

THE LEGALITY OF DOCUMENTS NEGLIGENTLY AFFIXED WITH FORGED STAMPS

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Abstract

Since the last amendment was in force in 2000, the tariff charged for stamp duty has not been adjusted to suit the most recent monetary value up until Law No. 10 of 2020 on Stamp Duty was issued. In addition to tariff adjustment, the new Law also stipulates the levy of stamp duty on digital documents, which have become increasingly popular used in the recent years, with the expectation of boosting the inflow of State revenue generated from the levy of stamp duty. Nonetheless, the rampant distribution of illegal, forged stamps, aside of inflicting material losses on the State finance due to non-optimum revenue generation, also give rise to uncertainty amongst laypersons with regards to the legality of the document concerned. A document found to have used a forged stamp shall be considered legally equal to an unstamped document, leaving thereupon an obligation due for settlement prior to the document being eligible for use, which should be rectified through an administrative means called “pemeteraian kemudian/subsequent stamp” (nazegelel).

Keywords: Document; Stamp Duty; Forged Stamp; Nazegelel

1. Introduction

Pursuant to Law No. 13 of 1985 on Stamp duty as revoked and replaced by Law No. 10 Year 2020 concerning Stamp duty (“Law No.13/1985” and “Law No.10/2020” consecutively), stamp duty is a form of tax levied upon documents purported either to provide detailed account of certain civil events or to be utilized as evidence before the court of law. Comparatively different from the Dutch civil law system from which the Indonesian practice of duties collection upon the procurement and/or the utilization of certain documents was originated, the term “stamp duty” in several common law countries refers not only to the levy imposable upon the procurement and/or utilization of documents, but also on levies due to payment to the State following the acquisition of securities or land and/or building ownership (similar to Indonesian version of *Bea Perolehan Hak atas Tanah and Bangunan/BPHTB*).¹

As occurs everywhere else in a global scope, the recent trend shows a shift of custom from previously using physical documents to using digital (paperless) documents distributed through digital platforms in accordance with the continuous technological advancement and increasing efficiency of transaction systems, thus prompting the creation of digital stamps called electronic

¹ Antony Seely and Matthew Keep, *Stamp Duty Land Tax on Residential Property*, 2020; James Alm, Patricia Annez, and Arbind Modi, *Stamp Duties In Indian States: A Case for Reform*, 2004, <https://elibrary.worldbank.org/doi/epdf/10.1596/1813-9450-3413>.

seals/*e-meterai*, to seize the otherwise lost opportunity of generating revenues from larger tax basis.² As the new law enacted and the system put in place with constant evaluation and progressive improvement efforts to accommodate electronic dealings,³ stamp duty in its physical form, however, will be unlikely to cease to remain relevant for use at least up until the coming decade since it is applicable in too many scopes of transactions in the society. It could even be safely said that the contribution to the State tax revenue from stamp duty alone is relatively significant, particularly when supported with an optimum collection system.

In light of the above, the levy of stamp duty in general and the common use of stamp duty in particular have become a lucrative business, giving way to the condition where opportunities could be quite easily coupled with malice intents from parties seeking to illegally reap some profit for individual/personal and group interests and, therefore, inflicting losses upon the State, among others through the printing, distribution, and sales of forged stamps purported for use as if they are genuine within the territory of the Republic of Indonesia. The financial loss suffered by the State due to illegal distribution and use of forged stamps is not insignificant. Financially speaking, in one case where the perpetrator has been engaged in the sales of forged stamps for 3 (three) years, the sales of forged stamps as indicated in the perpetrator's financial account show how the business have inflicted on the State a financial loss grossly amounting Rp6,1 billion.⁴ In another case, the police force has successfully uncovered an illegal printing and distribution of forged stamps with the State gross and potential loss amounting Rp27,9 billion.⁵

In addition, social losses also emerge for which the precise economic value is somewhat unquantifiable, and yet it imposes significant and far-reaching implications due to the unrest within the part of society who have not comprehended the aspects of legal certainty and protection pertaining to civil relationships for which the rights and obligations as well as the accompanying terms and conditions are all elaborated in detail in the document for which duty has been paid using a stamp duty which is later discovered to have been forged. This phenomenon negatively affects the level of social trust, in particular against the State as stamp duty issuer and the people

² Dimaz Ankaa Wijaya, Fengkie Junis, and Dony Ariadi Suwarsono, "Smart Stamp Duty," in *Seminar Nasional Perpajakan 2018*, 2018, 1–12.

³ Radea Respati Paramudhita and Obsatar Sinaga, "Optimizing the Use of Electronic Stamps as Tax Revenue in E-Commerce Businesses Linked to the Stamp Duty Law in Indonesia," *Central Asia & the Caucasus* 23, no. 1 (2022).

⁴ M. Agus Yozami, "Jerat Hukum Bagi Penjual Meterai Palsu .Com," *Hukumonline*, last modified 2018, <https://jurnal.hukumonline.com/berita/baca/lt5ab505f47fad1/jerat-hukum-bagi-penjual-meterai-palsu?page=all>.

⁵ Feby Novalius, "Meterai Palsu Dijual Online Rp2.200, Negara Rugi Rp27,9 Miliar," *Okezone.Cm*, last modified 2020, <https://economy.okezone.com/read/2019/03/20/20/2032677/meterai-palsu-dijual-online-rp2-200-negara-rugi-rp27-9-miliar>.

whose daily occupations necessitate the procurement of documents for which the legally stipulated obligation by to pay duties to the State arises, such as judges and bailiffs serving at the court of law, public notary, land officials/*Pejabat Pembuat Akta Tanah* (PPAT), auction officials, bank officers, brokers/middlemen in sales, investment managers, companies issuing (collective) bonds, and others often entrusted with documents procurement.

