

Problems of Land Deed Officials in Collecting Land and Building Acquisition Tax in Tegal City

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Abstract. *In property sale and purchase transactions, especially for buyers, a tax called BPHTB is imposed. The transaction for the transfer of rights to land and buildings is shown in the deed of sale made by the PPAT and the PPAT is the one who collects the BPHTB, but it is not uncommon to find many transactions for the transfer of rights to land and buildings carried out without using the services of a PPAT, only carried out underhand to avoid costs arising from the transfer of rights, including BPHTB. The purpose of this research is to examine the problems of Land Deed Officials in collecting Land and Building Acquisition Tax, and what are the obstacles and solutions of Land Deed Officials in collecting Land and Building Acquisition Tax. The approach method used in this legal research is an empirical legal approach method or in other words, it is called an empirical normative approach. In relation to the research method used, the author did this by researching legislation, regulations, legal theories and the opinions of leading legal scholars which are secondary data which are then linked to the actual situation, as well as related to problems found in the field related to problems faced by Land Deed Officials in collecting Land and Building Acquisition Tax. The results of the research obtained by the author include the contradiction in the BPHTB tax collection system, which was originally based on a self-assessment system, becoming an official assessment system. The validation process to determine the selling price of land and buildings is not regulated in laws and regulations, so that the process has an impact on changing the BPHTB value for a land object, automatically requiring more time.*

Keywords: *Collection; Land; Selling.*

1. Introduction

Every individual or entity that obtains economic value and benefits from land or buildings or those who obtain rights to the land and buildings are naturally subject to levies in the form of taxes by the State. BPHTB is a tax imposed on the

acquisition of rights to land and buildings. While the acquisition of rights to land and buildings is an act or legal event that results in the acquisition of rights to land and buildings by individuals or legal entities through an authentic Deed made and legalized by a Notary-PPAT.

The authority of a notary regarding the collection of BPHTB is not stated directly in the UUJN, however the authority to collect BPHTB can be seen in Article 15 Paragraph (2) letter f of the UUJN which states that a notary also has the authority to make deeds relating to land.

Land Deed Officials are required to understand and implement regulations in the field of taxation related to their duties. The understanding and implementation are in order to protect taxpayers who fulfill their rights and obligations as a form of their participation in financing development. This is a consequence of the constitution which mandates the importance of taxes to the state. Thus, Notaries-PPAT are always related to various types of state taxes including BPHTB.

Transaction value manipulation still often occurs. Many taxpayers try to reduce the transaction value so that the tax to be paid is also small. Therefore, the revenue office continues to try to tighten supervision. The Tegal City Revenue Office does not immediately trust the incoming transaction value. DPPKAD takes a number of stages to make the data accurate. One step is to match the submission with the price listed in the land value zone (ZNT). If the price does not match the ZNT, the revenue office takes other steps. Namely, a field survey. They will detect the range of land prices around the location being traded. High transactions are an indicator of rising land prices in an area. There are areas where the land value per meter continues to skyrocket.

In property sale and purchase transactions (land and buildings), especially for buyers, a tax called BPHTB is imposed on the transfer of rights to the land and building. The transaction appears in the sale and purchase deed made by the PPAT and the PPAT is the one who collects the BPHTB and then the PPAT is the one who deposits it into the state treasury. However, it is not uncommon to find many transactions for the transfer of rights to land and buildings that are carried out without using the services of a PPAT, only carried out underhand to avoid the cost of PPAT services and BPHTB. Of course, this condition from the government's side will have an impact on reducing regional original income, while from the Taxpayer's side and the buyer's side, due to their ignorance in implementing taxation in the BPHTB, it will have an impact on the ownership documents for the land purchased.

In fact, there are problems that occur in the context of collecting BPHTB in Tegal City, namely from the perspective of the parties (seller/buyer of land and buildings), they assume that there are problems with collecting BPHTB on the

selling price of land. The problem in question is when they come to the Notary/PPAT office in order to process the Sale and Purchase Deed for example, which contains a land sale object of IDR 200,000,000.00 (two hundred million rupiah). However, the Regional Revenue, Financial Management and Asset Service (DPPKAD) requested a transaction value for the land sale object above two hundred million rupiah, this indicates that the greater the nominal transaction, the greater the nominal BPHTB that must be paid by the taxpayer.

2. Research Methods

Specifically, according to the type, nature and purpose, legal research is divided into 2 (two), namely normative legal research and empirical legal research. The approach method used in this legal research is the empirical legal approach method or in other words called empirical normative. In connection with the research method used, the author did it by examining legislation, regulations, legal theories and opinions of leading legal scholars which are secondary data which are then linked to the actual situation, and related to problems found in the field related to problems faced by Land Deed Officials in collecting Land and Building Acquisition Tax. The research specifications that the author uses are Descriptive Analytical research specifications, namely research that attempts to describe legal problems, legal systems, and examine or analyze them according to the needs of the research.

3. Result and Discussion

3.1. General Overview of Notary-PPAT

Notary is a Land Deed Official, an official appointed by the state but not as a State Civil Apparatus, so that notaries can also be dismissed by the government. However, in his position, notaries cannot receive a salary from the government. Notaries only receive honorariums from the community for services they have rendered or can provide free services to those who are unable. Notaries have the authority to meet the needs of the community who require authentic legal documents (deeds) in the field of civil law. If a notary makes a deed that is not in accordance with applicable legal regulations, then the community can prove it by suing in a civil court to demand costs, compensation, and costs, this is a form of Notary accountability to the community.

1. Position and Authority of Notary as PPAT

The position referred to in this writing is that notaries as public officials are representatives of the government in providing services to the community, namely in terms of making authentic deeds. Thus, notary services are very important and are one of the legal needs of the community. However, the

position of a notary as a public official does not give the notary a position as a civil servant, but rather a profession.

2. Obligations and Prohibitions for Notaries

The obligations of a notary as regulated in Article 16 Paragraph (1) of the UUJN are as follows:

- a. Act honestly, carefully, independently, impartially, and protect the interests of the parties involved in legal actions;
- b. Make a deed in the form of a deed minute and store it as part of the notary protocol;
- c. Issue grosse deeds, copies of deeds, or quotations of deeds based on minutes of deeds;
- d. Provide services in accordance with the provisions of this law, unless there is a reason to refuse it;
- e. Keep everything regarding the deed he or she makes confidential and all information obtained for the purpose of making the deed in accordance with the oath/promise of office, unless the law stipulates otherwise;
- f. Binding the deeds made within 1 (one) month into a book containing no more than 50 (fifty) deeds, and if the number of deeds cannot be contained in one book, the deeds can be bound into more than one book and record the number of Minutes of Deeds, month and year of production on the cover of each book;
- g. Making a list of protest deeds against non-payment or non-receipt of securities;
- h. Make a list of deeds relating to wills in order of when the deeds were made each month;
- i. Sending a list of deeds as referred to in letter h or a nil list relating to wills to the Central List of Wills of the Department whose duties and responsibilities are in the notary field within 5 (five) days of the first Sunday of each following month;
- j. Record in the repertory the date of sending the list of wills at the end of each month;
- k. Have a stamp/stamp containing the state symbol of the Republic of Indonesia and in the space surrounding it the name, position and place of office concerned are written;

3. Appointment and Dismissal of Notary

Notaries as public officials are appointed and dismissed by the Minister of Law and Human Rights. The requirements for appointing notaries are regulated in Article 3 of the UUJN as follows:

- a. Indonesian citizen;
- b. Be devoted to God Almighty;
- c. Minimum age 27 (twenty seven) years;
- d. Physically and mentally healthy;
- e. Have a law degree and a master's degree in notary law;
- f. Have undergone an internship or have actually worked as a notary employee for 12 (twelve) consecutive months at a notary's office or on their own initiative or on the recommendation of a notary organization after completing their notary degree;
- g. Not having the status of a civil servant, state position, advocate, or not currently holding another position which is prohibited by law from holding the position of Notary Public."

3.2. Overview of the Regional Financial Agency of Tegal City

The Revenue, Financial Management and Regional Asset Service of Tegal City was established based on Tegal City Regional Regulation Number 11 of 2008 concerning the Organization and Work Procedures of the Tegal City Regional Service. The Regional Regulation was then followed up by Tegal Mayor Regulation Number 29 of 2008 concerning the Explanation of the Main Tasks, Functions and Work Procedures of the Tegal City Regional Service which states that the Revenue, Financial Management and Regional Asset Service of Tegal City has the following functions:

1. Formulation of technical policies in the areas of revenue, financial management and regional assets;
2. Implementation of government affairs and public services in the areas of revenue, financial management and regional assets;
3. Guidance and facilitation in the areas of revenue, financial management and regional assets;

4. Implementation of duties in the field of planning and operational control of revenue, data collection, determination and billing, budget, treasury, accounting and reporting, regional assets;
5. Monitoring, evaluation and reporting of revenue and management of regional finances and assets;
6. Implementation of department secretariat;
7. Carrying out other duties assigned by the Mayor in accordance with duties and functions.

Land and Building Acquisition Fee or abbreviated as BPHTB, is regulated in the provisions of laws and regulations in Indonesia, namely: Law Number 1 of 2022 concerning financial relations between the central government and regional governments, provides an understanding of BPHTB, namely Land and Building Acquisition Tax, which is a tax imposed on the acquisition of rights to land and/or buildings, hereinafter referred to as tax.

Article 23A of the Constitution of the Republic of Indonesia after the amendment (hereinafter abbreviated as the 1945 Constitution) stipulates that "taxes and compulsory levies for state needs are regulated by law". This article is a principal change from the 1945 Constitution before the amendment, where not only taxes but also other compulsory levies must all be regulated by law, this is to avoid arbitrariness by the authorities towards taxpayers as the consequence is that Indonesia is a country of law. This is in line with Article 33 Paragraph (3) of the 1945 Constitution, the earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.

The legal basis for tax collection gives rise to tax law which includes basic tax collection regulations, provisions for collecting the tax, which also explains the subject and object of the tax, the form and amount of payment, when the tax is owed, when the obligation arises for the Taxpayer and others. The current Tax Law is simpler compared to the old law, but the public still finds it difficult to understand the law, because in reality there is still a lack of synchronization between the Law and the implementation of BPHTB tax collection.

3.3. Problems of PPAT in collecting Land and Building Acquisition Tax in Tegal City

Collection of Land and Building Acquisition Fees which are regional taxes, the procedures used by taxpayers in fulfilling their obligations are based on the self-assessment system, namely taxpayers calculate and pay their own tax debts. With this self-assessment system, especially for BPHTB, it is hoped that the

community can easily fulfill their tax obligations and increase public tax awareness, especially taxes that arise when land and building rights are acquired.

Although there is a self-assessment system in paying BPHTB tax, this is not simply released by the Tegal City DPPKAD in the context of collecting BPHTB tax. Therefore, the Tegal City DPPKAD continues to carry out the field verification process for land and building objects related to the selling value of the object. The problems related to BPHTB collection are as follows: In violations that often occur in BPHTB payments at the Tegal City Regional Finance Agency, namely with price recognition, where taxpayers do not include the original price in the sale and purchase transaction in BPHTB payments. Taxpayers who are proven to have done this, tax officers can issue a Regional Tax Underpayment Determination Letter (SKPDKB). This is based on Article 97 paragraph (1) letter a number 1 of Law Number 28 of 2009, namely the regional head can issue a SKPDKB in the event that based on the results of an examination or other information, the tax owed is not or underpaid. Based on Article 97 paragraph 2 of Law Number 28 of 2009, which states that the amount of tax shortfall owed in the SKPDKB issued in the event that based on the results of an examination or other information it turns out that the tax owed is not or underpaid and the SKPDKB is issued in the event that the SSPD is not submitted to the authorized official within the tax period and after being reprimanded in writing is not submitted on time as determined in the reprimand letter, an administrative sanction in the form of interest of 2% per month is imposed calculated from the tax that is underpaid or late paid for a maximum period of 24 months calculated from the time the tax is owed. Administrative sanctions in the form of interest are calculated from the time the tax is owed until the SKPDKB is issued.

In its implementation, the collection of BPHTB goes through a validation procedure for determining the selling price of the transaction object as the basis for imposing BPHTB which is carried out by the regional government through field verification. The Taxable Object Sales Value (NJOP) based on Law Number 1 of 2022 concerning financial relations between the central government and regional governments is the average price obtained from sales and purchase transactions that occur naturally, and if there are no sales and purchase transactions, the NJOP is determined by comparing prices with other similar objects according to the location of the object, or the new acquisition value, or replacement NJOP.

The regional government related to the implementation of determining NJOP based on Law Number 1 of 2022 concerning financial relations between the central government and regional governments, as follows: In determining NJOP regulated in the Law as the period for determining NJOP, the Regional Government in this case is the Regional Head carried out every 3 years, except for certain tax objects whose amounts can be determined annually depending on

the development of the region. Determination of NJOP can be done in several ways, namely:

- a. Price comparison with other similar objects according to the location of the object, is an approach/method for determining the selling value of a tax object by comparing it with other similar tax objects that are located nearby and have the same function and whose selling price is known.
- b. New acquisition value is an approach/method for determining the sale value of a tax object by calculating all costs incurred to acquire the object at the time the assessment is carried out, minus depreciation based on the physical condition of the object.
- c. Replacement selling value is an approach/method for determining the selling value of a taxable object based on the production results of the taxable object.

The problem lies in taxpayers who object to the provisions of the Tegal City DPPKAD which determines a higher transaction value above the transaction value agreed by the taxpayer, so that the taxpayer bears a higher BPHTB tax payment burden. Based on the provisions of Article 79 of Law Number 1 of 2022 concerning financial relations between the central government and regional governments, The Regional Government in determining NJOP is not only based on written evidence, but also on the field verification process.

The local government makes its own selling price assessment outside the NJOP provisions when conducting a validation process in the form of field verification to ensure the truth of the sale and purchase object in this case is land and buildings. The local government does not trust the transaction value of the sale and purchase object, the local government considers the transaction value to be too low from the NJOP. In fact, the local government itself also determines the NJOP for the land and buildings. The field verification process is not regulated in the Law or in regional regulations.

Validation carried out by the local government aims to ensure the truth of the transaction value of land and building sales objects, this is also carried out by the Tegal City DPPKAD for land objects located in Margadana Village, Margadana District, Tegal City. So that taxpayers in this case (buyers) of the land object, filed objections to the validation carried out by the Tegal City DPPKAD in determining the transaction value. This is understandable, because legally there are no regulations governing the field verification process.

Legal uncertainty regarding the field verification process carried out by the local government (DPPKAD Tegal City) With the field verification process carried out by the local government in determining the transaction value of the object of sale and purchase, it creates legal uncertainty for the community conducting the

transaction. The local government in carrying out its authority should be based on laws and regulations that clearly regulate BPHTB. Then, with the field verification process which results in changes in the BPHTB value, it changes the payment system for land and building acquisition fees, which should be carried out with a self-assessment system, changing to an official assessment system.

The field verification process that does not have legal certainty, raises several problems, namely changing the BPHTB value, taking a long time and contradictions related to the taxation system. Initially, the BPHTB value was calculated by the taxpayer himself (self-assessment), but with the field verification process the BPHTB value changed and was determined by the local government itself (official assessment).

In addition to DPPKAD as the party that carries out the collection of BPHTB tax, there are also other parties that ensure the fulfillment of BPHTB provisions so that the Law on Land and Building Acquisition Tax (BPHTB) determines several authorized officials in fulfilling BPHTB provisions for the acquisition of land and building rights. These officials are authorized to check whether the Land and Building Acquisition Tax (BPHTB) owed has been deposited into the State Treasury by the Party that has acquired the rights before the authorized official signs the documents relating to the acquisition in question.

The officials referred to are appointed because of their authority in making deeds and ratifying the acquisition of rights. These officials are Land Deed Making Officials (PPAT), Auction Officials and Land Officials. The authorized officials as referred to in the Law on Land and Building Acquisition Fees (BPHTB), in their implementation have the main duties and functions as regulated in Article 24 paragraph (3) and Article 25 paragraph (1) of Law Number 1 of 1997 and Article 24 of Law Number 20 of 2000 concerning amendments to Law Number 21 of 1997 concerning Land and Building Acquisition Fees (BPHTB).

Technically, in the context of collecting BPHTB tax in Tegal City, it has been regulated in the Mayor's Regulation Number 5 of 2023 concerning the Position, Organizational Structure, Duties, Functions and Work Procedures of the Revenue, Financial Management and Regional Asset Agency of Tegal City. In Article 26 paragraph (1) of Perwal No. 5 of 2023, stipulates that "The PBB and BPHTB Regional Revenue Sector has the task of leading, coordinating and controlling the implementation of programs and activities for data collection, verification, determination and assessment, collection, objections and legalization of PBB and BPHTB regional taxes". This article is the basis for the Tegal City DPPKAD to carry out the BPHTB tax collection process in Tegal City, as well as technical regulations governing the procedures for its implementation.

The Tegal City DPPKAD in carrying out field verification is based on Article 27 letter b of Perwal No.5 Of 2023, which explains that "Coordination of the preparation of policy materials for data collection, verification, determination and assessment, billing, objections to regional taxes PBB and BPHTB". However, in its implementation, there were objections from taxpayers who questioned the transaction value of the land sale object determined by the DPPKAD of Tegal City.

3.4. Obstacles and solutions for PPAT in collecting Land and Building Acquisition Tax in Tegal City

The first obstacle is the taxpayer's ignorance about the procedure for calculating the BPHTB tax payment owed, which is one of the problems for PPAT. PPAT is confused in determining the basis for imposing BPHTB tax, whether based on the real transaction price of buying and selling or based on the land value zone determined by the DPPKAD of Tegal City itself. This is due to the lack of socialization from the local government regarding the basis for calculating BPHTB, especially BPHTB for the transfer of buying and selling rights.

The second obstacle is that many past sales transactions occur but the name change process has only been carried out in the current year. Often, PPAT must explain and explain and calculate how much tax is owed that must be paid based on the market selling value in the current year according to the real price of past sales and purchases adjusted to the estimated market value in the current year, if the calculation of how much tax is owed has been obtained, taxpayers often feel burdened by the amount of BPHTB tax that must be paid, this is caused by the ignorance of taxpayers or buyers who assume that the basis for imposing BPHTB tax on sales and purchases is based on the real price that occurred in the past. In fact, the market value of the taxable object will definitely increase in price every year. For this reason, it is necessary to adjust the basis for imposing BPHTB tax which is no longer based on the price of past sales and purchases but based on the transaction price adjusted to the market value in the current year. Then there is another renegotiation between the seller and buyer regarding the BPHTB agreement whether it will be divided equally or will remain the responsibility of the buyer only. The repeated negotiations result in a longer process time for making and signing the name change. The lack of certainty regarding the basis for imposing BPHTB is what causes the calculation of BPHTB collection in Tegal City to be less than optimal and efficient.

The third obstacle is that taxpayers who already know the procedures for calculating and paying BPHTB are actually looking for loopholes in paying BPHTB, namely by providing information about unreal sales transaction prices to the PPAT, the seller and buyer have manipulated the sales price by making their own unreal sales transaction receipts and then going to the PPAT even though in reality the actual sales price is higher than the engineered sales receipt that they

have made as the basis for calculating BPHTB. For example, the real land sale and purchase price of IDR 200,000,000.00 is made into a fictitious sales receipt of IDR 100,000,000.00, then the BPHTB calculation is reduced, which should pay tax of IDR 6,000,000.00 $((IDR\ 200,000,000.00 - IDR\ 80,000,000.00) \times 5\%)$ to only pay IDR 1,000,000.00 $((IDR\ 100,000,000.00 - IDR\ 80,000,000.00) \times 5\%)$. This happened because of the weak sanctions that have been running so far based on Tegal City Mayor Regulation Number 5 Of 2023 Article 36, namely if there is engineering and negligence in the calculation of BPHTB, criminal sanctions will be given in the form of 1 year imprisonment or a fine of 2 times the BPHTB tax owed. If there is an indication of engineering in the calculation of taxes that are not in accordance with the results of the study by the DPPKAD, the online application file from the taxpayer will only be rejected and returned to the taxpayer with the issuance of a report on underpayment in accordance with the calculation of the land value zone according to the Tegal City DPPKAD. If the taxpayer agrees with the calculation of BPHTB based on the land value zone from the Tegal City DPPKAD, the taxpayer then makes the BPHTB payment at Bank BPD Jateng. Conversely, if the taxpayer does not agree with the calculation of the Tegal City DPPKAD land value zone, the taxpayer is invited to come directly to the DPPKAD Office for clarification regarding the truth of the real transaction price by bringing authentic evidence such as the original sales receipt or proof of all sales and purchase payment transfers. The weak and less firm sanctions imposed by the Tegal City DPPKAD have resulted in a tendency for taxpayers to manipulate the actual transaction price for the benefit of the taxpayers themselves, this illustrates that the collection of BPHTB in Tegal City is not optimal in terms of regional tax revenue and the BPHTB research process which requires a lot of time.

