by examining the Rembatalan procedure within BPN, this journal combines a cross-jurisdictional comparative approach. By examining the procedures of Rembatalan within BPN, this journal combines a cross-jurisdictional comparative approach. Not only does it explain that "The crime of forgery of letters in the process of making a Certificate of Property Rights (SHM) is a form of serious violation that has a direct impact on legal certainty and social justice," this paper also places the Indonesian criminal law framework side by side with India and the Netherlands, by emphasizing that in Indonesia Article 263 of the Criminal Code has the same meaning as Article 463 of the Indian Penal Code and Article 225 paragraph (1) of the Dutch Wetboek van Strafrecht in defining the elements of actus reus and mens rea. Through this comparison, this paper provides a broader insight into the criminal elements of counterfeiting while emphasizing the need for synergy between criminal reform and land administration modernization.

As in the case of forgery of the letter by Anwar to Muhammad Madi, by changing the name of ownership on the land certificate, so that this becomes a dispute over land rights ownership. Knowing the government's efforts in overcoming problems in the land sector, as explained in the Ombudsman, which is an institution tasked with overseeing the implementation of public services, as well as identifying the forgery of letters that still

occurs due to the negligence of the State Civil Apparatus. Therefore, this article explores the following research question; How does ASN negligence violate OMBUDSMAN and AAUPB regulations? How does the criminal law comparison of document forgery in the making of SHM become a bright spot in the dispute?

B. Research Method

In this study, the type of research used is a secondary qualitative method, with data from journals, articles, related regulations, and other discussions related to the research. With the research method of analysis and available legal materials, a systematic compilation of journals will be carried out with legal and other academic interpretations.

C. Results and Discussion

1. Juridical review of State Administration in the negligence of Civil Servants (ASN) in enforcing the principles of the Ombudsman and the General Principles of Good Governance (AAUPB).

The State Civil Apparatus (ASN) is the spearhead in public services that connects the community with government officials as recipients and service providers. The ASN is regulated in Law Number 20 of 2023 concerning the State Civil Apparatus which specifically regulates the Principles, Basic Values, Code of Ethics, and Code of Conduct which are clearly stated in Chapter II of Law Number 20/2023.¹ As public administrators, ASNs are required to uphold ethics and principles so that the public receives effective, efficient, and fair services, as the form of the Republic of Indonesia which adheres to a democratic system of government with a commitment to implement good governance.² The ASN in question is a profession carried out by Civil Servants (PNS) and Government Employees with Work Agreements (PPPK) under the auspices of government agencies. According to Ridwan HR, AAUPB is a general principle that forms the basis and procedure for good, polite, and fair governance, avoiding violations of regulations, and free from abuse of authority, arbitrary actions, and violations of regulations.³ ASN as part of the service apparatus for the community with the government must also comply with the General Principles of Good Governance (AAUPB) as regulated in Law 30 of 2014 concerning Government Administration

The government's efforts in overcoming problems in the land sector are explained in the Ombudsman of the Republic of Indonesia (Ombudsman RI). The Ombudsman of the Republic of Indonesia is an institution tasked with overseeing the implementation of public services by state and government administrators who receive reports of alleged maladministration, such as State-Owned Enterprises (BUMN), Regional-Owned Enterprises (BUMD), and private bodies.⁴ The Ombudsman is specifically regulated in Law Number 37 of 2008 concerning the Indonesian Ombudsman, who is assigned to carry out duties and authorities with the principles of

¹ Law of the Republic of Indonesia Number 20 of 2023 concerning the State Civil Apparatus

² Sincere, sincere. Dewi, Maya Puspita. (2019) "Ethics of State Civil Apparatus in Building Good Governance"

³ Munawaroh, Nafiatul. (2023) "17 General Principles of Good Government and Their Explanations". Online

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⁴ Ombudsman of the Republic of Indonesia. <https://ombudsman.go.id/profiles/index/pftt?lang=id>.



Decency, Justice, Non-discrimination, Impartiality, Accountability, Balance, Openness, and Confidentiality.

