



The Validity of a Deed of Sale and Purchase Made by a Official Certifier of Title Deeds Before the Land and Building Acquisition Duty (BPHTB) is Paid

Riyanti Ida Wahyuningsih¹, Fanny Tanuwijaya², Ainul Azizah³

^{1,2,3} Master of Notary, Faculty of Law, University of Jember

ABSTRACT

Published Online: May 21, 2024

Land is one of the most important properties for the community and the state because it is very vulnerable to disputes and conflicts involving various parties. In land sale and purchase transactions, land buyers are required to pay the tax on Acquisition of Land and Building Rights (BPHTB) in advance personally before the binding of the sale and purchase deed. In practice, people often entrust BPHTB payments to the Official certifier of title deeds (PPAT) by considering the efficiency of the time and process, it is not uncommon for PPAT to assist and represent in terms of tax payments, especially BPHTB. However, PPAT's authority is actually only limited to making deeds regarding land rights or property rights over apartment units located in its working area as explained in Government Regulation Number 37 of 1998 concerning Regulations on the Position of Official certifier of title deeds which was later amended by Government Regulation Number 24 of 2016. The research uses the Juridical-normative method (*legal research*), namely legal research using legal norms as the object of research based on an internal perspective that is able to provide legal arguments when conflicts, vagueness, or legal vacuum are found.

KEYWORDS:

Sale and Purchase Deed; Land and Building; BPHTB; PPAT

BACKGROUND

Law is used to adjust individual interests with the interests of society and create a balance to provide freedom to individuals. One of the problems that often occurs in society is the issue of land and the sale and purchase process. Land sale and purchase transactions have special characteristics that distinguish them from the objects of sale and purchase of other objects, this is because the government regulates specifically related to land sale and purchase transactions with various laws and regulations and one of which is very important is related to the payment of taxes to the state by the parties in the land sale and purchase transaction. Taxes are levies from the public made by the smoothly for taxpayers and for the government, and in their use can run in accordance with what has been planned. In land sale and purchase transactions there is a morning obligation of the parties to pay taxes, for the seller is subject to Income Tax (hereinafter abbreviated as PPH) while for the buyer is subject to tax on Acquisition of Land and Building Rights

(hereinafter abbreviated as BPHTB), in land sale and purchase transactions that need to be considered is related to the tax that must be paid by the buyer, namely BPHTB, because BPHTB is one part of the requirements for submitting a name change on the certificate. The legal basis for the obligation to pay tax for the buyer is Law No. 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments contained in Article 1 paragraph (37) "Fees for Acquisition of Rights on Land and Buildings, which is a tax on the acquisition of rights to land and/or buildings".

The transfer of land rights juridically can be done in writing with a deed made by an authorized official and based on the National Land Agency (hereinafter abbreviated as BPN).¹ In the framework of the sale and purchase process of land rights or property rights over apartment units must be proven by a deed made by and before a PPAT, the occurrence of a transfer of land rights due to a sale and purchase transaction is one of the bases for the state to collect taxes

Corresponding Author: Riyanti Ida Wahyuningsih

*Cite this Article: Riyanti Ida Wahyuningsih, Fanny Tanuwijaya, Ainul Azizah (2024). The Validity of a Deed of Sale and Purchase Made by a Official Certifier of Title Deeds Before the Land and Building Acquisition Duty (BPHTB) is Paid. *International Journal of Social Science and Education Research Studies*, 4(5), 420-427

¹ J. Andy Hartanto, *Panduan Lengkap Hukum Praktis Kepemilikan Tanah*, (Surabaya: LaksBang Justitia, 2015) pp. 135

Riyanti Ida Wahyuningsih et al, The Validity of a Deed of Sale and Purchase Made by a Official Certifier of Title Deeds Before the Land and Building Acquisition Duty (BPHTB) is Paid

because the transfer of rights gives birth to tax obligations for the parties involved in it, in carrying out the correct BPHTB tax payment process is before signing and the transfer of BPHTB rights must be paid first. The payment mechanism is that a taxpayer, namely the buyer, comes to the PPAT office then the PPAT enters the BPHTB data in the e-BPHTB application which includes data on the buyer, seller and tax object data, after the PPAT enters the data in the e-BPHTB application, it will get a booking code, after getting the booking code, the PPAT submits it to the taxpayer to make a payment to the bank, then the taxpayer submits from BPHTB to the bank teller, then the taxpayer pays BPHTB through the bank then the taxpayer gets proof of payment from the bank, then the taxpayer comes to BAPENDA to validate BPHTB.

