

Tax Evasion of Buying and Selling Land by Notary

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Abstract

Tax evasion in land sale and purchase transactions by notaries is a significant legal problem, especially because of the strategic role of notaries in ensuring legal certainty. This study aims to analyze the application of criminal sanctions against notaries involved in tax evasion, particularly in the Denpasar District Court decision number 300/PID.B/2015 / PN.DPS. The method used in this study is normative juridical, with a case study approach to evaluate the relevant legal aspects and the implementation of criminal sanctions in this context. This writing includes a descriptive type of legal analysis with reference to related legislation, such as the Notary Office Act, the Criminal Code, and related documents and literature. The results showed that the notary has the authority to manage taxes such as Income Tax and Customs acquisition of land and building rights. However, this authority can be abused, as happened in the case of notaries with us initials. In such cases, judges pass a verdict under Article 372 of the Criminal Code, which is considered relevant for the criminal offense of embezzlement. This study recommends increased supervision, reform of tax policies related to notaries, as well as improving the integrity of the profession through strengthening the code of ethics. This effort is expected to increase public confidence in notaries and the legal system in Indonesia.

Keywords: Buying and Selling Land, Notary, Tax Evasion



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Introduction

Notary is a profession that has a strategic position in providing legal services to the community. As a public official, notaries are tasked with ensuring legal certainty in various transactions, including land purchase and sale transactions. One of the notary's obligations in the transaction is to ensure the payment of taxes in accordance with applicable legal provisions, such as Final Income Tax on the transfer of land and/or building rights and land and building acquisition duty. However, in practice, it is not uncommon to find cases where notaries commit deviations from their obligations, such as tax evasion in land sale and purchase transactions. This tax evasion can be done in various ways, such as engineering documents, lowering the value of transactions listed in the deed, or facilitating clients to avoid paying actual taxes. This kind of action not only violates the law, but also has the potential

to damage the image of the notary profession which should uphold integrity, honesty, and professionalism (Mufidah & Habibi, 2019).

The impact of tax evasion in land purchase transactions is very significant, both for the state and society. For the state, this action causes a reduction in income from the tax sector, which plays an important role in financing development. Based on the report of the Directorate General of taxes (DGT), the practice of tax evasion in the property sector, including land transactions, has resulted in potential state losses reaching billions of rupiah annually. Meanwhile, for the public, the actions of notaries involved in tax evasion can generate distrust of legal institutions and create legal uncertainty (Wijaya, 2023).

Legally, tax evasion is a criminal offense stipulated in Law Number 28 of 2007 concerning General Provisions and Tax Procedures (KUP). Article 39 of the KUP law expressly states that any person who deliberately does not report or reports incorrectly on tax obligations may be subject to criminal sanctions in the form of fines to prison sentences. Despite this, the implementation of criminal sanctions against notaries in cases of tax evasion is still a complex issue. This is related to the role of notaries, who often only act as intermediaries, giving rise to debates about the extent to which criminal liability can be imposed on notaries. On the other hand, the application of criminal sanctions against notaries involved in tax evasion must also take into account aspects of justice and the presumption of innocence. In-depth legal studies are needed to ensure that criminal sanctions imposed not only provide a deterrent effect, but also strengthen a fair and transparent legal system. In addition, consistent enforcement of the law on these cases is very important to maintain the integrity of the notary profession while increasing public confidence in the tax system (Arwi & Ispriyarso, 2023).

In recent decades, many unscrupulous notaries have become entangled in legal problems, either accidentally or with full awareness of their actions. One type of case that often occurs is abuse of trust related to the management of funds deposited by clients. A concrete example of this problem is the case of misuse of tax payment money that occurs in land purchase and sale transactions. In such transactions, the client, both the seller and the buyer, usually leaves the money to the notary to pay the taxes required by the state. The seller is subject to Income Tax, while the buyer is required to pay the acquisition of land and building rights duty. The task of the notary here is to manage the money and deposit it in the state treasury through the post office or perception bank. However, there are cases where this trust is misused, as happened to a notary with us initials who worked in Denpasar, Bali.

Based On the Decision of The District Court of Denpasar Number: 300/Pid.B/2015/PN.Dps dated August 4, 2015, unscrupulous us notaries proved legally and convincingly to have committed the crime of embezzlement. In its ruling, the judges stated that the US was guilty of not depositing money for the payment of land sales tax deposited by his client. Instead, the money is

used for personal interests or other purposes that are not in accordance with the mandate given by the client.

