

The Juridical Analysis of Notary/PPAT Responsibilities who Do Not Pay BPHTB Tax

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Abstract. *One of the potential sources of tax revenue that needs to be explored according to the current economic situation and condition as well as the development of the nation is the type of Customs Tax on Land and Building Rights, hereinafter abbreviated as BPHTB. The transfer of rights to land and buildings can occur due to a legal act or legal event. One of the legal actions that can cause the transfer of rights to land and buildings is through buying and selling. The existence of the transfer of rights must be proven by an authentic deed made by or before the Land Deed Making Official (PPAT). The transfer of rights to land and buildings through the sale and purchase gives rise to tax obligations for the parties, namely Income Tax (PPh) for the seller and Customs for the Acquisition of Land and Building Rights (BPHTB) for the buyer. The purpose of this paper is to describe the legality of the act of receiving the power to deposit taxes by the Land Deed Making Official (PPAT) as a public official and the juridical implications of PPAT who receive the custody of Income Tax (PPh) and Customs for the Acquisition of Land and Building Rights (BPHTB) from taxpayers. The method used to examine these problems is normative legal research using a statute approach to examine the laws and regulations related to the legal issues being studied. The legality of the act of receiving the power to pay taxes by PPAT as a public official actually does not yet exist, in other words, a definite rule has not been established that regulates the act of receiving the power to deposit taxes by PPAT. Then regarding the juridical implications of PPAT who receive PPh and BPHTB tax deposits from taxpayers, even though the act does not have legal legality, its implementation is still included in the legal*

category because the act departs from the habits that have been in effect so far and is accepted by the community. As long as there is no legal regulation to realize the legality of this act, during that time this habit will continue, although there is no guarantee of legal protection for this act, but as long as it does not cause harm to anyone, it is considered not a problem. The BPHTB fee entrusted by the client to the Notary as the Land Deed Making Officer (PPAT), allows for opportunities for fraud by not paying or embezzling the BPHTB funds deposited. The results show that the deed of sale and purchase that has been made by PPAT is valid even though the taxes arising from the transfer of rights to the land and buildings have not been paid. Parties who do not pay taxes arising from the transfer of land and building rights have debts to the state and may be subject to administrative sanctions in accordance with the provisions of the applicable laws.

Keywords: Acquisition; Attorney; Building; Land; Tax.

1. Introduction

One of the potential sources of tax that should be explored in accordance with the current economic situation and condition as well as the development of the nation is the Customs for the Acquisition of Land and Building Rights (hereinafter referred to as BPHTB).¹For the purchase of land, there is a tax that must be paid by the parties, the seller of the land in this case will be subject to income tax and the buyer will be subject to BPHTB. BPHTB is one type of objective tax or material tax where the tax payable is based first on what is the object of tax and then pays attention to who is the subject of the tax. Every acquisition of land and/or building rights requires the receiving party to pay the Buyer's Land Rights Acquisition Fee. The seller is subject to Income Tax (PPH) and the buyer is subject to Land and Building Rights Acquisition Fee (BPHTB) in practice, then the client asks for PPAT assistance to pay taxes (PPH and/or BPHTB). Next the client transfers some funds or submits it in cash for tax payment.

In general, there is no legal regulation that prohibits PPAT from receiving the power to deposit tax payments. Article 3 letter m of the PPAT Code of Ethics only regulates PPAT obligations, it is stated that in the context of carrying out office duties (for PPATs and substitute PPATs) or in daily life. When there is no legal regulation that prohibits PPAT from receiving the power to deposit PPH/BPHTB taxes, then on a *contrario* basis this is allowed. However, considering the emergence of several cases related to the risk of tax deposit to PPAT, moreover there is an abuse of power to deposit taxes, then it should be related to the

¹Andi Indah Rizky Y, 2017, Tanggungjawab Notaris Selaku Pejabat Pembuat Akta Tanah Dalam Pemungutan Bea Perolehan Hak atas Tanah Dan Bangunan Di Kota Makassar, Jurnal Akta.

practice of PPAT receiving the power to deposit taxes, it needs to be studied further, the client's actions to deposit tax money are more because of the element of trust in the PPAT. PPAT. In practice, the deposit of tax money has never been realized in the form of a deposit agreement or a power of attorney from the client to the PPAT. Thus, the legal relationship between the client and the PPAT in terms of depositing tax money is unclear.

