

## Supervision of PPAT on Sale and Purchase Deeds Before Payment of BPHTB

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**Abstract:** *The signing of the deed of sale and purchase by the Land Deed Making Officer (PPAT) before the payment of the Land and Building Acquisition Fee (BPHTB) has caused a polemic of law and professional ethics. This practice not only violates applicable legal provisions, but also has the potential to harm the state in terms of tax revenue. The purpose of this study is to analyze the Implementation of Supervision and Guidance for PPATs Who Sign Deeds of Sale and Purchase Before Payment of BPHTB in North Kolaka Regency and to analyze the legal responsibility of PPATs who sign Deeds of Sale and Purchase before payment of BPHT in North Kolaka Regency. The method of approaching the problem that the author uses is an empirical approach method, namely a method of data collection carried out by examining secondary data against primary data in the field and examining existing facts in line with observations in the field which are then reviewed based on related laws and regulations because the existing laws are in reality made, and determined by humans who live in society to research the Implementation of Supervision and Guidance for PPATs Who Sign Deeds of Sale and Purchase Before Payment of BPHTB in North Kolaka Regency. The results of the study can be concluded that the implementation of guidance and supervision of the Advisory and Supervisory Board towards PPAT is by visiting several PPATs and obtaining several findings related to several PPATs in North Kolaka and providing guidance related to PPAT job regulations, socialization of regulations concerning the PPAT code of ethics and supervision, namely in the form of supervision of the implementation of PPAT positions and enforcement of legal regulations in accordance with regulations in the field of PPAT.*

**Keywords:** BPHTB; PPAT; Supervision.

### 1. Introduction

The concept of a state of law places law as a basis for power and in the process of

organizing power in all its forms and processes. The formulation of a state of law (rechstaat) has four elements and their derivatives, among which the most frequently encountered in several literatures are the principle of legal certainty and the principle of equality.<sup>1</sup>This principle certainly also applies to all public officials, especially Land Deed Making Officials (PPAT) as officials who are authorized to make authentic deeds. The 1945 Constitution of the Republic of Indonesia emphasizes that taxation is one form of manifestation of taxpayer participation in the state. Through a compulsory collection process that must be regulated in the form of a law that regulates the basis for imposition, the State has the authority to collect taxes from its citizens. Article 23 paragraph (2) of the 1945 Constitution of the Republic of Indonesia is the constitutional basis for the tax collection system in Indonesia. Increasing the potential for tax revenue can be done through tax intensification and/or tax extensification policies.

One of the potential sources of tax that should be explored according to the current economic situation and conditions and development of national development is the Land and Building Acquisition Fee (BPHTB). The position of BPHTB as a tax imposed on the acquisition of land or building rights to tax subjects becomes an event/condition/action that gives rise to the obligation to pay tax.<sup>2</sup>In the case of the transfer/assignment of land rights in order to be registered, it must be proven by an authentic deed made by a public official, in this case the Land Deed Making Official (PPAT), the type and form of the deed, the implementation and procedures for making it, are regulated by the Regulation of the Minister of State for Agrarian Affairs, Head of the National Land Agency Number 3 of 1997 concerning the Implementation Provisions of Government Regulation Number 24 of 1997 concerning Land Registration, in Articles 95 to 102. The PPAT deed is one of the data sources for maintaining land registration data, so it must be made in such a way that it can be used as a strong basis for registering the transfer and encumbrance of the rights concerned.

In carrying out their duties and positions, PPATs are only authorized to make authentic deeds related to land and can only be done within the scope of the PPAT's work area/region, unless there are special matters that require permission from the head of the provincial national land agency office. Based on the PPAT job regulations, the main task of PPATs is to carry out part of the land registration activities by making deeds as evidence of certain legal acts regarding land rights and ownership rights to apartment units, which will be used as the basis for

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<sup>1</sup>Qurratu Uyun Ramadani Zulkhainen. (2022). "Legal Analysis of Article 66 Paragraph (1) of the Notary Law Regarding Notary Supervision". in the journal, *Officium Notarium* NO. 1 VOL. 120-129, p. 123 <https://journal.uui.ac.id/JON/article/view/26439/14570> accessed on May 6, 2024 at 20.00 WITA.

