

## PROBLEMS OF AUTHORITY OF LAND DEED MAKING OFFICIALS IN THE TRANSFER OF RIGHTS IN SURABAYA

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### ABSTRACT

*Population and economic growth have given rise to excesses in terms of ownership of land rights and obligations, whether social or individual. In this case, the government seeks to overcome various problems that arise by arranging this most strategic problem by affirming the legal certainty of land rights and obligations, a land registration process is needed. This research uses normative juridical methods, namely legal research conducted by examining library or secondary materials as basic materials which are then examined by conducting searches on regulations and legal materials related to the problems studied. The study concluded that PPAT has an important role in the transfer of rights, namely making authentic deeds regarding legal acts of transfer of rights which are then used as the basis for land registration. In the process of transferring rights, of course, it is related to BPHTB or Land Rights Acquisition Duty, which is the obligation to pay taxes for buyers due to the acquisition of land rights. PPAT in making a deed of sale and purchase of PPAT must ensure that all tax payment obligations must have been paid in full by the taxpayer, because before the tax wajin pays in full its tax obligations, PPAT must not make and sign the deed of transfer of rights. This is in accordance with the provisions of article 24 paragraph (1) of BPHTB Law No. 20 of 2000. If PPAT violates these provisions, PPAT will be subject to a penalty of Rp. 7,500,000.00 according to article 26 of BPHTB Law No. 20 of 2000.*

**Keywords:** Authority, Land, Ownership, Transition.

## **INTRODUCTION**

Land and Man have an inseparable relationship, because land has an important role in human life, and land itself is one of the sources of human life. All human activities will certainly depend heavily on land to carry out their lives such as farming, building houses, buildings in the form of hotels, office buildings, transportation facilities and many more human activities that really need the existence of land. According to article 33 paragraph (1) of the 1945 Constitution states that "the earth, water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people.

To have a right to a piece of land, one of the things that must be done is to apply for land registration to the head of the local land office. Considering that land is the most important aspect of life, it is felt necessary to provide protection for land, namely in its ownership rights, land ownership arises through legal actions, such as granting land rights through buying and selling, grants, inheritance, exchange and others. The legal act resulted in the transfer of land rights from the landowner to another party who would receive the right to the land. In the sale and purchase of land rights that have been certified, in order to have legal force, the transfer of land rights is completed by a sale and purchase deed (AJB) on the object of land rights that is certified before the authorized official, namely PPAT. PPAT is a general official who has the authority to make authentic deeds in terms of legal acts in the field of transfer of land rights and / or ownership rights over apartment units (sarusun).

Given that land has high economic value, there is consideration for collecting taxes in the process of signing the AJB. Every transfer of rights creates tax obligations for the parties involved in it. According to P.J.A. Adriani: "A tax is a contribution to the state which can be imposed, which is owed by the obligated to pay it according to regulations without regain, which is directly appointable, and which is used to finance expenditures, the general expenditure is related to the duty of the state to administer the government."<sup>1</sup>

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<sup>1</sup> P.J.A.Adriani, *Introduction to Tax Law*, Cet. 3, Eresco, Bandung, 1987, p. 2

In the process of transferring rights, the seller will be subject to Income Tax (PPh) and for the buyer will be subject to Land and Building Rights Acquisition Duty (BPHTB). Income Tax (PPh) is a tax from the sale of land that must be paid by the seller of land. In principle, these tax obligations must be paid before the signing of the sale and purchase deed before the PPAT, both income tax and BPHTB. PPAT has a role as a party who knows as well as who signs the BPHTB SSPD deposited by taxpayers through their signatories. In this case, PPAT becomes the party that guides, directs, and explains the amount of BPHTB owed by taxpayers. Therefore, the optimal collection of BPHTB as part of regional taxes cannot be separated from the role of PPAT when carrying out its work duties. Related to this,

PPAT will directly deal with prospective taxpayers. There are also many buying and selling factors that occurred 10 years ago but the reverse management of the name is processed in the current year, the tax calculation also confuses the transacting parties, this is where the role of PPAT in appealing and understanding the parties in calculating the amount of tax owed in accordance with applicable laws in order to ensure legal certainty for parties and local governments in collecting BPHTB.