One part of the State Civil Apparatus (ASN) is the National Land Agency (BPN), which is a non-ministerial government agency that carries out government duties in the land sector. The duties of the BPN include the issuance of Presidential Regulation Number 10 of 2006 which is aimed at serving the community in organizing their rights in the land sector in accordance with the rules and regulations to have binding legal protection and certainty.⁵ The establishment of the National Land Agency (BPN) originated from the Basic Agrarian Law (UUPA) in the context of binding land ownership by individuals with permanent legal force (inkrah). The object of the contract between the individual and the land is obtained and explained through a Certificate of Ownership (SHM) which clearly states the identity, the type of rights obtained, details of the land owned, the boundaries of the land, and so on, signed by the authorities and a legal letter issued by the National Land Agency according to the location of the specific object. However, not everything that is addressed in writing goes according to people's expectations. Many injustices are committed by government agencies against the rights of the community, therefore the establishment of the Ombudsman Institution is intended to provide protection for the community as regulated in Article 1 paragraph (3) of the 1945 Constitution on the Rule of Law which should uphold the rights of individuals and society.

The Ombudsman Institute is regulated in Act No. 37 of 2008 concerning the Ombudsman of the Republic of Indonesia, Article 4 of which regulates the obligation of the institution to work based on reports from the public regarding service problems of a public service institution that commits maladministration against the public. Maladministration is an act against the law, abuse of authority, exceeding authority, including negligence and neglect of legal obligations in the provision of public services by state governments that causes material or immaterial losses to society and individuals. Article 7 also authorizes the Ombudsman to work passively in conducting investigations of public services on his own initiative. The Ombudsman Institute has a big role in realizing the principle of Good Governance, where the government should serve the community in various fields. Martin Oosting stated that the Ombudsman has an independent nature that cannot be intervened by the influence of the authorities that can be misused, and stands firm in avoiding corruption, collusion, and nepotism (KKN).⁶

In guaranteeing legal certainty for the public's right to land registration, the National Land Agency (BPN) has an obligation to issue a certificate of proof of rights, including: 1) Fake Land Rights Certificates, 2) Genuine but Fake Certificates (incorrect or falsified certificates), and 3) Double Certificate, where more than one certificate is issued for an object, resulting in partial or complete overlap. These three problems are often faced by the community and harm the parties due to legal defects committed by the authorities at the National Land Agency (BPN). In an effort to prevent, supervise,

⁵ Dewandaru, P. A., Hastuti, N. T., & Wisnaeni, F. (2020). Settlement of land disputes against dual certificates at the national land agency. *Notary*, 13(1), 154-169

⁶ Hasjimzoem, Yusrani. "The Existence of the Ombudsman of the Republic of Indonesia." *Fiat Justisia* 8, no. 2 (2014): 192-207.

and take action to avoid conflict, the cancellation of certificates with administrative legal defects can be carried out. However, the provisions governing the cancellation of duplicate certificates have created a conflict of authority norms that are the authority of the State Administrative Court relating to the cancellation of certificates as a product of the State Administrative body.⁷

Administrative legal defects are regulated in the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency No. 9 of 1999 concerning Cancellation of Land Rights Article 106 paragraph (1) which refers to 1) Incorrect procedure; 2) Incorrect application of the law, 3) Incorrect object of rights, 4) Incorrect subject of rights; 5) Incorrect type of rights; 6) Incorrect calculation of area; 7) Overlapping land rights; 8) Incorrect legal or physical data; and 9) Other administrative errors. The result of land disputes leads to legal action by the National Land Agency (BPN) to cancel Land Rights Certificates based on Law No. 5 of 1960 concerning Basic Agrarian Principles, Government Regulation No. 24 of 1997 concerning Land Registration, Presidential Decree No. 26 of 1998 concerning the Establishment of the National Land Agency, and Regulation of the State Minister of Agrarian Affairs / BPN No. 3 of 1999. The purpose of canceling land rights certificates with administrative defects is to provide legal protection for land rights because the certificate is legal proof of legally protected land ownership and control. The filing of a request to cancel a certificate with administrative defects is done through the National Land Agency (BPN) and the State Administrative Court (TUN), with a resolution that can be the renewal of the certificate or re-registration.⁸