<sup>2</sup>Marihot Pahala Siahaan. (2020), *Elementary Tax Law Basic Concepts of Indonesian Taxation*, First Edition, Graha Ilmu, Yogyakarta, p. 32.

registering changes to land registration data resulting from such legal acts.<sup>3</sup>

PPAT is responsible for checking the requirements for the validity of legal acts related to the transfer of land and/or building rights and ownership rights to apartment units as stated in Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, "Land Registration determines that the transfer of land rights and ownership rights to apartment units through sale and purchase, exchange, gift, income in a company and other legal acts of transfer of rights, except for the transfer of rights through auction can only be registered if proven by a deed made by an authorized PPAT according to the provisions of applicable laws and regulations." Land and Building Acquisition Fee (BPHTB) is a type of tax imposed on individuals or entities when obtaining rights to land or buildings through various methods, such as purchase, inheritance or gift.<sup>4</sup> Legally, the provisions regarding BPHTB are specifically regulated in the provisions of Law Number 28 of 2009 concerning Regional Taxes and Regional Retributions, and each regional government is given the authority to determine its own regulations, including rates, in accordance with central policy.

Before signing the deed of sale and purchase, the PPAT must first request proof of tax payment, this is in accordance with the provisions of Article 60 paragraph 1 letter (a) of Law Number 35 of 2023 concerning Regional Taxes and Regional Levies regarding amendments to Law Number 28 of 2009 concerning Regional Taxes and Regional Levies, which explicitly states: "The Land Deed Official/Notary according to his authority must request proof of payment of BPHTB from the taxpayer, before signing the deed of transfer of rights to land and/or buildings". The Land Deed Official (PPAT) has the role and responsibility to carry out the main tasks and authorities given to him, such as carrying out part of the land registration activities by making deeds as evidence of the implementation of certain legal acts. In terms of supervising the performance of PPAT, of course, there needs to be guidance and supervision of PPAT carried out by the PPAT Advisory and Supervisory Board.

In relation to the development and supervision of PAT, the Government through the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency has issued Regulation of the Minister of Agrarian Affairs and Spatial

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<sup>3</sup>Fathimah Fithriah.(2021) Consequences of Unlawful Acts by Land Deed Making Officials in Making Grant Deeds (Case Study of Supreme Court Decision of the Republic of Indonesia Number 771 PK/PDT/2017). Indonesian Notary: Vol. 3, Article 43. 2. P. 3.,[Consequences of Unlawful Acts by Land Deed Making Officials in Making Grant Deeds \(Case Study of Supreme Court Decision of the Republic of Indonesia Number 771 PK/PDT/2017\) \(ui.ac.id\)](#). accessed on July 06, 2024, at 15.20 WITA.

<sup>4</sup>Satria Utama Teja Sukmana, Raihan Tengku Mardi, Aprilia Niravita, (2023), Optimization of Regional Tax Collection Through the Implementation of Bphtb Law Regulations: Challenges and Opportunities. *Civilia: Journal of Legal Studies and Civic Education*, , Vol.2, No. 6. P. 192.<http://jurnal.anfa.co.id/index.php/civilia/article/view/1423/1362>. Accessed on July 06, 2024 at 17.21 WITA.

Planning/Head of the National Land Agency of the Republic of Indonesia Number 2 of 2018, concerning the Development and Supervision of Land Deed Making Officials (Regulation Number 2 of 2018), which in essence in Article 2 paragraph (1) states that this regulation is intended as a guideline for the implementation of development and supervision, as well as enforcement of the rule of law, through the imposition of sanctions on PPATs who commit violations of office under the Ministry of ATR/BPN with the aim of realizing PPATs who are professional, have integrity and carry out their positions in accordance with the provisions of laws and regulations and the PPAT Code of Ethics.<sup>5</sup>

In fact, one of the cases that occurred in North Kolaka Regency in the 2020 Fiscal Year number 23.A/LHP/XIX.KDR/05/2021 where on May 24, 2021 related to a notary/PPAT who signed a Deed of Sale and Purchase (AJB) before proof of tax payment in the form of a Regional Tax Payment Letter (SSPD).<sup>6</sup>This makes the researcher want to know more deeply about the implementation and supervision carried out on PPAT, so the author raised the title of the Thesis "Implementation of Supervision and Guidance on PPAT Who Signed the Sale and Purchase Deed Before Payment of BPHTB and Regional Tax Payment Letter (Case Study of PPAT North Kolaka)". The purpose of this study is to analyze the Implementation of Supervision and Guidance on PPAT Who Signed the Sale and Purchase Deed Before Payment of BPHTB in North Kolaka Regency.

This research is important to do because it has high significance to touch on crucial aspects in the land administration system, namely PPAT compliance with regulations related to the payment of Land and Building Acquisition Fees (BPHTB). This practice not only violates the rule of law, but also threatens the integrity of the PPAT profession and the land law system in Indonesia.

