

COUNTERFEITING CERTIFICATE OF BUILDING USE RIGHTS (STUDY OF THE CITY OF MATARAM)

Ni Putu Ari Sudani Armayanti^{*}, Muhammad Natsir^{**}, Sahnan^{**}

^{*}Postgraduate Student of Magister Law Study Program, Mataram University, Indonesia

^{**}Lecture of Law Faculty Mataram University, Indonesia

Jalan Pemuda No. 35. Mataram-83125, Tlp. (0370), Fax. 646919

Email correspondence: Email : arieekink2@gmail.com

Abstract: *This study aims to analyze how criminal law policy is seen from its relation to certificate forgery cases, especially Building Use Rights certificates. By analyzing criminal liability both the applicant and the authorized official who issued the certificate. The legal issues raised in this study include: How is the criminal law policy in terms of its relation to the falsification of the Building Use Rights certificate and what factors then cause the forgery of the Building Use Rights certificate and how to deal with it in accordance with applicable criminal law policies. This study wants to see how the law should be enforced and applied which is juxtaposed with a situation that occurs in real terms. So this research is empirical legal research, which compares between *das sein* (the actual situation) and *das sollen* (which should be). So that some theories are used as analytical knives to analyze comparisons between existing laws and their application. In addition to collecting materials through literature review, data collection through interviews was also conducted. Based on the results of the study it can be concluded that many things are not in accordance with the legislation set. Forgery of the Building Use Right certificate has occurred from even the basic data that was originally submitted by the applicant. So that criminal liability is not only focused on the authorized officials who issue and certify the certificate even though it can also be concluded as a culpa or negligence, but for the applicant also imposed criminal liability.*

Keywords: *forgery, building use certificate, criminal*

I. INTRODUCTION

Crime of forgery is a problem if it results in causing harm to others. Therefore the act of forgery is included in the criminal law. This is because the basic principle of the concept of counterfeiting fulfills the elements of violation of the law as well as the negative consequences caused by acts of counterfeiting committed.

In everyday life, both individuals, or as members of the community and members of state life, often even in touch with the objects mentioned above, especially with money and letters. People put a trust in the truth of these objects, therefore the truth of these objects must

be guaranteed. If not, it can cause bad consequences for the community.¹ The attack on the belief in the truth is in the form of an act that deserves to be punished, which by law is determined as a crime. Giving or placing the prohibited nature of actions in the form of an attack on that belief in the Act is in the form of a legal protection against the belief in the truth of these objects.²

And for all actions which ultimately can make public confidence eroded in its belief in legal protection, it must be truly given limits and regulated in the Law. It is the same thing with the act of forgery committed. And fraudulent acts can take the form of false promises, perjury, and forgery of money, brand forgery, stamp forgery, signatures and other authentic deeds. In this thesis which will be reviewed and analyzed further is the forgery of letters, and more precisely the certificate of Right to Use Building or which is often abbreviated as HGB.

Falsification of this authentic letter or deed, in this case is the certificate, not the first time it has happened, almost all regions throughout the country have cases of certificate forgery occurring. As raised in the thesis of the brother Syamsul Rijal, one of the students of the Alauddin State Islamic University in Makassar. Which rose about the existence of multiple certificates that were widely circulated and and became a conflict of conflicts in Sulawesi, especially in Makassar.

From the data obtained by Syamsul Rijal in the Makasar State Usayas Court, data was obtained that in 2010, disputes with multiple certificate problems were almost nonexistent because of the 46 land cases included in the Makassar State Administrative Court only 1 case was a double certificate, but it was different when compared to the following year, in 2011 which showed that multiple certificate disputes increased significantly, from 53 cases there were 9 cases of double certificates.

Indeed, there are many types of forgery, but what the writer will discuss further in this thesis is the falsification of certificates, especially the Right to Use Building Certificate, abbreviated as HGB. This is because many original but fake certificates which are often called asphalt (original but fake) certificates circulate in the community.

The aspect of counterfeiting is indeed associated with criminal law, but the law governing land itself is regulated in the Law. For that, besides criminal law, civil law, government law, and other positive laws that apply in Indonesia, there are also laws that regulate Indonesia's natural wealth, namely Agrarian law. This law governs the control and management of existing natural resources which are covered by the territory of the Republic of Indonesia.