Therefore, this research set an objective to determine the legality of documents negligently affixed with forged stamp, as well as the available means for rectification and improvement of law enforcement in tackling the illegal circulation of forged stamps. The analysis elaborated in this text set off from a thorough assessment on the completion of all conditions determining the legality of a written agreement, which shall affect the civil relationship governed therein, especially when the document concerned serves as an evidence in a judiciary process before the court of law. In addition, the amendment of penal/criminal provisions concerning the distribution of forged stamps in the society will be analyzed, as well as the available means of actions to be carried out as solutions to prevent further potential leaks in the stream of State tax revenue inflows from the illegal practice of printing, distribution, and sales of forged stamps.

2. Method

Legal research is carried out with the intention to discover legal regulations, principles, or doctrines concerning what should be in alignment with the prescriptive characteristic of legal scholarship.⁶ The method utilized in this research is a juridical-normative nature in attempting to analyse the prevailing laws and regulations i.e., through comparing legal principles with the positive legal norms as set out in the laws and regulations as the positive legal norms (*das sollen*)⁷ of stamp duties collection and usage with the legal reality (*das sein*) collected from reported cases and judicial precedents on stamp forgery, to seek for solutions in order to enable a more effective implementation of said norms. The data referred to in this research are secondary data obtained from literature research in a library research setting,⁸ as well as non-legal materials i.e., non-legal books, research reports, and journals relevant with the legal issues in question.

⁶ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2006). P.35

⁷ Sudikno Mertokusumo, *Bab-Bab Tentang Penemuan Hukum* (Bandung: Citra Aditya Bakti, 1993).

⁸ Sudikno Mertokusumo, *Penemuan Hukum, Sebuah Pengantar* (Yogyakarta: Liberty, 1993).p.52

3. Results and Discussion

3.1. Duties Levied on Documents Pursuant to Law No. 10 Year 2020

The term “document” originated from the Latin word *docere*, which means to teach. This definition is commonly used within 2 (two) contexts. Firstly, document is defined as a written source of historical information as opposed to oral testimonies, artefacts, drawings, and other archaeological trails. The second definition refers to official and State correspondences, such as treaty/agreement, laws, grant, concession, etc. According to Gottschalk, a document (documentation) in its wider sense could mean each process of substantiation, or the attempt to provide evidences, based on any given resources, either in written, oral, descriptive, or archaeological forms.

Pursuant to Article 1 point 2 (a) of Law No.13/1985, documents are papers containing texts with meanings and intents concerning certain actions, circumstances, or reality for certain persons and/or stakeholders. In order to keep up with the recent societal development and international customs, especially the recent technological development that expands the practice of electronic transactions as well as the increasing public awareness concerning the importance of environmental protection which includes the encouragement of using less and less papers whenever possible, Law No.10/2020 brings about adjustments by elaborating the definition of documents, signatures, and stamps in their wider sense i.e., not only in their traditional, physical forms, but also in their digital forms.

In the past, documents were often strictly defined as “papers containing texts”, while an extension of definition allows “everything written or texts, either in handwritten, printed, or digital formats...” to be classified as documents, for which arise the obligation to pay for legally imposed duties. This supposedly results to the expansion of tax collection bases, which is expected to consequently optimizes the generation of State revenue and gathers adequate funds to finance the national development. Alongside such adjustments, the definition of signature has now also been altered to include digital signatures as referred to in the Law regulating information and digital transactions.

Meanwhile, the term seals (“*benda meterai*”), which are previously limitedly defined as only stamp duty and stamped paper officially issued by the Government, has now been amended into stamps (“*meterai*”) i.e., “label or seal in paper, digital, or other forms possessing particular characteristics and safeguard elements, officially issued by the Government of the Republic of Indonesia for use as means of payment of duties imposed on documents.” The issuance of Law

No.10/2020 saw that “*kertas meterai*” is finally removed, considering its many years of disuse for practical reason i.e., that in practice, it is much easier for a finished document to be later affixed with a stamp duty, and that it is now even no longer available for purchase.

The Law provides an exhaustive list of the documents for which the affixation of stamp duty is obligatory. In addition to the documents used for judiciary/court affairs, other documents procured as tools to provide an account of civil matters/relationships pursuant to Article 3 (2) of Law No.10/2020, which give rise to the obligation of duties payment thereof, are as follows: a) agreements, verification letters (certificate, reference, testimonial), letters of representation (statement, declaration), or similar letters, as well as their counterparts; b) notarial deeds as well as their *grosse*, counterparts, and excerpts; c) deeds made by a land official as well as their counterparts and excerpts; d) securities of any sorts and forms; e) Documents elaborating transactions involving securities, including transactions of futures of any sorts and forms; f) Documents related to auction in the forms of original, excerpts, copies, and *grosse* of the minutes of auction; g) A document stating a monetary value exceeding Rp5.000.000,- (five million rupiah), which: mentions the acceptance of money; or contains an admittance that the entirety or part of the debts have been settled or calculated; and h) Other documents as stipulated by the Government Regulation.