Notary can be sentenced to criminal if it can be proven in court intentionally or unintentionally, the notary jointly with the appearers with the intent and purpose to benefit themselves or harm other appearers. If this is proven, the Notary must be held accountable and punished. In practice, it is found that a legal action or violation committed by a Notary can actually be subject to administrative or civil sanctions or a code of ethics for the position of a Notary, but then withdrawn or qualified as a crime committed by a Notary.

The case as stated in the decision No. 72/Pid.B/2020/PN/Pkl, dated June 8, 2020, initially the complainant had reported a Notary/PPAT related to the alleged criminal act of Fraud and or embezzlement because the complainant considered himself IDR 13,500,000,- (thirteen million five hundred thousand rupiah) which was entrusted to a Notary/PPAT for payment of Customs on Acquisition of Land and Building Rights (BPHTB) was not used properly.

2. Research Methods

The research method to be carried out is in the form of normative juridical research. Normative legal research is research that emphasizes the use of written legal norms. In writing, it can be in the form of books, theses, laws, court decisions, and literature from libraries.² From these various sources, it will then be analyzed regarding the Responsibilities of the Notary / Land Deed Making Official for the Sale and Purchase Deed which contains elements of the crime of fraud and or embezzlement.

3. Results and Discussion

3.1. Juridical implications for Notaries/PPATs who do not make BPHTB tax payments

One of the foundations of the government's authority is the principle of legality. As a consequence of the rule of law, there must be guarantees for state administration as state equipment to be able to run the government, while citizens have rights and obligations to get guaranteed protection. Therefore, the

²Soerjono Soekanto and Sri Mamudji, (2007), *Penelitian Hukum Normatif Suatu Tujuan Singkat*, Cet. 10, Jakarta: Raja Grafindo Persada, p. 4.

power of the Government cannot be separated from the development of the principle of legality, which means that every action of the Government must be based on the law. Based on the previous discussion, regarding PPAT's act of receiving the power to deposit tax payments from his client, it is known that there is no legality for this act, only based on habit. Habits are human actions that are repeated over and over again in the same way.

In the event that the PPAT's act of accepting payment of the power of attorney to deposit taxes from his client has become a habit because it is done repeatedly, even if there is a PPAT who is not willing to do the act it cannot be said to be a form of violation of the law, but the PPAT who does this is already seen as This is a common thing for the community, especially those who use the services of PPAT.

Discussions about the legality of a rule cannot be separated from its validity, because legality is the basis for the validity of an authority. Legal validity is a theory that teaches how and what the conditions are so that a legal rule becomes "valid" (valid) so that it can be applied to the community. In order for the law to be "legitimate", then the law must be applicable to society, so a rule of law must be a valid law. From this situation, the concepts of command, forbidden, authorized, force and obligation emerge. However, a "valid" legal rule is not necessarily an "effective" legal rule.

Based on this, although PPAT's act of receiving the power to deposit tax payments from his client does not yet have legal legality, its implementation is still included in the legal category because the act departs from the customs that have been in force so far and is accepted by the community. As long as there is no legal regulation to realize the legality of this act, during that time this habit will continue, although there is no guarantee of legal protection for this act, but as long as it does not cause harm to anyone, it is considered not a problem.