Article 35 of the Basic Agrarian Law provides the meaning of Building Use Rights, namely the right to establish and own buildings on land that is not his own for a maximum period of 30 years and can be extended for a maximum period of 20 years.³ From this description, it can be concluded that the longest tenure of land or land with a Building Use Right Certificate is approximately 50 years. Whereas the origin of land can be from State land or individual property rights.

Based on the description of the background above, the formulation of the problem is how is the criminal law policy in terms of its relation to the falsification of the Building Use Rights certificate. The type of research that will be conducted is a type of empirical legal

¹ Op.Cit., Adami Chazawi, p. 3

² *Ibid.*, p. 3

³ Urip Santoso, *Hukum Agraria dan Hak-Hak Atas Tanah*, Prenada Media, Jakarta, 2005, p.106

research, namely research that examines the application of legislation and studies it in phenomena and social symptoms that occur in people's lives.

The method of approach used in this study is a sociological approach, approach to legislation (statute approach), and conceptual approach. In this study, data collection techniques were carried out through library research using document studies, namely data collection obtained using written records in research locations, fiber sources that were related to the problem under study. Field research uses interviews, which is done by asking questions using open questionnaires to respondents and pre-determined informants. The data analysis used in this study is qualitative analysis, which is a legal analysis based on library material and field material. The method or analysis is done by looking for patterns of relationships between applicable legal norms, theories or principles with facts and data in public life (Comparative Content Analysis).

II. RESULT AND DISCUSSION

2.1 General Review of Counterfeiting Crimes Specifically in the Issuance of the Right to Use Building Certificate

In legal science, legal differences are recognized and there is no known separation or division of law, based on the object of discussion such as civil law, criminal law, constitutional law, and international law. This differentiation is in the learning process since the S1 program is often connoted as division and some argue that separation is.⁴ For acts of irregularities relating to elements of certificates or rights to land more often linked to the elements of the law so that the law is used as a basis and reference and Civil Law. This is because legal separations are quite premature.

Such a presumption is clearly not right at this time. The traditional difference in legal science is still relevant to the development of society that is still simple and not as fast and complicated as its development in the present, especially since the end of the Second World War.⁵ If previously the complexity of the community was not as fast as it is now, it might be possible to classify and separate the law. But according to current developments and technology, this separation has been deemed inappropriate. The development of human thinking skills and the development of technology leads us to see a problem not only from one side and classify it.

According to Boedi Harsono, legal provisions governing tenure rights to land can be arranged into one unit which is a system, called the Land Law.⁶ But all actions that have a criminal element, violations and errors relating to the control of a land or land remain included in the Criminal Law.

Land Law does not regulate land in all its aspects. He only regulates one of the juridical aspects which are called tenure rights over land.⁷ Juridical control is based on rights, which are protected by law and generally authorize the right-holders to physically control the land being hijacked. But there is also juridical control that even if it gives authority to control the land physically, in fact the physical control is carried out by other parties.⁸ An example of

⁴ Romli Atmasasmita, *Pengantar Hukum Kejahatan Bisnis*, Edisi kedua, Prenada Media, Jakarta, p. 18

⁵ *Ibid.*, p. 18

⁶ Boedi Harsono, *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, Print Revision Edition 10, Djambatan, 2005, p. 17

⁷ *Ibid.*, p. 17

⁸ *Ibid.*, p. 23

this is land that is leased, as a matter of ownership it does indeed belong to the owner, but in the right of physical control the tenant is entitled.

2.2 *Problems in Certifying a Land or Land*

In the previous sub-chapter, the terms and conditions of the application for issuing a certificate have been discussed. Likewise the conditions for submitting a Building Use Right certificate. A certificate is needed to process a certificate involving the applicant, contiguous landowners, village officials and related agencies to obtain explanations and letters as the basis of the rights relating to the certificate issuance request.⁹ Involvement of several elements of the State apparatus and related agencies in issuing this certificate is for the legal clarity of a certificate, while for surrounding landowners as boundary clarity and ownership.

There are a number of things that might become opportunities for deviations from the process of the birth of a certificate. And this usually involves officials or the State apparatus, not the land owner or neighboring land. Explanations both oral and written from the parties concerned have the opportunity for counterfeiting, expiration and sometimes even incorrect or fictitious resulting in a certificate of legal disability.¹⁰ This is what makes a new problem in the issuance and validity of a certificate. Indeed, counterfeiting may not only involve the relevant agencies, related to the information contained in a certificate, but the forgery of certificates may also be carried out by individuals outside the agency or certain positions in the issuance of certificates, this is not much related to advancing technological advances, which made some people make fake certificates.

