

The Use of Article 378 of the Criminal Code against Violations of Article 43 Paragraph 2 of the Flats Law on Legal Certainty of Land Ownership Status

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Abstract

The developer of the apartment is allowed to sell the apartment unit that has not been completed after fulfilling the requirements and obligations as regulated in Article 43 paragraph (2) of the Flats Law. This study aims to analyze and find the accuracy of using Article 378 of the Criminal Code to adjudicate violations of Article 43 paragraph (2) of the Flats Law related to the certainty of land ownership status as the basis for making PPJB and criminal responsibility for notaries against the occurrence of criminal acts in the deed he made related to with the principle of prudence of a notary in carrying out his office. The research method used in this study is normative juridical law research, the approach method used is the statutory regulation approach and the conceptual approach as well as the case approach. From the results of the research and discussion, it can be concluded first: the use of Article 378 of the Criminal Code which is applied to violations of Article 43 paragraph (2) of the Flats Law is inappropriate. The appropriate article for the violation is Article 110 of the Flats Law. Second: For criminal acts that are contained in a notary deed, it can cause the notary to be held criminally responsible for participating in helping the occurrence of a crime.

Keywords:

violations; flats law; legal certainty; land ownership status



I. Introduction

The need for housing for the community is not proportional to the availability of existing land, especially in urban areas that are densely populated with settlements. This results in high land and house prices because big cities are economic and industrial centers, where office buildings or workplaces are relatively far from where they live. For this reason, people need a place to live that is closer to an office building or workplace, but at an economical price. As an alternative to answer the limitations of land and a more economical place to live in big cities, it is time to fulfill the residence or house as a dwelling in urban areas by building vertical houses with flats.

Along with the development of the economy and the increasing need for housing in big cities through flats, this must be supported by the underlying legal instruments, so that the legal relationship between the actors in the construction of flats and the people who need the apartment units becomes clear and with legal certainty. The state feels the need to outline policies and establish provisions for the purpose of organizing flats, and also feels the need to stipulate things that must be complied with and prohibitions that should not be carried out by actors in the construction of flats. The administration of flats is regulated in Law Number 20 of 2011 concerning Flats (hereinafter referred to as UURS), Developers of flats who have not fulfilled the requirements and obligations as regulated in Article 43 paragraph (2) of the UURS are prohibited from selling condominium units as regulated in

Article 98 of the UURS. Violation of the prohibition, then based on the provisions of Article 110 UURS, apartment developers are given criminal sanctions, namely imprisonment for a maximum of 4 (four) years or a fine of a maximum of Rp. 4,000,000,000, - (four billion rupiah).

Although UURS has provided firm and clear regulations in the context of organizing flats, the compliance of the people who are the actors of the construction of flats and also the people who are prospective buyers of flats is still relatively low. So that the makers of UURS feel the need to involve a notary in the administration of flats. This is reflected in the provisions of Article 43 paragraph (1) UURS which involves a notary in making PPJB between developers and apartment buyers.

Article 43 paragraph (1) UURS clearly stipulates that PPJB must be made before a notary. Which has the understanding that PPJB must be made in the form of an authentic deed that has perfect evidentiary power. However, in practice, apartment construction actors do not apply PPJB making before a notary, and are only made under the hands.

Disputes over the administration of flats still occur, including the case in Sleman, Yogyakarta in the Supreme Court's decision Number 549 K/Pid/2019. In this case, the development actors have not fulfilled the requirements to sell through PPJB regarding the certainty of land ownership status which is a violation of Article 43 paragraph (2) letter a UURS. The director of the developer company who became the perpetrator of the construction of the apartment was sentenced to a criminal sentence for violating the provisions of Article 43 paragraph (2) of the UURS.

The author found a legal issue that law enforcement officers ranging from the police, prosecutors to court judges in the court decisions above, both the prosecution and the decisions given did not use the provisions of Article 98 of the UURS as a criminal offense and Article 110 of the UURS as a criminal threat, but used the provisions of Article 378 of the Criminal Code. Criminal acts in the administration of flats by construction actors started from not making PPJB before a Notary.

The aim to be achieved through this research is to analyze and find the accuracy of using Article 378 of the Criminal Code to prosecute violations of Article 43 paragraph (2) of Law Number 20 of 2011 concerning Flats related to certainty of land ownership status as the basis for making PPJB and criminal responsibility for a notary against the occurrence of a crime in the deed he made is related to the principle of prudence of a notary in carrying out his position.