This study aims to analyze the Implementation of Supervision and Guidance for PPAT Who Signed the Sale and Purchase Deed Before Payment of BPHTB in North Kolaka Regency.

## **2. Research Methods**

This study uses an empirical legal approach method with research specifications on land law that focuses on supervision of PPAT. The method of data collection through interviews and observations and data analysis using descriptive analysis techniques.

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<sup>5</sup>Miftahul Huda & Ani Suhaini, (2023), Authority of the Regional Development and Supervision Council Against Violations of the Code of Ethics by Land Deed Making Officials in Carrying Out Their Positions. *Journal of Law*. Vol. 20, No. 2, P. 673.<https://ejournal.penerbitjurnal.com/index.php/law/article/view/557>, accessed on July 06, 2024 at 20.00 WITA

<sup>6</sup>Author's initial observations on May 4, 2024

### **3. Results and Discussion**

#### **3.1. Implementation of Supervision and Guidance for PPAT Who Signed the Sale and Purchase Deed Before Payment of BPHTB in North Kolaka Regency**

The guidance and supervision of PPAT at the district level is carried out by the MPPD. MPPD is the PPAT Advisory and Supervisory Council formed and determined by the Director General and is domiciled in the BPN regional office. The North Kolaka Regency PPAT Advisory and Supervisory Council was formed in 2022, with its chairman being the Head of the North Kolaka Regency National Land Agency Regional Office, its members are 9 people consisting of the Head of the Administration Section, Head of the Rights Determination and Registration Division, Head of the Rights Determination and Registration Division, Head of the Control and Handling of Disputes and Land, Penata Muda and there are 4 IPPAT members.<sup>7</sup> Guidance and supervision carried out by the PPAT Advisory and Supervisory Board towards Land Deed Making Officials in North Kolaka Regency, Fajar said that the implementation of guidance and supervision by the Advisory and Supervisory Board towards the guidance and supervision of PPAT is by visiting several PPATs in North Kolaka Regency and providing guidance related to the PPAT job regulations.

immediately responded to and followed up by imposing sanctions in accordance with the provisions and can realize harmonization and synergy between the Ministry of ATR/BPN and IPPAT in carrying out PPAT duties; The mandate of Article 32 paragraph (2) of PP No. 24 of 2016 to regulate the procedures for coaching and supervision of PPAT in the Ministerial Regulation followed up by the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 2 of 2018 concerning the Coaching and Supervision of Land Deed Making Officials (hereinafter referred to as Permen ATR/Ka.BPN No. 2 of 2018), which was promulgated on March 20, 2018. The birth of Permen ATR/Ka.BPN No. 2 of 2018 is intended as a guideline for the implementation of coaching and supervision as well as enforcement of legal regulations through the imposition of sanctions on PPAT carried out by the Ministry. In addition, the promulgation of Permen ATR/Ka. BPN Number 2 of 2018 also aims to create PPATs who are professional, have integrity and carry out the position of PPAT in accordance with the provisions of laws and regulations and codes of ethics.

In this case, what is meant by PPAT includes PPAT, Temporary PPAT, Replacement PPAT, and Special PPAT. Overall, for guidance and supervision by the PPAT Advisory and Supervisory Board towards PPAT is carried out by the Minister, but in the implementation of guidance and supervision in the regions it is carried out by the Head of the BPN Regional Office and the Head of the Land Office. Guidance

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<sup>7</sup>Interview with Fajar as Head of the Regional Office of the National Land Agency of North Kolaka Regency

towards PPAT carried out by the Minister can be in the form of determining policies regarding the implementation of PPAT job duties, providing direction to all interested parties related to policies in the field of PPAT, carrying out actions deemed necessary to ensure that PPAT services continue to run in accordance with the provisions of laws and regulations, and/or ensuring that PPAT carries out its duties and functions in accordance with the code of ethics.

In addition to the guidance as referred to above, the BPN or members of the appointed Advisory and Supervisory Board conduct an examination of the deeds made by PPATs in the regions at the time of registration of transfer of rights and encumbrance of rights. how to make a Deed and its shortcomings because the PPAT sends a report copied to the land office and regional office. Supervision of the implementation of this PPAT is carried out internally by the Advisory and Supervisory Board. namely such as checking minutes/deeds, supervising the performance of PPATs.<sup>8</sup>For guidance carried out by the PPAT Guidance and Supervisory Board in the form of delivery and explanation of policies that have been determined by the minister related to the implementation of PPAT duties in accordance with the provisions of laws and regulations and socialization, dissemination of land policies and laws and regulations, and implementation of PPAT duties and functions in accordance with the code of ethics, carried out periodically. In carrying out such guidance, the head of the BPN regional office and/or the head of the land office can be assisted by the PPAT Guidance and Supervisory Board in accordance with their duties and authorities.<sup>9</sup>