So that it could be that the forgery of this certificate was carried out by lay people and by officials or authorized agencies. As for the form of forgery itself, it can be part or whole what is certain is that with this forgery, the risks and effects are of course negative. There will be parties who feel disadvantaged because of this forgery.

With regard to the effects and risks that occur due to fraudulent actions that occur, then that is where the Law acts as a protector, which is expected to provide a sense of security for the community. The rules are then used as limits and shade both in the rights or obligations of a person or a legal entity over a certificate.

2.3 *Falsification of definitions and scope according to the Criminal Code*

Counterfeiting, as described in Chapter Background, is one form of crime that is included in a criminal act whose provisions are formulated in Book II of the Criminal Code, namely from Chapter IX to Chapter XII, concerning crimes of perjury to crime of forgery of letters.

Crimes concerning Counterfeiting or abbreviated as fraudulent crimes are in the form of crimes which contain elements of a state of unrighteousness or falsehood over something (object).¹¹ By containing this element of untruth that makes fraudulent acts worthy of caution, which of course can have adverse effects or effects, and because of the effects and consequences of these crimes included in the Criminal Code.

⁹Ali Achmad Chomzah, *Hukum Pertanahan, Seri Hukum Pertanahan III – Penyelesaian Sengketa Ha katas Tanah, Seri Hukum Pertanahan IV – Pengadaan Tanah Instansi Pemerintah*, Prestasi Pustaka, Jakarta, 2002, p. 25

¹⁰*Ibid.*, p.25

¹¹Adami Chazawi, Op.,Cit. p. 3

The explanation from H. Raysid and Fahmi Raghib was to explain that, those who could be convicted were not only active perpetrators but also passive perpetrators of crime. In fraudulent acts, those who know of fraudulent acts that have not reported the crime can also be subject to criminal sanctions.

Counterfeiting of goods also includes violations of intellectual property; this is regulated in Article 72 of Law Number 19 of 2002 concerning Copyright, Article 54 of Law Number 31 of 2000 concerning Industrial Design and Article 90, 91 and 94 of Law Number 15 of 2001 concerning Trademarks.¹² Falsification is actually a type of violation of two basic norms, namely Truth or belief whose violations can be classified as a group of crimes of fraud and Order of the people whose violations are classified as groups of crimes against the State / public order.¹³

2.4 Counterfeiting Certificate of Building Use Rights

For forgery of certificates, especially the Certificate of Right to Use Building, which makes it different from the forgery of certificate certificates in general, is not a complete forgery, or a fake certificate. However, according to one of the staff of the Provincial Land Agency, who when interviewed said that there had been no reports of falsifying the Right to Build Building Certificate to date. But to falsify the contents of the certificate, when processing or requesting, it may occur. Furthermore, the staff of the West Nusa Tenggara National Land Agency (not to be named) also said that the contents of the certificate which is possibly incorrect, could be questioned through legal channels, namely through the Administrative Court and Civil Code, but not criminal.¹⁴ Even though according to the author, even though it could be a lawsuit through criminal means. Because it fulfills the element of criminal offense. The separation of a case or action that can be classified as a criminal offense or ultimately considered an administrative error or negligence is actually no longer appropriate. As revealed by Romli Atmasasmita in his book "Introduction to Business Crime Law" states... cooperation between conventional legal disciplines is needed in accordance with the interests of its regulation so that a comprehensive answer is expected on a problem faced by the community.¹⁵

In accordance with Roeslan Saleh's opinion which was also in accordance with Moeljatno's opinion, as quoted by E.Y. Kanter and S.R. In his book the Principal of the Criminal Law Principle in Indonesia and its Application, errors in the concept of Criminal Law consist of 3 elements, namely:

1. Responsible ability;
2. Intentional (*dolus*) or omission (*culpa*) as a form of error, and also as an assessment of the inner relationship with the actions of the perpetrator;
3. The absence of forgiving reasons.¹⁶

¹² Okezone News, *Ribuan Barang Palsu & Melanggar Hak Cipta Dimusnahkan*, <https://news.okezone.com/read/2014/04/25/501/975501/ribuan-barang-palsu-melanggar-hak-cipta-dimusnahkan>, diunggah pada tgl 25 April 2014, accessed on April 26, 2018.