In addition, PPAT has the obligation to report or notify the acquisition of land and building rights, based on applicable regulations. The report is about the number of BPHTB SSPDs issued and the number of deeds made.

BPHTB payments must be made before or when the deed of transfer of land rights is made before the authorized PPAT. PPAT is prohibited from signing the deed of transfer of rights before the taxpayer pays off BPHTB.<sup>2</sup> This is regulated in Article 91 paragraph (1) of Law No. 28 of 2009 concerning Regional Taxes and Regional Redistribution and is also regulated in article 24 paragraph (1) of Law No. 20 of 2000 concerning Land and Building Rights Acquisition Duties which says that: "The Land Deed Making Officer/Notary Public can only sign the deed of transfer of Land and/or Building Rights after the Taxpayer submits proof of tax payment"

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<sup>2</sup> Marihot Pahala Siahaan, *Compilation of Regulations in the Field of BPHTB, Guidelines in the Preparation of Rules for the Implementation of Regional Regulations on BPHTB*, Graha Ilmu, Yogyakarta 2010, p. 7

The preparation of the Sale and Purchase Deed in relation to BPHTB's payment obligations in addition to taking a lot of time, of course, involves many parties. The more parties involved, the more potential legal problems arise. One of the problems that often occurs in the preparation of Sale and Purchase Deed in relation to BPHTB payment obligations is an effort to avoid BPHTB.

In addition, the responsibility in the repayment of income tax and BPHTB by the parties is the cause of the grace period between the engagement and the process of transferring land rights carried out before a Notary / PPAT with the implementation of the transfer of land rights to be longer and generally the parties related to these actions carry out transfer transactions and / or control of ownership of the land rights by entrusting on the basis of trust in the form of a sum of money for the payment of PPhTB and BPHTB through the act of submission to a Notary / PPAT official as the maker of the deed of transfer of land rights of the parties. This relatively long period of time has the potential to misuse payment funds or repayment of PPhTB and BPHTB mandated to the Notary / PPAT, both by its employees and or by the Notary / PPAT directly concerned.

In addition to the above problems, in reality that has occurred so far, the ignorance of the parties in paying taxes often harms regional revenues because tax calculations by taxpayers are not in accordance with real market price transactions that occur in the field. As if the transaction price is made smaller than the actual real transaction in order to avoid paying large taxes in accordance with the real price as the basis for calculating taxes in buying and selling land. And also not a few PPAT that prioritizes the signing of the Deed of Sale and Purchase before receiving proof of tax payment from taxpayers.

This study aims to determine how the role and authority of PPAT in the process of rights change, as well as the factors that make PPAT not exercise its authority in accordance with applicable procedures and regulations and what the legal consequences for PPAT that violate its authority in carrying out the process of transferring rights.

## **RESEARCH METHODS**

This research is a normative research and is descriptive analytic. The data used are secondary data in the form of primary, secondary and tertiary legal materials. The approach method used is the Legislation approach with data collection techniques, document studies sourced from laws and regulations and literature studies sourced from library materials, journals. And doctrines relevant to this object of research.

## **RESULT AND DISCUSSION**

### **The role of PPAT in the registration process Transfer of rights on the basis of buying and selling**

Land is an important economic factor and has strategic value in any way, whether social, political or cultural. Population and economic growth have given rise to excesses in terms of ownership of land rights and obligations, whether social or individual. In this case, the government seeks to overcome various problems that arise by arranging this most strategic problem by affirming the legal certainty of land rights and obligations, a land registration process is needed. In article 1 point 1 of Government Regulation No. 24 of 1997, it is explained that land registration is a series of activities carried out by the government continuously, continuously and regularly, including the collection, processing, bookkeeping and presentation and maintenance of physical data and juridical data, in the form of maps and lists of land parcels and flats units, including the provision of proof of rights for land parcels that already have rights and property rights over apartment units and certain rights that burden them. From the land leveling activity will produce you proof of land rights called certificates.