II. Research Methods

The research method used in this research is normative juridical law research, which is also called doctrinal legal research. The approach used is a regulatory approach to legislation (Statute Approach) which was carried out by reviewing the laws and regulations and regulations related to moving legal issues being handled, and experts (tights) and doctrine -doctrines that develop in the science of law, in order to find ideas that give rise to relevant legal understanding, concepts and principles, as a basis in building a legal argumentation as a prescription in solving the legal issues faced, as well as the case approach taken by examining cases related to legal issues and understanding the ratio decidendi or the reason for the judge in giving a decision.

III. Result and Discussion

3.1. Acquisition of Joint Land Rights

Land disputes and conflicts are complex and multidimensional problems. Therefore, efforts to prevent, handle and resolve must take into account various aspects, both legal and non-legal. Often the handling and resolution of land disputes and conflicts is faced with dilemmas between different interests that are equally important. Finding a balance or win-win solution for conflicts that already occur clearly requires effort that is not easy. (Isnaini et al, 2020)

According to Article 17 UURS, the construction of flats can be carried out on land:

- 1) Property Rights (HM)
- 2) Building Use Rights (HGB) or Use Rights (HP) on state land
- 3) Building Use Rights (HGB) or Use Rights (HP) on land Management Rights (HPL)

The regulation of Article 17 of the Flats Law is based on the concept of land rights contained in the National Land Law which divides land rights in two forms, namely:

- 1) Primary land rights are rights that are directly granted by the state to the holder of the rights, such as Hak Milik (HM), Hak Guna Usaha (HGU), Hak Guna Bangunan (HGB), Right to Use (HP).
- 2) Secondary land rights are rights that arise or are imposed on existing land rights. This right can arise because of an agreement between the land owner as the primary right holder and the prospective secondary right holder. This secondary right is superimposed on other rights that have a higher degree, such as HGB/HGU/Hak Use on land with Ownership Rights or Management Rights.

The preparation for obtaining the rights to the joint land which will be used as a flat project has the following stages of licensing:

a. Advice Planning

Advice Planning is a technical recommendation letter issued by the Regional Development Planning Agency (Bappeda), which contains information on zoning and building intensity limits in accordance with regional spatial planning directions.

b. Location Permit from Online Single Submission (OSS)

Land that will be used as an apartment construction project that is in accordance with the Spatial and Regional Planning (RTRW), then business actors can apply for a Location Permit in order to fulfill commitments through OSS.

A location permit is a permit granted to a business actor who will acquire land for business needs. The Location Permit can also acquire/transfer the right to use the land for business purposes and/or carry out other activities.

c. Land Technical Considerations

The location permit as referred to above has been regulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 17 of 2019 (hereinafter abbreviated as Permen ATR/KBPN No. 17/2019). Location permits issued through the OSS system above, still require approval from the regional head, namely the Regent/Mayor, specifically for DKI from the Governor. Therefore, the requirement to obtain approval from the said regional head, must attach the technical considerations of land issued by the Land Office.

d. Location Permit Approval

The results of the technical considerations on land are used by the Regency/City Regional Government to be taken into consideration in granting approval or rejection of applications for fulfillment of Location Permit Commitments.

The series of activities above are in order to obtain space certainty on the land where the flat will be built. Furthermore, after the certainty of space is obtained, the developer carries out land acquisition activities.

Land acquisition activities can be carried out through the transfer of rights or relinquishment of land rights, then requesting building use rights or use rights, if the land in question is land controlled directly by the state. In the event that the land to be built is land with management rights (HPL), then the way that can be taken is for the developer and the right holder to make a land use agreement which is then registered with the Land Office for the issuance of building rights or use rights on HPL land.

3.2. Permit for Constructing Flats

After the developer has obtained the certainty of space and certainty of land rights, then other permits are still needed as requirements for the construction of flats, namely:

a. Building Approval

The term Building Approval (PBG) is a substitute term for the Building Permit (IMB). The term PBG refers to the amendment of UURS which is amended by Article 56 of Law Number 11 of 2020 concerning Job Creation (hereinafter referred to as UUCK). Requirements to obtain PBG, developers are required to plan in detail the following matters:

- 1) Determine and ensure each apartment unit and its proportional comparison value;
- 2) Site plan along with floor plans and sections thereof;
- 3) Limits of ownership of shares, objects and land together.