¹³ Kajian Pustaka, *Pemalsuan Dokumen*, <http://www.kajianpustaka.com/2016/03/pemalsuan-dokumen.html>, yang diunggah pada 17 Maret 2017, diakses pada 15 Desember 2017

¹⁴ Interview with one of the staff of the West Nusa Tenggara Regional National Land Agency. On Tuesday 31 July 2018.

¹⁵ Romli Atmasasmita, *Pengantar Hukum Kejahatan Bisnis*, Kencana, Jakarta Timur, 2003, p. 28

¹⁶ E.Y. Kanter dan S.R. Sianturi, *Asas Asas Hukum Pidana di Indonesia dan Penerapannya*, Storia Grafika, Jakarta, 2002, p. 165

2.5 *Errors Due To Intentional As Well As Potential Deviations In Making Building Use Rights Certificates*

In the case of making a certificate, the applicants will undergo the path to fulfill the requirements and provisions set out by the National Land Agency as stipulated in the Regulation of the Minister of Agrarian Affairs / Head of National Land Agency Number 9 of 1999. In addition to the data and information from the applicant itself, be individuals or legal entities contained in Article 32 and Article 33 paragraph (2) point (1). Information regarding land which includes juridical data and physical data must be attached. This is stated in the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency Number 9 of 1999, Article 33 paragraph (2) point (2).

For one of the case studies raised in this thesis research, the case for the Right to Use Building certificate located in Punia Village, Mataram, which is the subject of the problem is the measurement letter and the limits of the Building Use Certificate No. 11 / Punia, November 11, 2014, No. Measure Letter 445 / Punia / 2014 dated 11 November 2014, with an area of 27,384 M2. PT Srijaya Propindo Utama. In this Building Use Rights certificate there is a bubble of size that should be recognized and controlled by PT. Srijaya Propindo Utama to build the Mall.

The role of the Mataram City National Land Agency in terms of the inclusion of area may be considered an intentional or negligent issue of a certificate which was finally used as the basis of the rights to the building for Right to Use Building with commercial functions or the Mall. Thus further studies on potential irregularities committed by employees or officials of the Mataram City National Land Agency or parties from the applicants are examined further with interview techniques. Interview with the Mataram City National Land Agency Office and the community around the building. This is done by interviewing the PT. Srijaya Propindo Utama is not possible to do.

Thus indications of abuse of authority can also be considered as one of the deviations with intentionally changing the contents, both partially and throughout the contents of a certificate. A person can only be blamed for doing a delict according to the Criminal Code, if the person has been proven to fulfill each element of the delict in question, as formulated in the law.¹⁷ Likewise, the authorized official or the applicant may also have committed a delict if it is proven to fulfill each element of the delict concerned.

The formulation of laws regarding each delict can be divided into several elements, while the elements can be further divided into two types of elements, namely "objective elements" and "subjective elements".¹⁸ Just as the attitude of the authorities in making irregularities includes deviations that occur in the issuance of a Building Use Right certificate. If irregularities or deviations committed by authorized officials or applicants fulfill delict elements to be blamed as stated in the Criminal Code, officials and applicants may be subject to criminal sanctions in addition to administrative sanctions due to their position as state servants for authorized officials. Has made a mistake with the intentional element or the applicant has been subjected to criminal sanctions due to fulfilling the delictive elements of criminal acts of forgery.

¹⁷ P.A.F. Lamintang dan C.Djisman Samosir, *Delik-Delik Khusus, Kejahatan Yang Ditujukan Terhadap Hak Milik Dan Lain-Lain Hak Yang Timbul Dari Hak Milik*, Nuansa Aulia, Bandung, Mold II, 2011, p. 13

¹⁸ *Ibid.*, p. 13

Quoting from Pompe's statement as quoted by Mr. The WPJ Handboek van het Nederlandse Strafrecht, which was then quoted back in the Lamintang and C. Djisman Samosir PAF books in their book entitled "Special offenses, Crimes aimed at property rights and other rights arising from property rights", using "*Wetshistorische Interpretatie*", it will be known that according to *Memorie van Toelichting*, what is meant by "*opzet*" is "*willens en wetens*". This means that someone who is accused of intentionally committing an act, he must want to do that, and must understand the consequences of his actions.¹⁹