The solutions to the above problems according to the author are that there must be a tiered coordination between the DPPKAD of Tegal City, especially with all PPATs in Tegal City regarding the market price of land sales and purchases in all areas of Tegal City as a basic reference for land value zones in calculating BPHTB taxes in order to facilitate PPATs in providing correct and accurate information to prospective taxpayers regarding the certainty of calculating how much BPHTB tax must be paid by taxpayers. This is the key to creating legal certainty for the Tegal City regional government itself and taxpayers, if this condition can be realized, it will create optimization of BPHTB tax payments in Tegal City and shorten the time for processing research and BPHTB payments in Tegal City so that the Transfer of Rights process will be faster, transparent, accurate which will benefit the Tegal City community in general or parties who will buy and sell land, especially in Tegal City. There needs to be socialization about strict sanctions based on Regional Regulation Number 5 Of 2023 regarding BPHTB which is valid through PPAT as the frontline official who directly deals with taxpayers. That the active role of PPAT of Tegal City as a connecting bridge in providing accurate information after the existence of tiered coordination with the DPPKAD of Tegal City regarding

sanctions, procedures for calculating BPHTB Collection and the active role of PPAT in requesting honest information from taxpayers regarding the actual sale and purchase transaction price encourages the creation of optimization and efficiency of BPHTB collection and legal certainty for taxpayers in Tegal City.

4. Conclusion

Problems of PPAT in collecting BPHTB, The validation process to determine the selling price of land and buildings is not regulated in laws and regulations, so that the process has an impact on changing the value of BPHTB. So there is a contradiction in the BPHTB tax collection system, which was originally based on a self-assessment system, to an official assessment system. Another impact arises from the obstruction of land certification because taxpayers object to paying the nominal amount of BPHTB tax determined from the field validation process by the Tegal City DPPKAD. With this problem, the policy carried out by the Tegal City DPPKAD in order to carry out field verification has the potential to change the transaction value which has an impact on changes in the BPHTB value, this is contrary to the taxation system that adheres to self-assessment where taxpayers are given the trust and freedom to determine their own transaction and tax values. Obstacles and Solutions to PPAT in BPHTB Collection, Lack of knowledge and dishonesty from taxpayers regarding the procedures for filling in, calculating, researching BPHTB payments becomes the task of PPAT to explain and supervise taxpayers in the BPHB collection process so that it is in accordance with the Tegal City Regional Regulation. In terms of BPHTB payments, the most at risk of being misused by taxpayers is BPHTB transfer of rights to land sales and purchases, because the calculation is based on the transaction price of the sale and purchase that occurs. In an effort to optimize BPHTB payments, prospective taxpayers are advised to make payments for the sale and purchase of land in the presence of the Tegal City PPAT so that the actual sale and purchase price will be known, not the price engineered by the parties to avoid the sale and purchase tax that should be owed. So that the misuse of the self-assessment system, namely by deliberately reducing the actual sale and purchase transaction price with a bad agreement between the parties to make the sale and purchase price as low as possible from the actual sale and purchase price in order to engineer the payment of BPHTB that should be owed can be minimized. The imposition of strict sanctions by the Tegal City Regional Government can also provide a deterrent effect for taxpayers who try to circumvent BPHTB taxes for personal gain.

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PP number 35 of 2023

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