In addition, development actors must also have determined the designation of flats to be built, either for residential or non-residential, or mixed.

b. Deed of Separation

The development organizer is obliged to separate the apartment from flat units and which includes joint parts, shared objects, and shared land with a clear description through a deed of separation as regulated in Article 26 UURS. After the construction of the apartment is completed, the developer submits the approval of the description to the Regional Government. A description is a description in the form of pictures and writings that clarify the boundaries of flats both horizontally and vertically, shared parts, shared land, shared objects, as well as a description of the proportional comparison value of each apartment unit. The description is made by the development organizer himself, then the local government is asked for approval.

c. Issuance of Certificate of Ownership of Flat Units

After obtaining approval from the local government, the deed of separation is registered with the local Land Office by attaching a certificate of title to the land concerned, a livable permit, and other necessary documents. The Deed of Separation and its attachments are used as the basis for the issuance of the certificate of ownership of the apartment unit and the preparation of the land book.

After the deed of separation is registered and the HMSRS land book is made, the Land Office will issue a HMSRS certificate (SHMSRS) in accordance with the number of apartment units, all of which are still in the name of the development organizer. This HMSRS certificate contains:

- a. A copy of the HMSRS land book;
- b. Copy of measuring letter/drawing of joint land situation

- c. Plans for flats that clearly show the level of the flats and the location of the flats. (vide Article 7 paragraph (2) Regulation of the Head of the National Land Agency Number 4 of 1989 concerning Forms and Procedures for Making Land Books and Issuing Ownership Certificates for Flat Units)

d. Occupancy Permit

After the completion of the construction of the flats, the development organizer is required to have a habitable permit first before the flats can be occupied. A livable permit will be issued if the implementation of the construction of flats in terms of architecture, construction, installation and other building equipment is in accordance with the provisions and requirements specified in the relevant PBG.

3.3. Sales of Flats

a. Direct Selling

Developers who build and operate flats are parties who can be land owners and or non-land owners. Furthermore, the developer's rights to the flats are further divided into:

- 1) Common land is a plot of land with rights or leased land for buildings that are used on the basis of joint and inseparable rights on which an apartment is built and its limits are set in the requirements for a building permit.
- 2) Common thing is an object that is not part of the apartment but is part that is not separately owned together for shared use.
- 3) Shared part is part of an apartment that is not separately owned for joint use in a unitary function with the apartment units.
- 4) Apartment unit is an apartment unit whose main purpose is used separately with the main function as a place of residence and has a connecting facility to public roads.

In point 4 above, the apartment unit (sarusun) can be given a new right, namely the Ownership Right to the Flat Unit (HMSRS). HMSRS is a new right that was not previously known as land rights in the LoGA. In its development, HMSRS has received a fairly clear and firm regulation in the Flats Law, and is conceptualized as one of the rights in the corridor of the land law system, related to the principle of horizontal separation and the principle of attachment (assessment), so that HMSRS can be equated with land rights. Because HMSRS is equated with land rights, the transfer of HMSRS is also subject to the provisions of the transfer of land rights.

Buying and selling (transfer of rights) according to the national land law system originating from customary law, is known as the principle of light and cash, so that buying and selling whose object is HMSRS must also be based on the principle of light and cash. It means that the legal act of buying and selling must be made in writing before the appointed/appointed official. Cash means that at that time the seller delivers the goods and the buyer pays the selling price. Thus, buying and selling whose object is in the form of HMSRS must also follow the procedures for the transfer of rights regulated in the land law system, among others, carried out in the presence of an authorized official (PPAT) and in cash.

With the above concept, the developer can only sell the condominium unit after the object (the condominium unit) is ready to be handed over and receives the sale and purchase price in cash, while the buyer (users) is ready to make cash payments and receive the condominium unit at the same time. The sale and purchase transactions are carried out in the presence of the authorized official (PPAT).

b. Indent Sales through PPJB

Developers of flats, it is possible to sell condominium units before the construction of flats is completed through the PPJB system, as regulated in Article 43 of the Flats Law. This means that the developer is permitted by law to sell condominium units even though the object is not ready to be handed over and the sale price has not been paid in full, through a system of preliminary sale and purchase agreements (PPJB). In other words, the concept of buying and selling according to the UUPA which adheres to the principle of light and cash can be deviated through independent sales with the PPJB system which is a preliminary agreement or assistance, until the actual sale and purchase of HMSRS occurs.

Through Article 43 of the Flats Law, the state intends to regulate restrictions for developers to apply the PPJB system to potential buyers (users) and provide sanctions for violations that occur.