The task of registering land, in principle, is imposed on the government and to the landowners who have the obligation to register their rights. The registration of the land is regulated through Law No. 5 of 1960 concerning the Regulation of Agrarian Principles. In organizing this land registration, the Head of the Land Agency certainly needs assistance from other officials in making land deeds, so that it is lighter and easier to register land, especially in the process of transferring land rights. The official who

assists the Head of the Land Office in this matter is the Land Deed Making Officer (PPAT). According to PP 24 of 1997, it is explained that PPAT is a general official who is given the authority to make certain land deeds.

The role of PPAT is to assist the head of the land office in carrying out the task of land registration by making deeds regarding legal acts of land rights or property rights to apartment units to be used as a basis for registering changes in juridical data regarding land. Certain authentic deeds referred to here are deeds of sale and purchase, exchange, grants, income into the company (inberng), division of joint rights, granting building use rights / use rights over freehold land, granting dependent rights, and granting power of attorney to impose dependent rights. The deed can be both an authentic deed and a deed under hand.

### **The role of PPAT in BPHTB Tax payments**

Land buying and selling activities also result in the consequences of paying land sales tax. This land sale and purchase transaction also involves other costs incurred and must be met by the Seller and buyer in accordance with applicable regulations. In the activity of buying and selling land also results in the consequences of paying land sales tax. This land sale and purchase transaction also involves other costs incurred and must be met by the Seller and buyer in accordance with applicable regulations. In Law Number 28 of 2009, Land and Building Rights Acquisition Duty (BPHTB) is a tax imposed on the acquisition of land and building rights, while the acquisition of land and building rights is a legal act or legal event that results in the acquisition or possession of land and building rights by private persons or entities.

However, in practice there are still many people who do not understand about the law and taxes, in this case the PPAT must provide a clear picture of the forms of taxes that will be imposed on the parties in every transfer of rights transaction such as the sale and purchase process. In the event of a transfer of rights to land and buildings, PPAT in carrying out its position also serves as a legal consultant, in this case it also includes tax consultants, which must provide an explanation of the deed of transfer of rights along with the obligations that must be fulfilled from each party concerned. In

addition to reducing the burden of duty to help calculate the amount of BPHTB tax payments owed, PPAT can also help taxpayers to calculate and deposit taxes owed.

According to Surabaya City Regional Regulation Number 11 of 2010 concerning Land and Building Rights Acquisition Duties listed in Chapter III The Basis for Imposition, Tariffs and Tax Calculation Procedures are mentioned in article 6. In order to harmonize the application of land and building rights acquisition duty (BPHTB) rates in the regions, in accordance with the provisions of article 7 of Surabaya City Regional Regulation Number 11 of 2010 concerning Land and Banguan Rights Acquisition Duties (BPHTB) is 5% (five percent) which is the maximum rate as stipulated in the provisions of article 88 of Law Number 28 of 2009 concerning Regional Taxes and Regional Levies.

After the BPHTB verification application has been completed, the PPAT notifies the taxpayer by submitting a BPHTB Deposit Letter from the Regional Financial and Asset Management Agency in the form of the results of the BPHTB Verification application, which contains the amount of tax to be paid, the Land Deed Making Officer asks the taxpayer to immediately pay the BPHTB tax so that they can continue the process of transferring rights. The importance of tax payments as a source of regional cash income and also useful for realizing sustainable regional development, so we as legal officials and also as a community must realize how important tax payments are. As a Land Deed Making Officer (PPAT) who is given the responsibility to participate in supervising BPHTB tax payments.

