



The application of economic value of land deed official fees in the Indonesian land law system

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Abstract

Land Deed Official (PPAT) is a public official who is authorised to make authentic deeds regarding certain legal acts concerning land rights or property rights over apartment units. Based on this, the provision of PPAT Service Money as stipulated in the provisions of Article 1 paragraph (3) of the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 33 of 2021 concerning Service Money for Land Deed Officials. The article states that 'Service Fee as referred to in paragraph (1) is based on economic value'. The regulation regarding the PPAT Service Fee does not mention the exact amount or proportion, but is only determined from the transaction price of each deed with details of the upper limit preceded by the words 'may not exceed' 1% (one per cent) of the transaction price stated in the deed and a maximum of 0.25% of the transaction price stated in the deed. This certainly raises issues related to PPAT Services Money so that it allows for differences in rates between PPATs with one another.

Keywords: Service money, economic value, land deed officials

Introduction

Bernhard (2012) ^[5] Soil is the most important part of the earth because it is very useful in human life. This is because land is widely used as a place for all activities in the form of a source of life for humans, even this land is declared as an element of territory in state sovereignty. Therefore, land for the Indonesian people has an eternal relationship that is religiously magical, which must be maintained, managed and utilised properly. Therefore, it is necessary to handle and regulate land.

The regulation of land is made to avoid problems or conflicts related to the incompatibility of land use with the conditions and nature of its rights so as not to achieve the main goals, prosperity, justice and happiness for the community (Muchsin, Imam and Soimin, 2014) ^[21]. Christiana (2020) For this reason, the state has an obligation to guarantee legal certainty for land ownership rights for the community through land registration. The implementation of land registration in all regions of the Republic of Indonesia is carried out by the government. Urip (2010) ^[24] The government intended to organise land registration is the National Land Agency (BPN) whose duties and implementation are carried out by the Head of the Regency / City Land Office assisted by the Land Deed Official (PPAT).

A Land Deed Official (PPAT) is a public official authorised to make authentic deeds regarding certain legal acts concerning land rights or property rights over apartment units. As a public official, a PPAT is not included in the category of employees regulated in Law Number 43 of 1999 concerning Amendments to Law Number 8 of 1947 concerning Civil Service Principles. Therefore, a PPAT does not receive a monthly salary like other employees, but rather an award that comes from clients who come to ask for a deed to be made.

The award received by the PPAT is in the form of the provision of PPAT Service Money as stipulated in the provisions of Article 1 paragraph (3) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia

Number 33 of 2021 concerning Service Money for Land Deed Officials. The article states that 'Service Fee as referred to in paragraph (1) is based on economic value'. The regulation on PPAT Service Money does not mention a definite amount or proportion, but is only determined from the transaction price of each deed with details of the upper limit preceded by the words 'may not exceed' 1% (one per cent) of the transaction price stated in the deed and a maximum of 0.25% of the transaction price stated in the deed. Government Regulation No. 24 of 2016 on the Amendment to Government Regulation No. 37 of 1998 on the Regulation of the Position of Land Deed Official states that: 'The service fee (honorarium) of PPAT and Temporary PPAT, including the service fee (honorarium) of witnesses may not exceed 1% (one per cent) of the transaction price stated in the deed' (Gabby, Viana and Widodo, 2019) ^[38]. The regulation does not include the phrase economic value. This certainly raises issues related to PPAT Services Money, allowing for differences in rates between PPATs with one another. So this aims to determine the economic value of PPAT service fees. The legal basis for PPAT Service Money in the old regulation is regulated in Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Regulations on the Position of Land Deed Officials, then replaced by a new regulation regulated in Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 33 of 2021 concerning Service Money for Land Deed Officials. The old regulation did not include the term economic value. Article 32 Paragraph (1) only states 'The service fee (honorarium) of PPAT and Temporary PPAT, including the service fee (honorarium) of witnesses may not exceed 1% (one per cent) of the transaction price stated in the deed'. Meanwhile, Article 1 Paragraph (4) of the new regulation includes the term economic value which states that 'Economic value as referred to in paragraph (3), is determined from the transaction price of each deed with the following details:

- a. less than or up to Rp500,000,000.00 (five hundred million rupiah), at a maximum of 1% (one per cent);
- b. more than Rp500,000,000.00 (five hundred million rupiah) up to Rp1,000,000,000.00 (one billion rupiah), at a maximum of 0.75% (zero point seven five per cent);
- c. more than Rp1,000,000,000.00 (one billion rupiah) up to Rp2,500,000,000.00 (two billion five hundred million rupiah), at a maximum of 0.5% (zero point five per cent); or
- d. more than Rp2,500,000,000.00 (two billion five hundred million rupiah), a maximum of 0.25% (zero point two five per cent).

This provision does not further discuss the definition of economic value. For this reason, there is no further information related to what is meant by economic value. This research will examine in more depth the meaning of 'economic value of PPAT service fees'.

Analysis and Discussion

The application of Ministerial Regulation No. 33 of 2021 concerning Determination of Service Money by Land Deed Officials, where the policy is sourced in Article Article 1 paragraph 4 which focuses on economic value as referred to in paragraph (3), is determined from the transaction price of each deed with details. Which states that there are differences in PPAT services from 1% to 0.25% so that this lacks elements of justice and equality. Government Regulation Number 24 of 2016 on the Amendment to Government Regulation Number 37 of 1998 on the Regulation of the Position of Land Deed Official states in Article 32 Paragraph 1: 'The service fee (honorarium) of PPAT and Temporary PPAT, including the service fee (honorarium) of witnesses may not exceed 1% (one per cent) of the transaction price stated in the deed'. It can be seen that the Government Regulation should have an implementing regulation but until now there is still no implementing regulation. And finally Ministerial Regulation Number 33 of 2021 which regulates the fees for Land Deed Officials.

The rationale for the imposition of the economic value of PPAT service fees in Permen Agrarian and Spatial Planning/Head of the National Land Agency Number 33 of 2021 concerning Service Fees for Land Deed Officials is to provide legal certainty both to the public, PPAT, and other parties related to PPAT services. This legal certainty is basically needed to provide guidelines so that it can prevent PPAT from unhealthy work competition among fellow PPATs, namely by reducing as small as possible the fees requested or charged for PPAT services provided to the community. This in the future can reduce and degrade the image of the PPAT position in the eyes of the community and the general public, therefore this action can be categorised as a violation of the PPAT code of ethics and defamation of the dignity of the PPAT. In addition, the imposition of the economic value of PPAT service fees is also needed to prevent PPATs from charging too high PPAT service fees so as to create the view of the public that the PPAT position is a money-making machine.

The implementation of PPAT service fees in Permen Agrarian and Spatial Planning / Head of the National Land Agency Number 33 of 2021 concerning Land Deed Official Service Fees is influenced by 3 (three) main factors that

become obstacles in the application of these provisions, namely substance factors including the unclear what is meant by 'PPAT services' and the absence of binding legal sanctions in the event of a violation of these legal provisions. The legal structure factor is the imposition of PPAT service fees with different mechanisms by the Surakarta City PPAT and the PPAT in Ngawi Regency, namely the Surakarta City PPAT which only applies PPAT service fees as the cost of making authentic deeds and the Ngawi Regency PPAT which applies PPAT service fees as the overall cost of the process of changing the name of the land title certificate through buying and selling. The last factor is the culture of the community itself, where the people of Surakarta City tend to have a higher/larger expenditure level compared to the people in Ngawi Regency.

The Theory of Justice is here to analyse problems related to the rationality of imposing economic value on PPAT service fees in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 33 of 2021. The author in conducting the analysis will first analyse the legal provisions based on phenomena that occur in the community, then analyse the rational basis. This is because the legal facts show that there are differences in the application of Article 1 Paragraph (4) of the ministerial regulation regarding economic value in Ngawi Regency and Surakarta City due to the different economic levels of each of these regions.

This legal certainty theory is basically used by the author to analyse and answer problems related to the application of economic value of PPAT service fees in practice in Surakarta City and Ngawi Regency. This is because in Indonesia the law is made to follow the phenomena that exist in society so that legal regulations must be very behind and cause chaos because there are no legal rules governing (legal vacuum) phenomena that are happening in people's lives. Thus, it is necessary to form new legal regulations by considering the philosophical basis and purpose of the formation of existing legal regulations by the legislators. So that it can be known which actions may and may not be carried out by each party, so there is no confusion, especially regarding the application of provisions regarding the use of service fees for PPAT.

Economic Theory of Law with economic considerations without eliminating the element of justice, so that justice can become an economic standard based on three basic elements, namely value, utility, and efficiency based on human rationality. Based on this basic concept, EAL concludes that law is created and applied for the primary purpose of enhancing the broadest public interest. EAL is a tool from economic theory to evaluate the process, formation, structure, and impact of laws and/or policies on society. The essence of EAL is the impact of policies made today for the future and the purpose of EAL is for the welfare of society, as mandated by Article 33 of the 1945 Constitution. The principle of efficiency applies in that the benefits obtained must be greater than the costs incurred. As mentioned above, EAL is based on three basic concepts, namely value, utility, and efficiency based on human rationality, with the following explanation

- a. The concept of rational choice, this concept is a basic assumption in EAL. The concept of rational choice starts from the basic assumption that humans are essentially rational beings. The context of human

satisfaction is unlimited and humans are never satisfied with what they get and achieve, so they are encouraged to make the best decisions from the choices available from the availability of scarce resources. This is done to increase prosperity (wealth maximisation), so that every human being as an economic being is called by the term rational maximise.

- b. The concept of value, according to Posner, a value can be interpreted as something that is meaningful or important (significance), desire or desirability of something, either monetary or non-monetary, so that the inherent nature of human personal interests to achieve satisfaction.
- c. Efficiency Concept Marsudi Djojodipuro (1994) in this case offers 2 (two) concepts of profit allocation measuring efficiency, namely Pareto Optimality and Pareto Superiority. Pareto Optimality occurs if the distribution of profits can reach a level that makes people happy. If this is not possible, then Pareto Superiority can be applied which is a way in which at least one person is happier without another person suffering.
- d. The concept of Utility, in EAL, the use of the concept of utility means the usefulness or benefits of economic goods that can provide / produce a benefit that leads to welfare. There are two types of understanding of utility in EAL, the first is related to expected utility as defined as happiness by utilitarian thinkers. Secondly, utility in the sense used by utilitarianism philosophers, which is the happiness of all human beings.

Research Methods

Sabian (2010) ^[25] This research uses the type or type of sociology of law study that examines 'law as it is in society'. Starting from the view that law is a pattern of social behaviour that is institutionalised and exists as an empirical social variable. By using a juridical sociological / sociology of law research approach, namely a research approach that studies the influence of society on law, Johnny (2013) ^[18] to what extent the symptoms that exist in society can affect the law and vice versa and depart from the empirical science paradigm.

Conclusion

In carrying out its duties and positions, the Land Deed Official (PPAT) receives an award in the form of the provision of service money for land deed officials as stipulated in the provisions of Article 1 paragraph (3) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 33 of 2021 concerning Service Money for Land Deed Officials. The article states that 'Service fee as referred to in paragraph (1) is based on economic value'. The regulation regarding the PPAT Service Fee does not mention the exact amount or proportion, but is only determined from the transaction price of each deed with details of the upper limit preceded by the words 'may not exceed' 1% (one per cent) of the transaction price stated in the deed and a maximum of 0.25% of the transaction price stated in the deed. This certainly raises issues related to PPAT Service Fees so that it allows for differences in rates between PPATs with one another. This provision does not further discuss the phrase economic value. Therefore, there

is no further information related to what is meant by economic value.

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