3.4. PPJB form

According to Article 43 paragraph (1) of the Flats Law, which stipulates: "The process of buying and selling condominium units before the construction of flats is completed can be carried out through PPJB made before a notary". Furthermore, according to Government Regulation Number 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Settlement Areas (hereinafter referred to as PP No. 12/2021) which in Article 22K paragraph (3) determines: "PPJB is signed by the prospective buyer and development actors made before a notary. Thus, based on these provisions, PPJB can only be made in the form of a deed made before a Notary.

The involvement of a Notary in making evidence against the PPJB is intended because a Notary who is conceptualized as a Public Official is given the authority to make evidence that has the power of proof as an authentic deed. In addition, the existence of a Notary in exercising his authority must always be based on the UUJN and other laws and regulations, which in Article 16 paragraph (1) letter a of the UUJN states: "In carrying out his position, the Notary is obliged to act trustworthy, honest, thorough, independent, impartial. and safeguard the interests of the parties involved in legal actions." Thus, making PPJB which is required in the form of a notarial deed, in addition to having strong evidentiary power, also so that the notary can be a jury or arbiter of PPJB contents/materials.

3.5. Obligations, Prohibitions and Sanctions for Making PPJB

a. Obligations

Article 43 paragraph (2) of the UURS contains requirements and obligations that must be fulfilled by developments who wish to sell condominium units that have not been completed, namely:

- 1) Land ownership status evidenced by a certificate of land rights in the name of the development actor or a certificate of land rights in the name of the cooperating land owner or a document of land rights in accordance with the provisions of the legislation in the land sector.
- 2) Building Approval Proven by PBG letter
- 3) Availability of infrastructure, facilities, and public utilities clear information on infrastructure, facilities, and public utilities promised by the developer.
- 4) Development of at least 20% (twenty percent) construction of at least 20% (twenty percent) is 20% (twenty percent) of the volume of construction of flats that are being marketed.

- 5) The promised thing is the condition of condominium units that are built and sold to consumers who are marketed, including through promotional media, among others, the location of the flats, the shape of the condominium units, the building specifications, the price of the condominium units, infrastructure, facilities, and public utilities for the flats, other facilities, as well as the time of handover condominium.

b. Ban

According to Article 98 UURS, Developers are prohibited from making PPJB:

- 1) which is not in accordance with the marketed; or
- 2) before fulfilling the certainty requirements as referred to in Article 43 paragraph (2).

c. Penalty

According to Article 110 UURS, the Developer who makes PPJB:

- 1) Which is not in accordance with the marketed; or
- 2) Before fulfilling the certainty requirements as referred to in Article 43 paragraph (2) as referred to in Article 98, shall be sentenced to a maximum imprisonment of 4 (four) years or a maximum fine of Rp. 4,000,000,000.00 (four billion rupiah).

The provisions of Article 110 of the Flats Law above, regulates criminal sanctions for violations of the provisions of Article 98 jo. Article 43 paragraph (2) of the Flats Law. With the provision of offenses and criminal sanctions, violations committed by apartment developers (developers) against the provisions of Article 43 paragraph (2) of the Flats Law have qualified as criminal acts.

Because the legal subject of the developer is a corporation, the provisions of Article 110 of the Flats Law have also fulfilled the criminal provisions for corporations, namely by providing an alternative in the form of punishment to people within the developer corporation who provide policies/decisions so that a criminal act in the form of imprisonment or punishment occurs the corporation itself is not possible to be sentenced to imprisonment and is only possible to pay a fine.

3.6. Review of Court Decisions Regarding Violations of Obligations and Prohibitions of Making PPJB

There are still many irregularities in the administration of flats, including the case in Sleman, Yogyakarta in the Supreme Court's decision Number 549 K/Pid/2019. In the decision, Defendant 1 (T1) and Defendant 2 (T2), are the founders and shareholders, as well as Commissioner and Director of a limited liability company (PT) engaged in the construction of flats. T1 and T2 market and sell the condominium units to be built by holding a meeting. Further to the offers made by T1 and T2, then the victim witness who was present at the meeting was interested in the offer made, so he bought and paid a sum of money to T1 and T2. After 4 (four) years, it turned out that the construction of the flats had not yet started, so the victim's witness reported T1 and T2 to the police, which were then processed until the trial at the Sleman State Court.