### **Making a PPAT deed that is not in accordance with the procedure.**

The procedure for making a deed of sale and purchase of land and / or buildings is associated with the provisions of exposure, a PPAT that is subject to the provisions in Article 24 paragraph (1) of Law Number 20 of 2000 concerning BPHTB in which the deed of transfer of rights to land and / or buildings can only be signed if it has paid off the obligation to pay taxes owed to taxpayers, and submit proof of payment to the relevant PPAT. If the taxpayer's obligation does not pay BPHTB, then automatically the sale and purchase cannot be carried out. This is in accordance with the provisions

of article 24 paragraph (1) of the BPHTB Law, which is as follows: "The Land Deed Making Officer/Notary can only sign the deed of transfer of rights to land and / or buildings when the taxpayer submits proof of tax payment in the form of a Letter of Deposit of Land and Building Rights Acquisition Duty".

This has the consequence that PPAT can only sign the deed of transfer of land and / or building rights if the party who obtained the right to land and / or building (Taxpayer) has shown proof of tax payment in the form of SSB. The relationship between PPAT in carrying out BPHTB collection is difficult to explain as a general official who authorizes the transfer of land and / or building rights transactions which are required so that before signing the deed must meet all conditions including the payment of tax obligations, one of which is the payment of BPHTB taxes. However, in practice it is difficult to apply the stages of making a deed of relinquishment, there are still many obstacles that make the deed of transfer of rights not in accordance with the provisions described above, this is due to the situations and conditions in the sale and purchase that cause the PPAT to violate its authority, which must be done so that the land sale and purchase transaction can be carried out. These obstacles are:

First, the willingness of the parties to immediately make and sign the sale and purchase deed in the face of the PPAT, but taxpayers still do not provide files such as personal identity, which are useful for administrative needs so that the sale and purchase deed is immediately carried out.

Second, the lack of public knowledge about the procedures for paying taxes directly to appointed perception banks. So they immediately submit it to the PPAT because taxpayers do not want to be complicated. Although this is not the main task of PPAT.

Third, there is a high mutual trust between PPAT and the parties, which causes them to believe that PPAT will protect and will not reveal secrets between them and they also understand and understand each other. This raises the belief that the actions they do are safe and will not get into trouble in the future.

Fourth, the time efficiency factor for the parties, because in making a sale and purchase deed requires time that cannot be ascertained for inspection or checking



certificates. As a result of these obstacles, it has the potential to cause violations of the authority of the PPAT, which are as follows: namely the date of signing the deed which is earlier than the date of payment of BPHTB. Signing of the sale and purchase deed which is carried out first before BPHTB payment. PPAT who commit these violations because they are not afraid of the threat of fines. In addition, there is a PPAT that considers in order to avoid the obligation to pay fines that threaten him, the number and date of the deed stated in the deed will be made after or the same in the proof of tax payment.

The validity of the PPAT deed made before the payment of obligations in the form of BPHTB tax remains valid as long as the deed is still in accordance with the provisions in articles 97, 98, 99, 100, 101 and 102 of the Regulation of the Minister of Agrarian State/ Head of the National Land Bd Number 3 of 1997 concerning the provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration.

For the deed it makes, PPAT also has the obligation to report every month to the UN Service office, this is stated in article 24 paragraph (1) and article 25 paragraph (1) of the BPHTB Law. Article 25 stipulates that the PPAT/Notary and the Head of the State Auction Office must report the preparation of the deed or minutes of auction for the acquisition of land and building rights to the Director General of Taxes no later than the 10th of the following month. The monthly report on the deed of transfer of rights to land and buildings presented by the PPAT is not only needed in the context of supervising the compliance and correctness of the fulfillment of BPHTB tax payments for the transfer of rights to land and / or buildings as well as for the tax officer to see the truth of the amount of tax imposition with the Tax Object Acquisition Value (NPOP), complication the data in the Bank with that reported by the PPAT, and choose BPHTB which is sourced from land rights and / or land rights from PPAT with the source of transition to the Land Office (BPN).