Officials who intentionally ignore the measurement letters and other requirements and only refer to the information provided by the applicant have actually violated the existing law because it is in accordance with the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency Number 9 of 1999, which is regulated in Article 33 Paragraph 2 point (b) regarding the application for the application for the Right to Build Building certificate, in the article has stipulated that each requirement is accepted, for example the measurement letter and the limits submitted by the applicant will be further analyzed by the team and special sections. This is different from the results of the interview that the author got from an interview on August 27, 2018, by two staff from the Mataram City Land Agency, namely Mamiq and Pak Nyoman (because these two fathers did not want to mention names prominently), Mamiq himself was one staff of the Determination section at the Mataram City National Land Agency Office. However, their position and authority are not explained further. The two fathers who worked at the Mataram City National Land Office said that if the report on the boundaries or size of land proposed by the applicant is different from reality or in other words there is a markup of size, then this does not include forgery and is valid, this is due to the possibility that the applicant has just bought the land, so it may not be certain about the actual limits and size. Still according to the two fathers this matter is not a problem, because the applicant who inflates the size or extent of the land becomes a loss for himself due to being exposed to greater costs, or adjusted to the size, limit or extent proposed. The National Land Agency will write as stated by the applicant. This according to the author contradicts the rules that have been set, but when the author further inquiries their statements or statements which, according to the author, are somewhat deviant, Pak Nyoman corrected the statement by saying the decision was in the hands of the Head of Division in charge of examining the information further. He also added that the results outlined in the field analysis were also based on information or approval from the Mayor (the Licensing Party), the local Village Head and the neighbors adjacent to the land.²⁰ But on the results of interviews with several residents around the building with the Right to Build Building certificate, more people did not feel or were not invited to coordinate at all by the National Land Agency, especially the Mataram City National Land Agency.

On the other hand we cannot blame one agency here, namely the National Land Agency; this is because this agency also coordinates with other officials, as stated in the interview dated 27 August 2018, from the village head to the licensing party that the mayor also has responsibility for that matter. For this reason, the potential for irregularities in the making of Building Use Rights certificates due to errors due to intentions is very possible not only from the applicant, but the relevant agencies and authorities also have the potential and possibility of doing so.

¹⁹ *Ibid.*, p. 22

²⁰ The results of the interview with Mr. Nyoman and colleagues on August 27, 2018, the Office of the Land Agency of the City of Mataram, at 12:06 a.m.

But unfortunately to conduct interviews in the mayor, or the Licensing Agency of the City of Mataram, the authors encountered many obstacles, one of which was not accepting the existence of research interviews, even for simple questions the staff did not respond, before the submission of the research application was received or positioned. The author submits the request to the Mataram City Licensing Agency, and is expected to wait for the call time for the research interview. But until now there was no call at all, even the author had returned to confirm the letter requesting research to the office, but several times there did not get a definite answer. Though all the requirements for conducting a study have been undertaken by the author. Including asking for a letter requesting research at the Office Regional Development Planning Office. This not only happened in the Mataram City Licensing office, but also at the West Nusa Tenggara Regional Land Agency, and the Public Works Office, with the author's assumption that the Agency was authorized in urban spatial planning that was closely related to licensing and urban spatial planning.

The non-transparency of these government agencies, even for matters relating to research, which should have been given support for the advancement of knowledge and direction of improvement both administratively and structurally. According to the author indirectly illustrates how the 'dirty' game is performed by authorized officials in these agencies. This also raises the possibility and indications of KKN or Collusion and Nepotism Corruption in the agency or agency of that State. If referring to the slogan "If it is clean why should it be uncomfortable", then the non-transparent attitude of the agency's employees, and even the impression of covering up things that should be open to the public for information and education will not occur.