Not many alterations could be seen with regards to the list of documents, except for the addition of auction-related documents and documents with transaction worth passing the set benchmark of Rp5.000.000,- (five million rupiah), as adjusted from the previous benchmark of Rp1.000.000,- (one million rupiah).

Stamp duty is imposed with varying tariff points across the globe, either with a specific/flat rate, a certain rate determined according to the monetary or transactional worth as stated in the document (*ad valorem rate*), or a mix of both (*mixed rate*) i.e., by combining a basic tariff and an addition calculated with certain percentage adjustable according to the value of transaction.⁹ Law No.13/1985 itself has divided the tariff into 2 (two) i.e., Rp1.000,- (one thousand rupiah) and Rp500,- (five hundred rupiah). On April 20th of 2000, the Government Regulation No. 24 Year 2000 concerning The Amendment of Stamp Duty Tariff and the Nominal Benchmark Subject to Stamp Duty (“GR No.24/2000”) was issued, which adjusted said tariffs to Rp6.000,- (six thousand rupiah) and Rp3.000,- (three thousand rupiah) respectively. Article 2 point (1) of GR No.24/2000 stipulated that notarial deeds and their counterparts, deeds made by appointed land officials and

⁹ Alm, Patricia Annez, and Arbind Modi, *Stamp Duties In Indian States: A Case for Reform*.

their counterparts, and agreements or documents procured for evidentiary purposes before the court of law shall all be affixed with a Rp6.000,- (six thousand rupiah) stamp duty. Article 5 of the most recently updated Law No.10/2020 stipulated that the stamp duty tariff has now become a flat rate of Rp10.000,- (ten thousand rupiah) for all documents that are subject to stamp duty obligation, effective since January 1st, 2021 in accordance to Article 32 of said Law.

In addition to said amendments, the new Law also attempts to accommodate the interests related to development and social affairs through the facility of duties exemption, either for a temporary period or permanently, for documents that concern the transfer of ownership of land and/or building purported for religious and/or social (non-commercial) activities or within the scope of acceleration of response and recovery process of social-economic condition of certain regions due to natural disasters (as announced by the Government to establish a situation of emergency), documents made in order to encourage or implement certain Government programme and/or policies of certain institutions in relation to the monetary or financial services sectors (which is impossible with varying tariff rates in accordance with Article 6 point (3)), or documents governing the implementation of a binding international agreement.

3.2. Agreement as Evidence Before the Court

An agreement is a legal phenomenon where two or more persons mutually enter into covenant with one another to do or not to do something,¹⁰ and most of the time in an environment of increasingly complex socio-legal relationships, the involved parties acknowledge the necessity to put their covenants in a written document intended to serve as proof of their undertakings. It sets out the respective rights and obligations between the parties that consented to enter into it, meaning that each party shall carry out their respective obligations and obtain their respective rights. Such rights and obligations when explicitly set out in a detailed agreement shall provide a sense of legal certainty between the involving parties, especially concerning the date of commencement and the effective date of such agreement, the legal subjects, the substance covering the intents of all parties, the terms and conditions involved, and the witnesses present at the time of signing to confirm the conclusion of such agreement¹¹

Article 1320 of the Indonesian Civil Code (ICC) stipulated that in order to determine the legality of an agreement, the following 4 (four) conditions shall be met cumulatively i.e., the

¹⁰ Ahmadi Miru, *Hukum Kontrak Dan Perancangan Kontrak* (Jakarta: Raja Grafindo Persada, 2007).

¹¹ Salim, *Teknik Pembuatan Akta Perjanjian* (Jakarta: Raja Grafindo Persada, 2017).

presence of consent of the persons involved, the parties' capability to enter upon an agreement, a certain subject, and a lawful purpose. The consensus reached between the parties is an absolute element required for the existence and legality of an agreement. This could be achieved through various means, but the most important is through the conveyance of offer and acceptance of said offer,¹² occurring in various manners i.e., through a written document (in the form of either authentic deed or private deed),¹³ oral communication, symbols, or even silence (which is considered as tacitly provided consent).

While oral consent is the most common form of consent conveyed among one another in the society, despite the parties involved being unaware of an agreement already taking place most of the times and therefore never have considered it as a legally binding agreement.¹⁴ Its legality is of no less value than that of written agreements insofar as the requirements that make up the legality of an agreement stipulated in Article 1320 of the ICC have all been met. However, evidences of the commencement of oral agreements remain relatively tougher to provide, speaking of presenting to and convincing the court of law in a legal proceeding, compare to their written counterpart, thus the general preference of setting each subject matter into a written, comprehensive agreements instead.

Certain symbols are often used by the sellers of (typically) one main product in illegal agreements, among others transactions involving drugs.¹⁵ Symbols are also affixed on goods featuring certain specifications (e.g., goods which production process and materials are labelled "halal" or having taken into considerations certain aspects such as human rights protection, or recycleable goods with varying degree of reusability) or goods utilized at certain places (e.g., to inform the applicable prohibitions subjected to any person when entering smoke-free zones). Tacit consent occurs for example in agreements concerning the use of public transportation, particularly when the passenger is familiar with the routes and/or destinations; he would directly jump into the vehicle without even asking about the destinations or tariffs. Without any exchange of words with the driver, the circumstances have conceptually give rise to the commencement of a transport agreement between the passenger and the driver¹⁶ or the transportation provider/operator by whom the driver is employed.

¹² Miru, *Hukum Kontrak Dan Perancangan Kontrak*.