in the process of buying and selling land and buildings, where the sale and purchase requires an authentic deed made by a public official, namely PPAT. According to Article 1874 BW, a deed is a copy that is deliberately made to be used as evidence of an event and signed. Thus, the important elements for a deed are the intention to create a written evidence and a written signature.³According to the provisions of Article 1870 BW, namely regarding strength and authentic deed as a means of proof, an authentic deed provides between parties and their heirs or persons who have rights and to them, a perfect proof of what is contained therein. Authentic deeds have absolute

³R. Subekti, (1979), *Hukum Pembuktian*, Pradnya Paramita, Jakarta. p. 23.

evidentiary power. If in the future a dispute arises, then the authentic deed can be used as perfect evidence so that the proof can also be done without other evidence. This is different from an underhand deed, where an underhand deed has incomplete proof if it is still denied by one of the parties, and becomes perfect when it has been acknowledged by both parties.

With respect to the sale and purchase of land, without an authentic deed from the PPAT, the sale and purchase of land does not cause the transfer of land and buildings. To be able to transfer an object, namely land and buildings, it must be done with a deed of sale and purchase or AJB. The deed of sale and purchase is a requirement for the transfer of the name of the land certificate from the seller to the buyer. Deed of sale and purchase of land is an authentic deed made by PPAT which has functions, among others, namely the existence of evidence in the form of a PPAT deed which is a requirement for registration of the sale and purchase by the Head of the Land Office, that it is true that legal actions have been carried out and prove the transfer of land rights to the recipient. The transfer of rights can only be registered if it is proven by a PPAT deed. This is stipulated in Article 37 paragraph (1) of PP No. 24 of 1997 which states:

“The transfer of land rights and ownership rights to flat units through buying and selling, exchanging, grants, income in the company and other legal acts of transferring rights, except for the transfer of rights through auction, can only be registered, if it is proven by a deed made by the PPAT that authorized according to the provisions of the applicable laws and regulations.”

The parties in the act of buying and selling land are the seller and the buyer, in the sale and purchase there must be an agreement between the seller and the buyer in accordance with the provisions contained in Article 1320 of the Civil Code. Buying and selling is a process that can be evidence of a transfer of rights carried out by the seller and buyer before the PPAT in cash. The making of the deed of sale and purchase of land is carried out after the obligations of taxes must be paid. The validity of the deed of sale and purchase of land is said to be valid if it meets the requirements set out in Article 1320 of the Civil Code even though the parties have not fulfilled their obligations, namely paying BPHTB taxes. The parties only have debts to the state and if it has not been paid it will hamper the next land registration process.

3.2. Legal liability of a notary/PPAT who does not make BPHTB tax payments on the basis of a power of attorney from the taxpayer

The juridical implications of PPAT receiving PPh and BPHTB tax custody from taxpayers are:

- The act of PPAT receiving the power to deposit tax payments from his client does not yet have legal legality but its implementation is still included in the legal category because the act departs from the habits that have been in effect so far and is accepted by the community. As long as there is no legal regulation to realize the legality of this act, during that time this habit will continue, although there is no guarantee of legal protection for this act, but as long as it does not cause harm to anyone, it is considered not a problem.
- The PPAT who defaults is obliged to be responsible for all costs, losses and interest arising from the non-performance of the achievements given to him. PPAT is also obliged to be responsible for all actions that are done intentionally and omissions made in fulfilling achievements. PPAT which gives power to its employees to pay taxes is responsible for all consequences that occur if there is negligence on the part of its employees.
- PPAT who commits an unlawful act in the realm of Civil Law related to the power to deposit tax payments of his client is responsible for reimbursement of costs, compensation and/or interest, as long as it must first be proven that there are: (a) losses, (b) there is a causal relationship between suffering and the violation or omission of the PPAT, (c) the violation or omission is due to an error that can be accounted for to the PPAT concerned. d. PPAT who commits an unlawful act in the realm of Criminal Law related to the power to deposit tax payments for his client, the most likely to occur is a criminal act of embezzlement in office.