Land Deed Making Officials (PPAT) who violate the provisions in articles 24 and 25 of Law Number 20 of 2000 concerning Land and Building Rights Acquisition Duties will be subject to sanctions in accordance with the provisions in article 26 of

Law Number 20 of 2000 concerning Land and Building Rights Acquisition Duties, namely: Land Deed Making Officials / Notaries and State Auction Officials who violate the provisions as referred to in article 24 paragraph (1) and paragraph (2) will be subject to administrative sanctions and a fine of Rp. 7,500,000.00 (seven million five hundred thousand rupiah) for each violation. As well as Land Deed Making Officials / Notaries who violate the provisions as referred to in article 25 paragraph (1) are subject to administrative sanctions and fines of Rp.250,000.,00 (two hundred fifty thousand rupiah) for each report.

### **Misuse of PPAT authority in BPHTB tax payments**

In the process of making a sale and purchase deed in relation to BPHTB payments, in addition to taking a lot of time, of course, there are more and more parties involved. With more and more parties involved, of course, the potential for legal problems that arise will also increase. One of the problems that arise in making AJB in relation to the payment of BPHTB obligations is the custody of BPHTB payments to PPAT made by taxpayers (buyers). The custody of BPHTB payments is very likely to occur legal errors such as embezzlement, fraud and falsification of documents related to BPHTB payments.

In practice, the PPAT that pays BPHTB tax obligations from taxpayers is carried out without a power of attorney from the taxpayer/buyer. Without the granting of power to the PPAT, it can be said that, the legal relationship between the PPAT and the taxpayer / buyer is the relationship between general officials who have certain authorities and people who have special needs related to certain authorities owned by these general officials. . A PPAT who abuses the trust given by taxpayers in terms of making BPHTB payments is a criminal act that can be threatened with embezzlement in accordance with the provisions of Article 372 of the Criminal Code and fraud in accordance with the provisions of Article 378 of the Criminal Code.

Legal consequences for PPAT individuals who do not deposit BPHTB taxes that have been submitted by taxpayers. The occurrence of misappropriation of BPHTB payments made by PPAT certainly has legal consequences, such as:

- a. Legal consequences of non-payment of BPHTB in the process of transferring land rights through sale and purchase. The transfer of land from the owner to the recipient is accompanied by a juridical submission, namely a surrender that must meet legal formalities including fulfillment of requirements, carried out through established procedures, using documents, made by and before the PPAT. The conditions for transferring rights to land parcels that have been certified or Ownership Rights over apartment units are one of them paying BPHTB borne by taxpayers who are individuals or legal entities. And in Article 103 letter I, the third part regarding the registration of transfer of rights due to transfer of rights, namely attaching proof of repayment of BPHTB payments as referred to in the PDRD Law. In this case, if the BPHTB payment terms are not implemented in the transfer of land rights, it cannot be processed further.
- b. Legal consequences for taxpayers who entrust BPHTB to PPAT who misappropriates it. The legal problem that occurs is an illegal act where the act of PPAT that does not pay BPHTB to Bapenda causes losses to taxpayers, even if done unintentionally. In practice, PPAT performs a job based on its authority or within the scope of its duties and positions. Taxpayers come on their own awareness to PPAT to get services which are then poured into the form of authentic deeds in accordance with applicable legal rules. It is impossible for PPAT to make a deed without a request from anyone.
- c. Legal consequences for PPAT that does not deposit BPHTB that has been submitted by taxpayers. BPHTB payments entrusted by taxpayers to PPAT to be deposited but not deposited by PPAT then the actions committed by the PPAT can be said to have violated laws and regulations or unlawful acts.

## **CONCLUSION**

The role of PPAT in carrying out part of the registration of land rights is to make land deeds as evidence of certain legal acts regarding land rights or property rights to flats, which will be used as a basis for registering changes in the registration data, as stated in article 2 paragraph (1) of Government Regulation Number 37 of 1998 concerning the Regulation of the Land Deed Maker Position. Before making the deed of transfer of rights, the PPAT must check the certificate at the Land Office to ensure that the certificate is not in dispute.

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