¹³ Ibid. p.15

¹⁴ Ibid. p.16

¹⁵ Ibid. p.16

¹⁶ Ibid. p.16

The element of capacity requires the parties' ability to carry out certain legal action, which by its definition produce legal consequences.¹⁷ A person is considered as lacking of capacity to carry out certain legal action when he is aged below 21 (twenty-one) years old, unless said person has been married prior to reaching 21. On the contrary, each person aging 21 (twenty-one) years old or above are considered as having legal capacity, with the exception of certain circumstances where said person should be placed under guardianship e.g., a major who is continually in the state of rage, an imbecile, a lunatic, or a squanderer (Articles 379 and 433 of the ICC).¹⁸

The certainty of terms in the agreement as agreed upon by the parties, particularly their respective rights and obligations shall concern certain matters or goods, which means there is clarity whenever any conflict occurs with regards to the rights, obligations, and matters or goods, as are agreed upon and specified in the agreement.¹⁹ The goods in question for instance, has to have at least its type determined, while its precise quantity does not hold the same significance and therefore its mention is not obligatory insofar as these could be quantified or determined at a later date.²⁰

The last requirement demands the existence of certain legal causes underlying an agreement, with all matters agreed upon be in conformity and not contradictory to the prevailing laws and regulations. Entering into an agreement concerning narcotics, prostitution, sales of body parts, etc. which are all in violation of the laws, is a breach of legality which renders said agreement to be void by virtue of the laws (*void ab initio*).

All of those are the requirements demanded to establish the legality of an agreement, meaning that each agreement shall meet all 4 (four) requirements cumulatively before being acknowledged as an agreement made in accordance with the laws.²¹ These requirements are classified into 2 (two) groups: The first concerns the subject matter (the parties entering into an agreement), and the second concerns the object of agreement (the intents conveyed and the very content/substance of what has been agreed upon by both parties respectively in the agreement).²² The distinction between the 2 (two) groups is utilized by legal scholars to determine the respective legal consequences of failing to meet either one or the entire set of those requirements.

¹⁷ Salim, *Teknik Pembuatan Akta Perjanjian*. p.30

¹⁸ Ibid. p.29

¹⁹ Subekti, *Hukum Perjanjian, 23rd Edition* (Jakarta: Intermasa, 2010).p. 19

²⁰ Subekti, *Pokok-Pokok Hukum Perdata, 33rd Edition* (Jakarta: Intermasa, 2008). p. 136

²¹ Hardjian Rusli, *Hukum Perjanjian Indonesia Dan Common Law*, 1993. p. 44

²² Subekti, *Aspek-Aspek Hukum Perikatan Nasional, 4th Edition* (Bandung: Citra Aditya Bhakti, 1998). p. 16

When the first and/or second requirements (which are both subjective in nature) is not met, an agreement becomes voidable,²³ meaning that an interested party is allowed to file for its cancellation before the court of law following a proper commencement, or it would otherwise prevail.²⁴ An agreement will be considered as void by virtue of law (*void ab initio*) when the third and/or fourth requirements (which are both objective in nature) is not met i.e., deemed as has been virtually void since its commencement, or in other words, considered as having never existed before the law.

An agreement itself is only one among the evidences deemed acceptable for judiciary purpose at the court of law pursuant to Article 1866 of the ICC. In general, written evidence can be classified into 2 (two) i.e., authentic and privately made texts. Authentic deeds pursuant to Article 1868 of the ICC are “the deeds produced in the form as stipulated by the laws by or in the presence of a public official [endowed with authority and is therefore] competent to act at the place [where the production of deed occurs]”, which pursuant to Article 1870 renders the strongest, most perfect evidence concerning the details elaborated therein.

The nature of its production process i.e., being made by or in the presence of a competent public official and witnesses, leads to them being expected to be able to guarantee/confirm the true account/circumstances of the occurrence of consent with all its terms and conditions also stipulated thereof. This nature of authentic deeds obliges the judges to give trust and the contents written therein shall be deemed as true, unless any person filing for claims against it could prove otherwise in accordance with the demand of Article 1865. Where an element is not properly met, the laws stipulate that the resulting legal consequences that follows is the degradation of the authentic deed concerned in terms of its strength of evidence into becoming equal to a private deed.

Pursuant to Article 1874, the presence of a competent public official is the distinguishing factor between authentic and privately made documents since the privately made versions are made without the presence of any competent public official who could otherwise guarantee/confirm the true account of the occurrence of a certain legal event (particularly with regards to the time, place, the parties involved, and other details that made up the material substance of a letter or deed) as set out in the letters or deeds in question, which would then affect its strength as a means of evidence. Those included within the league of public officials competent

²³ Ibid. p.44

²⁴ Ibid. p.45

to issue authentic deeds are, in general, public notary, but also other public officials such as civil registrar officials, bailiffs serving at the court of law, auction officials, and land officials.