Provisions regarding guidance for PPAT, in the Regulation of the Minister of ATR/Head of BPN No. 2 of 2018 also regulates the supervision of PPAT. Regarding the scope of supervision of PPAT includes Supervision of the implementation of PPAT positions, and enforcement of legal regulations in accordance with the provisions of laws and regulations in the field of PPAT. The PPAT Advisory and Supervisory Council of North Kolaka Regency carries out Supervision of PPAT which consists of 2 types, namely supervision of the implementation of PPAT positions and supervision of the enforcement of its legal regulations. In the supervision of the field of enforcement of PPAT legal regulations, this is related to the ethics of a PPAT, so far there have been no reports from the public regarding violations committed by PPAT and receiving requests from investigators regarding violations committed by the PPAT itself. This means that the guidance and supervision carried out by the PPAT advisory and supervisory council is running well in this case appreciating the performance of PPAT in North Kolaka Regency who have carried

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<sup>8</sup>Interview with Markus Senimianto, Young Land Administrator, North Kolaka Regency BPN Regional Office

<sup>9</sup>Hatta Isnaini Wahyu Utomo, Op.Cit, p. 125

out their duties and positions as PPAT by referring to the laws and regulations that have been determined.<sup>10</sup>

Supervision of the implementation of the PPAT position is carried out by the PPAT Advisory and Supervisory Board to ensure that the PPAT carries out its obligations and position in accordance with the provisions of laws and regulations. The objects of supervision of the implementation of the PPAT position are in the form of supervision of:

1. The location of the PPAT office
2. PPAT official stamp
3. PPAT nameplate and letterhead
4. Use of deed forms, making of deeds and delivery of deeds
5. Submission of monthly deed reports
6. Making a list of PPAT deeds
7. Binding of Deeds, documents supporting Deeds, protocols or storage of original bundles of deeds, and
8. Implementation of other positions as determined by the Minister

Supervision of the implementation of the position is carried out by inspection to the PPAT office or other supervisory methods, carried out by the PPAT Advisory and Supervisory Board, carried out periodically, and the Head of the BPN Regional Office, carried out at least 1 (one) time in 1 (one) year. The head of the BPN regional office and/or the head of the land office can assign an appointed official to carry out inspections to the PPAT office. In carrying out the inspection, the head of the BPN regional office or the PPAT Advisory and Supervisory Board in accordance with their duties and authorities. If the inspection to the PPAT office is assisted by the PPAT Advisory and Supervisory Board, then it is carried out with the provision of receiving an assignment from the Chairperson of the PPAT Advisory and Supervisory Board, and is carried out by at least two people.<sup>11</sup>

The results of the examination are made in the form of a report. If there are findings of violations committed by the PPAT, it is followed up with an examination by the PPAT Advisory and Supervisory Board. The results of the examination to the PPAT office are reported periodically to the Minister. Reporting is carried out in stages, with the following provisions:

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<sup>10</sup>Interview with Fajar as Head of the Regional Office of the National Land Agency of North Kolaka Regency

<sup>11</sup>Salim, HS., 2016. Op.Cit, p. 102

1. The head of the land office submits this to the head of the BPN regional office
2. The head of the BPN regional office submits reports in his area and reports from the land office to the director general, no later than the second week of the beginning of the month, and
3. The Director General forwards the report of the head of the land office and the head of the BPN regional office to the Minister.

The implementation of supervision carried out by the PPAT Advisory and Supervisory Council is to avoid violations committed by PPAT in order to realize the honor and dignity of PPAT as State Officials.<sup>12</sup> Effective supervision of Land Deed Making Officials carried out by the Advisory and Supervisory Board can minimize violations committed by PPATs in order to achieve the implementation of their positions in accordance with applicable provisions in order to protect the interests of the community.<sup>13</sup>

The form of supervision and guidance carried out by the Advisory and Supervisory Board is to provide policies regarding the implementation of PPAT office duties, provide direction to all stakeholders related to the PPAT office, provide guidance and supervision of the PPAT professional organization so that it continues to run in accordance with its direction and objectives, carry out other actions deemed necessary to ensure that PPAT services continue to run as they should, and provide guidance and supervision of PPAT and temporary PPAT in order to implement the PPAT professional code of ethics. Meanwhile, the form of guidance and supervision by the Head of the National Land Agency, Head of the Regional Office includes conveying and explaining land policies and regulations and applicable laws and regulations, assisting in socializing, disseminating land policies and regulations or technical instructions, and periodically supervising the PPAT office to ensure administrative order, implementation of duties and obligations in accordance with the provisions of laws and regulations concerning PPAT.

