

Application Analysis of Criminal Sanctions for Embezzlement of Tax Fees Deposits for Land and Building Rights (BPHTB) Acquisition Committed by Notaries - PPAT

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In practice, Notary or PPAT often act as intermediaries for depositing the Acquisition of Rights over Land and Buildings Tax BPHTB payments to facilitate the transaction process. However, it is regrettable that some individuals serving as Notaries occasionally abuse their power and authority regarding BPHTB payments. The type of research conducted in this paper is Doctrinal. The results of the discussion indicate that the responsibility of a Notary should be to carry out their duties and authority properly and firmly, without violating the rules governing their position. The conclusion drawn from this analysis is that a Notary is responsible for the assistance provided in the BPHTB payment process for clients, and not for exploiting the money for personal interests. Such actions can cause losses to clients and the state. The legal consequences for Notaries who abuse their authority include criminal sanctions and the obligation to compensate clients who suffer losses due to their actions.

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1. INTRODUCTION

Notaries play a special role in repayment of BPHTB. In tax collection, there are three systems and procedures when determining the amount of tax that must be paid by taxpayers, namely the official tax system, the self-assessment system, and the tax withholding system. Basically, Indonesia follows a self-assessment system, but Indonesia's current form of tax collection is not absolute self-assessment. The essence of the self-assessment tax collection system, especially at BPHTB, is that taxpayers are a group that actively fulfils their tax responsibilities. Notaries can actively collect funds from taxpayers, meaning that taxpayers are able to guarantee repayment from BPHTB to the Notary. However, in practice, land and/or building sale and purchase negotiations are obtained where the land and/or building acquirer entrusts BPHTB payments to a Notary. However, it is believed that the Notary who approved the BPHTB payment never carried out the BPHTB payment to the government.

In practice, money custody is often accepted by several Notaries whose main goal is to facilitate the transaction process. Notaries have obligations in accordance with Article 16 of Law Number 2 of 2014, amendments to Law Number 30 of 2014 concerning the Position of Notaries (hereinafter referred to as UUJN), namely that one of them must act honestly and protect the needs of the parties in preparing the deed. Apart from that, the Notary's code of ethics also regulates the good behavior and personality of the person carrying out the duties of a Notary. Some people abuse their power and position, so this activity is considered "embezzlement".

Legal certainty is a legally valid protection against arbitrary behaviour, indicating that individuals can expect the desired results in certain situations. Society wants legal certainty because this will increase social order. One of the roles of law is to create certainty to ensure order in society. Among the many State implementers, power in law and politics, there are those who are referred to as state officials, both in general and in particular. Among the public officials who carry out State duties, there are public officials who are called Notaries.

Notaries and Land Deed Making Officials (PPAT) have a very important role in creating legal traffic, especially in the context of making deeds. As a Public Official, a Notary has the authority granted by the state to carry out several public functions, especially in the field of civil law. One of the main service areas that is the responsibility of a Notary is the creation of authentic deeds, along with other tasks related to the Notary's authority and scope of work. In the context of land administration, the government appointed the National Land Agency of the Republic of Indonesia (BPN) as the agency responsible for this field. The land office, as a BPN work unit in each district or city, plays a role in managing land administration. In carrying out its duties, the land office is assisted by a Land Deed Drafting Officer (PPAT) as well as a Notary and other officials appointed for this purpose. PPAT has the main task of carrying out some land registration activities by making deeds as evidence and the basis for land registration. All matters related to deeds of transfer of land rights, granting new rights to land, and binding land as collateral for debts is the duty and responsibility of the PPAT and must be made before him.

This is proof that there has been a sale and purchase of land rights in accordance with legal provisions and the PPAT makes a Deed of Sale and Purchase (AJB) which is then followed by its registration at the local Land Office in accordance with the location of the land that is the object of the sale and purchase. Registration of every transfer, deletion and encumbrance, such as registration for the first time or registration due to conversion or release will cause many legal complications if it is not registered even though the registration is strong evidence for the right holder.