Referring to Law Number 14 of 2008 concerning Public Information Openness, with no disclosure and non-transparency, both staff and authorities in these agencies have violated and violated this Law. Because in the general provisions of Law Number 14 of 2008 it is clearly stated, in Article 1:

Item (1)

"Information is information, statements, ideas, and signs that contain values, meanings, and messages, both data, facts and explanations that can be seen, heard and read presented in various packages and formats in accordance with the development of information and communication technology electronically or non-electronically. "

Item (2)

"Public Information is information that is produced, stored, managed, sent, and / or received by a public body relating to the administration and administration of the state and / or the organizer and organization of other public bodies in accordance with this Law and other relevant information with public interest."²¹

The openness of the staff and officials involved, and even the refusal to not give any information at all is clearly contrary to the Law. The reasons stated were sometimes made contrived, from which officials or leaders were not in place, to the procedure for obtaining permission to conduct research within the agency. For reasons the procedure for obtaining a permit is done according to the procedures and requests of the agency, but still not given a response and permission. Even for the National Land Agency, the provision of information to the public has been regulated in the Agrarian Ministerial Regulation Number 3 of 1997,

²¹ Law Number 14 of 2008 concerning Public Information Openness.

Tenth Section concerning the Presentation of Information on Physical Data and Juridical Data, contained in;

Article 187

- (1) Information about physical data and juridical data contained in registration maps, land registers, measuring letters and land books is open to the public and can be given to parties with interests visually or in writing.
- (2) Written information about physical data and juridical data regarding a plot of land as referred to in paragraph (1) shall be provided in the form of a Land Registration Certificate.
- (3) A Land Registration Certificate as referred to in paragraph (2) shall be made in the form according to the questionnaire 209.

Article 188

- (1) Information in the registration map can be given in the form of a copy or photocopy of the part of the map in question which is given a note stating the party requesting the information and its needs.²²

Referring to the Law, the public has the right to know information about physical data and judicial data on the registration map, list of land, measuring letters and land books open to the public. This can also prevent losses that might occur or be experienced by the community. With the disclosure of the information above, the community before buying or transacting for purchases or other transactions related to land or land can obtain valid information regarding the status of the land or land.

For this reason, if seen from the element of deliberation, the writing of false information or false data in the Building Use Right Certificate will increase the indication. The authorities are not only aware of the invalidity of the data submitted by the applicants and even cover up the errors and falsification of these data.

2.6 *Penalty Associated With Deviations in Making Building Use Rights Certificates*

Crime prevention policies or efforts are essentially an integral part of community protection efforts and efforts to achieve social welfare. Therefore, it can be said that the ultimate goal or main objective is the protection of the community to achieve public welfare. To achieve public welfare, a good legislation is needed, for which every country has a body in charge and has the authority to make regulations that are desired to express what is contained in the community in order to achieve what has been aspired, which is called the maker body law (legislative body). The formulation of a regulation is seen as part of the politics of criminal law. The meaning of criminal politics of law itself, implies how to try or make and formulate a good legislation.²³

Criminal policy against acts of forgery committed in the issuance of a certificate of Right to Build Buildings, contained in Articles 263 and 264 of the Criminal Code, which threaten imprisonment and fines against the perpetrators. If in the previous chapter a general crime of forgery and the threat of conviction were discussed in Article 263, then in Article 264, the threat threatened was 8 years in prison.

For the objective elements of the concept of counterfeiting referred to in article 264 of the Penal Code the letter itself. Whereas in addition to the objective element of fraudulent

²² Regulation of the Minister of Agrarian Affairs Number 3 of 1997 concerning the Implementation Provisions of Government Regulation Number 24 of 1997 concerning Land Registration

²³ M. Hamdan, *Poltik Hukum Pidana*, Raja Grafindo Persada, Jakarta, 1997, p. 6

acts committed, the subjective elements formulated in Paragraph (1) Article 264 of the Criminal Code are as follows.

Subjective elements: acts of falsification or falsification carried out on letters with type and form, authentic deeds, debt securities and debt certificates from a State or public institution, *sero*, *talon*, dividend proof, and credit letter.

Whereas in Paragraph (2) Article 263 the Criminal Code has the following formula:

a. Objective elements:

- 1) Actions: wear;
- 2) The object:
 - a) Fake letters mentioned as objects in paragraph (1);
 - b) Forged letters mentioned as objects in paragraph (1);
- 3) Use of the letter can cause loss;

For Paragraph (2) this is more emphasized on the effects of losses that can be caused or have been caused by acts of fraud. This is because for a fake letter, it might not cause a loss. However, for fraudulent acts that cause losses, they will be punished with the same criminal sanctions as those threatened in Paragraph (1) Article 263 of the Criminal Code.

b. Subjective Elements: acts of forgery.