PPAT has the authority stipulated in Article 2, Article 3 and Article 4 of Government Regulation Number 37 of 1998 concerning the Regulation of the Position of Official certifier of title deeds which was later amended by Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning the Regulation of the Position of Official certifier of title deeds (hereinafter referred to as PP PPAT). The duty of a PPAT based on Article 2 of PP PPAT is to make a land deed which is the basis of written evidence of a legal action regarding land rights or ownership rights to an apartment unit, which will then be registered for data changes at the land office, followed by Article 3 of PP PPAT a PPAT in carrying out his duties and authorities must be in his working area, followed by Article 4 PPAT that PPAT is only authorized to make deeds regarding land rights or property rights over apartment units located in its working area, the authority mentioned in PP PPAT is very deviant from the example of cases that occur in the community who make BPHTB payments to a PPAT, which is a violation of the provisions of an official who has been strictly regulated by an authority.

Examples of violations include embezzlement in tax payments that are not paid by unscrupulous PPATs as in Decision No. 212/Pid.B/2021/PN.Bdg which is outlined as follows:² The defendant HSJ is a Notary/PPAT who has received money in the amount of Rp 2,162,500,000 (two billion one hundred sixty two million five hundred thousand rupiah) from witness AP to take care of the sale and purchase documents of land purchased from witness NG. The defendant HSJ promised the witness AP that the documents would be completed in about two months, but the defendant did not complete his work or obligations, the defendant always argued that the process was ongoing from 2017 to 2019, until finally the witness AP gave power of attorney to the advocate/lawyer witness MPZJ to ask the defendant to make a statement dated October 22, 2019 which basically acknowledged that he had received money totaling Rp2,162,500.000,-, however the defendant did not complete

his obligations properly, in fact the defendant had used the money that had nothing to do with the work that was assigned and requested by the witness AP, but was used for the defendant's personal interests, then the defendant was willing to fully return the money to the witness AP no later than one month (November 22, 2019), the receipt of the BPHTB payment deposit from the Regional Revenue Agency (hereinafter referred to as BAPENDA) of Cimahi City from 2017 until 2019 there was no BPHTB payment on behalf of PT Kartika Inti Sejati as the taxpayer, until the agreed time the defendant had not yet returned the money totaling Rp 2.162,500,000, - AP felt disadvantaged by the defendant's actions in the amount of at least Rp. 2,162,500,000. Referring to the facts revealed during the trial, the panel of judges was of the opinion that the defendant was legally and convincingly proven to have committed the crime of embezzlement in relation to his work because all elements of Article 374 of the Criminal Code (hereinafter referred to as the Criminal Code) had been fulfilled in their entirety, and sentenced the defendant to two years and three months imprisonment.

Based on the description above, it has been proven that the embezzlement of money paid to the PPAT to process BPHTB payments is used by the PPAT for his personal needs, so the existence of the case in the court decision is an example of the incident that really exists and the author will discuss in more depth in this study related to the authority and extent of the responsibility of the PPAT as the recipient of BPHTB money given by the confrontants. The non-payment of BPHTB also has an impact that is closely related to the deed made by the PPAT, which will become a new issue in the validity of the deed made by the PPAT, whether the existing deed still has legal force or makes the deed lose its validity, the confronters are clearly disadvantaged by this event and do not stop there, the continuity of the land registration process for the transfer of names on the certificate will also cause problems, because one of the requirements requested by the BPN in addition to the AJB made by the PPAT, among others, is proof of tax payment which should be obtained after the tax is paid. Based on the foregoing, it is necessary to study in more depth the authority and legal consequences of PPAT actions that have an impact on a criminal offense and also have an impact on the deed made, so the author raises the problem in the form of scientific work in the form of a thesis with the title "**The validity of the JUAL BUYING Deed made by the PPAT BEFORE the BPHTB is paid.**"

METHODOLOGY

The research method in this research is the normative legal research method, which is a method of examining the law from an internal perspective with legal norms as the object of research. researchers use the type of

² See Decision No. 212/Pid.B/2021/PN.Bdg

Riyanti Ida Wahyuningsih et al, The Validity of a Deed of Sale and Purchase Made by a Official Certifier of Title Deeds Before the Land and Building Acquisition Duty (BPHTB) is Paid

Normative Juridical legal research (*legal research*), namely a *legal research* using legal norms as the object of research based on an internal perspective that is able to provide legal arguments when conflicts, vagueness, or legal vacuum are found.³ The approaches used in this legal study are *statute approach*, *conceptual approach* and *case approach*, Researchers also analyze using several theories, namely the theory of legal certainty, the theory of legal protection, and the theory of responsibility. The results of the study are then carried out and connected to the subject matter in this thesis regarding the validity of the deed of sale and purchase made by PPAT before BPHTB is paid.