Notaries have a special role regarding the payment of Land and Building Rights Acquisition Fees (BPHTB). In the context of tax collection, there are three systems or procedures used to determine the amount of tax that must be paid by taxpayers, namely the official tax system, the self-assessment system, and the tax withholding system. Indonesia basically adopts a self-assessment system, although in practice it does not fully implement absolute self-assessment. The essence of the self-assessment system, especially in the case of BPHTB, is that taxpayers actively fulfil their tax responsibilities. Notaries have an important role in collecting funds from taxpayers, which means that taxpayers are responsible for paying BPHTB to the Notary. However, in practice, agreements often occur in land and/or building purchase and sale transactions where the land and/or building acquirer submits BPHTB payments to the Notary. However, it is unfortunate that Notaries who approve BPHTB payments often do not make these payments to the government.

BPHTB is one of the largest sources of regional income. BPHTB tax is a tax imposed on the acquisition of rights to land and/or buildings. B Ilyas believes that BPHTB tax is the acquisition of rights to land and buildings which can be in the form of land and buildings. The legal basis for collecting BPHTB tax is Law Number 21 of 1997 concerning Fees for Acquisition of Land and Building Rights (BPHTB). The formation of the law regarding BPHTB has the aim of requiring tax collection on the acquisition of land and building rights, as has been implemented and carried out as an effort for the nation's independence to meet government expenditure related to its duties in carrying out general government and development.

In practice, money custody is often accepted by several Notaries whose main goal is to facilitate the transaction process. Notaries have obligations in accordance with Article

16 of Law Number 2 of 2014, amendments to Law Number 30 of 2014 concerning the Position of Notaries (hereinafter referred to as UUJN), namely that one of them must act honestly and protect the needs of the parties in preparing the deed. Apart from that, the Notary's code of ethics also regulates the good behavior and personality of the person carrying out the duties of a Notary. Some people abuse their power and position, so this activity is considered "embezzlement".

Notaries carry out their duties freely, without being influenced by executive bodies and other bodies. The meaning of freedom here is so that the notary profession will not be afraid to carry out its position, so that it can act neutrally and independently. In this regard, Komar Andasmita, stated that every Notary must have sufficient broad and in-depth knowledge and skills so that he can be a mainstay of the community in designing, compiling and making various authentic deeds, so that the linguistic structure and juridical techniques are neat, good and correct, because in addition to these skills, expertise is needed. also honesty or sincerity and an objective nature or view.

In connection with this authority, a Notary can be held responsible for his or her actions in making an authentic deed that is not in accordance with applicable regulations or is carried out against the law. Accountability is an attitude or action to be responsible for all the consequences of actions taken, whether in the form of risks or legal consequences of those actions.

The forms of liability imposed on Notaries generally include criminal, administrative and civil liability, depending on the nature of the violation that occurred and the legal consequences that arise. Criminal liability usually results in criminal sanctions, while administrative liability will result in administrative sanctions, and civil liability will result in civil sanctions. This is a consequence of violations or negligence committed by the Notary in the process making authentic deed.

In the last few decades, there have been many cases where several Notaries were involved in legal problems, whether they were aware of it or not. One example of a case is abuse of trust, where a number of Notaries used tax payment funds for land buying and selling transactions placed with them by clients.

Previous study which has a similar discussion and also serves as a reference for this writing, namely there are several journals entitled "NOTARY/PPAT RESPONSIBILITY FOR MISUSE OF AUTHORITY OVER PAYMENT OF DUTY FOR ACQUISITION OF LAND RIGHTS (BPHTB) (STUDY OF RULING OF THE SURABAYA STATE COURT NUMBER 210/PID. B/2022/PN SBY). This journal raises issues related to the responsibility of Notaries/PPATs for abuse of authority over BPHTB payments. The discussion in the previous research above is in line with the discussion that will be discussed in this paper, however there is a difference in the focus of the discussion with this research, namely that this research will examine in more depth the application of law and criminal sanctions against Notaries/PPATs related to embezzlement of deposits of BPHTB tax money.

2. RESEARCH METHOD

The research method used in this research uses normative law, namely studying legal rules as written or library law which refers to legal norms contained in statutory regulations. Normative legal research is problem solving based on literature and statutory regulations related to the problems discussed based on gaps in legal norms or principles. The type of research in this research is research on legal systematics, in this case referring to legal synchronization.

FORMULATION OF THE PROBLEM

1. What is the authority of a Notary in receiving and paying land sale and purchase tax money in the form of PPh and BPHTB to the state treasury?
2. What is the application of the law and the Notary's responsibility for abuse of authority in BPHTB payments?

3. RESULTS AND DISCUSSION

Notary's Authority to Receive and Pay Land Sale and Purchase Taxes in the Form of PPh and BPHTB to the State Treasury

According to Civil Law, sale and purchase is one type of agreement/engagement contained in Book III of the Civil Code concerning Engagements. In the case of buying and selling land, Article 1457 reads: "Sales and purchases are an agreement, whereby one party binds himself to hand over an object and the other party pays the price that has been promised.

Based on the definition in Article 1457 of the Civil Code, buying and selling is an agreement. The conditions for the validity of an agreement according to Article 1320 of the Civil Code are the existence of an agreement between those who bind themselves, the ability to make an agreement, the existence of a certain thing, and a lawful cause. If the conditions regarding agreement and skills (subjective requirements) are not met, then an agreement can be cancelled, meaning that the agreement remains in place until a decision is made by the judge. Meanwhile, if the conditions regarding a certain matter and a lawful cause (objective requirements) are not fulfilled, then an agreement is null and void, meaning that from the start it is considered that there was no agreement.

Based on Article 1457 of the Civil Code, buying and selling as regulated in Civil Law is only obligatory, meaning that a new sale and purchase agreement lays down reciprocal rights and obligations between both parties, or in other words, buying and selling as followed by Civil Law does not transfer property rights or rights. New ownership is transferred by handing over or levering.

In Article 1458, in the case of buying and selling immovable objects, the sale and purchase is deemed to have occurred even though the land has not been handed over or the price has not been paid. To transfer rights, another legal action is still required in the form of a transfer, the method of which is determined by another regulation.

From this description, the sale and purchase of land according to Civil Law consists of 2 (two) parts, namely the sale and purchase agreement and the transfer of rights, both of which are separate from one another. So, even though the first thing has been completed, usually with a notarial deed, if the second thing has not been done, then the status of the land is still the property of the seller.

Buying and selling land in customary law and UUPA has the same meaning, based on UUPA Article 5, the meaning of buying and selling freehold land according to UUPA is nothing other than the meaning of buying and selling according to customary law. According to customary law, buying and selling land is a clear and cash transfer of land rights. This clearly means that the act of transferring rights must be carried out in the presence of the traditional head, whose role is as an official who ensures the regularity and legality of the act of transferring rights, so that the act is known to the public. general. Cash means that the transfer of rights and payment of the price are carried out simultaneously. Therefore, cash may be the price paid in cash, or paid in part (cash is considered cash). In the event that the buyer does not pay the balance, the seller cannot sue on the basis of the sale and purchase of land, but on the legal basis of debts and receivables.

Criminal Sanctions against Notaries Who Are Involved in the Crime of Tax Evasion on the Sale and Purchase of Land

The juridical definition of embezzlement is regulated in Chapter XXIV (book II) of the Criminal Code, consisting of 5 articles (372 to 376). One of them, namely Article 372 of the Criminal Code, is a criminal act of embezzlement in the main form whose formulation reads: "Any person who deliberately unlawfully controls an object which should or partly belongs to another person who is in his possession not because of a crime, because he is guilty of embezzlement, shall be punished." with a maximum imprisonment of 4 (four) years or with a maximum fine of 900 (nine hundred) rupiah." So, embezzlement in this criminal act can be interpreted as an act that is deviant/deviant, abusing other people's trust and the initial possession of the goods is not an unlawful act, it is not the result of a crime.

In relation to the criminal act of embezzlement committed by a notary, first in this case we will discuss the aspect of Notary's responsibility that arises because of a mistake (schuld) made in carrying out a position's duties and this mistake causes losses to other people who request services (client) Notary. So that the Notary's unlawful actions (wederrechtelijk) can be held accountable from a civil, administrative or criminal law perspective even though the UUJN does not regulate criminal sanctions.

In Article 63 paragraph (2) of the Criminal Code, it is stated that: "if an act falls within a general criminal regulation, it is also regulated in a special criminal regulation, then only that specific one is applied". From this article it can be interpreted that if there is an act that can be punished according to special criminal provisions in addition to general criminal provisions, then the special criminal provisions are used. On the other hand, if special criminal provisions do not regulate it, then the violation will be subject to a general crime, namely the Criminal Code. Therefore, if a criminal offense is committed by a notary, a notary may be subject to criminal sanctions contained in the Criminal Code, even though the UUJN does not regulate criminal sanctions.

A notary does not mean that the notary is free from the law, cannot be punished, or is immune from the law, a notary can be punished criminally if it can be proven in court that intentionally or unintentionally the notary together with the parties made a deed with the intent and purpose of benefiting only a particular party or harm the other party. If this is proven, then the Notary must be punished.

A criminal act (strafbaar feit) is an act that is prohibited by a rule of law, a prohibition which is accompanied by threats (sanctions) in the form of certain penalties for anyone who violates the prohibition. Related to criminal acts in the office of a Notary are acts carried out by a Notary in carrying out his or her duties and position which are prohibited by a legal regulation or in other words the acts carried out by a Notary contain elements of a criminal act (strafbaar feit).

Notary's responsibility for abuse of authority in paying Land and Building Rights Acquisition Fee (BPHTB)

A notary is an official who, because of his position, can authorize third party deposits to the state treasury. To pay off BPHTB, the Indonesian tax payment method uses a self-assessment system, or taxpayers are responsible for adding up and paying off the tax themselves. Therefore, the Notary is able to act as a connector or third party in repayment of BPHTB. Based on the sale and purchase of land and/or buildings, buyers mostly entrust BPHTB payments to a Notary because they don't want to be bothered. This notary has the authority to verify that the allottee has deposited the land acquisition and rental fees (BPHTB) that must be paid to the Treasurer before the official signs the certificate. This is an opportunity for the Notary to embezzle funds entrusted to him by the taxpayer.

Regarding the payment of tax payments, a Notary has the right and authority to receive BPHTB tax payments in accordance with his responsibilities as a Notary who carries out deed transfer of land rights. This practice is based on the concept of basic customary rights

and the transfer of these rights, which are recognized and accepted by the community, implemented in daily life, and acknowledged in bureaucratic structures. In principle, the Notary has the right to allow BPHTB tax payments in accordance with his obligations.

One of the provisions that a Notary should pay attention to when issuing a deed of transfer of rights to land and/or buildings is the payment of BPHTB tax which must be paid to the presenter as the taxpayer. Therefore, the average client is the recipient of legal benefits. This is explained in Article 91(1) of the PDRD Law that the Notary actually has the power to certify the deed of transfer of rights to land and/or buildings, but only if the taxpayer has provided a receipt. In this case, of course the representative has the right, therefore the Notary, archivist or taxpayer concerned must first pay the BPHTB tax resulting from the change of rights to land and/or buildings before signing the letter listed. Meanwhile, the publisher as a taxpayer has not paid the BPHTB based on the Notary stated in the tax guarantee letter, the Notary cannot sign the letter.

Henny Hartati and Habib Adjie are of the opinion that responsibility is determined due to the nature of the denial and its legal impacts. Notary responsibilities arise from criminal, administrative and civil responsibilities. This question illustrates the consequences of the Notary's denial or carelessness in executing the notarial deed. If the official in charge is a Notary seen before the Taxpayer makes BPHTB payments for the land and/or the land deed remains valid, but notarial administrative sanctions in the form of fines will be imposed for violations.

PPh and BPHTB fees are usually paid by the notary's client, but in practice there are times when this occurs seen that operators/clients are very dependent on Notaries to pay their clients' PPh and BPHTB fees. Therefore, statutory regulations do not regulate the rights of Notaries to pay Land and Building Tax (PPh and BPHTB) to clients or implementers as Notaries, but clients relinquish power to Notaries who are interested in paying sales tax, PPh and BPHTB which must be paid. .

Ronal Ravianto and Amin Purnawan explained that actually as a Notary, in buying and selling land and/or buildings, vigilance and obligations must always be prioritized, because it can be said that the Notary is the main partner of the State. A Notary is expected to be able to compare or interpret the prevalence of property prices, whether they are common or not. In buying and selling, a Notary is not expected to participate as a Notary organize price agreement between the seller and the buyer. It is worth confirming that behind the various tax issues related to Notaries, it appears that the existence of tax responsibilities, whether general or specific, then the responsibility of a Notary becomes increasingly heavier due to related laws, sanctions, laws related to Notaries, such as Notaries. carelessly carrying out his duties as an intermediary between the tax authorities and taxpayers.

However, clients must also be careful in this matter and first assess the nature of the Notary. So that the client's trust in the Notary is realized safely and effectively, without deception or embezzlement of deposited money. Notaries have a big responsibility, furthermore make the parties pay taxes before signing the sale and purchase deed. The notary must also examine the land title certificate. The legal basis for Notaries in checking land title certificates is that it is clear that the Notary in carrying out his duties, if the transfer of land rights is carried out before the acquisition of land rights or the transfer is completed, takes the form of an authentic deed, after which the land title deed must first be verified.

For this reason, Notaries who receive BPHTB tax payments from their clients are based on Article 24 of the BPHTB Law which states that BPHTB taxpayers are not subject to Notary tax. When the Notary receives a deposit, the Notary must pay the money quickly and if there is a problem in repayment, then Public Notary Also responsible for any problems that may arise. Basically, in carrying out their obligations and responsibilities,

Notaries must pay more attention to their clients and follow UUJN and professional ethics rules to carry out their duties safely and smoothly.

4. CONCLUSION

1. That regarding the Notary's authority in receiving and paying land sale and purchase tax money in the form of PPh and BPHTB to the state treasury, that is, his authority is not regulated in the provisions of the applicable laws, but the Notary has the authority to receive and pay land sale and purchase tax money in the form of PPh and BPHTB to the state treasury, if the parties (clients) authorize the notary concerned to pay it.
2. That regarding criminal sanctions against Notaries who are involved in criminal acts of tax evasion regarding land buying and selling transactions, such as Notaries who are also Land Deed Making Officials (PPAT), are stated in Article 372 of the Criminal Code. If deed the notary has been proven to comply with the formulation of the offense stated in the article, the notary can be sentenced to imprisonment for 6 (six) months. However, it should be noted that the implementation of the prison sentence does not have to be carried out immediately by the Defendant unless within 10 (ten) months there is another order in the Judge's Decision which has permanent legal force, which states that the Defendant is proven to have committed a Criminal Offense.

5. REFERENCES

Books

- Adjie, Habib. *Hukum Notaris Indonesia*, Bandung: Refika Aditama, 2008.
- Anand, Ghansham. *Karakteristik Jabatan Notaris Di Indonesia*. Sidoharjo: Zifatama Publisher, 2014.
- B.Ilyas, Wirawan dan Richard Burton, *Hukum Pajak*, Jakarta: Salemba Empat, 2004.
- Anwar, Moch (Dading). *Hukum Pidana Bagian Khusus (KUHP Buku II)*, Bandung: PT Citra Aditya Bakti, 1990.
- Gunadi, Ismu dan Jonaedi Efendi, *Cepat dan Mudah Memahami Hukum Pidana*, Jakarta: Kencana Prenadamedia Group. 2014.
- Komariah, *Edisi Revisi Hukum Perdata*. Malang: Universitas Muhammadiyah Malang, 2001
- Mubarok, Nafi'. *Buku Diktat Hukum Dagang*. Surabaya: Fakultas Syariah dan Hukum Universitas Sunan Ampel, 2016.
- Parlindungan, A.P. *Pendaftaran Tanah di Indonesia*. Bandung: CV Mandar Maju, 2009.
- Sjaifurrachman. *Aspek Pertanggungjawaban Notaris dalam Pembuatan Akta*. Bandung: Mandar Maju, 2011.
- Siahaan, Marihot Pahalamana. *Bea Perolehan Hak Atas Tanah Dan Bangunan Teori Dan Praktek*, Jakarta: Raja Grafindo, 2003.
- Soedjendro, J. Kartini. *Perjanjian Peralihan Hak atas Tanah yang Berpotensi Konflik*. Yogyakarta: Penerbit Kanisius, 2001.
- Teguh Prasetyo, *Hukum Pidana (Revisi Ed.)*. Jakarta: Rajawali Press, 2010.
- Waluyo, Doddy Radjasa. *Hanya Ada Satu Pejabat Umum Notaris*. Tangerang: Media Notaris, 2005.

Journals

- Leomuwafiq, Ghazi. "Pertanggung Jawaban Notaris Ppat Dalam Melakukan Pelayanan Pembayaran Pajak Bea Perolehan Hak Atas Tanah Dan Bangunan (BPHTB)." *Jurnal Media Hukum dan Peradilan* 5, no. 1 (2019): 101-117.

Sari, Devi Nurmalia. "Analisis Penerapan Sanksi Pidana Penggelapan Titipan Uang Pajak Bea Perolehan Hak Atas Tanah dan Bangunan (Bphtb) yang Dilakukan oleh Notaris–PPAT." PhD diss., UNS (Sebelas Maret University), 2017.

Wijaya, Eveline. "PERTANGGUNGJAWABAN NOTARIS/PPAT TERHADAP PENYALAHGUNAAN WEWENANG ATAS PEMBAYARAN BEA PEROLEHAN HAK ATAS TANAH (BPHTB)(Studi Putusan Pengadilan Negeri Surabaya Nomor 210/Pid. B/2022/PN SBY)." *JURNAL RECTUM: Tinjauan Yuridis Penanganan Tindak Pidana* 5, no. 3 (2023): 215-223.

Legislations

The 1945 Constitution of the Republic of Indonesia

Law Number 30 of 2004 concerning Notary Positions

Criminal Code [Wetboek van Strafrecht]. Translated by Moeljatno. Jakarta: Bumi Aksara, 2011.

Internet

[https://www. Hukumonline.com/berita/a/waspada-ini-pasal-pasal-yang-sering-menjerat-profesi-notaris-dan-ppat-lt5795e599691ec/](https://www.Hukumonline.com/berita/a/waspada-ini-pasal-pasal-yang-sering-menjerat-profesi-notaris-dan-ppat-lt5795e599691ec/)

<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwinieWMoMSEAxUTyzgGHRSCDQAQFnoECCoQAQ&url=https%3A%2F%2Fnotarylaw.journal.ulm.ac.id%2Findex.php%2FnoIaj%2Farticle%2Fdownload%2F13%2F11&usg=AOvVaw1og25Na2L07ZZYaKul1xTA&opi=89978449>