Based on above elaborations, it could be concluded that whether or not a document subject to payment of duties have not been affixed by a stamp duty or have been affixed by forged stamps shall not render the legality of document as void; such occurrence only affect the usability of said document to serve as evidence of certain civil dealings before the court.²⁵ The legality of document per se shall be put into question when, and *only when*, certain inadequacies are discovered with regards to one of the 4 (four) or all requirements to establish the legality of an agreement pursuant to Article 1320 of the ICC, even when the document in question is affixed with *many* stamps as many so believed to be the sign of document legality.²⁶

3.3. The Legality of Agreement Affixed with Forged stamps

Stamp duty is affixed on documents as one administrative requirements levied on the parties as legal subjects to the payment of duty arising from the commencement of certain legally stipulated documents as mentioned in the previous section. Article 7 points (1) to (9) of Law No.13/1985 governed the particular directions of use of stamp duty, among others concerning the affixation of signature accompanied with the date, month, and year [showing the date of duty payment for the document concerned], and a direction that used stamps shall not be reused. Taking into account the nature of the imposition of duty which is inherently an administrative obligation (although as with other tax-related obligations, depriving the State of the income intended to finance national development endeavours is rightly classified as a crime), the laws provided that any violation against the legal provisions could first of all be immediately rectified through an administrative procedure.

Said violation fits in the event where certain documents, including those made abroad, have not been (adequately) affixed with a stamp duty or otherwise has been affixed only with a forged stamp. Aside of judicial precedents ruling on illegal circulation of forged stamps, the authors have found no precedent determining a document's legality where a forged stamp is used. However, in the later context i.e., where the printing, distribution, and consequently the purchase and use of forged stamps in particular took place, (pseudo-)payment of duties could be considered to have been carried out by the parties of the agreement who unknowingly used forged stamps instead of

²⁵ Siti Nurdiyah Fauza Tuanaya, "Fungsi Bea Meterai Dalam Surat Perjanjian," *Notarius* 13, no. 2 (2020): p. 887.

²⁶ Mega Tumilaar, "Fungsi Meterai Dalam Memberikan Kepastian Hukum Terhadap Surat Perjanjian," *Lex Privatum* 3, no. 1 (2015): 61.

the genuine one. Despite of the obligation as a buyer to act in good faith, including to reasonably inspect any indication of forgery or other fraud that might lead to discovery that prevents damage,²⁷ it is difficult to determine the intention or otherwise negligence of the end users, that are the parties to an agreement, at the time of purchase and when affixing forged stamps on their documents; they might very well be unaware victims of the illegal circulation of forged stamps themselves since the payable duty for each document is close to negligible (the current rate of Rp10.000,- per document is less than the amount generally spent by a common worker for lunch).

When forgery of stamp duty is later discovered and could be proved to have occurred, the matter should be judged by a court in criminal proceeding to determine the legal consequences. As to the question of agreement legality, a court in civil proceeding would need to decide within the contract law regime and it could be concluded that the documents affixed with forged stamps are still fully legal and binding, albeit having the same value as documents on which no stamp duty has been affixed at all. This means only that the documents have a payable obligation in the form of stamp duty in addition to the penalty that entails for late payment, whilst the affixation of forged stamp on a document is no acceptable ground to declare it any less in legality. In the light of those, the unintentional use of forged stamps on documents shall be treated similarly to inadequate or non-payment of duty owed i.e., an administrative error that could easily be administratively rectified.

Article 8 point (1) of Law No.13/1985 and Article 3 point (2a) of the Ministry of Finance Regulation No.70/PMK.03/2014 concerning The Procedure for *Pemeteraian Kemudian* (“PMK No.70/03/2014”) obliges the relevant tax subject or the beneficiary of documents to be utilized as evidence in a judiciary process before the court of law or otherwise anyone who is to receive benefits from the use of document in question to undergo a simple administrative rectification procedure called *pemeteraian kemudian (nazegelen)*.²⁸ This procedure calls for the duties which in reality has never been (adequately) paid and therefore is still owed to the State to be first of all fulfilled to meet the legal administrative requirement arising at the moment the legal event of document commencement took place by making a full payment for the amount of duty long due, in addition to the payment of penalty imposed on such delay of payment, unintended or otherwise. The previous Law No.13/1985 stipulates that the amount of penalty imposable for documents that

²⁷ J Timothy White, “The Scope of the Depositor’s Duty To Prevent and Discover Alterations and Forgeries of His Checks,” *Vanderbilt Law Review* 16, no. 4 (1963).

²⁸ Evie Rachmawati Nur Ariyanti, “Tinjauan Yuridis Terhadap Bea Materai Di Indonesia,” *ADIL: Jurnal hukum* 11, no. 1 (2020): 54.

are subject to payment of duty and yet which have not been (adequately) paid for is 200% (two hundred percent) of the due amount of duty, while Article 5 of PMK No.70/03/2014 and Law No.10/2020 renewed the rate to 100% (one hundred percent) of the due amount of duty.

Pursuant to Article 10 Law No.13/1985, *nazegelen* is carried out by a postal officer in accordance with the procedure set out in the Ministry of Finance Regulation. Following the settlement of due duties and the penalty, a post officer shall affix a stamp that reads “*Telah dilakukan pemeteraian kemudian sesuai dengan Peraturan Menteri Keuangan Nomor 70/PMK.03/2014*”, accompanied by the name and postal membership number of the officer on the document now affixed with stamp duty, as well as enclose on the document the tax payment evidence/*Surat Setoran Pajak* (SSP) with a distinctive transaction number for verification purpose. The document owner is responsible for the settling of all due process related to document tax payment through *nazegelen*, unless said document was issued not by its owner e.g., public notary, land officer, or other competent public officials responsible over the deeds, copies, and counterparts of deeds they issued, in which case the document issuer shall bear the cost of settlement of *nazegelen* in accordance with Article 8 point (1) of PMK 70/03/2014.

3.4. Social Losses Due to the Detriment of Legal Culture

The foundational principles of law prevailing for a legal system in a civil society as suggested by Roscoe Pound²⁹ are that each person could rightly expect that other people will act in certain manners as to not inflict upon others any harm; that he could possess what he discovers for noble causes and to utilize for his own needs what he has worked to create himself and obtained within a condition of socio-economic orderliness governing the society; that the people with whom they interact within the scope of common relationships in the society shall act in a bona fide manner (in alignment with the expectations placed by the moral sense of the society) and could be expected to fulfil the promises they have professed to accept or the expectations incited due to their actions; and that the people who own properties which could potentially “escape” their supervision and impose harm upon others, shall take into their care to keep said property under their supervision.

Considering at the contradicting realities to the aforesaid concept of legal norms operating within a civil society as suggested by Roscoe Pound, (organized) crimes which the authoritative institutions failed to tackle and thus becoming prevalent in the society are “...detrimental to the

²⁹ Soetikno, *Filsafat Hukum Bagian II. 7th Edition* (Jakarta: Pradnya Paramita, 1997). p. 80

efficiency of any democratic or economic system.”³⁰ The real loss of these crimes is ultimately the social value of public trust,³¹ even worse if directed towards the State, and therefore shall never be undermine despite the relatively insignificant amount of calculable State revenue loss in comparison to other sources of State revenues. The rampant distribution of forged stamps, for one, has driven the society into unrest since the reality does not align with the expectations of due protection stemming from the best intentions held by other people in carrying themselves out (in this context, in deciding whether or not to get involved in the printing, distribution, and/or sales of forged stamp duty), in manners which prevent losses from being inflicted on the society as a whole.

One of the most common concern arising from the lack of use of stamp duty in the making of an agreement, or in this case, the use of forged stamps instead of the original, is with regards to the legality of the document as well as the consequences and available legal protection. This is not surprising since upon discovery of the occurrence of the above practices, it can be deemed that the parties really have yet to fulfil their administrative obligations as stipulated by the prevailing laws and regulations regulating duties or tax imposable upon the occurrence of legal event i.e., the procurement and/or utility of certain documents.

Said concerns could occur in greater degree for laypersons with minimum knowledge of the legal implications arising upon the discovery that the duties owed to the State with regards to certain documents have been paid for using forged stamps, especially when it involves deeds and their copies or counterparts as procured by a public official trusted to represent the Government (such as public notary or court officials). If this circumstances is to be left as it is at the present condition without taking any course of action, the duty collection system will continue to run at the detriment of the society at large as well as the State, both socially and financially. Therefore, it will worth the investment and efforts to attempt working to socialize more extensively to the larger public audience concerning the legal consequences of unintentional use of forged stamps.

3.5. Penal Sanctions Against Forgery of Stamp Duty

There are several crimes related to seals in general and stamp duty in particular, including those committed beyond the territory of the Republic of Indonesia based on the principle of extraterritoriality, all of them inflict losses on the part of the State and are therefore classified in

³⁰ Marco Di Cataldo and Nicola Mastrococco, “Organized Crime, Captured Politicians, and the Allocation of Public Resources,” *The Journal of Law, Economics, and Organization* 00, no. 1 (2021). p.2

³¹ Ion Rusu, Bogdan Birzu, and Minodora Ioana Rusu, “Forgery and Fraud Offenses in Romanian Law,” *Juridica* 17, no. 3 (2021): 75–87.p. 81

the Indonesian Penal Code (IPC) as crimes (Article 4) subject to penal sanctions. Such actions are stipulated in the laws, as shown in table 1.

Law No. 10/2020 has renewed the threat of punishment against crimes related to forged stamps with more severe punishment in the hope of discouraging any intent of and deterring perpetrators against committing crimes which inflict losses on the State's finance and social unrest. Law No.13/1985 stipulates only the threat of physical punishment (imprisonment), while material sanctions in the form of financial penalty (returning the money) had not been stipulated and made use of, which would have provided the State with the opportunity to recoup some of the lost income from the leak of duty collection. Notwithstanding, in a few past verdicts issued by the judicial bodies, the accused were not only charged with punishments for committing any crime related to forged stamps pursuant to Law No.13/1985 and IPC, but also with the threat of punishments stipulated in Law No. 8 Year 2010 concerning Prevention and Eradication of the Crime of Money Laundering, which combines both physical and material sanctions.³²

Despite the normative regulatory measures in place, effective realization need to be pursued and taken into serious account by the Government body. The case of postwar Biafra (formerly part of Nigeria)³³ has served as a powerful example as to how tolerance to crimes and violation of the laws by the enforcement authority spearheaded by the Supreme Court, especially and particularly impersonation of other people and rampant forgeries of documents, could result to future disrespect towards law enforcement, prevalence of crimes, and worst of all, to an unstable society where no amount of trust binds the daily national lives of the people. It all started when the civil war blurred lines between genuine and counterfeit, official and unofficial, yet this seemingly local issue resulting from the war has come to the point where Nigerians and people coming from the surrounding regions are today notoriously generalized to be fraudulent in their undertakings, "experts in intricate cons", unreliable and not to be trusted in the international affairs.

While the case was arguably acceptable considering the factor that such (minor) crimes was committed and started to be socially acceptable in the regions during a time of war when oftencase it was a matter of life and death given the heated political and military conflicts, public trust has already been irrevocably breached and law enforcement looked down upon. The people of Indonesia has not been in such state where forgery is the only way of surviving, therefore enforcement is rather non-negotiable; we do not wish to stumble upon the same problems, and it

³² Yozami, "Jerat Hukum Bagi Penjual Meterai Palsu .Com."

³³ S. Daly, "The Survival Con: Fraud and Forgery in Tha Republic of BIAFRA, 1967–70," *The Journal of African History* 58, no. 1 (2017): 136,144.

can be very much better if there are sufficient allocation of resources given to prepare adequate enforcement personnels combined with deep commitment to tackle the seemingly minor issue. Looking forward, potential of tackling forgery of stamp duty in the online and high technology environment is promising. One of the proposed way is by selling electronic stamp through online portal with secured payment mechanism, taking cue from the long adopted mechanism quite successfully managed by the Ministry of Law and Human Rights' General Legal Administration services (*layanan Administrasi Hukum Umum/AHU*).³⁴

Table 1.
Comparison of Penal Sanctions Against Forgery of Stamp Duty

| Crimes | Law No.13/1985 | Law No.10/2020 | IPC |
|---|-------------------------------|--|---|
| IPC and Law No.13/1985: Copying or forging stamp duty and stamped paper or otherwise the signature(s) required to effectuate the use of the stamp duty. | up to 7 years of imprisonment | up to 7 years of imprisonment and penalty in the amount of maximum Rp500.000.000,- | up to 7 years of imprisonment |
| Law No.10/2020: Copying or forging stamp duty; producing stamp duty by using genuine stamp (including the production of stamp duty in digital and other forms) in illegal manner. | | | |
| IPC and Law No.13/1985: Storing supply of forged stamps to be distributed in or smuggled into the territory of Indonesia. | up to 7 years of imprisonment | up to 7 years of imprisonment and penalty in the amount of maximum Rp500.000.000,- | up to 7 years of imprisonment |
| Law No.10/2020: Using, selling, offering, handing over, storing supply for sales, or smuggling into the territory of Indonesia, forged stamps or goods affixed with forged stamps. | | | |
| IPC and Law No.13/1985: Using, selling, offering, handing over, supplying for sales or smuggling into the territory of Indonesia, stamps with the brand, stamp, signature, mark of effectuation or other signs showing the time of its past use have been removed. | up to 7 years of imprisonment | up to 3 years of imprisonment or penalty in the amount of maximum Rp200.000.000,- | up to 4 years of imprisonment or penalty in the amount of maximum Rp4.500,- |
| Law No.10/2020: Removing any signatures or other signs showing the time of past use of the stamp and therefore, that a stamp is no longer eligible for use; Using, selling, offering, handing over, storing supply for sales, or smuggling into the territory of Indonesia, stamps with the signs, signature, or the date showing past use of the stamp have been removed. | | | |
| Law No.13/1985: Storing the materials or tools known to be used to commit one of the crimes to copy or forge seals. | up to 7 years of imprisonment | - | - |

Source: Law No.13/1985, Law No. 10/2020, and IPC

³⁴ Paramudhita and Obsatar Sinaga, "Optimizing the Use of Electronic Stamps as Tax Revenue in E-Commerce Businesses Linked to the Stamp Duty Law in Indonesia." p. 1551

3.6. Socialization to Incorporate Public Participation in Law Enforcement

Detection is the first step to be seriously taken in order to tackle the issue of stamp forgery. This can be done in many available techniques as suggested by various researches, ranging from determining the printer used to carry out forgery,³⁵ text-line examination,³⁶ symbol recognition or image registering,³⁷ filtering the circulation of stamp duties marketed online through digital platforms,³⁸ etc. Observing how such illegal practice has become rampant and acknowledging the difficulties of tracing mechanism when carried out solely by the authority to identify the distribution and use of forged stamps, it then becomes quintessential for the public to be included in supervising the distribution and use of stamp duties to ease the burden of law enforcement, as well as to safeguard against the loss of State income potentials crucial as one of the resources to finance national development, the result of which will directly affect public welfare.

Society involvement has been made a significant part of law enforcement with regards to forgery of bank notes through socialization on how to identify and report any indications of forged bank notes i.e., through applying 3D (*dilihat, diraba, diterawang*) i.e., a combination of observing, touching, and seeing through the notes. The Government also attempts to enforce similar practice, applying the same approach in identifying the distribution and use of forged stamps, through applying 3D (*dilihat, diraba, digoyang*)³⁹ i.e., a combination of observing, touching, and *tilting* the piece of stamp duty in question to assess whether the characteristics pertaining to the official, genuine stamps issued by the Government are all present. This is because a piece of genuine stamp duty can be identified through the safety characteristics it features as provided in the guidelines issued by the Directorate General of Taxation (PMK No. 65/PMK.03/2014). Article 13 of Law No.10/2020 stipulates that stamp duty possess a few general characteristics that should be physically observable. In addition, stamp duty also features special characteristics purported as safety elements embedded in their design, material, and printing technique.

³⁵ Sara Elkasrawi and Faisal Shafait, "Printer Identification Using Supervised Learning for Document Forgery Detection," in *2014 11th IAPR International Workshop on Document Analysis Systems* (Tours: IEEE Computer Society, 2014), p. 4

³⁶ Joost van Beusekom, Faisal Shafait, and M.Thomas Breuel, *Text-Line Examination for Document Forgery Detection*, Springer-Verlag, 2012. p. 11

³⁷ Barbora Mícenková, Joost van Beusekom, and Faisal Shafait, "Stamp Verification for Automated Document Authentication," in *International Workshop on Computational Forensics*, 2014, 117–129.