RESULTS AND DISCUSSION

3.1 Legal certainty of sale and purchase deeds that have not been paid BPHTB

Sale and purchase activities and the transfer of land rights in Indonesia cannot be separated from the law, the law has regulated and provided a forum for every action of the community, the law also regulates the binding and shows that most of the community activities carried out by legal subjects can rely on laws and regulations, especially the Civil Code. The principle attached to the transfer of sale and purchase is the legal power possessed by the owner, in the sense that a person who has legal legal power as a landowner, it is necessary to pay attention to the validity of a transfer of land rights that makes the object for sellers and buyers, the conditions for the validity of sale and purchase of land rights or ownership rights to an apartment unit for the purpose of registering the transfer of rights are divided into two, namely:

4

First, the material requirements where the holder of land rights or milk rights to an apartment unit is entitled and authorized to sell the land rights or ownership rights to the apartment unit, and the buyer must qualify as the holder / subject of the rights of the land rights or ownership rights to the apartment unit that becomes the object of sale and purchase. The seller has the right and authority to sell his land rights or ownership rights in a flat; the person whose name appears on the certificate or other than the certificate has the right to sell; a person is authorized to sell his land if he is an adult; if the seller is a minor, he is represented by his guardian; If the seller is under guardianship, he is to be represented by his guardian; If the seller is to be represented by another person as proxy, the proxy must produce a notarial power of attorney; If the land rights or milk rights to the apartment units to be sold are joint property, the seller must obtain the prior consent of the husband or wife. Furthermore, the buyer must fulfill the subject of the right of land rights or ownership rights over the apartment unit which is the object

of sale and purchase; If the object of sale and purchase is freehold land, the parties that can buy land are individual Indonesian citizens, government banks, religious bodies, and social bodies; If the object of sale is Right of exploitation land, the parties that can purchase the land are individual Indonesian citizens, legal entities established under Indonesian law and domiciled in Indonesia; If the object of sale is right of building land and right of use land, the parties that can purchase the land are individual Indonesian citizens, legal entities established under Indonesian law and domiciled in Indonesia.

Second, as a formal requirement for the registration of transfer of rights, the sale and purchase of land rights or property rights over a flat unit must be proven by a deed made by and before a PPAT. The process that must be carried out by the confronters if they want to buy and sell land is to come to the local PPAT office to be able to make a land sale and purchase deed, then the PPAT asks for the certificate of land rights to be sold and bought, proof of identity and other completeness files from the parties. Then, a PPAT checks the certificate at the local land office to ensure its validity and cleanliness, and to make sure there are no encumbrances, disputes or debts. If, after checking, the certificate is deemed valid, the next step is to draw up a deed of sale. The process involves the seller, the buyer and at least two qualified witnesses, often from the PPAT's own staff. Before the deed of sale is drawn up, the PPAT ensures that taxes have been paid by each party, including the annual Land and Building Tax for the seller and BPHTB for the buyer.

The deed of sale and purchase is made by filling in the available deed blanks completely and filling in the deed of sale and purchase blanks in accordance with the circumstances, reflecting the situation and valid data, supported by relevant documents. This sale and purchase deed consists of two original copies, one kept by the PPAT and the other submitted to the land office for the ownership registration process. Once the deed is completed, the PPAT reads its contents to the parties involved, explaining the purpose and registration procedures. During the reading, the parties involved are entitled to ask questions. The sale and purchase of land is an agreement in which one party agrees to hand over land and the other party agrees to pay an agreed price. Despite the agreement, the title to the land has not yet passed to the buyer. For this reason, an additional legal action, the transfer of title, is required to confirm the buyer as the new owner. A deed of sale drawn up by a PPAT is essential as a formal requirement for the transfer of title at the local land office.

BPHTB payment on the legal certainty of the sale and purchase deed is reviewed through the *Certainty*

³ Johnny Ibrahim, *Teori&Metodologi Penelitian Hukum Normatif*, (Malang : Bayumedia Publishing, 2008), pp. 27

⁴ Urip Santoso, *Pendaftaran dan Peralihan Hak Atas Tanah* (Jakarta:Prenada Media Group,2019), p 368.

Riyanti Ida Wahyuningsih et al, The Validity of a Deed of Sale and Purchase Made by a Official Certifier of Title Deeds Before the Land and Building Acquisition Duty (BPHTB) is Paid

Principle, namely the tax that must be paid by the taxpayer must be ensured to ensure legal certainty both regarding the subject, object, amount of tax and the time of payment, then in terms of tax collection contained in the tax imposition system is a *self-assessment tax* collection system, namely the taxpayer determines the amount of tax owed in accordance with the provisions of tax legislation. Given in one of the principles put forward by Lon Fuller that the law must be consistent between the rules as announced and the actual implementation of existing rules. Government Regulation No. 35 of 2023 concerning General Provisions of Regional Taxes and Regional Levies article 59 paragraph 10 that the payment or deposit of BPHTB is no later than paid at the time of signing the sale and purchase deed. then from the point of view of taxation the sale and purchase deed cannot be signed before payment of BPHTB, the sale and purchase deed is locked and cannot be signed due to non-payment of BPHTB so that if the tax is not paid the sale and purchase deed cannot be signed and has no legal certainty.