As for the subjective element, namely, the perpetrator does the forgery of the letter mentioned in paragraph (1), while in Paragraph (2) the intent of the crime or the intention of the perpetrator is the subjective element of the verse. So that in the case of criminal prosecution of forgery of the Building Use Right certificate which is also one of the authentic deeds, sometimes land certificates are often referred to as land certificates.

According to Sudikno Mertokusumo the deed is a letter that is given a signature, which contains legal events, which form the basis of a right or engagement, which is made from the original intentionally for the purpose of proof.²⁴ And one type of deed contained in Article 264 is an Authentic Deed. Clearly the Right to Use Building Certificate is also an authentic deed, because it contains the terms and characteristics of an authentic deed, namely the existence of an authorized official's signature and becomes the basis of a right or engagement.

In addition to criminal sanctions contained in Articles 263 and 264 concerning forgery with the threat of imprisonment of 6 years for Article 263 and threats of imprisonment or imprisonment for 8 years for Article 264, which contains the threat of imprisonment for forgery in general. If there is an indication of a criminal act of corruption committed by land officials, then the criminal threat for the actions taken can also be imposed on the official.

III. CONCLUSION

Falsification of Building Use Rights certificate occurs in the data submitted and the requirements set by the Act. Such as, for example, area data, building permit conditions and location permits or the elimination of public property rights such as burial areas and public road access. Whereas in the case of Aston Inn Mataram which is under the auspices of Aston International, Aston Inn should have been certified as Building Use Rights, under the legal entity of PT. Brilliant Panca Kencana. Indications of falsification of data submitted by Aston Inn owners by looking at and juxtaposing information regulations provided by the BPN with

²⁴ Daeng Naja, Teknik Pembuatan Akta, Pustaka yustisia, Yogyakarta, 2012, p. 1

regulations and laws. And the acts of counterfeiting included in the realm of criminal law which have been regulated in articles 263 and 264 of the Criminal Law states that forgery of letters can be in the form of part or all. Some of that can be in the form of forgery of data entered or other conditions that are not true. And the letter or certificate of Building Use Rights is used as evidence of the basis of the rights which then cause harm to the community.

REFERENCES

- Ali Achmad Chomzah, *Hukum Pertanahan, Seri Hukum Pertanahan III – Penyelesaian Sengketa Hak Atas Tanah, Seri Hukum Pertanahan IV – Pengadaan Tanah Instansi Pemerintah*, Prestasi Pustaka, Jakarta, 2002.
- Boedi Harsono, *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, Print Revision Edition 10, Djambatan, 2005.
- E.Y. Kanter dan S.R. Sianturi, *Asas Asas Hukum Pidana di Indonesia dan Penerapannya*, Storia Grafika, Jakarta, 2002.
- Kajian Pustaka, *Pemalsuan Dokumen*, <http://www.kajianpustaka.com/2016/03/pemalsuan-dokumen.html>, yang diunggah pada 17 Maret 2017, accessed on December 15, 2017.
- Okezone News, *Ribuan Barang Palsu & Melanggar Hak Cipta Dimusnahkan*, <https://news.okezone.com/read/2014/04/25/501/975501/ribuan-barang-palsu-melanggar-hak-cipta-dimusnahkan>, uploaded on 25 April 2014, accessed on 26 April 2018.
- Romli Atmasasmita, *Pengantar Hukum Kejahatan Bisnis*, Kencana, Jakarta Timur, 2003.
- Urip Santoso, *Hukum Agraria dan Hak-Hak Atas Tanah*, Prenada Media, Jakarta, 2005.
- P.A.F. Lamintang dan C.Djisman Samosir, *Delik-Delik Khusus, Kejahatan Yang Ditujukan Terhadap Hak Milik Dan Lain-Lain Hak Yang Timbul Dari Hak Milik*, Nuansa Aulia, Bandung, Mold II, 2011.
- M. Hamdan, *Politik Hukum Pidana*, Raja Grafindo Persada, Jakarta, 1997.
- Daeng Naja, *Teknik Pembuatan Akta*, Pustaka yustisia, Yogyakarta, 2012.
- Law Number 14 of 2008 concerning Public Information Openness.
- Regulation of the Minister of Agrarian Affairs Number 3 of 1997 concerning the Provisions on the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration