

## **Legal Impact On Notaries Of Buleleng Regency Determined As Perpetrators Of Special Tax Criminal Offences (Study Of Singaraja District Court Decision No. 159/Pid.Sus/2023/Pn.Sgr)**

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**Abstract.** *Notaries as public officials have a central role in ensuring legal certainty, but the determination of a Notary as a perpetrator of a special tax crime creates a significant anomaly. This study examines the case of a Notary KNS in Buleleng Regency who was found guilty of committing a crime by intentionally failing to submit an Annual Personal Income Tax Return (SPT) based on the Singaraja District Court Decision Number 159/Pid.Sus/2022/PN Sgr jo. Supreme Court Decision Number 5673 K/Pid.Sus/2023. The purpose of this study is to analyze in depth the Legal Impact on the status of the position, authority, and legal products of the Notary based on the Notary Law (UUJN), as well as to identify various forms of legal accountability faced by the Notary after the criminal verdict. This study uses a normative juridical legal research method with a statute approach and a case approach. The results of the study show that (1) The legal impact for Notaries who are determined as perpetrators of special tax crimes is very significant, including the potential for dismissal from the position of Notary based on Article 8 paragraph (1) letter c UUJN because the crime committed is punishable by imprisonment of 5 years or more, and the potential to be categorized as a disgraceful act. This has an impact on the loss of Notary authority and creates legal uncertainty regarding deeds made after the decision has taken effect before official dismissal. (2) The legal liability faced by Notaries is multidimensional, including criminal liability (imprisonment and fines according to the decision), professional/administrative liability (dismissal from office by the Minister of Law and Human Rights upon the recommendation of the Supervisory Board), and ethical liability (sanctions from the Notary Honorary Council based on the Indonesian Notary Code of Ethics).*

**Keywords:** *Crimes; Impact; Legal; Notary; Responsibility.*

## 1. Introduction

The Republic of Indonesia is a state based on law based on Pancasila and the 1945 Constitution of the Republic of Indonesia (UUD 1954). As a state that adheres to the principle of a state based on law, the state guarantees certainty, order and legal protection based on truth and justice for the lives of its people.<sup>1</sup>Gustav Radbruch put forward certainty as one of the objectives of law. In the order of community life is closely related to certainty in law. Legal certainty is in accordance with normative nature, both provisions and judge's decisions.<sup>2</sup>

Among the many executors of the State, power, law and politics, there are those who are called State officials, both generally and specifically. Among the general officials who carry out State duties, there are general officials called Notaries.<sup>3</sup>Notaries in Indonesia are regulated by the Law of the Republic of Indonesia (hereinafter referred to as UURI) Number 2 of 2014 concerning Amendments to UURI Number 30 of 2004 concerning the Position of Notary Public, referred to as the Law on the Position of Notary Public (hereinafter referred to as UURI JN 2004), which was promulgated on January 15, 2014, by the Minister of Law and Human Rights of the Republic of Indonesia and came into force on the date of promulgation, which is the legal basis for Notaries to carry out their duties and positions in providing legal services to the public, both in making deeds and in the form of legal counseling.

The duties of a notary are regulated in Law Number 30 of 2004 concerning the Position of Notary (UUJN)<sup>4</sup>, which was later revised through Law Number 2 of 2014 concerning the Position of Notary (UUJN)<sup>5</sup>. The following are the duties and authorities of a notary according to the Notary Law:

- 1) Making an Authentic Deed
- 2) Providing Legal Advice
- 3) Supervising the Making of Deeds
- 4) Validating Signature
- 5) Storing Deeds and Other Documents
- 6) Issuing Copies, Excerpts and Excerpts of Deeds

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<sup>1</sup>Article 1 number (3) of the 1945 Constitution of the Republic of Indonesia.

<sup>2</sup>Gustav Radbruch. (1961). *Einfuehrung In Die Rechtswissenschaft*. Stuttgart: Kohler Verlag.

<sup>3</sup>Habib Adjie, Adjie, Habib. (2008). *Hukum Notaris Indonesia (Tafsir Tematik Terhadap UU No, 30 Tahun 2004 Tentang Jabatan Notaris)*. Bandung: Refika Aditama p. 6.

<sup>4</sup>Law No, 30 of 2004 concerning Notary Positions

<sup>5</sup>Law No. 2 of 2014 Amendment to Law No. 30 of 2004 concerning Notary Positions

- 7) Conducting Deed Reading
- 8) Maintaining Confidentiality of Deeds
- 9) Assisting in Registration and Legal Process
- 10) Giving Testimony in Court

Many deeds made before a notary have tax consequences for the parties involved. Examples include deeds of sale and purchase of land and/or buildings that give rise to obligations for Land and Building Acquisition Tax (BPHTB) for the buyer and final Income Tax (PPh) for the seller, deeds of establishment of business entities such as Limited Liability Companies (PT) related to corporate tax obligations, deeds of gift, deeds of division of joint rights, to other deeds related to the transfer of assets or economic transactions. Thus, notaries are often at the forefront of the formalization process of transactions that are taxable objects.

Although notaries are not tax officers or tax authorities who are tasked with collecting taxes directly, their role cannot be separated from the taxation system. In carrying out their duties to provide legal counseling and advice related to the deeds made, notaries are expected to have adequate understanding of the taxation aspects relevant to the deed. Notaries often remind or inform parties about potential taxes arising from the legal acts they carry out, as part of professional services and to ensure the completeness and validity of the legal process as a whole.

