

Tax Income Payment Constraints

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Abstract

One of the sources of tax recipients that can be obtained by the state is land and / or buildings. Land and buildings provide benefits and / or a better socio-economic position to people or entities that have a right on them or get benefits from them, and therefore it is only natural that they are obliged to give part of the benefits or enjoyments they get to the state through taxes. The approach method used in this research is the socio-legal approach. The results of the research obtained include, among other things, fees for acquisition of land and building rights, which are taxes imposed on the acquisition of rights to land and or buildings, hereinafter referred to as taxes. Acquisition of rights to land and or buildings is a legal act or event that results in the acquisition of rights to land and or buildings by individuals or bodies.

Keywords: *Constraints; Payment; Tax Income;*

A. Introduction

The Unitary State of the Republic of Indonesia is a constitutional state based on Pancasila and the 1945 Constitution of the Republic of Indonesia which aims to create a safe, orderly, prosperous and just national life order. In its development, the law in Indonesia has undergone major, fast and complex changes. The shift of centralistic to decentralized power causes changes in the behavior of bureaucratic policies both at the central and regional levels that change from the old paradigm to the new paradigm, sometimes causing the rule of law to sink because of power, so that it can lead to policies that do not side with the people.¹

Taxes are compulsory contributions to the state that are owed by individuals or entities that are compelling based on law, without receiving direct compensation and used for state needs to the maximum extent possible. Tax collection is a transfer of wealth from the people to the state which results will also be returned to the community.² Therefore, tax collection must obtain approval from the people themselves regarding the type and amount of tax to be collected. The process of people's consent in question, of course, can only be carried out with a law.

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1. Lilik Warsito Potensi Korupsi Dalam Kebijakan Validasi Pajak Penjualan Atas Tanah Dan Atau Bangunan, *Jurnal Pembaharuan Hukum*, Volume 2 No. 2 Mei-Agustus 2015, page.363-369
 2. Wirawan B.Ilyas dan Richard Burton, *Hukum Pajak: Teori, Analisis, dan Perkembangan*, Edisi Keenam, Selemba Empat, Jakarta, 2013, page.7.

Several tax functions, among others, are: to finance state expenditures, public interest financing, such as the construction of school buildings, bridges, public roads, and various other facilities that are often used by the community. On the other hand, tax does not only function to put money into the state treasury, but also a form of community participation in development by fulfilling state obligations in an effort to increase national independence in the implementation of national development.³ Tax is an important part and cannot be separated from the law. Thus in national development, especially legal development in the field of state administrative law, tax law is an important tool in the framework of supporting tax revenues into the state treasury and supporting increased growth in economic and social development.⁴

One of the sources of tax recipients that can be obtained by the state is land and / or buildings. Land and buildings provide benefits and / or a better socio-economic position to people or entities that have a right on them or get benefits from them, and therefore it is only natural that they are obliged to give part of the benefits or enjoyments they get to the state through taxes. . On the one hand, land must be used and utilized maximally for the welfare and prosperity of the people, while on the other hand its sustainability must be preserved. On the one hand, land has grown as a very important economic object and has grown as a material for commerce and an object of speculation, on the other hand it must be used and utilized for the maximum welfare of the people.⁵

As we all know that in every transaction, for example the sale and purchase of land and buildings carried out before the PPAT, the parties are first required to pay taxes, either Income Tax (PPH) for the seller / right giver or Land Acquisition Fee and Buildings for the buyer / receiving rights. Based on the “Self Assessment System” adopted in Indonesia, this taxpayer is given the authority to calculate and pay as well as report the amount of tax owed. The buyer as the party who gets the rights to the land is obliged to pay the Acquisition Fee for Land and / or Building Rights The seller as the party receiving payment for the transfer of rights will receive additional income from the sale of land and / or buildings, therefore he is obliged to pay Income Tax. Due to the existence of a “Self Assessment System”, it is possible that the seller and the buyer make an agreement not to include the actual transaction value in the Sale-Purchase Deed to minimize tax payments, both Land and Building Acquisition Fee and income tax. This of course can be detrimental to state finances.

Every transfer or assignment of land rights, both ownership rights and other land rights that can be transferred or encumbered, then according to the laws and regulations must be registered. The transfer of rights which is meant to occur either due to sale and purchase, release of rights or due to an agreement granting loading as part of a debt agreement. This obligation is borne by all parties, both individuals and legal entities which according to the land / agrarian law are the subject of land rights.

The Deed of Sale and Purchase behind the name is made in the process or implementation as above, it can also be made based on the deed of power to sell in the form of an authentic deed made by a notary. The deed is drawn up between the parties, on the one hand as the land owner as the seller and on the other as the intermediary (the power of attorney), before a notary so it is commonly known as a notarial deed. The content of the deed is essentially a statement by the parties to bind themselves in a legal act of buying and selling.

With power over the land and everything attached to these lands. The deed of power to sell is

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3. Syofrin Syofyan & Asyhar Hidayat, *Hukum Pajak dan Permasalahannya*, Refika Aditama, Bandung, 2004, page. 21
 4. Marihot Palaha Siahaan, *Hukum Pajak Elementer*, Graha Ilmu, Yogyakarta, 2010, page. 8.
 5. Andrian Sutedi, *Peralihan Hak Atas Tanah dan Pendaftarannya*, Sinar Grafika, Jakarta, 2009, page.1.

basically a means of evidence showing that the parties are bound in an agreement of goods / objects (land and / or buildings) as the intermediary object of the sale and purchase agreement with the power of attorney.