This case became one of the vivid examples where the abuse of authority by a notary not only violated the trust of the parties involved in the land sale and purchase transaction, but also harmed the state because taxes that should have gone to the state treasury were not paid. This shows that there is a gap in the supervision and enforcement of the law against the notary profession, which should be a party that upholds integrity and trust in carrying out their duties. The existence of elements such as the US has a negative impact on the image of the notary profession as a whole. Therefore, more assertive and systematic efforts are needed to ensure that notaries carry out their duties in accordance with the code of professional ethics and applicable legal regulations. On the other hand, this case is also a lesson for the public to be more careful and ensure that every transaction involving notaries is carried out transparently and according to legal procedures.

This paper aims to analyze how the application of criminal sanctions for notaries involved in the sale and purchase of land tax evasion. The discussion will cover legal aspects, challenges in law enforcement, as well as its relevance to the development of law in Indonesia. Hopefully, this study can provide constructive recommendations in an effort to improve the effectiveness of law enforcement and tax governance in Indonesia.

Methodology

The research method used in this study is the normative legal research method, which is research that focuses on the study of applicable legal norms. The approaches used in this study include Statute Approach to analyze the content and application of related laws and regulations and conceptual Approach to understand the legal concepts on which to base the analysis. Data were analyzed qualitatively by descriptive-analytical method. This study aims to identify, explain, and evaluate the applicability and implications of legal norms to the problems studied.

Results and Discussion

Notary Authority to Receive and Pay Land Purchase Tax in the Form of Income Tax and Customs Acquisition of Land and Building Rights to the State Treasury

The act of buying and selling according to Civil Law, sale and purchase is one type of agreement/engagement that is in Book III of the Civil Code on engagement. In the sale and purchase of land applies the provisions of Article 1457 which reads: "sale and purchase is an agreement by which one party binds itself to deliver a material and the other party pays the price that has been promised. Within the meaning of Article 1457 of the Civil Code, sale and purchase are included in the agreement. The condition for the validity of an agreement in Article 1320 of the Civil Code is the existence of an agreement that binds the parties, the proficiency in making an alliance, the existence of a

certain thing, and there is a lawful cause. If the terms of agreement and competence (subjective conditions) are not met, then an agreement can be canceled, that is, the agreement remains until the decision of the judge. Whereas if the conditions regarding a certain matter and a lawful cause (objective conditions) are not met, then a null and void agreement means that from the beginning it is considered that there is no agreement. Based on the Civil Code Article 1457, the sale and purchase adopted in Civil Law is only obligatoir meaning that the new sale and purchase agreement lays down mutual rights and obligations between the parties, in other words, property rights do not move through the sale and purchase stipulated in the Civil Law book, but new property rights move by transfer or assignment (I Komang Edy Susanto, Ida Ayu Putu Widia, 2020).

In the UUPA and customary law of buying and selling have the same meaning, based on the UUPA Article 5, the meaning of buying and selling land property rights according to the UUPA is nothing but the meaning of buying and selling according to customary law. According to customary law, the sale and purchase of land is a clear and cash transfer of land rights, which means that the transfer of Rights is clearly carried out in the presence of traditional heads whose role is to ensure the regularity and validity of the act of transfer of rights so that the act is known to the public. Cash means that the transfer of ownership and payment of winnings occurs at the same time. Therefore, cash may be a price paid in cash (cash is considered cash). In the event that the buyer does not pay the rest, the seller cannot sue on the basis of the sale and purchase of land, but on the basis of legal debt and receivables (Laia et al., 2023).

Requirements in the legal act of buying and selling land and buildings are divided into 2 (two), namely: 1) Material Requirements This material condition determines the validity of the sale and purchase, among others, as follows: a) The buyer has the right to purchase the land in question; b) The point is that the buyer as the assignee must be qualified to own the land he will buy. To determine whether or not the buyer has the right to obtain rights to the land he will buy depends on what rights exist on the land. Based on the basic agricultural law, if the buyer has a foreign National other than an Indonesian citizen, then only individual Indonesian citizens and legal entities designated as such by the government can claim the land can be owned. The sale to a legal entity whose citizenship or government does not exclude it makes the purchase invalid, since the law and the land belong to the state; c) The seller has the right to sell the land in question; d) Who has the right to sell the land, of course, the rightful holder of the land rights is called the owner. When the owner of a land plot is only one person then he has the right to sell the land himself. But if the owner of the land is two people, the one who has the right to sell the land is the two people together; e) Land rights in question are tradable and not in dispute; and f) Regarding the land rights that may be, the Constitution regulates the rights: property rights, the right to use, the right to use, and the right to use. If any of these material conditions are

not met, for example, the seller does not have property rights to the goods sold, or the buyer is not qualified to be the owner or owner of the property rights to the goods. The sale and purchase of land carried out by those who are not entitled is null and void, that is, from the beginning the law considers that there has never been a sale and purchase.

Formal requirements, after all the material requirements are met, then the sale and purchase in front of PPAT. In the implementation of buying and selling made by PPAT things that must be considered are: 1) Transfer of land and property rights to residential units through sales, exchanges, grants, income in a company, and other legitimate ways, except the transfer of rights through auctions can only be registered if proven by a deed made by PPAT authorized under the provisions of applicable laws and regulations. Because the UUPA is based on customary law (Article 5 of the UUPA) and customary law uses a concrete/ contact/ real/real system, sales and sales made without the presence of PPAT are still considered valid. 2) To ensure legal certainty in the transfer of land rights, PP No. 24 of 1997 as a regulation on the implementation of the UUPA stipulates that agreements governing the transfer of land rights must be made by and in the presence of PPAT certified documents. To draw up a deed of sale and purchase, the buyer must certify to the seller that he has paid the purchase price in full. In addition, the seller is obliged to pay the Income Tax fee and the buyer is obliged to pay the BPHTB paid in advance before the signing of the sales contract. This is stipulated in Article 91 paragraph (1) of Law Number 28 of 2009 which reads, "the property deed officer/notary can take the land and/or you can sign the title deed to the building (Huda, 2022).

Notary authority in the field of land. The position of a Notary as a public official is something that is trusted by the community. As a rule, notaries are public officials who can provide reliable advice. Everything that is written and established is true, and the notary is the creator of the ruling document in the legal process. Notary is an official authorized to make an authentic deed. This authority is granted by the Civil Code contained in Article 1868. As for strengthening the provisions contained in Article 1868 of the Civil Code, the promulgated UUJN as one of the legal products governing the notary. One of the things regulated in the UUJN is the authority of Notaries. Article 15 Paragraph (1) UUJN says that the Notary is authorized to make an authentic deed regarding all deeds, agreements, and provisions required by laws and/or required by the interested party to be stated in the authentic deed, guarantee the certainty of the date of making the deed, save the deed, provide grosses, copy and quotation of the deed, all of it as long as the making of the deeds is not also assigned or excluded to other officials or other persons stipulated by law (Aisyah et al., 2023).

One of the powers regulated by the law is the ability to make deeds related to land, as stipulated in Article 15 Paragraph (2) letter f UUJN. By law, this authority has been granted, but in practice, notaries are not yet fully able to carry out the creation of such acts. Currently, the authority of notaries in

drafting land-related deeds is still limited. The restriction is due to the presence of another official, the land deed making officer, who has the authority to make deeds in the land sector as stipulated in government regulation number 37 of 1998. The land deed making officer authority is also a form of attribution because the authority is given directly through legislation (Jamilah, 2019).

The authority of a notary has been limited in Article 15 Paragraph (1) UUN. This restriction applies if there are other officials authorized to draw up an authentic deed under different laws and regulations. Therefore, if there is an official who is legally authorized to make an authentic deed as mentioned in the law, the notary must hand over the authority to make the deed to the appointed official. However, as long as the making of an authentic deed is not regulated by other laws, the notary still has the authority to make the deed. The deed of sale and purchase of land rights made in the presence of the land deed officer (PPAT) is one of the main conditions for registering the transfer of land rights at the Land Office. This process has an impact on the creation of legal certainty regarding the status of the land. The transfer of rights to land and/or buildings can be carried out through various means, such as sale, exchange, transfer of Rights Agreement, release of rights, assignment of rights, auction, grant, or other agreed methods. The income generated from the transaction becomes the object of Income Tax and is taxed in accordance with applicable regulations. In addition to Income Tax from land sale and purchase transactions, there is also a duty tax on the acquisition of land and building rights that must be paid (Dumanauw et al., 2023).

The implementation of the acquisition of land and building rights involves various regulations that are interconnected and involve many parties, including Land Offices, notaries, land deed officials, banks, local governments, courts, and other relevant institutions. As a public official, notaries who also act as the land deed making officer cannot be separated from the tax aspect in carrying out their duties in drafting land deeds. One of the land deed making officer's responsibilities in making the deed is to ensure that the taxpayer has paid off the acquisition of land and building rights owed, as evidenced by showing a local tax payment letter for the acquisition of land and building rights duty.

Basically, the cost of Income Tax and the acquisition of land and building rights paid directly by the face or notary client. However, in practice, clients often trust the notary to take care of the payment of Income Tax and the acquisition of land and building rights. In this case, the legislation does not expressly authorize the Notary as the land deed making officer to pay land purchase and sale tax on behalf of the client. However, if the client or the facing authorizes the notary to represent them in making the payment of the land sale and purchase tax to the state treasury, the notary is authorized to carry out the payment (Hidayat, 2019).

Application of Criminal Sanctions Against Notaries Involved in Tax Evasion on Land Sale and Purchase Transactions in Decision Number 300/PID.B/2015/PN.DPS

In the Criminal Code, embezzlement is in Book II Chapter XXIV articles 372 to 376. One of these articles, namely Article 372 of the criminal code, is a crime of embezzlement in the form of a principal whose Formula reads:

“Anyone who deliberately unlawfully controls an object that should or partly belongs to another person who is not guilty of embezzlement, shall be punished with imprisonment for a term of 4 (four) years or with a fine as high as 900 (nine hundred) rupiah.”

Thus, embezzlement in the criminal act can be interpreted as an act that deviates/deviates, misuses the trust of others and the beginning of the goods in the hands is not an act against the law, not from the results of a crime. Related to the crime of embezzlement committed by a notary, then first in this case discusses the related aspects of Notary liability due to errors made in performing official duties and errors that cause harm to others who request services. Therefore, the unlawful act of the notary can be held accountable from the point of view of civil/civil law, administration and from the point of view of criminal law even though in law No. 4 of 2012 on the position of Notary does not regulate criminal sanctions (Nisya', 2019).

In Article 63 paragraph (2) of the Criminal Code states that: “if an act is included in a general criminal rule, it is also regulated in a Special Criminal rule, then only the special one is applied”. From this article, an interpretation can be made if there is an act that can be punished according to a special criminal provision in addition to a general criminal, then the special criminal provision is what is used. Conversely, if the special criminal provisions do not regulate, then the offense will be subject to a general criminal code. Therefore, in the event of a violation of a criminal offense committed by a notary may be subject to criminal sanctions contained in the criminal code even though UUJN does not regulate criminal sanctions.

Notaries in carrying out their duties are guided by the UUJN, but that does not mean notaries are clean from the law, cannot be punished, or are immune to the law. Notary can be punished criminally if it can be proved in court that the notary intentionally or unintentionally together with the parties make a deed with the intention and purpose to benefit certain parties or harm others. If the act is proven and meets the elements of the criminal pasal then the notary shall be punished. As in the case of a criminal verdict in Denpasar involving one of the notary officials (Limbong et al., 2022).

This tax criminal case began in 2011 in Denpasar. A PPAT Notary with the initials AS has received clients who intend to buy a plot of land to build a branch office of PT. Pawnshop in Sukawati Gianyar area. The landowner we call NL intends to sell 700 m2 of land according to SHM number 256 / Singapadu village on behalf of WN. On April 5, 2011 PT. Pawnshop represented (witness) Sundoyo pay Rp. 25.000.000, - as a sign so. Then on June 28, 2011 made deed of sale and Purchase Agreement No. 14, it was

agreed that the seller on behalf of NL will sell his land susai SHM Certificate No. 256/Singapadu village to PT. Pawnshop represented Dijono as regional leader at that time for Rp. 2.750.000.000,-. In the deed it is stated that the money already received by the seller is Rp. 325.000.000, - at the signing of the deed. Phase 2 will be repaid after the decline of rights and property rights into building rights. But on August 12, 2011 PT. The Pawnshop added another payment outside the agreement of Rp. 425.000.000, - to the seller. It turned out that there were problems related to the land area, so the seller requested that changes be made to the land area, from 700 m² to 600 m². It was approved by PT. Pawnshop so that an addendum was made on the deed of agreement / bond of sale and purchase number 14.

On June 28, 2011 with the number 16 where the addendum agreed area to be sold 600 m² at a price of Rp. 2.350.000.000,00. After the inheritance, SHGB number 13 was issued on behalf of NL and WN. Because it is completed the decline of rights, then PT. Pawnshop pay off the remaining payment of Rp. 1.600.000.000, - in accordance with the deed of agreement/bond of sale and purchase No. 11 dated January 3, 2012 and made power of attorney No. 12 dated January 3, 2012.

Description the cost behind the name in accordance with letter number 371 / PPAT/IXI2011 dated November 8, 2011 includes: a) SSB/BPHTB / purchase tax fee of Rp. 114.500.000,00; b) certificate processing fee and reverse name fee of Rp. 6.500.000,00; c) notary fee of Rp. 23.500.000,00; d) notaries deed fee (3 deed) of Rp. 3.500.000,00; e) service fee, blank and stamp duty of Rp. 1.000.000,00.

Notary PPAT as determine the cost of SSB/BPHTB / purchase tax in accordance with applicable regulations in the district. Gianyar is the purchase price of (Rp.2.350.000.000,00 - Rp. 60.000.000, -) X 5% = Rp. 114.500.000, - which will then be deposited into the state Treasury which previously had to get approval and Local Government of Gianyar through BPD Bali. But the US has not paid the BPHTB to the state treasury because it is used for personal interests.

With the description of the case above, the public prosecutor gave two charges using Article 372 of the Criminal Code and Article 378 of the criminal code, but the panel of judges only used Article 372 of the Criminal Code as a legal consideration. Article 378 of the Criminal Code with a description of the act in the second indictment Article 372 of the Criminal Code should be avoided. Because Article 378 of the Criminal Code and Article 372 of the criminal code is 2 (two) things different article elements. Therefore, the description of his actions must also be different. Embezzlement is almost the same crime as theft in Article 362 of the Criminal Code. The only difference is that in the theft of goods taken to be owned it is not yet in the hands of the perpetrator, while in the crime of embezzlement, the goods owned are already in the hands of the perpetrator not because of the crime or have been entrusted to him. Whereas in Article 378 of the criminal code on fraud the thing that becomes special or differentiates from other articles in the

criminal code is the element of “trickery or a series of lies” and the element of “moving others to hand over something to him”.

Based on this, the judge has been right in making a decision based on a criminal offense under Article 372 of the Criminal Code, where in embezzlement, the possession of an object by a person is carried out by means of a legitimate act (not because of a crime). The act of possession of the goods is carried out with the awareness that the giver and the recipient of the goods are both aware of their actions, but in the end the possession of the object by the recipient of the goods is seen as an unwanted act (against the law), so that the juridical application of the indictment from the public prosecutor in Article 372 of the criminal code is considered appropriate.

Conclusion

The strategic role of notaries in land sale and purchase transactions, especially related to tax payment obligations such as Income Tax and land and building Rights Acquisition duty. Although notaries have the authority to administer and deposit such taxes, there are many cases of tax evasion involving notaries. This action not only violates the law, but also damages the reputation of the notary profession as well as reduces state revenues from the tax sector. Tax evasion is often done through document engineering or impairment of transactions in deeds, which has the potential to create public distrust of legal institutions. Decision number 300/PID.B/2015/PN.DPS reviews the crime of embezzlement committed by a notary, USA. In this case, the US notary was involved in a land sale and purchase transaction involving PT. Pawnshops and landowners, NL. Although notaries are guided by law No. 4 of 2014 concerning the position of a notary, this does not preclude the possibility of criminal sanctions under the Criminal Code if proven to have committed a mistake to the detriment of the other party. In the legal process, the panel of judges decided to use Article 372 of the Criminal Code as a legal basis. Thus, the decision of the judge is considered appropriate because it meets the elements established in the article and reflects the violations of the law committed by the notary in the performance of his duties.

Suggest

Based on the above discussion, we suggest that:

1. Increased oversight: increased oversight of notary practices is needed to prevent tax evasion. This can be done through regular audits and training on tax compliance.
2. Policy reform: the government needs to carry out policy reforms to clarify the legal responsibilities of notaries in tax transactions, so as to reduce existing legal gaps.
3. Improvement of professional integrity: efforts are needed to improve the integrity of the notary profession through a stricter code of ethics and sanctions for ethical violations.

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