



Disconsistency between the real transaction price and the price as stated in the transfer of land purchase rights by PPAT (study in Magelang district)

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Abstract

The purpose of this study is to analyze the factors causing the difference in the price of sale and purchase transactions held in the land sale and purchase agreement deed by PPAT. To analyze the legal consequences for the parties in the land, sale and purchase agreement deed are made if the parties do not tell the actual price. This research is an empirical legal research. The results showed that the factors that caused the sale and purchase price of hold in the transfer deed by PPAT were: (1) The development of the selling price was increasing day by day, while the NJOP determination was based on the average price in a certain area and at a certain time. (2) PPh and BHPTB will directly reduce the seller's income, and increase the buyer's cost, the amount of which is calculated based on the selling value, so that sellers and buyers try to keep the transaction price to a minimum. The difference between the real price and the price stated in the deed of transfer of land rights made by PPAT is a common thing in terms of sale and purchase of land, and is not a violation for PPAT as long as the price agreement is an agreement that is not regulated by PPAT, and the price difference is does not hinder the process of transferring land rights at the ATR office. The legal consequence for PPAT if the PPAT regulates the parties to declare that the price is not true in the making of the deed of transfer of land rights is that PPAT can be penalized in the form of dishonorable dismissal for committing irregularities. Notaries can also be given administrative sanctions for their mistakes related to the deed they make in the form of a verbal warning to the notary/ PPAT and a warning can also be made in writing, and the notary/ PPAT can be temporarily suspended for 1 (one) to 6 (six) months, and the most serious is notary/ The PPAT can be disrespectfully discharged from their position.

Keywords: real price, transaction price, transfer deed

Introduction

In order to guarantee legal certainty and legal guarantees for subjects who own land, land registration is carried out as a form of legal land control (juridical control) as regulated in Article 19 paragraph (1) of Law Number 5 of 1960 Concerning Basic Regulations on Agrarian considering that to ensure legal certainty by the government, land registration is held throughout the territory of the Republic of Indonesia according to the provisions regulated by the government. The legal implications of juridical control over land through land registration will also have implications for the transfer of land which must also be carried out juridical. Regarding the juridical land tenure rights, each right holder can transfer the rights they have to other legal subjects in accordance with the provisions of existing laws and regulations.

Correct transfer of land rights must be in accordance with Government Regulation Number 24 of 1997 and Government Regulation Number 37 of 1998 in the form of making land deeds made by PPAT will later be used as a condition for registering the transfer of land rights to the district/ city land office where the land is located. The term PPAT is clearly and expressly found in Law Number 4 of 1996 concerning Mortgage Rights to Land and Objects Related to Land (hereinafter referred to as the UU HT) in Article 1 point 4, namely "Land Deed Making Official, hereinafter referred to as PPAT, is a public official who is given the authority to make deeds of transfer of land rights, deeds of assignment of land rights, and deeds of authorization to impose Mortgage Rights according to the

prevailing laws and regulations". Whereas in the Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration (hereinafter referred to as PP Land Registration) Article 1 number 24 states "PPAT is defined as a general official who is authorized to make certain land deeds".

PPAT is given the authority to make authentic deeds related to the transfer of rights called deed of sale and purchase (Ronald Ravianto dan Amin Purnawan, 2017) ^[10]. Deed of sale and purchase (hereinafter refer to as AJB) is a deed which proves that there has been a transfer of rights from the seller to the buyer. Fundamentally, the sale and purchase of land and buildings is real and cash, where both parties agree, and the agreement is spelled out in an authentic deed made by PPAT, and the fee has been paid. If the transaction fee for selling the land has not been paid, the AJB cannot be made. Thus, the PPAT obligation in making the deed is to first ensure that the Land and Building Title Acquisition Fee (BPHTB) has been paid by showing proof of BPHTB deposit (Saktisila Widjono, W, 2013) ^[11].