In certain types of transactions, laws and regulations can even place notaries in a more active position regarding tax administration. For example, in land and building sales transactions, notaries are often asked to ensure that the seller's PPh and BPHTB<sup>6</sup>the buyer has been paid (validated) before the deed is signed and submitted for registration. This involvement, although not in the form of direct collection, shows the important role of notaries in supporting tax compliance of the parties transacting before them. On the other hand, notaries themselves as professionals who carry out their positions independently are also tax subjects. Income received by notaries in the form of honorariums for deed-making services and other legal services is an object of Personal Income Tax (PPh). Just like other taxpayers, notaries have a legal obligation to calculate, deposit, and report their taxes in accordance with the provisions of applicable tax laws and regulations. Tax is a main pillar in the revenue structure of the Unitary State of the Republic of Indonesia, which is defined as a mandatory contribution to the state owed by individuals or entities. Its nature is mandatory

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<sup>6</sup> Yogahastama, R. (2019). "Peran serta notaris memungut pajak BPHTB pembuatan akta jual beli di Kabupaten Pamekasan." dalam *Simposium Hukum Indonesia*, 1(1), 385-393.

based on law, meaning that its collection can be forced by the state on Taxpayers without any counter-performance or direct compensation received by the taxpayer. Fulfillment of these tax obligations is a manifestation of state obligations and community participation in supporting state financing and national development, which is based on legal norms that bind all citizens and legal entities that meet subjective and objective criteria.<sup>7</sup>

One of the potential sources of tax that should be explored according to the current economic situation and conditions and development of national development is Article 39 Paragraph (1) letter c of Law No. 28 of 2007 concerning the Third Amendment to Law No. 6 of 1983 concerning General Provisions and Tax Procedures as amended by Law No. 7 of 2021 concerning Harmonization of Tax Regulations.<sup>8</sup>

There are various criminal acts or criminal acts or tax violations that can be subject to criminal sanctions. An example of a tax violation is one of the cases in the case of a Notary in Buleleng Regency who was subject to a Tax Crime. According to the decision of the Singaraja District Court Number 159/Pid.Sus/2022/PN Sgr, the defendant Notary KNS was proven legally and convincingly guilty of committing a tax crime and was found guilty of committing a Special Crime.<sup>9</sup>The panel of judges at Singaraja District Court sentenced the defendant, a tax evader with the initials KNS, to six months in prison and a fine twice the loss of state revenue amounting to Rp1,457 billion. The sentence imposed by the panel of judges was lighter than the prosecutor's demand of two years and two months and a fine twice the loss of state revenue. The panel of judges said that the notary who opened a practice in Buleleng Regency, Bali, intentionally did not submit the Annual Personal Income Tax Return (SPT) for the 2013-2016 tax year period which caused a state loss of Rp728.89 million.

The urgency of this research arises from the significant phenomenon where a Notary, who is a central public official in enforcing civil law and guaranteeing legal certainty, is actually determined as a perpetrator of a special crime in the field of taxation. The case of Notary KNS in Buleleng Regency, as proven in the Decision of the Singaraja District Court Number 159/Pid.Sus/2022/PN Sgr and upheld to the cassation level by the Supreme Court in Decision Number 5673 K/Pid.Sus/2023, which stated that the defendant was proven legally and convincingly guilty of committing a crime "by intentionally not submitting a notification letter (2013-2016 Personal Income Tax Annual Tax Return), so that it

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<sup>7</sup> Kurniasari, RA, & Badriyah, SM Kurniasari, R. A., & Badriyah, S. M. (2022). "The Imposition of the Final Transfer of Rights to Land and/or Building Tax (PPHTB) in the Sale and Purchase Binding Agreement (PPJB)." dalam *Jurnal Daulat Hukum*, 5(3), 176-183.

<sup>8</sup>Law No. 7 of 2021 concerning Harmonization of Tax Regulations.

<sup>9</sup>Publik. (2023). "Notaris di Buleleng Dipenjara & Didenda Rp 1.4 Miliar, Kanwil DJP Bali Beber Fakta Penting". <https://bali.jpnn.com/hukum/22073/notaris-di-buleleng-dipenjara-didenda-rp-14-miliar-kanwil-djp-bali-beber-fakta-penting> (accessed on 18 Oktober 2024).

can cause losses to state revenue on an ongoing basis", is a crucial starting point that requires in-depth study. As a comparison, the alleged criminal case involving Notary/PPAT Diyah Setyowati in Boyolali, Central Java, as reported by the mass media in early 2025, showed a different *modus operandi* but still indicated the potential for serious violations. In this case, Notary DS was reported to the police for alleged embezzlement of tax money (BPHTB) belonging to the client, falsification of documents in the form of death certificates and heirs' statements to smooth the process of changing the name of the certificate through inheritance even though the seller was still alive, and destruction of the certificate. The alleged motive was to avoid higher sales taxes, which directly harmed the client (both buyers and sellers) and had the potential to harm state finances. This case, although still under investigation, illustrates how complex the legal risks are that can arise from the actions of Notaries who are suspected of being untrustworthy and abusing their authority, which not only impacts the taxation aspect but also the validity of documents and certainty of land rights for the community.<sup>10</sup>

This phenomenon presents a fundamental contradiction with the essence of the notary's office. A notary, based on the Notary Law (UUJN), is a public official who is authorized to make authentic deeds and exercise other powers to serve the community for the sake of certainty, order, and legal protection. The deliberate act of violating the law, especially tax law which is a pillar of state revenue, by a notary raises serious questions about the integrity and legal compliance of the individual holding the position, who should be a role model in obeying the law.

Tax criminal cases involving a notary have the potential to erode public trust in the notary profession as a whole. The public entrusts the preparation of important legal documents to notaries with the assumption that notaries work professionally, honestly, and obey the law. When a notary is proven to have committed a crime that is detrimental to state finances, this can raise public doubts about the guarantee of truth, justice, and legal certainty inherent in the notary's position itself.

This research is urgently needed to provide a comprehensive analysis of the legal and professional consequences faced by notaries after a tax criminal verdict has permanent legal force. The results of the study are expected to provide a more complete understanding of the conflict between the status of a notary's general official and the criminal law violations he has committed, as well as to evaluate the effectiveness of existing accountability mechanisms. Furthermore, this study can contribute ideas for strengthening the supervision system and enforcement of notary professional ethics to prevent the recurrence of similar cases and

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<sup>10</sup>SoloAja.co. "Notaris di Boyolali Dilaporkan ke Polisi, Diduga Gelapkan Pajak dan Rusak Sertifikat Tanah". [https://soloaja.co/read/notaris-di-boyolali-dilaporkan-ke-polisi-diduga-gelapkan-pajak-dan-rusak-sertifikat-tanah#google\\_vignette](https://soloaja.co/read/notaris-di-boyolali-dilaporkan-ke-polisi-diduga-gelapkan-pajak-dan-rusak-sertifikat-tanah#google_vignette) (accessed on 15 Mei 2025).

maintain the dignity of the notary's position in the public eye.

This study aims to analyze in depth the Legal Impact on the status of the position, authority, and legal products of the Notary based on the Notary Position Law (UUJN), as well as to identify various forms of legal responsibility faced by the Notary after the criminal verdict.

## 2. Research Methods

The research method used in compiling this thesis is normative juridical legal research. To answer the existing problems, this study will use a combination of approach methods including the statute approach, case approach, and conceptual approach. The research specifications used in this study are descriptive-analytical. Data collection in this study was carried out using the literature study method or document study, which focused on secondary data in the form of primary legal materials, secondary legal materials, and tertiary legal materials. Furthermore, the collected data will be analyzed using qualitative data analysis methods, by applying legal interpretation techniques (legal hermeneutics) and legal argumentation, to then draw deductive conclusions in order to answer the research problems.

## 3. Results and Discussion

### 3.1. Legal Impact on Notaries Determined as Perpetrators of Special Tax Crimes

Understanding the concept of "Legal Impact" is a central point in analyzing the legal consequences arising from a legal event, legal action, or court decision.<sup>11</sup>In the context of this research, which focuses on the determination of a notary as a perpetrator of a special tax crime, an in-depth exploration of the Legal Impact is crucial to understand how the status and role of a notary as a public official are legally affected. This concept does not stand alone, but is closely intertwined with the principle of legal certainty, which is one of the main pillars in a country based on law like Indonesia.

Terminologically, "Impact" refers to something that is involved or implied in it, or a logical consequence that arises from a statement or situation.<sup>12</sup>While "legal" is related to law or according to law. Thus, "Legal Impact" can be defined as all legal consequences or legal consequences that arise directly or indirectly from a legal act, legal event, or the application of a legal norm, including a court decision that has permanent legal force. This impact includes changes in legal status, the emergence of new rights and obligations, the cessation of existing

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<sup>11</sup> Hapsoro, WD (2023). Hapsoro, W. D. (2023). "Analisis Yuridis Penegakan Hukum Terhadap Tindak Pidana Perzinaan Berbasis Keadilan Restoratif." (Tesis Magister, Universitas Islam Sultan Agung, Semarang, Indonesia). P. 49.

<sup>12</sup> Supardan, H. D. (2024). *Pengantar ilmu sosial: Sebuah kajian pendekatan struktural*. Jakarta: Bumi Aksara.



rights and obligations, or the application of certain legal sanctions to the legal subjects involved.

Notaries, as public officials mandated by the Notary Law (UUJN) to make authentic deeds and exercise other authorities, occupy a central position in the civil law system in Indonesia. Their appointment by the state and their primary function in serving the public interest confirm their vital role in creating certainty, order, and legal protection for the community. In carrying out this noble task, Notaries cannot be separated from the taxation aspect. Many legal acts and significant transactions formalized through Notarial deeds are inherently taxable objects or have direct tax consequences for the parties involved. Therefore, the role of Notaries in taxation is multifaceted, including the responsibility to facilitate client tax compliance, indirect contributions to state tax administration, and the fundamental obligation to comply with tax regulations as individual Taxpayers.

One of the areas where the role of Notaries (and Land Deed Officials/PPAT, which are often held concurrently by Notaries) is vital in relation to taxes is in transactions of transfer of rights to land and/or buildings. Every deed of sale and purchase (AJB), gift, exchange, or entry into a company of land and/or buildings involves significant tax obligations.<sup>13</sup> The seller or transferor of rights is subject to final Income Tax (PPh) on the transfer of rights to land and/or buildings, while the buyer or recipient of rights is subject to Land and Building Acquisition Tax (BPHTB). UUJN and regulations related to PPAT expressly stipulate that Notaries/PPATs have an obligation to ensure that the PPh and BPHTB owed on the transaction have been paid in full by the parties before the deed is signed and registered. Proof of this payment is usually in the form of a Tax Payment Letter (SSP) for PPh and a Tax Payment Letter (SSB) for BPHTB<sup>14</sup> which has been validated by the tax office or perception bank. By carrying out this validation function carefully, Notaries/PPATs not only guarantee the formal validity of the deeds they make but also directly contribute to the optimization of state revenue from the property tax sector and ensure that every transfer of land and building rights has met the aspects of fiscal compliance.

In the realm of corporate law and commercial transactions, the role of a notary is also closely related to taxation aspects.<sup>15</sup> The establishment of a legal entity such as a Limited Liability Company (PT), Commanditaire Vennootschap (CV), or Foundation, as well as changes to its articles of association, requires a Notary

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<sup>13</sup> Ihsan, RNA (2023). "Kewenangan Ppat Dalam Pembuatan Akta Jual Beli Tanah (Studi di Kabupaten Belitung)." (Disertasi Doktor, Universitas Islam Sultan Agung, Semarang, Indonesia). P. 43.

<sup>14</sup> Widowati, A. R., Dewi, I., & Koeswarni, E. (2021). "Dampak Pemalsuan Validasi Surat Setoran Pajak dalam Pembuatan Akta Jual Beli Tanah." dalam *PALAR (Pakuan Law Review)*, 7(3), pp. 252-267.

<sup>15</sup> Christiawan, R. (2022). *Aspek Hukum Startup*. Sinar Grafika. P. 3.

deed. This deed of establishment is the basis for the new entity to register as a Taxpayer and obtain a Taxpayer Identification Number (NPWP). After having the status of a corporate Taxpayer, the entity will be subject to various tax obligations, such as Corporate Income Tax (PPh Badan) and Value Added Tax (PPN).<sup>16</sup>if it has been confirmed as a Taxable Entrepreneur (PKP). Although the Notary does not directly handle the client's NPWP registration, the deed he makes is a fundamental document that is a legal prerequisite for fulfilling the corporate tax obligations. Likewise, in making other commercial deeds, such as credit agreements, fiduciary guarantee bindings, or lease agreements, there are often tax aspects that need to be considered by the parties, for example PPh on loan interest or PPh on rental income, as well as the obligation to pay Stamp Duty on agreement documents.

UUJN, specifically Article 15 paragraph (2) letter e, mandates Notaries to provide an explanation regarding the rights and obligations of the parties in relation to the legal act to be stated in the deed. In this context, Notaries ideally do not only explain the civil law aspects of the transaction, but also proportionally provide information or at least increase the awareness of the parties regarding the potential tax consequences arising from the deed they make. This does not mean that Notaries act as tax consultants, but rather as responsible legal professionals, who ensure that their clients understand in general the impact of the legal act they carry out, including from the fiscal side. The provision of this information is preventive in nature, aimed at avoiding tax problems for clients in the future and ensuring that formalized transactions run smoothly both legally and administratively. This is in line with the role of Notaries in preventing disputes and maintaining the interests of the parties in a balanced manner.

Although the main role of a Notary is not as a direct tax collector or withholding agent as regulated for several third parties in the withholding tax system,<sup>17</sup>There is a mechanism where Notaries/PPATs actively contribute to tax administration. One concrete example is the obligation of PPATs to submit monthly reports on deeds of transfer of land and/or building rights that they have made to the Directorate General of Taxes (DGT) and other related agencies. This report contains detailed data on transactions, parties, objects, and transaction values, which are important databases for the DGT to supervise, verify, and extend Taxpayers. In addition, related to Stamp Duty, which is a type of tax on documents, Notaries have a role to ensure that the deeds they have made have been stamped in accordance with the applicable tariff provisions and are

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<sup>16</sup> Agustina, NZ, & Hartono, D. (2022). "Dampak Perubahan Tarif Pajak Penghasilan Badan Dan Pajak Pertambahan Nilai di Indonesia." dalam *EKUITAS (Jurnal Ekonomi dan Keuangan)*, 6(4), p. 456-475.

<sup>17</sup> Lestari, M Tanggung Jawab Notaris atas Penggelapan Titipan Uang Pajak (Analisis Putusan Pengadilan Tinggi Surabaya Nomor 663/PID/2017/PT. SBY)." dalam *Indonesian Notary*, 2(2), p. 28.



canceled (stamped later if necessary) legally. Compliance with the provisions of Stamp Duty is also part of the Notary's contribution to securing state revenues.<sup>18</sup>

One potential loophole may arise from the aspect of supervision and guidance of Notaries. UUJN has regulated the existence of a Notary Supervisory Board at the regional, regional, and central levels, as well as a Notary Honorary Board tasked with maintaining and upholding the honor, dignity, and code of ethics of the profession. However, the effectiveness of the implementation of this supervision and guidance function is often in the spotlight. Limited resources, the breadth of the work area, and the complexity of the problems faced can be obstacles. If supervision does not run optimally, the potential for deviations or violations by Notaries, including in terms of compliance with the law such as tax obligations, can be greater.

Other loopholes can stem from the Notary's own interpretation and understanding of applicable laws and regulations, including UUJN, the Notary Code of Ethics, and other sectoral regulations such as tax law. The dynamics of ever-changing regulations and the complexity of legal materials require Notaries to constantly learn and update their knowledge. Lack of comprehensive understanding or erroneous interpretations can lead to errors in making deeds or carrying out other job obligations. In the context of taxation, for example, a lack of in-depth understanding of obligations as a personal Taxpayer or tax aspects in client transactions can trigger non-compliance.

A significant legal phenomenon emerged from the case of Notary Komang Nunuk Sulasih (KNS) in Buleleng Regency, who was determined as a perpetrator of a special tax crime based on the Singaraja District Court Decision Number 159/Pid.Sus/2022/PN Sgr and confirmed by the Supreme Court Decision Number 5673 K/Pid.Sus/2023. Examination of these decisions is crucial to understanding how criminal tax law norms are applied to a public official and how judges construct facts and interpret laws. The defendant KNS, a Notary/PPAT, was charged with violating Article 39 paragraph (1) letter c of the KUP Law in conjunction with Article 64 paragraph (1) of the Criminal Code for intentionally failing to submit the Annual Personal Income Tax Return for the 2013-2016 tax years, which was carried out continuously and had the potential to harm state revenues of around IDR 728 million.

Legal facts revealed in the Singaraja District Court show that the Defendant KNS, despite being registered as a Taxpayer and receiving significant income from his practice, did not report the Annual Personal Income Tax Return for the period 2013-2016. Efforts to appeal, SP2DK, and counseling calls from the Singaraja

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<sup>18</sup> Sevendy, T., Renaldo, N., Panjaitan, HP, & Hutahuruk, MB (2023). "Development of Tax Teaching Materials: Withholding Tax." dalam *Reflection: Education and Pedagogical Insights*, 1(1), p. 20-27.

Pratama Tax Office did not result in proper reporting compliance. Although the Defendant admitted not submitting the SPT for various reasons such as lack of understanding and address problems, and claimed that there were client funds in his account, the Panel of Judges at the Singaraja District Court, based on statements from witnesses, experts, and evidence, considered that all elements of the crime charged had been fulfilled.

The legal considerations of the Singaraja District Court Panel of Judges concluded that the element of "Every Person" was fulfilled in the Defendant KNS. The element of "Intentionally" was considered fulfilled because the Defendant knew his obligations but ignored the warnings from the KPP. The element of "Not Submitting a Tax Return (SPT)" was factually proven for the 2013-2016 tax years. The element of "So that it can cause losses to state revenue" was also fulfilled with the existence of unreported taxes owed. Finally, the element of "Continuously carried out" was fulfilled because the act was carried out repeatedly for several tax years. The Defendant's defense was set aside, and the deposit money was calculated for payment of state losses and fines.

The Singaraja District Court verdict stated that the Defendant KNS was proven guilty and sentenced him to 6 months in prison and a fine of Rp1,457,784,414 (subsidiary 6 months in prison in lieu of a fine). The deposit money was taken into account, the detention period was reduced, and some of the evidence was confiscated for the state. This verdict was later changed by the Denpasar High Court which applied a conditional sentence, which became the basis for the Public Prosecutor to file an appeal to the Supreme Court.

The Supreme Court in Decision No. 5673 K/Pid.Sus/2023 rejected the Public Prosecutor's cassation application regarding the severity of the sentence, but revised the High Court's decision regarding conditional sentences. The Supreme Court stated that probation cannot be imposed for criminal acts in the taxation sector based on SEMA Number 4 of 2021. Therefore, the Supreme Court returned the prison sentence to 6 months without probation, in accordance with the Singaraja District Court decision, and maintained the fine and the determination regarding the deposit money. The Supreme Court also emphasized that the provisions of Article 44B Paragraph (2b) of the HPP Law do not apply retroactively to the Defendant's actions that occurred in the period 2013-2016.

The qualification of the proven criminal act is "Intentionally not submitting a Notification Letter, which act is carried out continuously, so that it can cause losses to state revenue," based on Article 39 paragraph (1) letter c of the KUP Law in conjunction with Article 64 paragraph (1) of the Criminal Code. All elements in Article 39 paragraph (1) letter c of the KUP Law—"Every Person," "Intentionally," "Not Submitting a Notification Letter (SPT)," and "So that it can cause losses to state revenue"—along with the element of a continuing act, have

been proven legally and convincingly based on facts and legal considerations in the trial.

In comparison, the alleged case of Notary/PPAT DS in Boyolali, Central Java, which was reported for alleged client tax evasion (BPHTB), document forgery (death certificate, SPAW), and destruction of certificates to avoid sales and purchase tax, shows a different and more active *modus operandi* in harming clients and the state. Although still under investigation, if proven, the DS case has the potential to involve violations of the KUP Law (Article 39 paragraph (1) letter i), the Criminal Code (Articles 263, 264, 266, 372, 374, 406), as well as serious violations of the UUJN and the Notary Code of Ethics. The legal implications, similar to the KNS case, can lead to criminal sanctions and dismissal from the position of Notary, but with the potential for more direct civil liability to the client. These two phenomena emphasize the importance of integrity and legal compliance for Notaries in carrying out their duties.

The determination of a Notary as a perpetrator of a special tax crime, such as in the case study of Notary KNS in Buleleng Regency who was found guilty of violating Article 39 paragraph (1) letter c of the KUP Law, has a very fundamental legal impact on his existence as a public official. The main legal implication based on the Notary Law (UUJN) is a serious threat to his position status, which has the potential to lead to dismissal. This is normatively based on Article 8 paragraph (1) letter c of the UUJN, considering that the crime committed carries a prison sentence of more than five years. Furthermore, the deliberate act of not fulfilling tax obligations that is detrimental to the state can also be categorized as a "disgraceful act" or "an act that degrades the honor and dignity of the Notary position," which can be the basis for dishonorable dismissal according to Article 9 paragraph (1) letter c of the UUJN. The direct consequence of this dismissal is the loss of all authority of the Notary to carry out his position as regulated in Article 15 of the UUJN, although there is potential legal uncertainty regarding the status of his authority in the period between the criminal verdict having permanent legal force until the official dismissal decision letter is issued.

The legal impact further extends to the legal products produced by Notaries and other rights and obligations attached to their position. The validity of deeds made by Notaries before committing a crime or before a court decision is generally maintained, but deeds made after a decision has taken effect and before official dismissal can raise doubts and test the principle of legal certainty. After official dismissal, any document made in the name of the Notary no longer has the power as an authentic deed. In addition, the rights of Notaries such as the right to leave become irrelevant, while fundamental obligations such as submitting Notary protocols to the appointed party (Articles 58-61 UUJN) and the obligation to maintain the confidentiality of the contents of deeds that have been made (Article 16 paragraph (1) letter f UUJN) remain valid. Membership in

the Indonesian Notary Association (INI) is also very likely to be affected by sanctions up to dismissal, which further emphasizes the end of their professional role.

### **3.2. Legal responsibility of notaries who have been determined to be perpetrators of special tax crimes**

The position of Notary as a public official appointed by the state to serve the interests of the community in making authentic deeds,<sup>19</sup> demands very high standards of integrity, professionalism, and legal compliance. A Notary is not only bound by the provisions of the Notary Law (UUJN) and the Code of Professional Ethics,<sup>20</sup> but also in all applicable laws and regulations in the Unitary State of the Republic of Indonesia, including among them regulations in the field of taxation. When a Notary, as in the case of KNS in Buleleng, is legally and convincingly proven to have committed a special crime in the field of taxation, then the legal consequences he faces are not only limited to criminal sanctions alone. Furthermore, he will be faced with various other forms of legal accountability, both professional/administrative, ethical, and potential civil. Understanding the various layers of accountability is crucial to see in its entirety how the legal and professional systems respond to serious violations committed by a public official.

#### **1) Basic Concept of Notary Legal Responsibility**

Legal responsibility in general can be interpreted as an obligation to bear all legal consequences arising from a legal act or violation of legal norms. In the context of a Notary, this legal responsibility has a broad dimension because of his dual status as an individual citizen and as a public official who carries out part of the state's functions. Hans Kelsen in his theory of legal responsibility closely links it to the concept of legal obligation. According to Kelsen, a person is legally responsible for a certain act if he can be subject to a sanction due to his actions that are contrary to the law. This sanction is imposed because of the existence of a delictum or wrongful act that he has committed.

The Theory of Legal Responsibility put forward by Abdulkadir Muhammad<sup>21</sup> is also relevant, which divides responsibility in unlawful acts into several categories, such as responsibility due to acts committed intentionally and responsibility due to negligence. In the case of tax crimes committed

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<sup>19</sup> Edbert, M., & Simanjuntak, YN (2024). Pembuatan Konten Edukasi Notaris Menggunakan Media Sosial Berdasarkan Kode Etik Notaris dan Teori Kepastian Hukum." *dalam Jurnal Acta Comitatus: Jurnal Hukum kenotariatan*, 9(2), 206-218.

<sup>20</sup> Pradistya, TN (2022). "Tanggung Jawab Notaris Secara Hukum Perdata Dan Hukum Administrasi Yang Lalai Karena Membuat Akta Perjanjian Yang Tidak Memenuhi Syarat Sahnya Perjanjian (Studi Putusan Pengadilan Negeri Selong Nomor 87/PDT. G/2019/PNSEL)." *dalam Indonesian Notary*, 4(2), p. 32.

<sup>21</sup> Abdulkadir Muhammad, SH (2021). *Hukum perusahaan indonesia*. PT Citra Aditya Bakti. P. 69.

intentionally, as alleged and proven to Notary KNS, then legal responsibility is based on the element of intent (*dolus*) to commit acts prohibited by law and causing losses. For a Notary, legal responsibility can be classified into several main areas:

- a. **Criminal Liability:** It arises when the actions of a Notary fulfill the elements of a criminal act as regulated in the Criminal Code (KUHP) or other special criminal laws, such as the KUP Law in tax cases.
- b. **Civil Liability:** It arises when the Notary's actions (either directly related to the making of a deed or other actions) cause losses to the client or third party, so that they can be sued to pay compensation based on unlawful acts (Article 1365 of the Civil Code) or breach of contract (if there is a contractual relationship).
- c. **Administrative/Professional Responsibilities:** In relation to violations of the provisions of the UUJN or other implementing regulations governing the position and authority of a Notary. Administrative sanctions can be in the form of a warning, temporary suspension, or honorable or dishonorable dismissal from office, imposed by the Minister of Law and Human Rights upon the recommendation of the Notary Supervisory Board or Honorary Council.
- d. **Ethical Accountability:** In relation to violations of the Indonesian Notary Code of Ethics (KENI) set by the professional organization (Indonesian Notary Association - INI). Ethical sanctions can be in the form of reprimands, suspension from organizational membership, to dismissal from organizational membership.

These four types of accountability can run in parallel and do not cancel each other out. This means that a Notary who has been convicted is not necessarily free from civil charges or administrative and ethical sanctions, and vice versa.

## 2) Analysis of Criminal Liability of KNS Notary in Tax Case

As explained in the analysis of the previous decision, Notary KNS has been proven legally and convincingly to have committed a criminal act "By intentionally not submitting a Notification Letter, so that it can cause losses to state revenue on an ongoing basis," violating Article 39 paragraph (1) letter c of the KUP Law in conjunction with Article 64 paragraph (1) of the Criminal Code. Singaraja District Court Decision No. 159/Pid.Sus/2022/PN Sgr sentenced him to 6 (six) months in prison and a fine of IDR 1,457,784,414 (subsidiary 6 months in prison). This decision, after going through an appeal process at the Denpasar High Court (which had changed the prison sentence to a conditional sentence), was finally revised by the Supreme Court through Decision No. 5673 K/Pid.Sus/2023 which returned the prison sentence to 6 months without a probationary period, while maintaining the fine.

This criminal liability is a form of state law enforcement against violations committed by the KNS Notary as an Individual Taxpayer. The criminal justice system has carried out its function to prove the elements of the charged offense and impose sanctions that are considered appropriate. The fact that the Defendant is a Notary is one of the considerations, although not explicitly burdensome in the verdict, but the status as a public official who should obey the law is certainly a significant moral background. This criminal liability is individual and is intended to provide a deterrent effect on the perpetrator and as a form of affirmation that everyone, including public officials, is equal before the law (equality before the law) when committing a crime. Repayment of part or all of the state's losses and fines, as carried out by the Defendant through deposit money, is one of the factors considered by the judge, but does not immediately eliminate imprisonment, especially considering the provisions of SEMA No. 4 of 2021 which prohibits probation for tax crimes.

### 3) Analysis of Professional/Administrative Responsibility Based on UUJN

Apart from criminal sanctions, the actions of KNS Notaries also trigger accountability in the realm of job law or administrative law. UUJN comprehensively regulates the obligations, prohibitions, and sanctions for Notaries who commit violations.

a. Violations of Obligations and Prohibitions in UUJN: Although the criminal act committed by Notary KNS is a violation of the KUP Law (related to his personal tax obligations) and is not directly a violation of the making of deeds (for example, false deeds), the act can be indirectly linked to a violation of the general obligation of a Notary to maintain the honor and dignity of his position, and to act in accordance with laws and regulations (as stated in the oath of office Article 4 UUJN). Article 16 UUJN regulates various obligations of Notaries, including acting honestly, carefully, independently, impartially, and protecting the interests of parties involved in legal acts (letter a). Violations of criminal law, especially those committed intentionally and detrimental to state finances, can be considered dishonest acts and not maintaining the honor of the position. Article 17 UUJN regulates prohibitions for Notaries, for example, having more than one office, leaving their area of office for more than 7 consecutive working days without a valid reason, or becoming civil servants. Although tax crimes are not explicitly included in this prohibition, the spirit of UUJN is for Notaries to always maintain their behavior.

b. Role and Authority of Supervisory and Administrative Sanctions Institutions: UUJN establishes the Notary Supervisory Council (MPN) at the Regional, Area, and Central levels (Articles 67-71) and the Notary Honorary Council (MKN) (Articles 72-77 UUJN, as further regulated in Law No. 2 of 2014). The MPN has the authority to supervise the implementation of the Notary's office and can impose administrative sanctions in the form of verbal warnings,



written warnings, temporary dismissal, honorable dismissal, or dishonorable dismissal upon the recommendation of the Central Supervisory Council to the Minister (Article 71 in conjunction with Articles 9, 10, 12, 13). The MKN has the authority to examine and make decisions on alleged violations of the Notary Code of Ethics and/or violations of the implementation of the Notary's office that have the potential to degrade honor and dignity, or harm the community, and can impose sanctions.

In the case of a KNS Notary, a criminal verdict that has permanent legal force for committing a crime that is threatened with a prison sentence of 6 years (meets the requirement of a threat of 5 years or more) directly becomes the basis for the Minister of Law and Human Rights to dismiss the Notary from his position, as regulated in Article 8 paragraph (1) letter c UUJN. This process usually begins with a report or information received by the MPN, which can then conduct an investigation and propose dismissal to the Minister through the Central Supervisory Board. This dismissal is the most severe form of administrative accountability. The type of dismissal (honorable or dishonorable) will depend greatly on the Minister's assessment of the severity of the violation and its impact on the honor of the position. Considering the elements of intent and state losses in this tax case, as well as the potential to be considered a "despicable act" or "an act that degrades the honor and dignity of the position of Notary" (Article 9 paragraph (1) letter c UUJN), dishonorable dismissal is a very possible option.

#### 4) Analysis of Ethical Responsibility Based on the Indonesian Notary Code of Ethics (KENI)

In addition to criminal and administrative liability, KNS Notaries also face ethical liability before their professional organization, namely the Indonesian Notary Association (INI), through the Notary Honorary Council. KENI sets standards of behavior and morals that must be adhered to by every Notary in carrying out their duties and in everyday life that can affect the dignity of the profession.

a. Violation of Professional Ethics Principles: The deliberate act of not submitting the Annual Personal Income Tax Return which results in state losses can be considered to violate several fundamental principles in KENI, including:

a) Integrity and Honesty: Notaries must have personal integrity and be honest in all aspects, including in fulfilling their obligations as citizens.

b) Maintaining the Honor and Dignity of the Office: Criminal acts, especially those related to financial dishonesty, can be considered to degrade the honor and dignity of the office of Notary.

c) Compliance with Law: Notaries as law enforcers in the civil sector must be role models in complying with all laws and regulations, including tax laws.

d) Professional and Social Responsibility: Notaries have responsibilities not only to clients but also to the state and society.

b. The Role of the Notary Honorary Council and Ethical Sanctions: The Notary Honorary Council (DKN) at the Regional, Area, and Central levels has the authority to examine and prosecute Notaries suspected of violating KENI. Based on reports or findings, DKN can conduct a series of examination processes. If proven to have violated, DKN can impose ethical sanctions of various types, ranging from verbal warnings, written warnings, suspension (temporary suspension) from INI membership, to permanent termination of INI membership (dismissal). These ethical sanctions run independently of criminal or administrative processes, although criminal decisions that have permanent legal force can be very strong evidence in ethical examinations. Dismissal from INI membership can also have an impact on the Notary's ability to continue his practice, because INI membership is often a prerequisite or at least a standard of professional recognition.

#### 5) Potential Civil Liability

In the case of KNS Notary, the main focus of the loss is on state revenue. Therefore, civil liability in the form of compensation to the state for principal tax losses has been attempted to be resolved through criminal mechanisms (deposit money calculated as payment of state losses and criminal fines). However, theoretically, if the actions of a Notary (including negligence or intent related to the implementation of his/her position) cause direct losses to clients or other third parties, then the potential for a civil lawsuit based on Article 1365 of the Civil Code (unlawful acts) or breach of contract (if a contractual relationship is violated) remains open.

In the specific case of KNS Notary relating to the failure to report his personal Income Tax Return, the direct impact of loss to the client may not be so obvious, unlike other cases where the Notary, for example, makes a wrong deed or embezzles the client's money. However, if the KNS Notary's tax non-compliance then results in his dismissal and there are clients who suffer losses due to the cessation of services or uncertainty over the deed made during the transition period, then hypothetically a civil lawsuit could arise, although the proof would be complex. The main focus of accountability in the KNS case is more on the criminal, administrative, and ethical realms.

#### 6) Synergy and Interaction Between Institutions in Enforcing Accountability

Enforcement of various forms of legal accountability against Notaries who commit crimes requires good synergy and coordination between various institutions. Criminal court decisions that have permanent legal force should be a trigger for the Ministry of Law and Human Rights (through the Directorate General of General Legal Administration), the Notary Supervisory Board, and the

Notary Honorary Council to immediately take the necessary administrative and ethical actions. Transparency of information between institutions, for example between the Directorate General of Taxes handling tax cases with the Ministry of Law and Human Rights and Notary organizations, is also very important so that the law enforcement process runs comprehensively. If a Notary is dismissed, the official announcement and appointment of the Notary receiving the protocol must be made quickly to ensure the continuity of public services and legal certainty for the community.

Based on this, the legal responsibility of a Notary who is determined to be a perpetrator of a special tax crime, such as in the case of Notary KNS, is multidimensional. In addition to the criminal sanctions in the form of imprisonment and fines that have been imposed by the court, the Notary also faces serious consequences in the realm of official law (administrative) which is very likely to result in dishonorable dismissal by the Minister of Law and Human Rights based on the UUJN. Furthermore, he must also be held accountable for his actions before the Notary Honorary Council based on the Notary Code of Ethics, which can result in ethical sanctions and even dismissal from membership of the professional organization. Although the potential for civil liability in this specific case may not be as strong as in cases of violations that directly harm clients, the principle still applies. Enforcing all layers of this responsibility is important not only to provide a deterrent effect and justice, but also to maintain the integrity, honor, and public trust in the Notary profession as one of the important pillars in the Indonesian legal system. The theory of legal responsibility provides a basis that every legal subject, including public officials, must bear the consequences of their actions that violate norms, whether criminal, administrative, ethical, or civil norms.

#### **4. Conclusion**

Based on the analysis of the case of Notary KNS in Buleleng Regency who was determined as a perpetrator of a special tax crime through the Singaraja District Court Decision No. 159/Pid.Sus/2022/PN Sgr jo. Supreme Court Decision No. 5673 K/Pid.Sus/2023, it was found that the legal impacts that arose were very significant. Legally, the Notary faces the potential for dismissal from his position based on Article 8 paragraph (1) letter c of the Notary Law (UUJN) because the crime committed is punishable by imprisonment of 5 years or more, and his actions have the potential to be categorized as a disgraceful act that can lead to dishonorable dismissal. This has implications for the loss of the Notary's authority to carry out his position and creates legal uncertainty regarding deeds that may be made after the decision has become final but before the official dismissal. The legal liability faced by the Notary is multidimensional, including criminal liability in the form of imprisonment and fines according to the court's decision; professional/administrative accountability that can lead to dismissal

from office by the Minister of Law and Human Rights upon the recommendation of the Supervisory Board; and ethical accountability before the Notary Honorary Council based on the Indonesian Notary Code of Ethics (KENI) for violations of integrity and dignity of office.

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