³⁸ Kelvin Adytia Pratama, Muhamad Amirulloh, and Somawijaya Somawijaya, "Responsibility for the Sales of Fake Stamps on Tokopedia'S Digital Marketplace Platform," *Jurnal Hukum Replik* 8, no. 1 (2020): 55.

³⁹ Wilfridus Setu Embu, "Tips Bedakan Materai Asli Dan Palsu Dari Perum Peruri," *Liputan6*, last modified 2019, <https://www.liputan6.com/bisnis/read/4113622/tips-bedakan-materai-asli-dan-palsu-dari-perum-peruri>.

Combining the knowledge of both general and special characteristics through extensive socialization, the public at large is expected to be able to easily identify forged stamps through the assessment of their physical appearance. Better yet, previous research also suggested the possibility of using easily accessible mobile phone scanner application to empower the public to identify fake documents, thus making detection efforts easier.⁴⁰ Socialization and education such as how to detect circulation of illegal goods online and the Laws surrounding Information and Technologies might result to increasing public awareness, subsequently making the supervisory role of the public more significant.⁴¹ Based on their initial suspicions, information, or indication of a crime related to forged stamps, the public is then encouraged to further inquire for assessment concerning the originality of the stamp duty in question at the nearest post offices, which have at the ready an ultraviolet apparatus to detect forged stamps (Court Decision No.71/Pid/B/2018/PN.Ttn), or to notify either the police office or the Taxation Authority.⁴²

Practically speaking based on the few real case examples involving forged stamps, however, indications of forgery were mostly initially identified through the witnesses' familiarity with the characteristics of the genuine stamp duty, suspicion arising from the lack of strength of the glued surface of the stamp duty, the printing finish looking rather obscure instead of slightly embossed, and the cuttings being not so neatly done. In addition to those physical features, stamp duty sold online through various websites of questionable nature are also often discovered to be have been forged (Court Decision No.41/Pid/B/2016/PN.Jap).

A lower purchase price point offered compares to the nominal value featured on the stamp duty could also be a good indication that what is being offered up for sale is a product of forgery,⁴³ although this should not be used as the sole indicator since the Directorate General of Taxation actually allows the sales of stamp duty not only through postal offices but also by other parties with slightly higher offer price points in comparison with the official purchase price set by the postal offices (Court Decision No.71/Pid/B/2018/PN.Ttn). Moreover, the forged stamps would have been handed over several times from one to another in circulation, each proxies retaining some profit margin, rendering relatively similar (the same or even slightly higher) price points of

⁴⁰ D. Alekhya, Prabha G.D.S., and G.V.D. Rao, "Fake Currency Detection Using Image Processing and Other Standard Methods," *International Journal of Research in Computer and Communication Technology* 3, no. 1 (2014): 131.

⁴¹ Pratama, Amirulloh, and Somawijaya, "Responsibility for the Sales of Fake Stamps on Tokopedia'S Digital Marketplace Platform."p.55

⁴² Yozami, "Jerat Hukum Bagi Penjual Meterai Palsu .Com."

⁴³ Pratama, Amirulloh, and Somawijaya, "Responsibility for the Sales of Fake Stamps on Tokopedia'S Digital Marketplace Platform."p.45

sales as compared to the postal office's rate by the time the stamp duty finally reached the end users despite the (probably very) low production costs.

The above mentioned characteristics will soon undergo some changes following the issuance of Law No.10/2020. However, public socializations to better identify the distribution of forged stamps will remain crucial be carried out in an even more extensive and urgent manner for the benefit of the larger society in the future. Socializations shall especially target those people who in the execution of their daily occupations are often demanded to procure documents for which the obligation by law to pay duties to the State arises, such as judges and bailiffs serving at the court of law, public notary, land official, auction official, bank officer, broker/middleman in sales, investment manager, firms issuing (collective) bonds, etc.

4. Conclusion

Stamp duty is levied on documents providing accounts of the occurrence of certain civil affairs or other legal events, purported for evidence in a judiciary process before the court of law. In Indonesian Contract Law regime, the assessment of a document legality refers to the fulfilment of all elements stipulated in Article 1320 of the ICC. Therefore, where it is discovered and proven that said document has used forged stamps for the payment of its State-owed duty, its legality before the law shall still be considered of no less value, insofar as no indication is found therein with regards to the inadequacy of any elements stipulated in Article 1320 of the ICC. However, said document could be said to be virtually unstamped with duty remained to be paid to the State. To rectify the situation, this obligation can be settled immediately through an administrative procedure known as "*pemeteraian kemudian*" (*nazegelen*) i.e., by making a full payment of duty long-due plus the penalty amounting 100% (one hundred percent).

In addition to the recent adjustment on the duty tariff rate, the threat of criminal sanctions against violation of provisions concerning stamp duties have been made more severe to deter crimes related to forged stamps and the contribution of stamp duty collection within the State tax revenue generation structure gains significance. To ensure optimum duty collection, the way forward calls for more extensive and targetted public socialization concerning the physical features and safeguards pertaining to genuine stamps shall be made a greater priority in the public policy agenda, positioning the members of the public as part of the law enforcement by getting them involved in identifying and reporting illegal circulation, as well as refusing to use forged stamps.

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