In a land sale and purchase transaction, both the seller and the buyer are subject to tax. In the transaction, the seller is subject to income tax (PPh). The legal basis for the imposition of Income Tax for land sellers is Article 1 Paragraph (1) and Article 2 Paragraph (1) Government Regulation Number 34 of 2016 concerning Income Tax on Income from the Transfer of Rights to Land and/ or Buildings, and the Sale and Purchase Agreement of Land and/ or Buildings and Amendments thereof, Article 1 Paragraph (1) On income received or obtained by an

individual or entity from: (a) Transfer of rights to land and/ or buildings; or (b) A sale and purchase agreement on land and/ or buildings and their amendments. The amount of PPh is regulated in Article 2 paragraph (1) The amount of Income Tax from the transfer of rights to land and/ or buildings as referred to in Article 1 paragraph (1) letter a is: (a). 2.5% (two-point five percent) of the gross value of the transfer of rights to land and / or buildings other than the transfer of rights to land and/ or buildings in the form of Rumah Susun or Rumah Susun Sederhana by taxpayers whose main business is to transfer rights to land and/ or buildings. The process of transferring rights to land and/ or buildings can only be carried out if the taxpayer has submitted proof of payment of tax payments. This is confirmed in Article 91 paragraph (1) of Law Number 28 of 2009 concerning Regional Taxes and Regional Levies which states: "Land Deed/ Notary Officials can only sign deeds of transfer of Rights to Land and/ or Buildings after the Taxpayer submits evidence payment of taxes".

Based on Law Number 28 of 2009 concerning Regional Taxes and Regional Retributions, buyers are subject to Fees for Acquisition of Land and Building Rights (BPHTB), namely taxes imposed on the acquisition of rights to land and/ or buildings. This is based on Article 85 paragraph (1) and paragraph (2) letter (a) number 1) of Law Number 28 of 2009 which stipulates that BPHTB Tax Objects are the acquisition of rights to land and / or buildings. One of the obtaining rights to land and/ or building includes the transfer of rights due to sale and purchase. As the basis for the BPHTB rate is the Tax Object Acquisition Value (NPOP), which is set at the highest to be 5% (five percent) (Article 88 paragraph (2) of Law Number 28 Year 2009). The NJOP determination itself is based on the property appraisal carried out by the local government, in this case the Regional Financial and Asset Management Agency (BPKAD) with direct community assistance.

The BPHTB tax requires that the price of the sale and purchase transaction reported is close to the fair market value of the property. This is sometimes difficult to enforce because the amount of the transaction price will affect the costs associated with the transaction. Therefore, the seller and the buyer choose the tendency not to include the actual transaction price on the sale and purchase deed made with the intention of reducing the costs that must be borne by the seller and the buyer (Marihot P.Siahaan, 2005) ^[9]. The statements of the parties who do not provide information in accordance with the actual situation regulated in Article 242 paragraph (1) of the Criminal Code (KUHP), "Whoever in a situation where the law determines that he should give testimony on oath or take legal consequences on such information, deliberately giving false testimony on oath, either orally or in writing, personally or by a proxy specifically appointed to that is, punishable by a maximum imprisonment of seven years".

Based on Magelang City Regional Regulation Number 9 of 2010 concerning Fees for Acquisition of Land and Building Rights, Article 6 BPHTB rates are set at 5% (five percent). Article 7 paragraph (1) The principal amount of BPHTB owed is calculated by multiplying the rate as referred to in Article 6 with the basis for the imposition of BPHTB as referred to in Article 5 paragraph (1) after being deducted by the Acquired Value of Non-Taxable Tax Objects as referred to in Article 5 paragraph (7) or paragraph (8). Magelang City Regional Regulation Number 9 of 2010

concerning Fees for Acquisition of Land and Building Rights Article 6, explicitly regulates the amount of BPHTB. However, in fact, PPAT openly recommends reducing the value of land transactions to the public to a minimum, so that tax costs are not large and this is a special attraction for PPAT in attracting clients. For members of the community, this may occur due to ignorance of information regarding government regulations, or due to other factors. PPAT must have known these provisions, but still committed violations. This is a reflection of the moral and ethical behavior of the PPAT itself (Harnita, Muazzin, Zahratul Idami: 2019) ^[7].