BPHTB is included in the tax payable in every transaction of acquisition of rights to land and buildings. The understanding that the public needs to be aware of the tax collection system for BPHTB is self-assessment where taxpayers are given the trust to calculate and pay the tax owed themselves, and report it without basing it on the issuance of a tax assessment letter The main *elements/essentialia of a* sale and purchase agreement are the goods and the price, in accordance with the principle of consensualism.⁵ sale and purchase agreement has also been born at the moment of reaching an agreement, regarding goods and prices. Once the two parties have agreed on the goods and price, a valid sale and purchase agreement is born. The consensual nature of buying and selling is also emphasized in Article 1458 of the Civil Code which reads, buying and selling are deemed to have occurred between the two parties as soon as they reach an agreement on goods and prices, even though the goods have not been delivered or the price has not been paid. Consensualism comes from the word consensus which means, agreement.⁶

When reviewing the validity of the agreement as stipulated in Article 1320 of the Civil Code in which there is an element of agreement, it shows that when talking about agreement in an agreement cannot be separated from a discussion about the validity of the agreement itself. The agreement made by the parties to carry out a legal action in relation to unpaid BPHTB is valid, considering that the main element of a sale and purchase agreement is the suitability of the goods and the price. sale and purchase agreement has been born at the time of reaching an agreement on goods and prices, when the confronters who want to make a deed of sale

and purchase to PPAT, a valid sale and purchase agreement is born even though the deed of sale and purchase has not been issued or signed by the parties because the deed of sale and purchase is locked by unpaid BPHTB, if BPHTB is not paid, the deed of sale and purchase cannot be issued because PPAT requires proof of payment from taxpayers as a condition for signing the deed of sale and purchase to be made by PPAT and the parties.

3.2 Legal Effect of BPHTB on Sale and Purchase Deed

With regard to the alignment of the valid requirements of an agreement relating to the payment of BPHTB as a form of implementation of the agreement, there are two elements in Article 1320 of the Civil Code, namely an agreement and something that is promised, the first element is an agreement. From an agreement word has two elements, namely the element of *offer (offer)* and the element of *acceptance (acceptance)*. When the offer and acceptance meet, it can be said to be the moment when an agreement between the parties occurs, giving birth to an agreement.⁷ The parties must carry out their rights and obligations, this agreement is said to be carried out if the rights and obligations have been carried out by both parties from the seller's side have the right to receive payment from the buyer who has agreed on the amount of the price of the object to be traded, the seller also has an obligation to carry out his obligations to submit and follow the sale and purchase process until the issuance of the sale and purchase deed, the seller is also obliged to pay income tax obtained from the sale of land objects that have been paid by the buyer.

From the buyer's point of view, for the issuance of a deed of sale and purchase, in addition to making payment for the object that has been agreed upon, the buyer must also make BPHTB payment obligations. Payment of BPHTB is a form of responsibility of the buyer to be able to make payments in the process of making a sale and purchase deed. Payment of BPHTB that is not paid by the buyer is a responsibility based on the negligence of the buyer which results in losses for the seller and buyer in connection with the process of making a deed of sale and purchase.

The importance of BPHTB paid by the buyer is as a requirement in making the sale and purchase deed made by the PPAT, the process of making the sale and purchase deed cannot be completed in a day because the authorized official will first check the authenticity of the land certificate of the property sold at the land office, considering that the sale and purchase deed is evidence related to the transfer of land rights, it should be made in accordance with the regulations and go through the process of following the directions which have been regulated in the Law, where the evidence of the sale and purchase deed owned by the buyer can be used as evidentiary

⁵ R.Subekti, *Aneka Perjanjian*, Bandung : Citra Aditya Bakti, 1995, p 2

⁶ *Ibid* p 3

⁷ ⁷ Irawan Soerodjo, *Hukum Perjanjian dan Pertanahan* :Yogyakarta, Laksbang Pressindo, 2017, p. 26

Riyanti Ida Wahyuningsih et al, The Validity of a Deed of Sale and Purchase Made by a Official Certifier of Title Deeds Before the Land and Building Acquisition Duty (BPHTB) is Paid

material in order to raise the judge's confidence in the truth of an event if one day a conflict occurs that disputes the ownership of the land.

The sale and purchase of land is said to be completed if the parties carry out their obligations and follow the procedures until the legal action is declared complete, namely the transfer of the name certificate from the seller to the buyer. The importance of the certificate as proof of ownership of land parcels that have become an agreement between the parties and the buyer. The certificate is a copy of the land book in which it contains ownership data and a copy of the measurement letter containing physical data, another purpose for the issuance of certificates of rights to land and buildings in land registration activities to aim that holders of land rights with legally and easily prove that ownership of the land as the owner and holder of legal rights to the land. A land certificate proves that the right holder has a right to a particular parcel of land.⁸ With regard to the importance of ownership of a certificate as proof of ownership of a land plot that is valid and strong and recognized by law, the absolute requirement to obtain a certificate is a deed of sale and purchase made by a PPAT. The sale and purchase deed is the first step procedurally to obtain a certificate, thus the legality of the transfer of land rights is determined by the procedures passed by the parties concerned, the legal procedures for the transfer of a land right must be fulfilled in transferring land rights. The procedure for the sale and purchase of registered land begins with the parties, both seller and purchaser, appearing before a PPAT and stating their intention to conduct a sale and purchase of land.