The Public Prosecutor (JPU) accused T1 and T2 of committing fraud related to the sale of the condominium unit using Article 378 of the Criminal Code. Against the prosecutor's indictment, the panel of judges gave legal considerations, that the act of selling the condominium unit was a contract law which was the authority of the civil judge, so the judge stated that the defendants had committed the acts as charged to him as the first indictment, but the act was not an act criminal law (Onslag Van Recht Vervolging).

At the cassation hearing, Judex Juris has given legal considerations (ratio decidendi) that the defendant's legal action is a violation of the provisions of Article 43 paragraph (2)

in conjunction with Article 98 of the UURS, but the criminal sanction used/imposed is Article 378 of the Criminal Code, even though the provisions of Article 110 UURS, as a special rule of law (*lex specialist*) is more appropriate to apply, than the rule of law.

As described above, the existence of Article 43 paragraph (2), Article 98 and Article 110 of the UURS is a derivation of Article 378 of the Criminal Code. Whereas Article 110 has an alternative regarding the legal subject who is responsible, namely the subject of imprisonment for persons (*natuurlijke persoon*) or criminal sanctions in the form of fines for corporations. Even at the time the cassation decision was made, the defendants (T1 and T2) who had died or were deceased, but were still sentenced to prison terms, were an irony.

The application of Article 378 of the Criminal Code rather than Article 110 of the UURS, by the judge creates legal uncertainty regarding violations of Article 43 paragraph (2) jo. Article 98 of the Flats Law. According to Philipus M. Hadjon quoting the opinion of Lon L. Fuller, assessing legal uncertainty occurs if one of the 8 (eight) principles occurs, in this case the principle of failure to publish or introduce the rule of law to the public or at least to interested parties who are expected to learn the rules. However, based on the Elucidation of Article 81 of the P3 Law which stipulates: "By the promulgation of the Legislation in the official sheet as referred to in this provision, everyone is deemed to have known it".

This is the application of the theory of legal fiction, which assumes that when a statutory regulation has been promulgated, then at that time everyone is considered to know (*presumption iure de iure*) and someone's ignorance of the applicable law or statutory regulations does not free that person from lawsuits (*ignorantia iuris neminem excusat*).

3.7. The Notary's Criminal Responsibility for the Occurrence of Criminal Acts in the Notary Deed

a. Notary Precautionary Principle

Notaries in carrying out their positions (making authentic deeds) are obligated to maintain the precautionary principle which is closely related to thoroughness, accuracy and thoroughness which have the same meaning, so that the deeds they make do not cause legal problems in the future. So that the purpose of the community to come and ask for the assistance of a notary, so that the legal actions, agreements or stipulations they want to carry out are included in the notary deed so that they are strong and perfect evidence to be achieved.

Accuracy is an important thing for notaries in carrying out their positions, because people who come and ask for assistance from notary services are legal professions that have special skills and responsibilities. According to Liliana Tedjosaputro in Ghansham Anand, The notary profession is a position of trust that is legally, morally and ethically responsible to the state/government and the public who are parties to the deed.

Although in the general explanation of the UUJN it is stated that the notary deed essentially contains the formal truth according to the request/will of the parties submitted/notified to the notary, but the notary has an obligation to explain that the things contained in the notary deed have been understood and according to the wishes of the parties themselves. The obligation of a notary to explain this requires a notary to understand and understand the characteristics of legal acts that are contained in the deed, so that the legal actions contained/stated in the deed do not violate things that are prohibited by the rule of law.

b. Responsibilities of a Notary

A notary in carrying out his position must comply with the obligations of the various provisions contained in the UUJN and other laws and regulations. Violation of the obligations of the UUJN and other laws and regulations creates liability as a juridical consequence, which can be divided into:

1. Violation of UUJN

UUJN is a guideline for notaries in obtaining, carrying out and quitting their positions as notaries, including personal behavior while serving as a notary is also regulated in UUJN. Violations that occur or mistakes made while serving as a notary, both in terms of procedures for making and behavior that are not directly related to the position of a notary give rise to liability as a juridical consequence of violations or mistakes made by a notary.

2. Review of Court Decisions That Provide Criminal Sanctions to Notaries Related to the Making of Deeds

This study also examines criminal cases involving a notary related to the making of a deed, which contains a criminal act. The decision that will be studied is the application of the *argumentum per analogiam* (analogy) method, namely to similar or similar events, which can be seen in the Corruption Court Decision at the Surabaya District Court Number 62/Pid.Sus-TPK/2017/PN.Sby jo. Decision of the Criminal Court at the East Java High Court Number 86/Pid.Sus-TPK/2017/PT.SBY.