Supervision is any effort or activity to find out and assess the actual reality regarding the implementation of tasks or activities. Supervision is the process of observing the implementation of all organizational activities to ensure that all work being carried out is carried out according to the previously determined plan.<sup>14</sup> The implementation of the duties of the PPAT Advisory and Supervisory Board is to provide preventive and curative guidance to PPAT in carrying out their profession as public officials so that PPAT must always improve their professionalism and work quality, so that they can provide certainty and legal protection for recipients of PPAT services and the wider community. The purpose of the supervision carried

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<sup>12</sup>Interview with Fajar as Head of the Regional Office of the National Land Agency of North Kolaka Regency

<sup>13</sup>Hatta Isnaini Wahyu Utomo, Op.Cit. p. 125-127

<sup>14</sup>Sujanto.(2018). Aspects of Supervision in Indonesia, Sinar Grafika, Bandung: P. 53



out on PPAT is so that PPAT meets as many requirements as possible. The requirements demanded are not only by law or statutes, but also based on the trust given by the client to the PPAT. Supervision of PPAT is very important for the life of society.

In carrying out their duties, PPATs are required to improve their professionalism and work quality, so that they can provide assurance of certainty and legal protection for clients and the wider community. The number of PPATs that is increasing every year, resulting in increasingly tight competition for PPATs to be professional and improve their quality.

In relation to the PPAT who signed the deed of sale and purchase before the payment of BPHTB in North Kolaka Regency, apart from the PPAT MPPD which plays a role in supervising, there is also the Audit Board of Indonesia which is involved in the case. The involvement of the BPK is not directly supervising the PPAT but is related to the state loss in the BPHTB payment process.

BPK or the Audit Board of Indonesia is an institution that has a role in encouraging the awareness of state administrators so that they have integrity in managing state finances. As an external supervisory institution, the audit is carried out by an institution that is located outside the institution/agency as the target being audited. In addition, BPK's supervision is repressive, namely supervision is carried out after the work or task is carried out. The supervision mechanism carried out by BPK as in the general explanation of Law Number 15 of 2006 concerning the State Audit Agency states that Audit is a process of identifying problems, analysis, and evaluation carried out independently, objectively, and professionally based on audit standards, to assess the truth, accuracy, credibility, and reliability of information regarding the management and responsibility of state finances.<sup>15</sup>

The statement provides an understanding that the BPK uses its supervisory rights only to the extent of managing state finances managed by state officials so that in the context of BPHTB payments which are taxes, it is the BPK's authority to examine. We can see this in the table. The North Kolaka Regency Government has budgeted and realized Land and Building Acquisition Fee (BPHTB) revenue in 2020 as follows:

NO	NAME OF PPAT	NO.AJB	DATE OF AJB	SSPD DATE	DELAY
1	Akbar Zulhaq	218/201	27 Mar 2019	24 Mar 2020	363 days
2	Akbar Zulhaq	254/2019	15 apr 2019	22 apr 2020	373 days
3	Akbar Zulhaq	261/2019	16 apr 2019	22 apr 2020	372 days

<sup>15</sup>Engkus, et al., (2020). Corruption in the Supervision and Control of Law Enforcement Officers, DIALEKTIKA Journal: Journal of Social Sciences, Vol 20 No. 1 2022, p. 119. accessed on July 26, 2024 at 20.00 WITA

4	Akbar Zulhaq	380/2019	14 June 2019	22 apr 2020	313 days
5	Akbar Zulhaq	382/2019	14 June 2019	22 apr 2020	313 days
6	Akbar Zulhaq	400/2019	17 June 2019	22 apr 2020	310 days
7	Akbar Zulhaq	722/2019	Oct 18, 2019	22 apr 2020	187 days
8	Akbar Zulhaq	732/2019	Oct 18, 2019	24 Mar 2020	158 days
9	Akbar Zulhaq	867/2019	10 Dec 2019	24 Mar 2020	134 days
10	Akbar Zulhaq	875/2019	12 Dec 2019	22 apr 2020	103 days
11	Akbar Zulhaq	956/2019	12 Dec 2019	24 Mar 2020	103 days
12	Akbar Zulhaq	987/2019	23 Dec 2019	22 Mar 2020	121 days
13	Akbar Zulhaq	958/2019	23 Dec 2019	24 apr 2020	92 days
14	Akbar Zulhaq	978/2019	23 Dec 2019	24 Mar 2020	121 days
15	Akbar Zulhaq	987/2019	23 Dec 2019	22 apr 2020	121 days