Land certificates as a strong legal basis to avoid land ownership that often leads to disputes such as evictions, land rights status and others that require serious attention to these legal cases. The purpose of land registration is to avoid legal problems in the future due to unclear land ownership. The legal act of transferring property rights has also been regulated in Article 19 of the UUPA, which is addressed to the government to carry out land registration throughout the territory of Indonesia which aims to ensure legal certainty in the nature of a *recht cadaster*, meaning that it aims to ensure legal certainty, by organizing land registration, the parties concerned can easily find out the legal status of the particular land they are dealing with, its location, area and boundaries, who owns it and what burdens are attached to the land.⁹

3.3 Responsibility of the Official certifier of title deeds (PPAT) for the payment of BPHTB

⁸ Adrian Sutedi, *Sertifikat Hak Atas Tanah*, Jakarta: Sinar Grafika, 2011. p 29

⁹ Yulies Tiena Masriani, *Pentingnya Kepemilikan Sertifikat Tanah Melalui Pendaftaran Tanah Sebagai Bukti Hak*, Jurnal USM Law Review Vol 5, No 2, 2022, p 543

PPAT as a public official authorized to make deeds of transfer of land and building rights has a limit of authority, where not all actions related to the process of making a deed of sale and purchase are PPATs who must carry it out, one example is the payment of BPHTB tax. Article 1 point 1 of the PPAT states that a PPAT is a public official who is authorized to make authentic deeds regarding certain legal acts concerning land rights or property rights over apartment units. In exercising their authority, PPATs are not only subject to the rules set by the Law, but they are also required to comply with the rules set by the organization. The rules are called a code of ethics. The PPAT code of ethics are rules that contain actions, attitudes, obligations, morals and character of members of the PPAT association in carrying out their obligations as PPATs and in public relations. The PPAT code of ethics is made by a PPAT organization incorporated in the Association of Official certifier of title deeds (hereinafter referred to as IPPAT). Article 1 point 2 of the PPAT Code of Ethics states that the PPAT Code of Ethics, hereinafter referred to as the Code of Ethics, is all moral rules determined by the association based on congressional decisions and / or determined by and regulated in laws and regulations governing it and which apply to and must be obeyed by members of the IPPAT association and all people who carry out their duties as PPATs, including Substitute PPATs.¹⁰

Article 1 point 3 of the PPAT Code of Ethics also states that a Official certifier of title deeds, hereinafter referred to as PPAT, is a public official who is authorized to make authentic deeds regarding certain legal acts concerning land rights or property rights over apartment units. The provision stating that PPATs are public officials comes from the term *openbare ambtenaren* which is translated as public officials, namely officials who are assigned the task of making authentic deeds that serve the public interest.¹¹ PPAT as the only official authorized to assist the parties in carrying out the legal act of buying and selling land, has been mentioned in the Law with regard to matters relating to BPHTB payment in accordance with Government Regulation Number 35 of 2023 concerning General Provisions of Regional Taxes and Regional Retribution contained in article 60 paragraph 1 The land deed maker or notary in accordance with his authority shall request proof of BPHTB payment to the taxpayer, before signing the deed of transfer of rights to land and / or building and reporting the making of a sale and purchase binding agreement and / or deed on land and / or building to the Regional Head no later than the 10th (tenth) day of the following month.

¹⁰ Husni thamrin dan M Khoidin, *HUKUM NOTARIAT dan PERTANAHAN*, Yogyakarta: Laksbang Justitia, 2021. H 85

¹¹ Habib Adjie, *Sanksi Perdata dan Administratif terhadap Notaris Sebagai Pejabat Publik*, Surabaya: Rafika Aditama, 2008, p. 27.

Riyanti Ida Wahyuningsih et al, The Validity of a Deed of Sale and Purchase Made by a Official Certifier of Title Deeds Before the Land and Building Acquisition Duty (BPHTB) is Paid

In relation to receiving a sum of money for BPHTB payment by the taxpayer/buyer as a public official has crossed the line of authority that should not be done by an official. PPAT in its authority when reviewing Government Regulation Number 35 of 2023 concerning General Provisions of Regional Taxes and Regional Levies contained in article 60 paragraph 1 there is a word obliged to request proof of payment, in the sense that this is mandatory which must be done by PPAT before signing the sale and purchase deed, PPAT is an official appointed by the government to be able to assist the community in land management, PPAT should not concurrently or assist as an executor who makes payments on BPHTB land tax, but the buyer independently makes payments on the tax obtained. The form of responsibility that PPAT has must be absolute, where PPAT as an official cannot exceed the limits of his authority to make BPHTB tax payments because it can lead to embezzlement or negligence.

Taxpayers can give power of attorney in carrying out their tax rights and obligations to third parties this is also stated in Government Regulation number 50 of 2022 concerning Procedures for Implementing Rights and Fulfilling Tax Obligations in Article 51 paragraph 1 states that taxpayers can appoint a power of attorney with a special power of attorney to exercise rights and fulfill obligations in accordance with the provisions of laws and regulations in the field of taxation. Power of attorney is given for matters of management, including in this case given from a superior to a subordinate in a working relationship. power of attorney can be given as part of an agreement to perform certain services. If the grant of power of attorney is given as part of an agreement, the power of attorney governing the grant of power of attorney must be signed by both the grantor and the grantee. If the grant is only for the purchase of an item, either movable or immovable, it is sufficient to mention that the purchase of the item is for a person whose name is mentioned in the agreement governing the purchase of the item, so that in the proof of ownership of the item the name of the person being purchased is stated.¹² It is stated in Article 1806 of the Civil Code that the recipient of the power of attorney who has notified the power of attorney to the person who entered into an agreement in the position of the recipient of the power of attorney, is not responsible for what happens outside the limits of the power given to him, unless the recipient of the power of attorney personally binds himself to be responsible for what has not been authorized to him from the power of attorney.

Regarding the granting of power of attorney, the taxpayer appoints a power of attorney with a special power of attorney regulated in KUHPer Article 1795 which states that the granting of power can be done specifically, namely only

regarding a certain interest or more or in general, namely covering all the interests of the power of attorney. With this information, it can be concluded that what is meant by a special power of attorney is a letter in which it has been stated what actions may be taken by the recipient of the mandated power of attorney to do something, taxpayers can use this power of attorney in carrying out certain actions in accordance with applicable laws and regulations, of course, if the taxpayer's actions are carried out and given to a power of attorney, there are terms and conditions that must be owned by a power of attorney that have been outlined in Government Regulation number 50 of 2022 concerning Procedures for Implementing Rights and Fulfilling Tax Obligations in Article 51 paragraph 3 which states that a power of attorney appointed as referred to in paragraph 1 must have certain competencies in tax aspects except family. Taxpayers cannot be arbitrary in appointing proxies including PPAT because it is clearly stated in the applicable laws and regulations that the proxy must make a special power of attorney and must understand and have certain competencies in the field of taxation as evidenced by certification or coaching by the ministry of finance association.

The BPHTB Tax Payment System has been regulated in the taxation law in Indonesia adheres to the concept of subjective and objective obligations applied to each type of tax. This means that tax obligations only apply if individuals or entities have met the criteria of the subject and tax object imposed.¹³ Article 1 point 14 of Government Regulation Number 35 of 2023 concerning General Provisions of Regional Taxes and Regional Retribution Taxpayers are individuals or entities, including taxpayers, tax withholders, and tax collectors, who have taxation rights and obligations in accordance with the provisions of laws and regulations. With regard to the procedures for paying BPHTB tax in accordance with the legislation, it is an individual or entity that obtains rights to land and / or buildings that must pay taxes and has rights and obligations in accordance with applicable laws and regulations, it will violate existing regulations clearly and clearly if a PPAT pays BPHTB tax, because in the applicable rules PPAT is only an official who makes a deed for legal actions carried out by the parties.

The Indonesian government has implemented a *self-assessment system*, which means that taxpayers determine the amount of tax payable themselves in accordance with the provisions of the tax law. The BPHTB tax calculation process stipulated by the Law is carried out independently by taxpayers and is also regulated in the same regulation, namely PP No. 35 of 2023 concerning General Provisions for Regional Taxes and Regional Contributions stipulated in Article 63 paragraph 1 letter E, which states that, the BPHTB SSPD research includes the correctness of the calculation of

¹² *Ibid.*

¹³ Soemarso, *Perpajakan Pendekatan Komprehensif*, Jakarta: Salemba empat, 2007, p 39

Riyanti Ida Wahyuningsih et al, The Validity of a Deed of Sale and Purchase Made by a Official Certifier of Title Deeds Before the Land and Building Acquisition Duty (BPHTB) is Paid

BPHTB deposited including the amount of deductions calculated by themselves. BPHTB payment processing which was previously done manually by coming directly to the tax and land office, now along with the development of information and communication technology the government has begun to take advantage of these technological developments by implementing several public service systems, through technology in the form of online applications that make it easier for all interested people and of course make it easier and can be accessed anywhere without having to come to the government service office. As one of them is in BPHTB payments, which the government is now facilitating related officials with online applications in the rules has been expressly stated in PP Number 35 of 2023 concerning General Provisions for Regional Taxes and Regional Contributions article 59 paragraphs 2, 3 and 4 which states, taxpayers make payments or deposits of taxes owed using SSPD.

Payment of BPHTB tax is a provision that must be considered by PPAT in making deeds relating to the transfer of rights to land and buildings, PPAT must ensure that BPHTB tax must be paid in advance by the confronter as a taxpayer who receives rights to land and buildings, this provision is contained in Article 60 paragraph 1 (One) letter a of Government Regulation number 35 concerning General Provisions of Regional Taxes and Regional Retribution which states that the official making the land deed or notary in accordance with his authority must request proof of BPHTB payment from the taxpayer before signing the deed of transfer of rights to land and buildings. This provision is clear that in fact the PPAT is only authorized to sign the deed of transfer of rights to land and / or buildings if the proof of payment has been submitted by the taxpayer with the provisions stipulated in the legislation, the deed cannot be signed by the parties before the confrontants or taxpayers concerned in the deed must first pay the BPHTB tax arising from the transfer of rights to land and / or buildings. If the confronter as the taxpayer has not paid off the BPHTB payment as evidenced by proof of tax deposit to the PPAT, then with reference to the provisions of the article, the PPAT is not allowed to sign the deed.

The role of PPAT in addition to being obliged to receive proof of payment of BPHTB tax deposited by BPHTB taxpayers also has other obligations that must be considered, namely the obligations as stated in article 60 paragraph 1 (One) letter b of PP No. 35 of 2023 concerning General Provisions for Regional Taxes and Regional Contributions where it is stated that the land deed maker or notary in accordance with his authority is obliged to report the making of a sale and purchase binding agreement and / or deed on land and / or buildings to the regional head no later than the

10th (Ten) of the following month. This provision confirms that PPATs must report every deed of acquisition of rights to land and or buildings to the designated official, namely the regional head, no later than the 10th (10th) of the following month, with regard to violations committed by PPATs cannot be separated from sanctions which are also regulated by legislation. The sanctions imposed on notaries or PPATs who commit such violations are explained in article 60 paragraph 2 of PP No. 35 of 2023 concerning General Provisions for Regional Taxes and Regional Contributions which states that in the event that the land deed maker or notary violates the obligations as referred to in paragraph one, administrative sanctions shall be imposed in the form of a fine of Rp 10,000,000, - (Ten million rupiah) for each violation as referred to in paragraph 1 (one) letter a and / or a fine of Rp 1,000,000, - (One million rupiah) for each report as referred to in paragraph 1 (one) letter b.

Legal responsibility is usually always associated with criminal law which is known as the principle (*Geen straf zonder schuld; actus non facit reum nisi mens sit rea*) is not punished if there is no fault. According to this understanding, it is clear that only people who are guilty can be held legally responsible.¹⁴ PPAT must ask its clients to complete the payment of taxes required and arising from the transaction of transfer of land rights, in accordance with Government Regulation No. 35 of 2023 concerning General Provisions of Regional Taxes and Regional Retribution in article 60 paragraph 1, the Official certifier of title deeds or notary in accordance with his authority is obliged to request proof of BPHTB payment to the taxpayer, before signing the deed of transfer of Land and/or Building Rights. Government Regulation Number 35 of 2023 on General Provisions of Regional Taxes and Regional Retribution also regulates sanctions for PPATs who violate the provisions in article 60 paragraph 1, namely stated in paragraph 2 In the event that the land deed maker or notary violates the obligations as referred to in paragraph 1, an administrative sanction in the form of a fine of Rp10,000,000.00 (ten million rupiah) for each violation as referred to in paragraph 1 shall be imposed.

The problem of paying BPHTB money that is not done by the taxpayer himself causes the result to lead to losses received by the taxpayer himself, a PPAT is not entitled to receive BPHTB payments, but in practice it is often found that some PPATs cross the limits of their authority on the basis of a service to clients, which a PPAT should only make a deed of sale and purchase and not help taxpayers to pay a sum of BPHTB money, in accordance with Government Regulation Number 35 of 2023 concerning General Provisions of Regional Taxes and Regional Retribution contained in article 59 paragraph 1 states that tax collection is prohibited from being contracted. What is meant in the article

¹⁴ Hakim, R., Prasetyo, B. R., Rochman, M. H., & Indarsita, V. (2023). Juridical Analysis of Unlawful Acts in a

Land Grabbing Case Without Ownership Rights. *Jurnal Hukum Sehasen*, Vol. 9, No. 2, pp. 329.

Riyanti Ida Wahyuningsih et al, The Validity of a Deed of Sale and Purchase Made by a Official Certifier of Title Deeds Before the Land and Building Acquisition Duty (BPHTB) is Paid

in its explanation "prohibited from being outsourced" is that the entire process of tax collection activities which include activities of calculating the amount of tax payable, monitoring, depositing, and collecting taxes cannot be cooperated with third parties, but it is possible to cooperate with third parties in order to support tax collection activities, including sending letters to taxpayers or collecting data on tax objects and subjects. Continued with Government Regulation Number 35 of 2023 concerning General Provisions of Regional Taxes and Regional Retribution Article 60 paragraphs 1 and 2 states that the land deed maker or notary in accordance with his authority is obliged to ask for proof of BPHTB payment to the taxpayer, before signing the deed of transfer of Land and/or Building Rights; and report the making of a sale and purchase binding agreement and/or deed on land and/or Building to the Regional Head no later than the 10th (tenth) day of the following month. In the event that the land deed maker official or notary violates the obligations as referred to in paragraph (1), administrative sanctions shall be imposed in the form of a fine of Rp10,000,000.00 (ten million rupiah) for each violation as referred to in paragraph (1) letter a; and/or a fine of Rp 1,000,000.00 (one million rupiah) for each report.

PPAT is obliged to apply the principle of prudence in carrying out its position, namely by making the law a guide in carrying out its position. By applying the principle of prudence in the procedure of making and signing the deed of transfer of land and/or building rights, legal certainty is created for the parties so that it will provide legal protection, both to the parties in the deed, as well as other parties that may be related. PPAT can help provide a solution that is justified by law to people who need its services, as an official who certainly understands more about the latest rules, the role of PPAT in providing information and education in carrying out all legal actions in accordance with the correct rules is one form of responsibility as a partner of the local government in securing / overseeing local cash income through BPHTB payments.

CONCLUSION

The legal certainty of the sale and purchase deed that has not been paid BPHTB in terms of the tax system, the sale and purchase deed cannot be signed before payment of BPHTB, the sale and purchase deed is locked and cannot be signed due to non-payment of BPHTB so that if the tax is not paid the sale and purchase deed does not have legal certainty. In terms of the agreement made by the parties in carrying out a legal action relating to unpaid BPHTB, it is valid, considering that the main element of a sale and purchase agreement is the suitability of the goods and the price, the sale and purchase agreement has been born at the time of reaching an agreement on the goods and prices.

The legal effect on the deed of sale and purchase made before the BPHTB is paid is that the deed of sale and

purchase cannot be issued and used as the basis for registering changes in land registration data at the Land Office if the BPHTB has not been paid and consequently the agreement cannot be implemented.

PPAT's responsibility for BPHTB payments PPAT in terms of receiving a sum of money for BPHTB payments by taxpayers, has exceeded the limits of authority that should not be done by an official. The role of PPAT in carrying out its duties as an official with regard to BPHTB tax payments is only obliged to request proof of BPHTB payment to the taxpayer, before signing the deed of sale and purchase, if the PPAT exceeds the limits of its authority, there will be sanctions against all existing actions and violations.

REFERENCES

1. Marihot P. Siahaan, Utang Pajak Pemenuhan Kewajiban dan Penagihan Pajak Dengan Surat Paksa, (Jakarta : Raja Grafindo Persada,2004)
2. J. Andy Hartanto, Panduan Lengkap Hukum Praktis Kepemilikan Tanah, (Surabaya: LaksBang Justitia, 2015)
3. Putusan No 212/Pid.B/2021/PN.Bdg
4. Johnny Ibrahim, Teori&Metodologi Penelitian Hukum Normatif, (Malang : Bayumedia Publishing, 2008)
5. Urip Santoso, *Pendaftaran dan Peralihan Hak Atas Tanah* (Jakarta:Prenada Media Group,2019)
6. R.Subekti, *Aneka Perjanjian*, Bandung : Citra Aditya Bakti, 1995
7. Irawan Soerodjo, *Hukum Perjanjian dan Pertanahan* :Yogyakarta, Laksbang Pressindo, 2017,
8. Adrian Sutedi, *Sertifikat Hak Atas Tanah*, Jakarta: Sinar Grafika, 2011
9. Yulies Tiena Masriani, Pentingnya Kepemilikan Sertifikat Tanah Melalui Pendaftaran Tanah Sebagai Bukti Hak, *Jurnal USM Law Review* Vol 5, No 2, 2022
10. Husni thamrin dan M Khoidin, *HUKUM NOTARIAT dan PERTANAHAN*, Yogyakarta: Laksbang Justitia, 2021
11. Habib Adjie, *Sanksi Perdata dan Administratif terhadap Notaris Sebagai Pejabat Publik*, Surabaya: Rafika Aditama, 2008
12. Soemarso, *Perpajakan Pendekatan Komprehensif*, Jakarta: Salemba empat, 2007
13. Hakim, R., Prasetyo, B. R., Rochman, M. H., & Indarsita, V. (2023). Juridical Analysis of Unlawful Acts in a Land Grabbing Case Without Ownership Rights. *Jurnal Hukum Sehasen*, Vol. 9, No. 2.