3.3. Court Decisions Related to Cases of Misuse of BPHTB Payments Conducted by PPAT

The legal basis for BPHTB is Act No. 21 of 1997 jo. Act No. 20 of 2000 concerning Amendments to Act No. 21 of 1997 concerning Customs for Acquisition of Rights on Land and Buildings. Rights to land and or buildings are rights to land, including Management Rights, including buildings on it, as referred to in Act No. 5 of 1960 concerning Basic Agrarian Regulations (UUPA), Act No. 16 of 1985 concerning Houses Compile, and the provisions of other applicable laws and regulations. This means that BPHTB may only be imposed on the acquisition of rights regulated in the UUPA, the Law on Flats, and Management Rights. The acquisition of other land rights that develop in indigenous peoples but are not recognized by the LoGA should not be subject to BPHTB.

In criminal law, the measure that determines a person can be criminally responsible for his actions is seen from the person's ability to be responsible. The

element of error is the main element in criminal liability. Defendant Damar has fulfilled the element of error, therefore he can be held criminally responsible for what he has done. Criminal liability implies that anyone who commits a crime or violates the law, as formulated in the law, then that person should be held accountable for his actions according to his mistakes. Accountability in criminal law adheres to the principle of no crime without error (*geen straf zonder schuld*). It cannot be separated between guilt and responsibility for actions.⁴

In the case of depositing tax money, the PPAT is authorized and may accept the deposit of Final PPh tax and BPHTB tax according to its duties as PPAT who completes the deed of transfer of land rights. Where in its implementation it is based on trust according to customary law that applies continuously and is recognized and accepted by the community and applies in practice, and has been accepted in the bureaucracy for managing land rights and their transfer. Therefore, it can be justified if PPAT accepts BPHTB tax deposits that are directly related to their duties. The BPHTB collection system adheres to a self-assessment system where taxpayers are entrusted with calculating and paying their own taxes owed. This is as regulated in Government Regulation No. 91 of 2010 concerning Types of Regional Taxes Collected Based on the Determination of the Regional Head or Paid Himself by the Taxpayer where it is stipulated in Article 4 that the Duty on Acquisition of Rights on Land and Buildings (BPHTB) is a type of tax that is paid by the taxpayer himself. Taxpayer. Therefore, the taxpayer in making the payment of the BPHTB calculates the tax payable by himself.

In the Pekalongan District Court Decision No. 72/Pid.B/2020/PN.Pkl, the judge has decided that the defendant H. Bachtiar, SH. S.Pn. bin Akmal above with a verdict that is not legally and convincingly proven guilty of committing a criminal act as charged by the Public Prosecutor, Freeing the Defendant therefore from all charges of the Public Prosecutor, Ordering the Defendant to be released from detention immediately after this verdict is pronounced, Restoring the rights of the Defendant within his capabilities. This is because the defendant's land certification process has not been able to be carried out because the BPHTB fees have not been properly paid but there has been no crime of fraud and or embezzlement.

4. Conclusion

The parties in the act of buying and selling land are the seller and the buyer, in the sale and purchase there must be an agreement as stated in Article 1320 of the Civil Code. The validity of the deed of sale and purchase of land is said to be

⁴Adami Chazawi, (2007), *Pelajaran Hukum Pidana 1*, Rajagrafindo Persada, Jakarta, p. 151

valid if it meets the requirements set out in Article 1320 of the Civil Code even though the parties have not fulfilled their obligations, namely paying BPHTB taxes. The authority of the Notary as PPAT in providing services in the form of payment of land sale and purchase taxes in the form of BPHTB has not been clearly regulated by existing regulations or laws, if there is a PPAT who defaults or commits acts against the law in the realm of Civil Law, of course, criminal law can be carried out. In the Pekalongan District Court Decision No. 72/Pid.B/2020/PN. However, the criminal process against a Notary/PPAT suspected of committing a criminal act should be carried out as a last resort after all reconciliation/peace efforts have not been achieved, law enforcement at all levels must be proactive in this regard considering the law is not only about certainty but also benefits and Justice.

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