Appointing from the State Administrative dispute in Decision Number 22/G/2024/PTUN. SRG, ASN, specifically the Tangerang City Land Agency, which has been negligent in issuing Certificates of Ownership (SHM) over land that has caused losses due to the negligence of ASN in carrying out its duties and obligations as the authorized party as the issuer of SHM, which should only be owned by an individual. ASN failed to carry out its obligation to check the supporting data for the issuance of SHM, thus affecting various individuals who were harmed. The legal consequences of unlawful acts are detrimental to both parties, preventing them from exercising their individual rights as owners who wish to register land to guarantee legal certainty over the land they own. Therefore, as a consequence of negligence on the part of the land agency itself, there must be legal accountability on the part of the land agency that issued the disputed certificate as a consequence of being a constitutional state that prioritizes the lives of the people. Liability is carried out as a legal compliance obligation of the state, government, or official as a result of a lawsuit by the community individually or civil legal entities. Liability can be carried out in the form of compensation with the payment of a sum of money, issuing a decision or regulation, cancelling/revoking a decision or regulation, or other actions that have effectiveness and efficiency in fulfilling

⁷ Sahnan, S., Arba, M., & Suhartana, L. W. P. (2019). The authority of the national land agency in resolving land disputes. *IUS Journal of Law and Justice Studies*, 7(3), 436-450.

⁸ Gayatri, Ni Made Silvia, I. Putu Gede Seputra, and Luh Putu Suryani. "Cancellation of Land Title Certificate Due to Administrative Defects." *Journal of Legal Analogy* 3, no. 1 (2021): 79-83.

obligations.⁹

2. Comparison of Criminal Law in an effort to clarify the handling of the crime of forgery

a. Comparison of Criminal Law Within Positive Law In Indonesia

In the scope of criminal law, not all events are criminal events. Therefore, it is necessary to look for the criminal elements in the events reported by the aggrieved party. There are two elements or concepts that are emphasized as requirements for a criminal event, namely Actus Reus and Mens rea. Actus reus is defined as an unlawful act, which must be committed consciously and voluntarily. Meanwhile, mens rea is introduced as a state of mind or intention that is required to act voluntarily. In criminal law, mens rea is a condition that limits responsibility to people who choose to commit the voluntary offense. What actually determines a criminal act? Is it the action first? Or the intention (state of mind) that violates criminal law?¹⁰

According to classical criminal law, actions that constitute a criminal offense are those expressly mentioned in the Criminal Code. This also means that criminal offenses for which individuals can be held accountable are those that have been previously regulated. However, in the book *Rangkaian Sari Kuliah Hukum Pidana (Essential Criminal Law Lectures)* by Drs. Utrecht, the definition of a criminal offense and its justice differs from the classical school, because modern criminal justice should be able to give more priority to the person of the perpetrator, as a human being. Drs. Utrecht also concluded that modern criminal law is still a legal blanket used for human slavery or power of influence. Therefore, instead of just an act that goes against the law, this criminal event is called a crime by Drs. Utrecht. A crime is an act of a person that goes against the social norms of society, and is a certain social phenomenon in human interaction in society. As a means of determining the responsibility for an individual's actions, there is a basic criminal concept called mens rea and actus reus. Both of these things must be possessed by the individual so that he or she can be found guilty or responsible for a crime. Mens rea comes from Latin and means "guilty mind". Then, Sudarto stated that mens rea is the psychological state of the perpetrator of the crime, so that the individual is aware of the actions he or she has committed. The psychological state in question includes the individual's mental condition, inner nature, and all thoughts in the process of thinking up to its implementation. Then, this mens rea is divided into 3 categories, namely intention (*dolus*), awareness (*culpa lata*), and negligence (*culpa levis*).¹¹

We can conclude that mens rea comes from the intention within a person when committing a crime. Meanwhile, *actus reus* is the result of *mens rea* (*mental element*), namely the actions or deeds carried out (*physical element*). Article 17 paragraph (1) of Law 1/2023 of the Criminal Code can be an example to reinforce this concept of mens rea because it reads "An attempt to commit a crime occurs if the intention of the

⁹ Tanner, J., Salmon, H., & Pattinasarany, Y. (2023). The legal responsibility of the National Land Agency for the existence of double certificates. *CAPITAN: Constitutional Law & Administrative Law Review*, 1(1), 23-32.