Source: BPK Findings, 2021

Regional Regulation Number 3 of 2011 has stipulated that PPAT/Notary can only sign a deed of transfer of Land and/or Building Rights after the Taxpayer submits proof of tax payment and PPAT/Notary who violates will be subject to an administrative sanction of Rp7,500,000.00. The results of the confirmation to the relevant PPAT/Notary are known that the deeds are planned transfer of rights transactions using credit facilities from the bank. In submitting the credit facility, the bank requires a signed AJB document for the BPHTB process that has not been paid when signing the AJB, which is acknowledged as ignorance on the part of the Notary. Due to these problems, the North Kolaka Regency Government has not imposed administrative sanctions in the form of a fine of IDR 7,500,000.00 for each violation related to the signing of the AJB or a total of IDR 112,500,000.00 (15 violations x IDR 7,500,000.00) and IDR 250,000.00 for each report that is not and/or late submitted with a total of IDR 6,000,000.00 (2 PPAT x 12 months x IDR 250,000.00) so that the total administrative sanctions in the form of fines that have not been imposed amount to IDR 118,500,000.00 (IDR 112,500,000.00 + IDR 6,000,000.00)<sup>16</sup>

<sup>16</sup>The Republic of Indonesia Audit Board, Audit Result Report on the Financial Report of the North Kolaka Regency Government for the 2020 Fiscal Year in Lasusua, 22.B/LHP/XIX.KDR/05/2020

BPK's findings regarding findings in North Kolaka Regency in 2021 through the following table:<sup>17</sup>

No	SSPD Date	AJB Date	AJB Number	Information
1	February 26, 2021	-	-	AJB not found for Seller MA and Buyer AB
2	March 29, 2021	March 30, 2021	258/2021	According to Regional Regulation
3	June 28, 2021	-	-	Numbering has not been done because the names for Seller AAA and Buyer MA have not been changed.
4	June 29, 2021	June 28, 2021	487/2021	AJB precedes BPHTB Tax by one day
5	June 29, 2021	June 28, 2021	488/2021	AJB precedes BPHTB Tax by one day
6	July 27, 2021	July 27, 2021	769/2021	According to Regional Regulation
7	October 05, 2021			Auction
8	December 02, 2021	December 16, 2021	887/2021	According to Regional Regulation

Source: BPK Findings, 2021

Based on the results of the author's research, it can be understood that there are two AJBs that precede the BPHTB Tax, each of which has a time duration of a day. Based on the audit report by the BPK, it was explained that based on the results of the interview with the Head of Other Regional Taxes, it was discovered that the Bapenda had written to the PPAT/Notary Official regarding the problem. However, the results of the review of the letter sent by Bapenda to the PPAT/Notary Official, there was no inclusion of the BPK recommendation regarding the administrative sanction in the form of a fine of IDR 118,500,000.00 to the Notary/PPAT which must be deposited into the Regional Treasury. Due to the absence of information regarding the fine, the PPAT/Notary Official has not been able to follow up on the recommendation. In order to test the compliance of the PPAT/Notary Official in submitting the 2021 Regional Tax Payment Letter (SSPD),

<sup>17</sup>Audit Board of the Republic of Indonesia, Audit Report on the Financial Report of the North Kolaka Regency Government for the 2021 Fiscal Year in Lasusua, 22.B/LHP/XIX.KDR/05/2022.

the BPK again conducted a random inspection of proof of tax payment in the form of SSPD for AJB.<sup>18</sup>

Through the results of the study, it can be understood that the position of the BPK in relation to the Land Deed Making Officer (PPAT) is only limited to whether or not there is a state loss due to the prioritization of the signing of the AJB before the payment of the BPHTB. The BPK provides recommendations to the supervisory board to impose administrative sanctions on the PPAT to the extent of what constitutes a state loss.

### **3.2. Legal Responsibility for PPAT Who Signs Deed of Sale and Purchase Before Payment of BPHTB in North Kolaka Regency**

The findings of the Audit Report on the Financial Report of the North Kolaka Regency Government from 2019 to 2023, one of which was in the 2020 Budget Year Number 23.A/LHP/XIX.KDR/05/2021 dated May 24, 2021, contained problems related to the Land Deed Making Officer (PPAT) who did not report the making of the deed and the existence of administrative sanction fines that had not been determined. Based on the results of confirmation to the PPAT/Notary AZ and ABP, it is known that there has been no follow-up action taken on the recommendations of the findings. Of course, if this is done by the PPAT concerned, it means that they have violated the provisions contained in Article 91 paragraph (1) of the PDRD Law. The sanctions given to PPAT who commit these violations are explained in Article 93 paragraph (1) and paragraph (2) of the PDRD Law. PPAT who has violated the provisions as referred to in Article 91 paragraph (1) shall be given an administrative sanction in the form of a fine of IDR 7,500,000.00 (seven million five hundred thousand rupiah) for each violation. Then, PPATs who violate the provisions as stated in Article 92 paragraph (1) will be subject to administrative sanctions in the form of a fine of IDR 250,000.00 (two hundred and fifty thousand rupiah) for each report.

Henny Hartati and Habib Adjie stated that the responsibility is determined by the nature of the violation and the legal consequences it causes. The responsibility imposed on a notary consists of criminal, administrative, and civil responsibility. This is a consequence of the violation or negligence committed by the notary in the process of making an authentic deed. Seeing the administrative sanctions given to the authorized official in this case the notary/PPAT, against the deed of transfer of rights to land and/or buildings made before the taxpayer pays BPHTB, the deed of transfer of rights to land and/or buildings remains valid, but the PPAT is given an administrative sanction in the form of a fine for the violation committed.

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<sup>18</sup>Audit Board of the Republic of Indonesia, Audit Report on the Financial Report of the North Kolaka Regency Government for the 2021 Fiscal Year in Lasusua, 22.B/LHP/XIX.KDR/05/2022.

### 1. Criminal liability

Criminal liability is a form of determining whether a suspect or defendant is held responsible for a crime that has occurred. According to Roeslan Saleh, criminal liability is defined as the continuation of objective blame that exists in a criminal act and subjectively meets the requirements to be punished because the act is "(Geen straf zonder schuld; Actus non facit reum nisi mens sit rea). This basis is regarding the accountability of a person for the actions he has committed. Related to the embezzlement of Land and Building Acquisition Fees (BPHTB) carried out by PPAT AN, the imposition of sanctions refers to the provisions of sanctions contained in the Criminal Code (KUHP). This is because the BPHTB Law as a *lex specialis* of the Criminal Code does not regulate special sanctions for PPATs who embezzle BPHTB. This regulation does not exist because the BPHTB collection system is self-assessment where the obligation to deposit BPHTB is in the hands of taxpayers. However, in its development, in connection with the lack of knowledge of taxpayers regarding the procedures for calculating and depositing BPHTB, many taxpayers ask PPAT to make a deed of transfer of land and building rights and ask for PPAT assistance and to help taxpayers in depositing BPHTB. The UUJN does not regulate the imposition of criminal sanctions on Notaries who are proven to have committed a crime in carrying out their duties and positions. Thus, because the UUJN does not regulate criminal sanctions. Likewise, the PP PJPPAT does not regulate the imposition of criminal sanctions on PPATs who are proven to have committed a crime in carrying out their duties and positions. In accordance with the provisions of Article 63 paragraph (2) of the Criminal Code which states that if an act falls within a general criminal rule, it is also regulated in a special criminal rule, then only the special one is applied.

### 2. Accountability from a civil aspect

Legal responsibility in civil law is a person's responsibility for unlawful acts. The provisions of the law on unlawful acts aim to protect and provide compensation to the injured party. Unlawful Acts are contained in Article 1365 of the Civil Code which states: "Every unlawful act, which causes loss to another person, requires the person whose fault causes the loss, to compensate for the loss". An act is said to be unlawful if it meets the 5 (five) elements that have been explained in the previous chapter, namely: a) the existence of an act. b) the act must be unlawful. c) there is an error on the part of the perpetrator. d) there is a loss. e) there is a causal relationship between the unlawful acts.

### 3. Administrative accountability

In addition to criminal and civil liability, a notary or PPAT can also be held liable by imposing administrative sanctions. If viewed administratively, PPAT is responsible for all obligations that must be carried out and prohibitions that must not be carried out in carrying out his position as a Public Official. In relation to the

embezzlement committed by PPAT AN, there are also administrative sanctions that were violated by the Defendant. Where it is explained in Article 24 paragraph (1) of Law No. 20 of 2000 concerning Amendments to Law No. 21 of 1997 concerning Land and Building Acquisition Tax: Land Deed Officials/Notaries can only sign the deed of transfer of land and/or building rights when the Taxpayer submits proof of tax payment in the form of a Land and Building Acquisition Tax Payment Letter. Based on the provisions of Article 24 paragraph (1) of the BPHTB Law above, the PPAT should sign the AJB after the taxpayer has completed the BPHTB tax payment. So that the findings against the PPAT are proven to violate the provisions of Article 24 paragraph (1) of the BPHTB Law because they have made and signed the AJB even though the taxpayer has not yet completed his obligations. Then in Article 26 paragraph (1) of Law No. 20 of 2000 concerning Amendments to Law No. 21 of 1997 concerning Land and Building Acquisition Fees states: Land Deed Making Officials/Notaries and State Auction Officials who violate the provisions as referred to in Article 24 paragraph (1) and paragraph (2), are subject to administrative sanctions and a fine of Rp. 7,500,000.00 (seven million five hundred thousand rupiah) for each violation.

#### 4. Accountability is linked to the code of ethics oath and PPAT

A PPAT must adhere to the code of ethics. The code of ethics is a product of applied ethics because it is produced based on the application of ethical thinking to a profession that can be changed along with the development of science and technology. The code of ethics is a manifestation of intrinsic moral values that cannot be forced so that it can only be effective if it is inspired by the ideals and values of life in the professional environment itself so that it can be a benchmark for members of the professional group and is an effort to prevent unethical actions. The code of ethics is like a compass that shows the moral direction for a profession and at the same time guarantees the moral quality of the profession in the eyes of the public. The PPAT code of ethics is all moral rules determined by the association based on the decision of the congress and/or which are determined by and regulated in the laws and regulations governing it and which apply to and must be obeyed by each and all members of the Association of Land Deed Officials (IPPAT) and all people who carry out their duties as PPAT including substitute PPATs. The PPAT code of ethics regulates matters that are mandatory and things that are prohibited from being done by PPATs.

The importance of PPAT understanding their obligations in making a deed will help the parties to fulfill their rights and obligations. In practice, usually PPAT will first explain to the parties what must be prepared and what must be done by the parties to support the making of the deed in accordance with applicable provisions. One of them, as in this study, is that PPAT will request proof of BPHTB tax payments that have been paid by the parties or assisted in payment by the relevant PPAT. Proof of BPHTB tax payments is one of the requirements for PPAT to

be able to sign the deed of transfer of land and/or building rights requested by the parties and provide guarantees and assurance to PPAT in making and signing the deed.

PPAT who violates the provisions contained in the laws and regulations will be subject to sanctions in accordance with those stated in the laws and regulations related to the deeds he/she makes, especially in making deeds of transfer of rights to land and/or buildings whose BPHTB has not been paid by the party appearing. Of course, in carrying out his/her position, a PPAT must be able to avoid all forms of violations that can harm the PPAT personally in carrying out his/her position, or the party appearing who makes the deed using the services of the PPAT, so it is very important for the PPAT to prioritize the principle of caution so that in carrying out his/her duties and authorities, the PPAT can avoid things that are contrary to the provisions contained in the notary's job regulations and PPAT's job regulations.

As stated by Krisna Harahap that "the strength of perfect evidence can still be revoked based on strong opposing evidence." Therefore, it is important for PPAT to implement the principle of caution in carrying out his/her position, especially in making deeds of transfer of rights to land and/or buildings, so that it will provide legal certainty and ultimately provide legal protection to the parties so that the strength of the evidence of the deed of transfer of rights to land and/or buildings cannot be revoked because the prerequisites and procedures in making it are in accordance with applicable provisions.

#### **4. Conclusion**

In order to provide guidance to PPAT so that in carrying out the duties and positions of PPAT they carry them out in accordance with applicable laws and regulations. While covering matters of supervision carried out by the Regional Supervisory and Advisory Board, namely in the form of supervision of the implementation of PPAT positions and enforcement of legal regulations in accordance with regulations in the field of PPAT. However, in the Regulation there is no regulation regarding the supervision system and implementation instructions (juklak) or technical instructions (juknis) for supervision of PPAT, which results in the PPAT Supervisory and Advisory Board referring to previous regulations regarding PPAT supervision. In the implementation of PPAT, there needs to be a national standard operating procedure for PPAT supervision which is strictly regulated by laws and regulations, for example in the form of Government Regulations (PP) or Technical Instructions/Implementing Instructions (Juknis/Juklak) regarding operational procedures for PPAT supervision and the need to improve coordination between MPPW and IPPAT to avoid misunderstandings that occur if MPPW does not give approval to examine PPAT.

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