

Due To Sell Off Power Of Legal Documents Are Made In Making Act Commerce Land And Buildings By Notary

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Abstract. The purpose of this study was to analyze the legal consequences of the agreement of power sell off made in the manufacture of an agreement of sale by Notary. Legal theory used in this study, among others: justice theory, the theory of authority and responsibility theory. The approach used in this study is primarily sociological juridical approach. Sociological juridical approach is to identify and conceptualize law as a social institution that is real and functional in a real life system. The results of this study finally provides the answer that the certificate authority to sell off which made the authorizer to the Proxy should still be subject to and required for payment of taxes from the sale of land and / or buildings that have been sold such, it thus obliged Notary socialize at the time the parties face because it is concerned responsibility by agreement authorized to sell he made in the manufacture of an agreement of sale in accordance with the provisions stipulated in the Indonesian Government Regulation No. 36 of 2016 regarding Income Tax on Income From the Transfer of Rights to Land and / or Buildings, And Agreements sale and purchase Land And / Or Building Along with its amendment.

Keywords: Certificate Authority To Sell; Agreement Of Sale; Notary.

1. Introduction

Source tax receiver that can be acquired by the state one of which is derived from the land or building. Land and buildings provide benefits and / or social position better economics for persons or entities who have a right to it or benefit from it, and therefore it is natural that they are required to give a portion of the benefit or enjoyment in obtain it to the state through taxes , On one side of the land should be used and exploited as much as possible for the welfare and prosperity of the people, while on the other hand must be preserved. Land on one hand, have grown up as a very important economic objects and has grown as a commercial material and object of speculation, on the other hand must be used and utilized for the welfare of the people.⁴

Each transition or loading over land rights, both property rights and rights over other land that can be transferred or encumbered right, then according to the statutory regulations must be registered. The transition occurs either right intended for sale and purchase, waiver or because of an agreement granting the debt load as a follow-up agreement. The obligation imposed on all parties, whether by an individual or a legal entity under the law of the land / agrarian serves as the subject of rights in land.

Registration of land in Indonesia is regulated in the Indonesian Government Regulation No. 24 of 1997 on Land Registration (State Gazette 1997 No. 59, State Gazette No. 3696) hereinafter of PP No. 24 of 1997. Article 1 point 1 formulate regulations regarding the registration definition: as an activity undertaken by the government

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⁴ Andrian Sutedi 2009 *Peralihan Hak Atas Tanah dan Pendaftarannya* Sinar Grafika Jakarta p.1.

on an ongoing basis, continuous and regular, covering the collection, processing, accounting, and presentation as well as the maintenance of physical data and juridical, in the form of maps and lists, on plots and individuals in apartment units, including the granting of rights letter of receipt for parcels of land that already exist and Proprietary rights over the apartment units as well as certain rights which encumber.

Regarding the purpose of registration of land, it can be found in the provisions of Article 3 PP No. 24 of 1997 that specifies the following objectives:

To provide legal certainty and legal protection to rights holders on a plot, apartment units, and other rights registered in order to easily be able to prove himself as the holder of the rights in question; to provide information to the parties concerned, including the government in order to easily obtain data required in conducting legal acts concerning land parcels and units of flats that have been registered; and for the orderly implementation of land administration.

In connection with the land registration purposes in the form of an orderly implementation of land administration, it is intended that the lands which have been registered have information relating to the land. Each land has been registered will be given a number of rights and has a function as authentic evidence to written form is poured into a rights certificate. Therefore, legally, the state acknowledges the ownership of land against land rights subject name is registered in the land certificate and as such, then the other party can not interfere contested land ownership.

Regarding the types of land rights that must be registered specified in Article 9 paragraph (1) In the PP No. 24 of 1997. The provision is determined that the object land registration includes:

- parcels of land that belongs to property, the right to cultivate, right to build, and use rights;
- land management rights;
- donated land;
- ownership of the apartment units;
- mortgage right;
- state land.

Provisions indicate that one of the legal actions which led to the transfer of rights to land and must be registered behind its name is a legal act of buying and selling that aktanya made in the form of the Agreement of Sale and Purchase (AJB) made by and / or before the Agreement Official Land (PPAT), commonly referred to by AJB behind the name and will be used as a transitional registration of land rights.

Sale and Purchase Agreement (AJB) behind the name is made in the process or its implementation as described above, can also be created based on the Power of Selling agreement in the form of an authentic agreement of Notary. These amendments were made between the parties, on the one hand as the land owner as the seller, and on the other as an intermediary (the proxy), in the presence of a Notary so commonly called notary agreement. The contents of the agreement is essentially a statement of the parties to enter into a legal act to make buying and selling with power over land and everything attached to these lands. Selling Authorization Agreement is basically dependent evidence showing the parties to a treaty of goods / items (land and / or buildings) as an intermediary object sale and purchase agreement with power.

Authorization Agreement (lastgeving) has been known since medieval in Roman law called mandatum. Manus meaning hand and datum has a sense giving a hand. At first mandatum done because of friendship, and conducted freely, and then be given an

honorarium that is not a payment but is more appreciation for the work that has been carried out by the recipient *mandatum*.⁵

Power or *Lastgeving* is an agreement (*overenkomst*) where there is a party to authorize or power (*macht*) to others (*lasthebber*) to act or perform legal acts on behalf of the authorizer (*lastgever*). In connection with the concept of power, settings can be found in Section 1792 Book of the Civil Law (hereinafter written Civil Code) concerning authorization, which determines as "an approval of a person as an authorizer with others as a proxy to perform an act / acts to be "on behalf of" the giver of power ". Thus, based on the provisions of Article 1792 of the Civil Code, the nature of the authorization is a "delegate" or "representative". "Deputize" here means giving power to delegate to the recipient authority to administer and implement the interests of the giver of power. As for the meaning of "on behalf of" the intended recipient of this article are authorized to act or acting on behalf of the endorser.⁶

The reason a person authorizes another person to take legal action that because of distance, illness, not in place, the bustle and skill. It thus becomes a reason not to do himself a legal act by the interested parties.

The authorization to sell is one form of certificate authority that is often encountered in the community. Making the sale agreement of power in the form of notarial agreement is something that is familiar in everyday practice Notary. The authorization is given and signed by the Seller (Principal) with the endorsee.

In accordance with the duties and authority, a notary is certainly obliged to realize the desires of the parties who want to take legal actions in front of him like made authentic act of "Agreement of Authorization to Sell".

According to Article 1 paragraph 7 of Act No. 2 of 2014 on the Amendment of Act No. 30 of 2004 concerning Notary states that "Agreement hereinafter referred to agreement is an authentic agreement made by or in the presence of a Notary according to the forms and procedures specified in this Act. "

In terms of making an agreement, of a Notary should refer to the provisions of Article 1320 of the Civil Code, which reads:

For the validity of the agreement required four conditions, namely:

- they agreed to bind himself;
- ability to make an engagement;
- a certain thing;
- a cause that kosher;

Besides, Article 1320 of the Civil Code, hence in making this agreement are guaranteed entry into force of the principle of freedom of contract as provided in Article 1338 paragraph (1) of the Civil Code which reads "Any agreement made legally valid as law for those who made it".

In agreement the power to sell is made in addition to already qualified Notary validity of a treaty, but in practice the observations the authors found in an agreement authorized to sell Notary still found some weaknesses in it. It thus in fact of everyday life often cause a problem between the authorizer with the proxy.

Certainly needs once analyzed the weaknesses in the agreement of selling power made by the Notary Public. Besides it also examines how the legal consequences of the agreement of power sell off in the manufacture of an agreement of sale by Notary.

Research Methods

⁵Herlien Budiono *Perwakilan Kuasa dan Pemberian Kuasa* Majalah Renvoi 6.42.IV 3 November 2006 p. 68.

⁶. Yahya Harahap *Segi-segi Hukum Perjanjian* Alumni Bandung 1986 p. 306.

The method is a process, principles and procedures of solving a problem, while research is the examination of careful, diligent and due diligence on a symptom to increase human knowledge, the research method can be interpreted as the principles and procedure to solve the problem faced in conducting research.⁷

According Sutrisno Hadi, research is an attempt to discover, develop and test the truth of knowledge, where business is done by using scientific methods.⁸

In this study, using a type of Juridical Empirical research, Juridical Empirical research method that aims to determine the effectiveness of the law of laws and regulations. Data used in this study, there are two primary data and secondary data. In analyzing the data obtained from these data, researchers used a qualitative approach which is a research procedure that produces descriptive data analysis.

2. Results And Discussion

2.1. Imposition of Tax Expense In Making Power of Selling Release Agreement of Land and Buildings by Public Notary

Income tax in accordance with Article 1 of Act No. 10 Of 1994 on Income Tax is a tax levied on the subject of taxes on income earned in the tax year. Therefore the income tax attached to the subject. Income tax is one type of subjective tax. Subjects will be subject to tax if the tax burden he has received and / or earn income. In the Income Tax Act, the tax subject who has an income referred to as a taxpayer. Likewise, on income derived by the individual or entity from the transfer of land and / or buildings, outstanding income tax and in this regard is final.

Imposition of taxes by tax subject in this case is the endorsee of the certificate authority to sell off the land and buildings of Notary. The imposition of the tax burden endorsee sell off is not regulated clearly in a statute or in regulations. However, in Article 1 (2) of Government Regulation No. 34 of 2016 regarding Income Tax on Income From the Transfer of Rights to Land and / or Buildings, And Agreements Sale and Purchase of Land and / or Building Along with its amendment, which reads "Income from the transfer of rights to land and / or buildings referred to in paragraph (1) letter a is income received or accrued by the assignor of land and / or building through sale, exchange, relinquishment of rights, transfer of rights, auctions, grants, inheritance, or other means agreed between the parties ". The sound of Article 1 (2) of Government Regulation No. 34 of 2016, indirectly regulate the "Authorization to Sell" which quoted the phrase "transfer of rights" mentioned in Article 1 (2) is.

Thus the imposition of tax by tax subject which in this case is the endorsee of the agreement of power sell off may be subject to income tax expense in accordance with the tax provisions sellers that where the amount of income tax on acquisition of land and / or buildings are set out in Article 2 paragraph (1) of Government Regulation No. 34 of 2016.

2.2. Responsibilities Related Notary Agreement of Authorization to Sell Off Its Not Paid Liability Tax Expense Such Land and Buildings

Coercive tax under the Act so that if not complied with or violated it will lead to punishment or sanctions for perpetrators.

⁷Soerjono Soekanto *Pengantar Penelitian Hukum* UI Press Jakarta 1986 p. 6.

⁸Sutrisno Hadi *Metodologi Research Jilid I* ANDI Yogyakarta 2000 p. 4.

Tax collection system in Indonesia is a self-assessment where the taxpayer is given credence to register, compute, calculate, pay and report their own taxes as stipulated. The consequences of the application of this assessment self gives a great responsibility on the taxpayer to perform Voluntary Compliance.

If the related non-payment of obligations burden of sales tax on land and buildings by the receiver's power is based on the agreement of power sell off Notary, may give rise to a suspicion of a potential breach of Voluntary Compliance, which is associated with Tax Evasion.

Embezzlement Tax (Tax Evasion) is an attempt to smuggle a tax, a tax payable zoomed scheme in breach of tax regulations (illegal), for example by not reporting the majority of sales, increases costs by means of fictitious, and collect taxes, but not the deposit.⁹

Thus given the role of responsibility Notary, in his position as the maker of the agreement of power sell off in terms of execution of the agreement of sale of land and buildings should Notaries always providing information on tax obligations to its clients, Notary assist the implementation of the income tax on income from the sale of land and buildings by notifying the sellers about their sales tax burden that must be paid by the seller or the endorsee of the agreement of power sold. It thus is the responsibility of the Notary of the certificate authority to sell off makes.

So it can be said that the successful implementation of the collection of income tax on income from the sale of land and buildings located on the taxpayer's own consciousness in performing its obligation to pay taxes.

3. Conclusion

Based on the results of research and data analysis described above, it can be concluded as follows:

- Income tax in accordance with Article 1 of Act No. 10 Of 1994 on Income Tax is a tax levied on the subject of taxes on income earned in the tax year. Therefore the income tax attached to the subject. Income tax is one type of subjective tax. Subjects will be subject to tax if the tax burden he has received and / or earn income. In the Income Tax Act, the tax subject who has an income referred to as a taxpayer. Likewise, on income derived by the individual or entity from the transfer of land and / or buildings, outstanding income tax and in this regard is final. Of Article 1 (2) of Government Regulation No. 34 of 2016, indirectly regulate the "Authorization to Sell" which quoted the phrase "transfer of rights" mentioned in Article 1 (2) is. Thus the imposition of tax by tax subject which in this case is the endorsee of the agreement of power sell off may be subject to income tax expense in accordance with the tax provisions sellers that where the amount of income tax on acquisition of land and / or buildings are set out in Article 2 paragraph (1) of Government Regulation No. 34 of 2016.
- If the related non-payment of obligations burden of sales tax on land and buildings by the receiver's power is based on the agreement of power sell off Notary, may give rise to a suspicion of a potential breach of Voluntary Compliance, which is associated with Tax Evasion. Embezzlement Tax (Tax Evasion) is an attempt to smuggle a tax, a tax payable zoomed scheme in breach of tax regulations (illegal), for example by not reporting the majority of sales, increases costs by means of fictitious, and collect taxes, but not the deposit. Thus given the role of the Notary

⁹<http://ektensifikasi423.blogspot.co.id/2014/12/tindak-pidana-perpajakan.html?m=1> accessed on December 8 2017

responsibilities, in his position as the maker of the agreement of power sell off in terms of execution of the agreement of sale of land and buildings should Notaries always providing information on tax obligations to its clients. Notary assist the implementation of the income tax on income from the sale of land and buildings to notify the seller about the burden of sales tax which must be paid by the seller or the endorsee of the agreement of power sold. It thus is the responsibility of the Notary of the certificate authority to sell off makes.

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