Based on the court's decision that gives criminal sanctions to the notary related to the making of the above deed, the author provides the following analysis:

- a. Notaries in carrying out their positions in addition to being guided by the UUJN must also comply with other laws and regulations such as the oath/promise made by the notary
- b. Although in the general explanation of the UUJN it is stated that basically the notary is only responsible for the formal truths that are notified by the parties to the notary, and is not responsible for the contents/materials contained in the body of the deed. However, based on Article 4 of the UUJN regarding the oath/promise to comply with the laws and regulations, as well as according to Article 16 paragraph (1) letter a of the UUJN related to the precautionary principle jo. Letter e, regarding the obligation to refuse to make a deed if there are legal actions contained in the deed that are prohibited by laws and regulations, then a notary as a public official who is authorized by the state, should be a filter or filter for violations that the community wants to commit.
- b. Judges are authorized to make legal discoveries, one of which is through legal construction methods that needed in the face of a legal vacuum. According to Philipus M. Hadjon, the legal construction model consists of an analogy and its counterpart (*spiegelbeeld*) *a-contrario*, and a third form, which P. Scholten calls legal refinement (*rechtsverfijning*) which in Indonesian is called legal narrowing.
- c. In legal considerations (*ratio decidendi*), judges make legal discoveries through legal construction using the *Argumentum a Contrario* method. This method uses the reasoning that if the law stipulates certain things for certain events, it means that the regulations are limited to certain events and the opposite applies to events outside. Based on the principle of criminal law that there is no crime without error (*geen straf zonder schuld*), then with the *Argumentum a Contrario* method, it can be interpreted that if someone makes a mistake, then that person can be punished, so the panel of

- judges is of the opinion that a notary can be punished if in carrying out his office he made a mistake (schuld) that can be accounted for in criminal law.
- d. Based on the evidence and facts of the trial, in the form of witness statements and a series of actions carried out by a notary, it can be proven that the notary is aware of a violation of law in the form of the transfer of TKD which legally cannot be transferred, even the notary makes evidence of the transfer. Thus it is proven that the notary made a mistake in carrying out his position.
 - e. The defendant's rebuttal stating that he was not aware of the existence of TKD so that he did not know that there was a violation of the law, as an element of forgiveness/removal of guilt, was refuted by the testimony of witnesses and the facts of the trial.

Based on legal facts and witness statements, it shows that the notary made an intentional mistake in making the deed, which is proven so that the intention to commit the error is categorized as an abuse of authority.

IV. Conclusion

Based on the discussion and research results, the conclusions that can be drawn from this research are as follows:

1. Law Number 20 of 2011 concerning Flats is a guideline for legal bearers (stakeholders), business actors and the community in which matters relating to the implementation of flats in Indonesia have been regulated, including the existence of sanctions for those who violate the provisions stipulated therein. Sanctions, including offenses and criminal sanctions regulated in the law, are special legal rules (lex specialist) which are a derivation of the provisions of Article 378 of the Criminal Code as general legal rules. In the event of a violation of the law related to the implementation of flats, the sanctions stipulated therein are used as the basis for law enforcement. Based on the case studied, it shows that law enforcement officers who are legal bearers (stakeholders) do not use offenses and criminal sanctions according to the Flats Law, but using offenses and general criminal sanctions regulated in Article 378 of the Criminal Code. The use of offenses and general criminal sanctions is not properly applied and creates legal uncertainty.
2. Notaries as public officials have the function of serving the public who need evidence. Notaries are appointed and given special authority to make written evidence that has perfect and full evidentiary power, namely as an authentic deed. Therefore, the position of a notary requires special expertise in the field of law. In order for a notary deed to have the power of proof as an authentic deed, the procedure for making the deed must be in accordance with the procedures for making a notary deed as regulated in the Notary Position Act. In accordance with the provisions of Article 4 regarding oaths and promises jo. Article 16 paragraph (1) letters a and e, in carrying out his position, a notary is obliged to act carefully, and refuse to make deeds that are prohibited by laws and regulations. Although according to the Law on Notary Positions, the concept of a notary's responsibility is limited to the formal truth of the statements of the parties submitted to the notary. In the event that a criminal act is contained in the notary deed, based on the decision being studied, the judge can use methods in making legal discoveries to be able to prove the notary's fault, especially if the error is a criminal act.

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