¹⁰ E. Utrecht, *Rangkaian Sari Kuliah: Hukum Pidana, Buku 1* (Jakarta: t.p., t.t.), 114

¹¹ Natsir, Jufri; Scott, Russia; "Good-bye, glass. "Forgery of Detailed Land Deeds and Sanctions for Criminal Acts

perpetrator has been realized from the beginning of the execution of the intended crime, but the execution is not completed, does not achieve results, or does not cause prohibited consequences, not because of his sole will".¹² Thus, *actus reus* and *mens rea* can be described in the principle that reads "*actus non facit reum nisi men sit rea*" which means that no act can be subject to criminal sanctions if there is no malicious intent in it.¹³

Specifically in Decision Number 22/G/2024/PTUN-SRG, it has been an example that negligence of the ASN (State Civil Apparatus) can be seen in terms of *mens rea* and *actus reus*. The factor of negligence in the intention or *actus reus* is found in the failure of the State Civil Apparatus or the State Administrative Court (PTUN) to fulfill its obligation to protect Muhamad Madi's personal documents. So that the transfer or transfer of ownership of the Certificate of Ownership (SHM) belonging to Muhamad Madi has been legalized by only one party and clarity has not been given to the original owner who is legally entitled. So the State Civil Apparatus who worked has violated state administrative law and did not follow administrative procedures.

As stated in the Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration¹⁴, the State Civil Apparatus who carried out their duties in Decision 22/G/2024/PTUN. SRG has failed and violated the following articles:

1. Article 37 paragraph (1) "The transfer of land rights and freehold rights to a unit of an apartment building through sale and purchase, exchange, grant, inclusion in a company and other legal acts of transfer of rights, except for the transfer of rights through auction, can only be registered if proven by a deed made by a PPAT (Legal Rights Transfer Official) who is authorized according to the provisions of the applicable laws and regulations."
2. Article 38 paragraph (1): "The making of a deed as referred to in Article 37 paragraph (1) shall be attended by the parties who perform the relevant legal act and witnessed by at least 2 (two) persons who are qualified to act as witnesses in that legal act."
3. Article 39 paragraph (1.c): "The PPAT refuses to draw up a deed if: (c) one or more of the parties who will carry out the legal act in question or one of the witnesses as referred to in Article 38 is not entitled or qualified to do so."

Meanwhile, in the *mens rea* factor, the actions carried out by the State Civil Apparatus have neglected their obligations. This is because every individual must be able to determine their will with full awareness.¹⁵ Wirjono Prodjodikoro has stated that intentionality that is purposeful (*opzet als oogmerk*) means that the individual has planned and desired to achieve a goal that benefits him.¹⁶ Therefore, it is clear that the State Civil Apparatus violated regulations and committed a criminal act because it harmed these parties.

¹² Law Number 1 of 2023

¹³ (Joshua & Adhari, Analysis of Lack of Intention (Mens Rea) in Criminal Prosecution in the Central Jakarta District Court Decision Number 844/Pid.B.2019.PN.JKT.PST. 2021)

¹⁴ Government Regulation No. 24 of 1997

¹⁵ Sudarto, Criminal Law I Revised Edition, (Semarang: Sudarto Foundation, 2018) p. 119

¹⁶ Wirjono Prodjodikoro. *Principles of Criminal Law in Indonesia*. Bandung: Refika Aditama, 2003.

Comparing articles from the old Criminal Code (KUHP)¹⁷ with the latest one, namely Law Number 1 of 2023, several changes can be found in both versions:

Criminal Code (Criminal Code) Old	Criminal Code Number 1 of 2023 (Criminal Code) New
<p>Article 263</p> <p>(1) Whoever forges a letter or forges a letter which may give rise to a right, covenant or release of a debt, or which is intended as evidence of a thing with the intention of using or ordering another person to use the letter as if its contents were true and not forged, threatened if the use can cause loss, due to forgery of letters, with a maximum prison sentence of six years. (2) Threatened with the same criminal penalty, whoever deliberately uses a fake letter or a forged letter as if it is true, if the use of the letter can cause loss.</p>	<p>Article 391</p> <p>(1) Any person who makes improperly or forges a Letter that may give rise to a right, obligation or release of debt, or which is intended as evidence of something, with the intention of using or asking others to use as if the contents are true and not fake, if the use of the Letter may cause loss, shall be punished for forgery of the Letter, with imprisonment for a maximum of 6 (six) years or a maximum fine of category VI.</p> <p>(2) Any person who uses a Letter whose contents are not true or that is forged, as if it were true or not forged, if the use of the Letter can cause harm shall be punished with the same criminal penalty as paragraph (1).</p>

There are several comparisons found from the two articles, namely the subjects intended by the two articles change. In article 263 it is stated at the beginning of paragraph 1 which states “whoever” which means it is general to anyone. Then, the old article does not explain in detail the punishment that will be imposed on the violator of the article. Meanwhile, in Article 391, the subject is changed to “everyone”. Through the change in the word, it explains that anyone can commit this crime with wrongful intent, and it is broader in nature. A significant difference is the fine in category VI, which is Rp. 2,000,000,000 or 2 billion rupiah. The changes in certain words provide clarity to the reader.

Criminal Code (Criminal Code) Old	Criminal Code Number 1 of 2023 (Criminal Code) New
<p>Article 264</p> <p>(1) Forgery of letters is threatened with imprisonment for a maximum of eight years, if committed for: 1. authentic deeds; 2. debt securities or</p>	<p>Article 392</p> <p>(1) Sentenced to imprisonment for a maximum of 8 (eight) years, Every person who forges a letter forged with: a. an authentic deed; b. Debt securities or debt certificates from a country or</p>

¹⁷ Criminal Code

<p>debt certificates from a country or its part or from a public institution; 3. Sero or Debt Certificate or Sero Certificate or Debt of an Association, Foundation, Company or Airline; 4. Talaon, Dividend or Interest Proof of Any of the Letters described in 2 and 3, or Proof of Interest issued in lieu of such Letters; 5. Letters of credit or trade letters intended for circulation. (2) Anyone who deliberately uses the letter in the first paragraph, whose content is not true or which is forged as if it were true and not forged, shall be threatened with the same criminal penalty, if the forgery of the letter may cause loss.</p>	<p>part thereof or from a public institution; c. shares, debt securities, stock certificates, debt certificates from an association, foundation, company or partnership; d. talon, dividend proof or interest proof of one of the Letters as referred to in letters b and c or proof of interest issued in lieu of the Letter; e. Letters of credit or trade letters intended for circulation; f. Certificate of land rights; or g. Other securities specified in laws and regulations. (2) Every person who uses the Letter as intended in paragraph (1) whose contents are not true or fake, as if true or not forged, if the use of the Letter may cause loss, shall be punished with the same penalty as intended in paragraph (1).</p>
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The comparison of the two articles is in the object in question. Article 264 does not yet categorize shares, share certificates, land titles, and other securities. This is a development for the new article because with this change, victims of document forgery crimes in the future will be able to use this article because more specific variations and types have been added. Then for the case in Decision 22/G/2024/PTUN.SRG, this latest article is a good development because it is clearly written specifically that in letter F in Article 392 or the latest one refers to a certificate regarding land rights. The similarity found between the two articles is that the prison sentence is still the same, with a maximum of 8 years.

Criminal Code (Criminal Code) Old	Criminal Code Number 1 of 2023 (Criminal Code) New
<p>Article 264</p> <p>(1) Whoever orders to enter false information into an authentic deed concerning a matter the truth of which must be stated by the deed, with the intention of using or instructing another person to use the deed as if his statement is in accordance with the truth, shall be threatened, if such use is likely to cause harm, with imprisonment for a maximum of seven years; (2) Anyone who deliberately uses the letter in the</p>	<p>Article 394</p> <p>Any person who requests to include false information in an authentic deed regarding a matter whose truth should be stated by the deed, with the intention of using or asking others to use it as if the information is in accordance with the truth, if such use may cause harm, shall be punished with imprisonment for a maximum of 7 (seven) years or a maximum fine of category VI.</p>

first paragraph, whose content is not true or which is forged as if it were true and not forged, shall be threatened with the same criminal penalty, if the forgery of the letter may cause loss.	
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The latest article appears to be shorter than article 264, which appears to have two paragraphs in it. However, there is a change in the sentence for the intended subject, namely “barang siapa” (whoever) to “setiap orang” (everyone), meaning that the subject becomes more specific to everyone who commits the offense. Then, there is a fine that is added, which is a maximum of category VI or an amount of Rp. 2,000,000,000 (2 billion rupiah). Thus, the negligence of the State Civil Apparatus in the case of Decision 22/G/2024/PTUN.SRG has violated the article listed above. However, the presence of Law Number 1 of 2023 has changed and added details to these verses so that legal loopholes regarding conflicts over the crime of forging land rights certificates will be minimized.

B. Comparison of Criminal Law Frameworking Indonesia, India, and Netherland

The phenomenon of document forgery in the process of making land title certificates is still common in Indonesia. Perhaps the correlation is not clearly displayed, but the negligence of civil servants, commonly referred to as maladministration and can be interpreted as poor administration, has a correlation with criminal acts. This correlation is formed from legal loopholes created by the violation of the Principles of Good Governance (AAUPB), which should be the principle or reference in the implementation of good, clean, and corruption-free governance. The crime of document forgery is a serious offense that will damage the legal order and social conditions of a country.¹⁸ Basically, humans do have a natural condition that This crime involves deliberate acts to create, alter, or falsify documents with the intent to deceive, manipulate the legal system, or gain unlawful advantage. The core legal elements of this offense consist of actus reus-the physical act of forgery-and mens real-specific intent to defraud or obtain unlawful gain. This duality is the main issue in most jurisdictions, including Indonesia, India, and the Netherlands.

In Indonesia, Article 263 of the Criminal Code has a similar meaning to Article 463 of the Indian Criminal Code¹⁹ and Article 225(1) of the Dutch Criminal Code²⁰.

Pasal 263 KUHP Indonesia:

1. Barang siapa membuat secara tidak benar atau memalsu surat yang dapat menimbulkan sesuatu hak, perikatan, atau pembebasan hutang atau yang diperuntukkan sebagai bukti dari sesuatu hal, dengan maksud untuk memakai atau menyuruh orang lain memakai surat tersebut seolah-olah isinya benar dan tidak dipalsu, jika pemakaian tersebut dapat

¹⁸ Natsir, Jufri; Scott, Russia; "Good-bye, glass. "Forgery of Detailed Land Deeds and Sanctions for Criminal Acts

¹⁹ India, *Indian Penal Code*, Sections 463, 465, 468, 471 (New Delhi: Government of India, 1860)

²⁰ Belanda. Wetboek van Strafrecht, Article 225

menimbulkan kerugian, diancam karena pemalsuan surat, dengan pidana penjara paling lama enam tahun.

2. Diancam dengan pidana yang sama, barang siapa dengan sengaja memakai surat yang isinya tidak benar atau yang dipalsu, seolah-olah benar dan tidak dipalsu, jika pemakaian surat itu dapat menimbulkan kerugian.

Pasal 463 Indian Penal Code (IPC):

"Whoever makes any false document or part of a document with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."

Pasal 225 ayat (1) Wetboek van Strafrecht (WvS) Belanda:

"Hij die opzettelijk een geschrift dat bestemd is om tot bewijs van enig feit te dienen, valselijk opmaakt of vervalst, met het oogmerk om het als echt en onvervalst te gebruiken of door anderen te doen gebruiken, wordt, als schuldig aan valsheid in geschrift, gestraft met gevangenisstraf van ten hoogste zes jaren of geldboete van de vijfde categorie."

All three articles define forgery as the creation of false documents with the intention of deceiving or gaining profit. Although in general Indonesia and India frame forgery in broader terms, Dutch law places particular emphasis on the probative function of forged documents. Article 264 in Indonesia and Article 468 in India both provide for aggravated forms of forgery, committed with specific intent. This is similar to Article 225 (3) of the Dutch Criminal Code, which increases the penalty if the forgery is related to terrorism. Article 266 of the Indonesian Criminal Code, in this case covering the inclusion of false information in authentic documents, is in line with Article 471 of the Indian Penal Code and Article 225 (2) of the Dutch Criminal Code, which punishes forgery when the user knows or should reasonably suspect that forgery has taken place.

Law No.1 of 2023 is the Criminal Code that will be implemented in 2026, and until now Indonesia has been using the Dutch Criminal Code since 1886. From this one fact, we can see that the criminal law that upholds justice and security for the Indonesian people is very outdated and irrelevant to the times. However, the bigger concern falls on what differentiates Indonesia from countries like India and the Netherlands. Because if we talk about existing laws and regulations, the Indonesian state should have sufficient regulations in the criminal law of document forgery related to the making of Certificates of Ownership. Indonesia defines the crime of document forgery as regulated in several articles in the Criminal Code (KUHP), including Article 263 which regulates document forgery in general, Article 264 which regulates forgery of authentic documents, and Article 266 which regulates forgery of authentic deeds by including false information in authentic deeds. Some of these articles were later reorganized in Law No. 1 of 2023, which still maintains the substance of Articles 263 to 266 in Articles 391 to 400 with better clarity and structure.

In Indonesia, land administration is an integral part of public administration, as has been argued by experts such as Sondang P. Siagian²¹ and Leonard D. White. The legal basis can be found in the 1945 Constitution Article 33 paragraph (3) which emphasizes that the earth and water and the natural resources contained therein are controlled by the state and

²¹ Siagian, Sondang P. State Administration.

used for the greatest prosperity of the people.²² The Basic Agrarian Law (UUPA 1960), together with Government Regulation No. 24 of 1997 concerning Land Registration, provides a regulatory framework.²³ In addition, Presidential Decree No. 7 of 1979 outlines the Four Pillars of Land Administration, which include legal order, administration, use, and the environment in land affairs.²⁴

India regulates document forgery under several sections of the Indian Penal Code, 1860. Article 463 defines forgery as the act of making a false document with the intention of causing damage or supporting a claim.²⁵ Article 465 provides a general penalty for forgery. Article 468 adds a higher penalty for forgery committed with the intention of deceiving, and Article 471 criminalizes the use of a false document as if it were genuine. These provisions are supplemented by the Information Technology Act, 2000, which broadens the scope of forgery to include digital formats, and the Registration Act, 1908, which governs property documentation.

Although India has a comprehensive legal structure, law enforcement is hampered by institutional fragmentation. Land is a state subject, which causes variations in procedural rigor and digitization across jurisdictions. In many rural areas, land records are still managed manually, creating opportunities for document forgery. Overburdened registration officers may neglect document verification due to workload or lack of digital infrastructure. Although national initiatives such as the Digital India Land Records Modernization Program (DILRMP) have made progress in states such as Maharashtra and Karnataka, implementation is still uneven. The integration of Aadhaar, which can function as a verification tool, has not yet been uniformly declared, making it possible for falsified documents to bypass authentication.

Loopholes in India's land administration system are often due to paper-based documentation systems, lack of infrastructure in rural areas, and bureaucratic inefficiency.²⁶ These institutional weaknesses result in deliberate forgery and administrative negligence. For example, state civil servants can register land transactions without re-verifying the chain of ownership or confirming the authenticity of the seller's identity. However, in many cases, these errors create loopholes for fraud with significant legal and financial consequences. Unlike the Dutch system, Indonesia and India do not yet have adequate national repositories to store all land-related documentation, identity verification, and tax records, allowing for overlapping claims and undetected document changes.

Criminal law in the Netherlands also regulates the crime of document forgery in Article 225 of the Wetboek van Strafrecht (Criminal Code).²⁷ Paragraph (1) deals with the manufacture or forgery of documents intended to be used as original evidence, while paragraph (2) criminalizes the use, provision, or possession of such false documents. Then in paragraph (3), the penalty is increased by up to one-third if the forgery facilitates a terrorist crime. The main elements of the law on document forgery in the Netherlands

²² Indonesia. Constitution 1945

²³ Indonesia. Government Regulation No. 24 of 1997 concerning Land Registration

²⁴ Indonesia. Presidential Decree No. 7 of 1979

²⁵ India. Indian Penal Code (IPC), Sections 463, 465, 468, 471

²⁶ Hapsoro, Rudi Herlianto, et al. "Soil Deformation and Land Data Accuracy

²⁷ Meijers, Canatan Lawyers. Forgery Forgery

include *actus reus* (the act of falsifying or using a document) and *mens rea* (the intention to deceive or to cause unlawful gain).²⁸ The Dutch court emphasizes that the crime of forgery only applies to documents for evidentiary purposes, and not all mistakes qualify as a crime unless there is intent. The term “document” is interpreted broadly and includes paper-based documents, plastic (e.g., identity cards), and digital formats (e.g., tax forms or online submissions).