Based on Law Number 5 of 1960 concerning Basic Agrarian Law and its implementing regulations PP Number 24 of 1997 concerning Land Registration, any transfer of land rights can be registered if it can be proven by a deed made by a Notary and/ or PPAT. Notary as PPAT has the authority to provide legal education on the consequences of the deed he makes. However, if it turns out that the price stated in the deed of sale and purchase is not the actual price, the notary as PPAT cannot be blamed, because the notary made the deed out of the willingness of the parties (Tambunan, 2019) ^[13].

The phenomenon of the mismatch between the real price and the agreement price stated by the seller and the buyer before the notary public needs to be analyzed the factors causing it, why there is a mismatch between the real price and the acknowledgment price of the seller and the buyer before the PPAT, and what is the legal consequence for the notary in the sale agreement deed buy land he created if the parties did not say the true price in depth in a study entitled "*KETIDAK SESUAIAN ANTARA HARGA TRANSAKSI RIIL DENGAN HARGA YANG TERCANTUM DI DALAM AKTA PERALIHAN JUAL BELI TANAH OLEH PPAT (STUDI DI KABUPATEN MAGELANG)*".

Research Question

Based on the description of the background above, in order for this research to be more focused, the problem of this research needs to be formulated as follows:

1. Why is there often a mismatch between the price of the land sale and purchase transaction in the land sale and purchase transfer deed by PPAT with the actual price?
2. What will be the legal consequences for PPAT and the parties in the land sale and purchase agreement if the parties do not mention the actual price?

Research Objectives

Based on the problems that have been formulated above, the objectives to be achieved in this study are as follows:

1. To analyze the factors that cause differences in the price of land sale and purchase transactions in the land sale and purchase agreement by PPAT.
2. To analyze the legal consequences for the parties in the land sale and purchase agreement deed made if the parties do not tell the true price.

Literature Review

Legal Effectiveness

An ineffective legal system will certainly hinder the realization of the objectives to be achieved. The legal system can be said to be effective if there are behaviors humans in society in accordance with what has been determined in the rules of law in force. In relation to legal effectiveness, the requirements of the law as a system of

norms need to be considered 5 (five) requirements that must be met in order to make the legal system effective, namely (Esmih, 2012):

1. easy or not the meaning of the rule of law to be understood and understood;
2. whether there are circles in society who know the contents of the legal rules concerned;
3. whether or not it is efficient and effective in mobilizing legal rules;
4. there is a dispute resolution mechanism that is not only easily accessible and accessible to every member of the community, but also has to be quite effective in resolving disputes;
5. There is an assumption and recognition that is evenly distributed among the members of the community that these legal rules and institutions are indeed capable of being effective.

Lawrence Meir Friedman's Legal System Theory

Lawrence Meir Friedman said that the success or failure of law enforcement depends on: Legal Substance, Legal Structure/ Legal Institutions and Legal Culture. In detail, it can be explained as follows (Slamet, 2012) ^[12]:

1. Substance of Law: In Lawrence Meir Friedman's theory this is called the Substantial system which determines whether or not the law can be implemented. Substance also means products produced by people who are in the legal system which includes the decisions they issue, the new rules they draft. The substance also includes living law, not just rules in law books. As a country that still adheres to the Civil Law System or the Continental European system (although part of the laws and regulations have also adopted the Common Law System or Anglo Saxon), it is said that law is written regulations while unwritten regulations are not declared law. This system affects the legal system in Indonesia. One of the effects is the principle of legality in the Criminal Code. Article 1 of the Criminal Code stipulates that "no criminal act can be punished if there are no rules governing it". So that whether or not an act is subject to legal sanctions if the act has been regulated in statutory regulations;
2. Legal Structure/ Legal Institution: In Lawrence Meir Friedman's theory this is referred to as a structural system that determines whether or not the law is properly implemented. The legal structure based on Law Number 8 of 1981 concerning Criminal Procedure Law includes: starting from the Police, Attorney General's Office, Courts and Criminal Implementing Bodies. The authority of law enforcement agencies is guaranteed by law. So that in carrying out their duties and responsibilities apart from the influence of government power and other influences. There is an adage that states "*fiat justitia et pereat mundus*" (although the world is collapsing the law must be enforced). The law cannot be enforced or enforced if there are no credible, competent and independent law enforcement officers. A statutory regulation if it is not supported by good law enforcement officials, then justice is only wishful thinking. The weak mentality of law enforcement officers has resulted in law enforcement not working properly. Many factors influence the weak mentality of law enforcement officers, including weak understanding of religion,

economy, non-transparent recruitment processes and so on. So, it can be emphasized that law enforcement factors play an important role in finalizing the law. If the regulations are good, but the quality of law enforcement is low, there will be problems. Likewise, if the regulations are bad while the quality of law enforcement is good, the possibility of problems arising is still open;

3. Legal culture: according to Lawrence M. Friedman is human attitudes towards law and the legal system - beliefs, values, thoughts, and expectations. Legal culture is an atmosphere of social thought and social forces that determine how law is used, avoided, or abused. Legal culture is closely related to the legal awareness of society. The higher the community's legal awareness, a good legal culture will be created and can change the public's mindset about law so far. In simple terms, the level of public compliance with the law is one indicator of the functioning of the law (Lawrence, 2009) ^[8].

Research Methodology

This research is descriptive analytical, which is research based on one or two interrelated variables based on general theories or concepts that are applied to explain a set of data with other data sets. This research elaborates and describes the data obtained normatively and then described to conduct a systematic review of the data (Bambang, 2010). This research is an empirical legal research.

Sources of data used in this study are primary data and secondary data. Primary data is data obtained directly from the first source (Amirudin, 2012). The primary data used in this research is in the form of direct interviews with: Notary/PPAT, Seller, Buyer, Magelang Regency Agrarian and Spatial Planning Office Staff, Magelang KPP Pratama Officer, Magelang City Indonesian Notary Association Management, and community members who have bought and sold land.

Secondary data is data that includes official documents, books, research results in the form of reports and so on (Ibid Pg. 20). Primary Legal Materials include:

1. Law Number 5 of 1960 concerning Basic Agrarian Law
2. Government Regulation Number 24 of 1997 concerning Land Registration
3. Law Number 21 of 1997 concerning Fees for Acquisition of Rights to Land and Buildings.
4. Law Number 36 of 2008 concerning Fourth Amendment to Law Number 7 Year 1983 concerning Income Tax
5. Law Number 28 of 2009 concerning Regional Taxes and Regional Levies
6. Regional Regulation of the City of Magelang No. 9/2010 concerning Fees for Acquisition of Land and Building Rights
7. Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public
8. Government Regulation Number 55 of 2016 concerning General Provisions and Procedures for Collecting Regional Taxes
9. Government Regulation Number 55 of 2016 concerning General Provisions and Procedures for Collecting Regional Taxes
10. Civil Code

Secondary legal materials include: research results relevant to this research; text books, legal reading books, legal journals, other related legal document materials, both printed and electronic. Tertiary Law Materials include: Legal Dictionary, Language Dictionary, and Encyclopedia.

The data collection technique is carried out through several stages including interviews. The interviews are conducted to obtain accurate information from competent sources. Documentation studies are carried out to obtain and understand concepts and theories as well as provisions regarding legal protection for Notaries/ PPATs, sellers and buyers in land sale and purchase transactions in terms of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public.

Analytical techniques using qualitative methods depart from assumptions about reality or social phenomena that are unique and complex. There is a certain regularity or pattern. The data analysis prioritizes sentences over numbers and prioritizes the depth of data rather than the amount of data. Qualitative analysis can only be carried out if the researcher is able to understand the norms, rules, principles, and legal systems related to laws and regulations as the basis of the object under study and ignores the impulses of actual legal adage (Tampil Anshari Siregar, 2007) ^[14].

Causes of Incorection Land Transaction Price in Transaction Assets of Transaction of Land by PPAT at Real Price

Transfer of rights over land through sale and purchase is basically a transfer right that occurs due to a legal act of transferring rights, where the transfer of rights is carried out on purpose so that the right is released from the original holder and becomes the right of another party (Effendi, 2001). Buying and selling shows that a legal buying and selling event occurred. The definition of buying and selling land is an agreement that contains the party who owns the land (the seller), agrees and binds himself to hand over his rights to the land to another party (the buyer). The buyer agrees to bind himself to pay the agreed price. Thus, in making a deed of transfer of sale and purchase rights so that the deed is declared valid, PPAT is guided by the law of the agreement as stipulated in Article 1313 of the Civil Code which states that an agreement is an act whereby one or more people bind themselves to one other person. This article explains in simple terms the meaning of an agreement which describes the existence of two parties that are mutually binding.

The deed of transfer of land rights is made by the seller and the buyer who are mutually binding, thus based on this article the deed of transfer of land rights does not violate Article 1313 of the Civil Code, as long as both parties have agreed, regardless of whether the price of the agreement is in accordance with the reality or not. Regarding buying and selling, the arrangement can be seen in Book III chapter V of the Civil Code. In Article 1457 of the Civil Code which states that buying and selling is an agreement, whereby one party binds himself to deliver an object, and the other party to pay the price that has been promised (Gunawan Widjaja dan Kartini Widjaja, 2007).

In connection with differences in real prices and prices in deeds of transfer of land rights, it is a common thing. This is due to technological developments that actually provide the widest possible information, so that in the practice of buying

and selling land, the problem of deliberate price differences by sellers and buyers can be easily carried out. However, through Magelang Regency Regulation Number 35 of 2017, concerning Guidelines for Collecting Fees for Acquisition of Land and Building Rights, it has regulated the BPHTB, so that although the price of the agreement can be regulated by both the seller and the buyer, the arrangement cannot be arbitrary, because the price the agreement stipulated in the deed of transfer of rights must be based on a fair price based on verification from the regional government.

According to the Basic Agrarian Law, registration is a strong proof of the validity of buying and selling carried out, especially in relation to third parties with good faith. Registration administration is open in nature so that everyone is assumed to know about it. Article 19 of the Basic Agrarian Law regulates land registration. As an implementation of Article 19 of the Basic Agrarian Law regarding land registration, Government Regulation Number 24 of 1997 concerning Land Registration was issued.

To be registered means to be recorded and issued a proof of their rights. The proof of right is called a land title certificate which consists of a copy of the land book and a measuring document bound together in one cover. The certificate is a strong means of proof, meaning that the statements contained therein have legal force and must be accepted as true information, as long as there is no other means of proof proving otherwise. This is in accordance with the provisions of the certificate as evidence as explained in Article 32 Paragraph (1) of Government Regulation Number 24 of 1997 which states that a certificate is a certificate of proof of right which is valid as a strong means of proof, in the sense that as long as it cannot be proven otherwise, the data physical and juridical data contained therein must be accepted as correct data, as long as the physical data and juridical data are in accordance with the data contained in the relevant measuring letter and land book.

Based on the description above, it shows that the difference between the real price and the price stated in the deed of transfer of land rights made by PPAT is a common thing in the case of land sale and purchase, and is not a violation for PPAT as long as the price agreement is an agreement that is not regulated by PPAT, and the price difference does not hinder the process of transferring land rights at the ATR office as long as the deed of transferring land rights has been determined by PPAT.

Legal Consequences Due to PPAT When the Parties do not State Actual Prices

The deed of transfer of land rights is an authentic deed made by PPAT, therefore the deed must be made in accordance with the form and procedure determined by law based on "Article 3 of Government Regulation No. 37 of 1998 in conjunction with the Regulation of the Head of BPN RI No. 1 of 2006 concerning Provisions for the Implementation of Government Regulation Number 37 of 1998 concerning the Position Regulation of Land Deed Making Officials. AJB is evidence of a sale and purchase from both parties whose legal action is in cash, as well as proof of the transfer of land rights from the original owner to the new owner registered at the Land Agency Office to obtain a certificate that has legal force (Ibid Pg. 512).

If the PPAT in making the deed of transfer of land rights is deemed to be detrimental to the state by being caught

manipulating the transaction price in which the BPHTB that must be deposited to the state is reduced as a result of the deed produced by the PPAT, then this will cause problems because PPAT is deemed to have committed irregularities from procedures both materially and formally (Adrin, 2010). As a result of these actions, PPAT can be sanctioned in the form of dishonorable dismissal for committing irregularities. The deed of transfer of rights also does not meet the formal requirements of the provisions of a deed which results in the power of proof of the deed to become a deed under hand, this is as stated in "Article 28 paragraph (2) of the Regulation of the Head of BPN RI No. 1 of 2006 concerning the Position Regulations for Making Land Deeds". The notary can also be subject to administrative sanctions for his mistakes related to the deed he made in the form of a verbal warning to the notary/ PPAT and a warning can also be made in writing, and the notary/ PPAT can be temporarily suspended for 1 (one) to 6 (six) months, and the heaviest notary/ PPAT can be discharged from their position.

Based on the description above, it can be argued that the legal consequence for PPAT if PPAT regulates the parties to declare the price that is not true in the making of the deed of transfer of land rights is that PPAT can be penalized in the form of dishonorable dismissal for committing irregularities. Notaries can also be given administrative sanctions for their mistakes related to the deed they make in the form of a verbal warning to the notary/ PPAT and a warning can also be made in writing, and the notary/ PPAT can be temporarily suspended for 1 (one) to 6 (six) months, and the most serious is notary/ the PPAT can be disrespectfully discharged from their position.

Conclusion

The factors that cause the sale and purchase price of hold in the transitional deed by PPAT are: (1) The development of the selling price is increasing day by day, while the NJOP determination is based on the average price in a certain area and at a certain time. (2) PPh and BPHTB will directly reduce the seller's income, and increase the cost of the buyer, the amount of which is calculated based on the selling value, so that the seller and the buyer try to keep the transaction price to a minimum. The difference between the real price and the price stated in the deed of transfer of land rights made by PPAT is a common thing in terms of sale and purchase of land, and is not a violation for PPAT as long as the price agreement is an agreement that is not regulated by PPAT, and the price difference is does not hinder the process of transferring land rights at the ATR office.

The legal consequence for PPAT, if the PPAT regulates the parties to declare that the price is not true in the making of the deed of transfer of land rights is that PPAT can be punished in the form of dishonorable dismissal for having committed irregularities. Notaries can also be given administrative sanctions for their mistakes related to the deed they make in the form of a verbal warning to the notary/ PPAT and a warning can also be made in writing, and the notary/ PPAT can be temporarily suspended for 1 (one) to 6 (six) months, and the most serious is notary/ The PPAT can be disrespectfully discharged from their position. The research suggests to the Directorate General of Taxes that the determination of PPh and BPHTB should not be based on the NJOP, but on the real price of the tax object.

Suggestion to PPAT is that each PPAT must be responsible for the sale and purchase price it makes on the sale and purchase deed so that the formal requirements of an authentic deed are fulfilled. In carrying out its position, the PPAT must pay attention to and comply with the applicable rules so as to avoid actions that may result in sanctions against them which the PPAT Supervisory Council may impose Suggestions for the community, it is better that in determining the agreement for the sale and purchase price of land, it is in accordance with the real price.

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