

## Juridical Implications for Officials Making Land Deeds Determined as Perpetrators of the Crime of Embezzlement of Taxes Fees for Acquisition of Land and Building Titles

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**Abstract.** *This study aims to determine the juridical implications and responsibilities of the PPAT in terms of receiving deposit of tax payments for land and building rights acquisition fees (BPHTB), then link it with an appropriate theory in order to draw conclusions. The method used in this research is the approach method in writing this is normative juridical, the specification of this research is descriptive analytical research. In the case of depositing BPHTB fees, basically it is paid by PPAT clients, but in practice it is often found that many PPATs are trusted by clients to pay BPHTB from their clients. In this regard, laws and regulations do not regulate the authority of a PPAT who makes land deeds to pay tax on the sale and purchase of land from his client. however, if the clients authorize the PPAT concerned to represent paying tax on the sale and purchase of land in the form of BPHTB to the state treasury, then the PPAT concerned basically does not have the authority to carry out the payment. So that there was evasion of BPHTB tax payments to PPAT. For PPATs who commit this abuse of power, the consequences of these actions are that the PPAT must be able to take responsibility and be subject to appropriate criminal sanctions by the panel of judges, namely Article 372 and/or 374 of the Criminal Code and/or Articles 4, 5, 6 of the Republic of Indonesia Act No.8 of 2010 concerning the Crime of Money Laundering and Article 55 paragraph 1 of the Criminal Code.*

*Keywords: Accountability; Authority; Tax*

### 1. Introduction

The Republic of Indonesia is a constitutional state based on Pancasila and the 1945 Constitution of the Republic of Indonesia (1954 Constitution) as a state that adheres to the principles of a rule of law, the state guarantees certainty, order and legal protection with the core of truth and justice for the lives of its

people.<sup>1</sup>Gustav Radbruch stated certainty as one of the goals of law. In the order of community life, it is closely related to legal certainty. Legal certainty is in accordance with the normative nature of both the provisions and the judge's decision.<sup>2</sup>

Based on article 1 of the Government Regulation of the Republic of Indonesia Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Regulations for the Position of Officials for Making Land Deeds, it is called PPAT as a general official who is authorized to make authentic deeds regarding certain legal actions regarding land rights and rights belonging to the apartment unit. General officials are people who are appointed by the competent authority, with the task of serving the general public in a particular field or activity.<sup>3</sup>

The tasks carried out by the PPAT are regulated in article 2 paragraph (1) of Government Regulation Number 24 of 2016 is to carry out some land registration activities by making deeds as proof that certain legal actions have been carried out, regarding land rights and ownership rights to Flats Units, which will be used as the basis for the registration of changes in land registration data resulting from the law.<sup>4</sup>

According to Act No. 16 of 2009 concerning the fourth amendment to Act No. 6 of 1983 concerning General Provisions and Tax Procedures in Article 1 Paragraph 1 states that taxes are mandatory contributions to the state owed by individuals or entities that are coercive based on law, by not getting compensation directly and used for the needs of the state for the greatest prosperity of the people. Taxes are a transfer of wealth from the people to the state treasury to finance routine expenses and the excess is used for public saving which is the main source for financing public investment.<sup>5</sup>

Based on Act No. 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments, BPHTB is a tax on the acquisition of land and/or building rights. Acquisition of Land and/or Building Rights is a legal act or event resulting in the acquisition of land and/or building rights by an individual or Entity. While Land and/or Building Rights are land rights, including

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<sup>1</sup>Article 1 point (3) of the 1945 Republic of Indonesia Constitution.

<sup>2</sup>Gustav Radbruch, 1961, *Einfuehrung In Die Rechtswissenschaft*, Kohler Verlag, Stuttgart.

<sup>3</sup>Basir, Mustofa Abdul, Jilly Febrian Muhadi & Rini Irianti Sundry (2021). Roles and Responsibilities of Notaries/PPATs in Minimizing Actions of Falsification of Evidence of Tax Deposits for Transfer of Land Rights. *Acta Comitas : Journal of Notary Law*, Vol. 06 No. 03.

<sup>4</sup>Pintoko, Personal Bombong Fiqtian (2021). Accountability of Notaries/PPATs as Intellectual Daders in the Field of Taxation in Carrying Out Office Duties. *Journal of Education and Development*, Volume 9 Number 4.

<sup>5</sup>Mardiasmo. (2018). *Taxation Revised Edition 2018*. Yogyakarta: Andi Publisher.

management rights, along with buildings on it, as referred to in the law in the area of land and buildings.<sup>6</sup>

There are various criminal acts or criminal acts or tax violations that can be subject to criminal sanctions. An example of a tax violation is one of the cases found in the Notary/PPAT case in Bekasi who was subject to the crime of embezzlement. Where in the decision of the Bekasi District Court Number: 474/Pid.B/2021/PN.Bks it has been found guilty of committing the Crime of Embezzlement as stipulated in Article 372 of the Criminal Code and/or 374 of the Criminal Code and/or Articles 4,5,6 of the Law RI Law No. 8 of 2010 concerning the Crime of Money Laundering and Article 55 paragraph 1 of the Criminal Code. The defendant embezzled 10 (ten) billion in BPHTB money from the developer company as a consumer. The chronology of the embezzlement is that the Grand Galaxy City housing developer in Bekasi initially entrusted the PPAT RS with dealing with the sale and purchase of each housing unit. However, it turned out that the BPHTB (Land and Building Rights Acquisition Fee) money that had been paid by the buyer by sending the payment directly to the hospital's account as the PPAT could not be accounted for, that is, it did not carry out the Sale and Purchase Deed process. It was not only the sale and purchase deed process that was not completed by the PPAT of the hospital, but after investigation it turned out that the BPHTB money sent by the consumer had disappeared from the hospital's account and was suspected of being embezzled.<sup>7</sup>

The victims in this case were around 389 consumers of PT. CSI. Where the victims had deposited Land and Building Rights Acquisition Fees (BPHTB) to the Notary Hospital's account, but by the company Notary, the Hospital was not paid to the State Treasury, but was used by the defendants for personal gain, so that the signing of the Deed of Sale and Purchase (AJB) was not carried out. between PT. Cipta Sedayu Indah (PT. CSI) with hundreds of buyers of housing/shop units. The demands of the victims (consumers) of buyers of houses/shops owned by PT. CSI for signing the Sale and Purchase Deed (AJB) for having deposited BPHTB through the Company Notary Account at Bank Jabar Banten (BJB) embezzled by the defendants as indicted by the Public Prosecutor (JPU), from the West Java High Court (Kejati-Jabar), Pitoyo, SH, Kartono, SH, and Rika, SH accompanied by Ni Made Wardani,<sup>8</sup>

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<sup>6</sup>Act No. 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments.

<sup>7</sup>Presisinews (2021). Polda Metro Jaya Reveals Rogue PPAT in Bekasi Darkened BPHTB Money. Accessible at <https://presisinews.id/polda-metro-jaya-Revealed-ppat-nakal-di-bekasi-gelapan-uang-bphtb/>. Retrieved November 9, 2022.

<sup>8</sup>Public (2021). "[Verdicts of the Panel of Judges Can Cause 2x the Consumer Losses](https://www.pospublic.co.id/2021/09/decision-majelis-hakim-dapat-menimbulkan.html)". Accessible at <https://www.pospublic.co.id/2021/09/decision-majelis-hakim-dapat-menimbulkan.html>. Retrieved November 9, 2022.

The formulation of the problem in this study is about what are the juridical implications for officials who make land deeds who are determined as perpetrators of the crime of embezzlement of BPHTB tax money? and what is the legal responsibility of the official making the land deed who has been named as the perpetrator of the crime of embezzlement of BPHTB tax money? Based on the formulation of the problem and the description described above, this thesis will take the title "Juridical Implications for Officials Making Land Deeds Determined as Perpetrators of the Crime of Embezzlement of Taxes Fees for Acquisition of Land and Building Rights (Study of Bekasi District Court Decision No. 474/ Pid.B/2021/PN.Bks).

## **2. Research Methods**

This research was conducted using an empirical juridical approach. The juridical approach is used to analyze various laws and regulations related to juridical implications for land deed officials who are determined to be the perpetrators of the crime of embezzlement of tax money from the acquisition of land and building rights. Meanwhile, the empirical approach is used to analyze law which is seen as patterned social behavior in people's lives that always interact and relate to social aspects.<sup>9</sup>

In this research, the research specification is Descriptive-Analytical which is intended to provide an overview as well as an analysis regarding the implementation of provisions in regulations based on applicable legal provisions. Likewise, it is also intended to provide an overview of the reality of the state of the object or problem, so that analysis can be carried out in order to draw general conclusions.<sup>10</sup>

## **3. Results and Discussion**

### **3.1. Juridical Implications for Officials Making Land Deeds Determined as Perpetrators of the Crime of Embezzlement of Taxes Fees for Acquisition of Land and Building Titles**

This case originated from PT. Cipta Sedayu Indah (CSI) who entrusted Rita's PPAT to manage the sale and purchase per housing unit in the Grand Galaxy City housing complex in Bekasi. The case was reported by the victim's attorney from the development company to the Kasubdit Harda Polda Metro Jaya AKBP Dwiasi

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<sup>9</sup>Nuha, Septiawan Syaifin, Henny Juliani and Nabitatus Saadah, 2017, Implementation of Regional Regulation Number 11 of 2014 Concerning Village Financial and Asset Management in Realizing Village Development in Punjulharjo Village, Rembang District, Rembang Regency, Diponegoro Law Journal, Vol. 6 No. 1.

<sup>10</sup>Ashofa Burhan. Legal Research Methods, (Jakarta: Rineka Cipta, 2000).

Wiyatputera with report number LP/7034/XI/YAN.2.5/2020/SPKT PMJ on November 26 2020. The report contains victims who have been harmed by a total of 23 billion for managing the buying and selling of houses in Grand Galaxy City housing. Consumers who buy houses per unit in Grand Galaxy City housing have paid off the BPHTB tax by sending it directly to an account owned by PPAT Rita. However, there is no buying and selling process carried out for the settlement of the payment.

Not only did the sale and purchase process or the signing of the sale and purchase not take place, but the money that had been paid by the consumer could not be processed because it had been used for personal purposes or embezzled by Rita's PPAT. The victims in this case were 389 consumers, all of whom were consumers from PT. Cipta Sedayu Indah (CSI). Consumers dare to deposit BPHTB directly into PPAT Rita's account because the PPAT is directly appointed by PT. Cipta Sedayu Indah (CSI) so that consumers feel confident about making payments directly to the PPAT. For the actions taken by PPAT Rita, the court judge gave a sentence in accordance with Article 372 and/or 374 of the Criminal Code and/or Article 4.5,

Based on the chronology of the cases above, it can be concluded that the PPAT has used his position wrongly, namely by not carrying out his duties as a PPAT appointed and entrusted by PT. Cipta Sedayu Indah (CSI). Coupled with the money that should have been deposited with the state but used for personal needs and it can be said that the money that has been deposited from the consumer to the PPAT was embezzled. In this case PPAT has committed the crime of embezzlement of money and default on responsibilities that should have been carried out.

BPHTB payments made by consumers by transferring directly to a PPAT's personal account should not be made. Because there are no rules that serve as a reference for this action. BPHTB payments should be made by the taxpayer himself, who then shows proof of payment to the PPAT to carry out the process of signing the deed of sale and purchase. However, the safekeeping of payments made by consumers is a common thing that is often done because consumers don't want to be bothered. As long as there is no legal rule to realize the legality of this act, then as long as this practice will continue, even though there is no guarantee of legal protection for this act, as long as it does not cause harm to anyone, it is considered not a problem.

Defaults arise from PPAT actions that do not pay BPHTB deposits, then the PPAT must be held accountable for their actions. Even though there are no regulations governing the safekeeping of BPHTB payments, non-payment of BPHTB deposit money used for personal purposes can be subject to sanctions, namely embezzlement and money laundering because the funds received are distributed

to the PPAT partners. With this act of embezzlement a PPAT can be subject to criminal sanctions in accordance with Article 374 of the Criminal Code concerning embezzlement which is then added to the Law of the Republic of Indonesia Number 8 of 2010 concerning the Crime of Money Laundering and Article 55 paragraph 1 of the Criminal Code which contains those who commit, who ordered to do, and who took part in doing the deed;

According to the Civil Law, buying and selling is one of the types of agreements/agreement contained in Book III of the Civil Code concerning Contracts. In the case of buying and selling land, Article 1457 reads: "A sale and purchase is an agreement, whereby one party binds himself to surrender an object and the other party pays the price that has been promised. The conditions for a valid agreement according to Article 1320 of the Indonesian Civil Code, are the existence of an agreement between those who are binding themselves, the ability to make an agreement, the existence of a certain matter, and a lawful cause. If the conditions regarding agreement and competence (subjective conditions) are not met, then an agreement can be cancelled, meaning that the agreement remains in place until a decision is made by the judge.<sup>11</sup>

The PPAT's action of receiving the power of attorney to deposit tax payments from its clients, it is known that there is no legality for this action, only based on custom. Habits are human actions that are still carried out repeatedly in the same way. If a certain habit is accepted by the community and the habit is always repeated in such a way that actions contrary to the habit are felt as a violation of the feeling of law, then a legal habit arises, which is seen by society as law. In the event that the act of the PPAT accepting payment of the power of attorney to deposit taxes from his client has become a habit because it is done repeatedly,<sup>12</sup>

Legal certainty is the certainty of laws or regulations, all kinds of ways, methods and so on must be based on laws or regulations. In legal certainty there are positive laws and written laws. Legal certainty normatively is when a regulation is made and promulgated with certainty because it regulates clearly and logically. Clear in the sense that it does not cause doubts (multi-interpretation) and logical in the sense that it becomes a system of norms with other norms so that they do not collide or cause a conflict of norms. Norm conflict arising from rule uncertainty can take the form of norm contestation, norm reduction or norm

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<sup>11</sup>Nafi' Mubarak, *Textbook of Commercial Law* (Surabaya: Faculty of Sharia and Law, University of Sunan Ampel, 2016).

<sup>12</sup>Ariffudin, Hanif Nur Widhiyanti and Hariyanto Susilo (2017). *Juridical Implications for Officials Making Land Deeds The Authorized Person Deposits Income Tax Money/Tax for Acquisition of Land and Building Rights from Taxpayers*. *Scientific Journal of Pancasila and Citizenship Education*, Vol. 2, Number 1.

distortion.<sup>13</sup> One of the legal acts of transferring ownership rights to land is by buying and selling land. In the customary practice of buying and selling land at this time, it is hoped that there will be legal certainty that can guarantee the continuation of these activities through the transfer of land title certificates. Transferring the name of a certificate of land rights by buying and selling is another legal act of transferring rights, except for transferring rights through an auction which can only be registered if proven by a deed drawn up by the authorized PPAT. This means that any transfer of ownership rights to land, which is carried out in the form of buying and selling, exchange or grants, must be made before the PPAT.<sup>14</sup>

### **3.2. Legal Liability of Land Deed Officials Who Have Been Determined as Perpetrators of the Crime of Embezzlement of Taxes Fees for Acquisition of Land and Building Titles**

According to Hans Kelsen who stated that a concept related to the concept of legal obligation is the concept of legal responsibility (liability). A person is legally responsible for certain actions that he can be subject to a sanction in case his actions are contrary to the law. The subject of responsibility and the subject of legal obligations are the same.

Being accountable for someone in criminal law does not only mean that it is legal to impose a sentence on that person but also that it can be fully believed that it is indeed the right place to have criminal responsibility. Criminal responsibility, in foreign terms it is also called *theorekenbaardheid* or criminal responsibility, which leads to the punishment of the perpetrator with the intention of determining whether a suspect or defendant is responsible for a crime that has occurred or not.

An example of a case of embezzlement committed by a notary as a PPAT, namely case number 474/Pid.B/2021/PN.Bks. The perpetrators of the crimes were Mantri Aditeia, Laksana Setiawan Sitompul and Rita Sari Dewi Latanna, each of whom had different sentences. Mantri Aditeia was sentenced to 1 year in prison, Laksana Setiawan Sitompul was sentenced to 6 months in prison and Rita Sari Dewi Latanna was sentenced to 2 years and 3 months in prison. Defendant Rita Sari Dewi Latanna received the longest sentence because giving testimony at trial was complicated, making the trial difficult. The victims in this case were 389 consumers of PT. Cipta Sedayu Indah (CSI). Where the victims had deposited

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<sup>13</sup>Utami, Pipit Saputri (2019). Accountability of Notaries/PPATs for Deeds of Transfer of Rights over Land and/or Buildings for which the BPHTB has not been paid. *Journal of Yuridika Insights*, Volume 3 Number 2.

<sup>14</sup>Unthari, Indarsi (2015). Legal Consequences Against Ppat For Not Paying BPHTB Money Entrusted to Him Regarding the Transfer of Rights Through the Deed of Sale and Purchase (Decision Study Number 300/Pid.B/2015/PN.Dps). *E-Journal of the University of North Sumatra*.

Land and Building Rights Acquisition Fees (BPHTB) to the account of Notary Rita Sari Dewi Latanna, SH. MKn, but by the company Notary, Rita Sari Dewi Latanna was not deposited into the State Treasury, but was used by the defendants for personal gain, so the signing of the Deed of Sale and Purchase (AJB) between PT. Cipta Sedayu Indah (CSI) with hundreds of house/shop unit buyers. As a result, the defendant received a sentence regulated in Article 374 of the Criminal Code, Jo Article 55 paragraph 1 of the Criminal Code, Jo Article 64 paragraph 1 of the Criminal Code. Defendant Rita Sari Dewi Latanna was sentenced to Article 372 and/or 374 of the Criminal Code and/or Article 4,5,6 of the Republic of Indonesia Act No.8 of 2010 concerning the Crime of Money Laundering and Article 55 paragraph 1 of the Criminal Code.

Regarding the criminal act of embezzlement committed by the PPAT, in this case it will be discussed regarding aspects of the PPAT's responsibility arising from an error (schuld) made in carrying out a position of duty and the error causes harm to other people who request services ( client) PPAT. So the PPAT can be held accountable for acts against the law (wederrechtelijk) from a civil, administrative and criminal law perspective. So that with the existence of this crime, the PPAT must be legally responsible for his actions that the PPAT can be subject to a sanction in cases of actions that are contrary to the law. According to the provisions of Article 63 paragraph (2) of the Criminal Code states that if an act is included in a general criminal code, It is also regulated in special criminal regulations, so only the special ones are applied. From this article it can be interpreted that if there is an act that can be punished according to special criminal provisions in addition to the general criminal, then the special criminal provisions are used, conversely if the special criminal provisions do not regulate, then the violation will be subject to general punishment, namely the Criminal Code. Therefore, if a criminal offense is committed by a PPAT, they may be subject to criminal sanctions contained in the Criminal Code even though the PPAT's code of ethics does not regulate criminal sanctions.

### **3.3. Example of deed that should be obtained by the client for giving trust to the PPAT in terms of paying taxes on the acquisition of land and building rights**

The PPAT deed is one of the main elements in the framework of maintaining land registration data, the most basic thing in carrying out a sale and purchase transaction is the making of a sale and purchase deed (AJB). In the implementation of Land and Building Rights Acquisition Fees (BPHTB), PPAT as the party entrusted by the taxpayer to calculate and manage all BPHTB financing in buying and selling transactions. Apart from the role of a Notary/PPAT, the Land Deed Making Officer (PPAT) has a role starting from the registration process, checking certificates with the National Land Agency (BPN) to making



deed of transfer of rights. Deed of sale and purchase of land is an authentic deed drawn up by a notary or Land Deed Making Officer (PPAT). The land sale and purchase deed document will usually contain details of property buying and selling activities which include the names of the seller, buyer.

The deed of sale and purchase of land has the right to be carried out only by the PPAT and the signing process must be carried out accompanied by the PPAT. By making a land sale and purchase deed, the ownership of a land can be transferred and the name reversed and considered legally valid. The function of the deed of sale and purchase is as legal proof of the sale and purchase of land or buildings agreed at a certain price and the terms stated in it have been agreed upon by the seller and the buyer, evidence of a case if one of the parties in the sale and purchase is unable to fulfill their obligations and legal evidence for sellers and buyers stating that both parties have fulfilled their respective rights and obligations.

Several conditions must be met by sellers and buyers in making a land sale and purchase deed, namely land data such as the original land certificate; proof of payment of PBB for the last 5 years along with STTS (Deposit Receipt); original building permit (IMB); proof of payment of PBB, electricity and water bills; roya letter or proof of settlement if the property was once a bank guarantee; proof of checking the authenticity of land certificates to BPN (this point can be taken care of yourself or with the help of a Notary/PPAT). Then the seller's requirements such as a photocopy of KTP; photocopy of KK; photocopy of Marriage Certificate (if already married). Furthermore, buyer requirements such as photocopies of husband and wife's KTP (if already married); photocopy of KK; photocopy of Marriage Certificate (if any); photocopy of NPWP; and a copy of the Indonesian citizen's statement or change of name (if any, for Indonesian citizens of descent).<sup>15</sup>

The process of making AJB if there are no problems or disputes can take approximately 1 month depending on the number of applications that come in at the PPAT office. After that, the land or building can proceed to the process of transferring the name which takes 1 to 3 months. During the AJB signature process, the seller or buyer can bring their family as witnesses.

Based on the example of the deed of sale and purchase above, such a deed will later be received and signed by the consumer. With the deed of sale and purchase, the land or building has officially become the property of the consumer. However, because the BPHTB money that has been deposited with the PPAT is not paid, it results in the consumer not having legal or legal

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<sup>15</sup>Baharudin (2014). Authorities of Land Deed Officials (PPAT) in the Land Sale and Purchase Process. *Progressive Justice*, Volume 5 Number 1.

ownership of the land or building.

#### **4. Conclusion**

The practice of buying and selling land at this time must have legal certainty that can guarantee the continuation of these activities through the transfer of land title certificates. Transferring the name of a certificate of land rights by buying and selling is another legal act of transferring rights, except for transferring rights through an auction which can only be registered if proven by a deed drawn up by the authorized PPAT. This means that any transfer of ownership rights to land, which is carried out in the form of buying and selling, exchange or grants, must be made before the PPAT. The deed of sale and purchase of land rights carried out before the Land Deed Making Officer (PPAT) is one of the requirements for registering the transfer of land rights at the Land Office, this will have implications for legal certainty regarding the status of the land. A PPAT who commits BPHTB tax evasion can be categorized as committing a criminal act of embezzlement which has legal consequences for imprisonment. Regarding the criminal act of embezzlement committed by the PPAT, in this case it will be discussed regarding aspects of the PPAT's responsibility arising from an error (schuld) made in carrying out a position of duty and the error causes harm to other people who request services (client) PPAT. So the PPAT can be held accountable for acts against the law (wederrechtelijk) from a civil, administrative and criminal law perspective. So with this crime, The PPAT must be legally accountable for its actions that the PPAT may be subject to a sanction in cases of actions that are contrary to the law. The judge's decision against the Land Deed Making Officer (PPAT) for not paying the Land and Building Rights Acquisition Fee (BPHTB) money that had been entrusted to him regarding the Transfer of Rights through the Sale and Purchase Deed, in decision Number 474/Pid.B/2021/PN. Bks., the panel of judges has correctly sentenced the defendant based on the statements of the parties and witnesses as well as the evidence available at trial. So that in this case the defendant was charged with Article 372 of the Criminal Code and/or Article 374 of the Criminal Code which is an Article of embezzlement, Article 4,5,6 of the Law of the Republic of Indonesia Number 8 of 2010 concerning the Crime of Money Laundering and Article 55 paragraph 1 of the Criminal Code.

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