Dutch land administration is managed by the Kadaster, a central agency responsible for land registration and cadastral mapping²⁹. All property transactions must be notarized and submitted to the Kadaster, ensuring legal consistency and reducing the chances of forgery. Since 2017, the Kadaster has operated under the Dutch Ministry of Home Affairs, which has increasingly integrated it into governance. Unlike Indonesia and India, the Netherlands has relatively no experience with forgery or administrative overlap. In the notarial system, notaries are required to verify the identity and capacity of parties to land transactions, and the Land Registry ensures that all registrations are reviewed, stored, and accessible to the public. Although some mistakes do occur—such as misinterpretation of foreign documents or reliance on automated recording—the system is designed to quickly identify and correct these errors. The Dutch model shows how clear legal standards, technological infrastructure, and human accountability can collectively reduce intentional falsification and negligent maladministration.

However, legal provisions alone cannot prevent forgery if the administrative system is weak. In Indonesia and India, gaps in civil registration, inadequate digital integration, and the absence of a centralized verification process allow falsified or duplicated land documents to be created and legalized. In both countries, civil servants have a role in preventing or creating loopholes for forgery. The failure of ASNs to verify important data, whether due to lack of training, resources, or accountability, has led to systemic vulnerabilities. These weaknesses not only facilitate fraud, but also lead to overlapping claims, protracted court proceedings, and a loss of public trust in administrative institutions. In contrast, the Netherlands presents a model in which administrative integrity complements law enforcement. A centralized cadastre, a legal mandate for notarial authentication, and strict evidentiary requirements collectively close the legal and procedural gaps that exist in Indonesia and India.

D. Conclusion and Recommendations

The legal infrastructure and land administration in Indonesia still have many shortcomings, which create loopholes for the crime of document forgery in the process of making SHM. This includes outdated and inconsistent records, weak inter-agency coordination between the National Land Agency (BPN), civil registry (Dukcapil), and tax office, and frequent negligence of civil servants (ASN) who certify land documents without verification. The Complete Systematic Land Registration Program (PTSL) has addressed several issues by increasing legal certainty, reducing processing time and administrative costs, and increasing public transparency. However, there are still challenges to be faced,

²⁸ [Strafrechtadvocaten.nl](https://www.strafrechtadvocaten.nl). Forgery.

²⁹ [LawyersNetherlands.com](https://www.lawyersnetherlands.com). Land Registry in the Netherlands



especially in areas prone to geological risks where soil deformation affects cadastral accuracy. Administrative negligence in this context can blur the line between civil oversight and criminal liability, especially when document falsification is made possible through inadequate verification.

Criminal liability in cases of falsification must be based on *actus reus* (the act of falsification or the use of false documents) and *mens rea* (intent or negligence). As explained by Natsir et al. (2021), errors in Indonesian law can be either intentional (*dolus*) or negligent (*culpa*), and it is this distinction that the court must evaluate when dealing with the role of civil servants in such cases. Overlapping authorities, unclear administrative responsibilities, and the lack of database synchronization between the National Land Agency (BPN), the Civil Registration Office (Dukcapil), and the Ministry of Finance also contribute to the rampant falsification of documents that take advantage of legal and procedural loopholes. This creates a structural vulnerability where falsified land certificates can be officially registered not because of any intentional criminal act by the applicant, but because of administrative failures on the part of the officials. In many cases, this allows fraudulent activities to remain undetected until they are sued in civil or criminal proceedings, often years later. In many cases, this allows fraudulent activity to remain undetected until it is sued in civil or criminal proceedings, often years later. This reveals the importance of general policy and legal politics that must maintain the integration or integrity of the nation both ideologically and territorially.

Thus, although all three countries criminalize forgery based on similar principles of *actus reus* and *mens rea*, the Dutch system stands out for the harmony between its laws, processes, and administrative infrastructure. To reduce the prevalence of document forgery, Indonesia and India must not only reform their criminal laws, but also modernize administrative practices and enforce the accountability of civil servants.

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