The agreement granting power (lastgeving) has been known since the Middle Ages which in Roman law is called a *mandatum*. *Manus* means hand and *datum* means giving a hand. At first the *mandatum* was carried out because of friendship, and it was done free of charge, only then could an honorarium that was not paid but was more of an appreciation for the work that had been done by the recipient of the *mandatum*.⁶

Power or Lastgeving is an agreement (*overenkomst*) where there is a party giving power or power (*macht*) to another person (*lasthebber*) to act or take legal action on behalf of the power of attorney (*lastgever*). With regard to the concept of power of attorney, the regulation can be found in Article 1792 of the Civil Code (hereinafter written as the Civil Code) regarding the granting of power, which determines as “an agreement between a person as an attorney with another person as the recipient of power to take an action / action to be able to “On behalf of” the authorizer “. Thus, based on the provisions of Article 1792 of the Civil Code, the nature of granting power of attorney is “to represent” or “representative”. “To represent” here means that the grantor represents the power of attorney to manage and carry out the interests of the power donor. As for the meaning of the word “on behalf of” the meaning of this article is that the person receiving the power acts or acts on behalf of the person giving the power of attorney.⁷

The reason someone gives the power to another person to take legal action is that it is because of distance, illness, absence, activity and skill. This is an excuse for not being able to do a legal act by those concerned by himself. The power of attorney to sell is a form of power of attorney that is often found in the community. The making of a sales power deed in the form of a Notary deed is a familiar thing in the daily practice of a Notary. Granting power of attorney given and signed by the Seller (Authorizer) with the Proxy.

In accordance with the duties and authorities, the Notary is certainly obliged to realize the wishes of the parties who wish to carry out legal actions before him, such as making deeds. According to Article 1 number 7 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position states that “Notary Deed, hereinafter referred to as Deed.

This research has the objective of analyzing the deed of power to sell off land and buildings by a notary who has already been subject to a tax burden related to the deed of selling power that is not paid the obligation of the sale and purchase tax of land and buildings

B. Research Method

The approach method used in this research is the socio-legal approach. The socio-legal approach is to identify and conceptualize a legal umbrella that includes all processes as real and functional social intuition in real life systems. The socio-legal approach emphasizes research aimed at gaining empirical legal knowledge by interviewing several respondents.

Thus the research carried out is none other than to obtain data that has proven scientific truth. However, to achieve scientific truth there are two patterns of thought according to history, namely thinking rationally and thinking empirically. Therefore, to find a scientific method, the rational approach method and the empirical approach method are combined, here rationalism provides a logical framework of thought while empiricism is a framework of proof or testing to ensure truth.

6. Herlien Budiono, *Perwakilan, Kuasa dan Pemberian Kuasa*, *Majalah Renvoi*, Vol IV, No 3 2006, page. 68.

7. Yahya Harahap, *Segi-segi Hukum Perjanjian*, Alumni, Bandung, 1986, page.306.

C. Result and Discussion.

1. Income Tax Harmonization is final to the transfer of Land Rights

Transfer of Rights to Land and / or Buildings can be in the form of sale of land and / or buildings, or exchange, agreement of transfer of rights, relinquishment of rights, transfer of rights, auction, grant, or other agreed methods. The income obtained from the transaction is an income tax object so that it is subject to income tax in accordance with the applicable regulations.⁸

Tax is one of the levies by the State whose payments are mandatory for certain objects. The legal basis for the application of tax levies in Indonesia is based on the provisions of the third amendment to the 1945 Constitution of the Republic of Indonesia, Article 23 letter a, which states that "Taxes and other levies that are compulsive for State purposes are regulated in law."⁹

The government today is increasingly aggressively increasing tax revenue, this can be seen from the various programs launched by the Directorate General of Taxes, such as the sunset policy program that provides for eliminating tax sanctions and increasing the target of ownership of Taxpayer Identification Numbers for every Indonesian citizen. Taxes can be collected by the government from various forms of economic activity in the community, one of which is from the transfer of land rights transactions. Every transfer of land rights may be subject to income tax and fees for the acquisition of land and building rights. The transfer of land rights is a common legal action and occurs in many communities, in the form of land buying and selling, grants, exchanges and others, considering that land is an immovable commodity commodity that has high economic value, especially in urban areas.

In the practice of making sale-purchase deeds, it often occurs that the seller is represented by another party using the power to sell. In principle, it is actually the power to sell because the seller (land owner) cannot present himself at the time of drawing up the sale-purchase deed for certain reasons. This is fundamental to Article 1792 of the Civil Code which states, "Authorizing is an agreement whereby a person gives power to another person, who receives it, to carry out an affair on his behalf." Power can be given and received in the form of an authentic deed, underhand deed or orally (1793 civil code). In general, a formal agreement that must be made in the form of an authentic deed, then the power of attorney should also be made in the form of an authentic agreement.

An agreement according to Subekti is an event where a person promises to another person or where 2 (two) people promise each other to carry out something, which in the

8. Bima Satrio Husodo, Sihabudin, Eny Harjati, Tinjauan Yuridis Pemungutan Pajak Penghasilan Atas Transaksi Jual Beli Hak Atas Tanah dan/atau Bangunan, *Pandecta*, Volume 12. Nomor 2. December 2017, page.208-224

9. Resmi, S. *Perpajakan Teori dan Kasus*, Salemba Empat, Jakarta, 2004, page.34

form of the agreement can be done as a series of words that contain promises or abilities that are spoken orally or written. Sudikno Mertokusumo in this regard said that an agreement is a legal relationship between two or more parties based on an agreement to have juridical consequences.¹⁰

The concept of "Empowerment" as an agreement, places an obligation to represent, if in the empowerment there is a grant of authority given to represent the legal interests of the author, not to represent the interests of the authority or third party. The development of empowerment in the practice of Notary, there has been a shift where authorization is found as a clause of the reciprocity agreement or as an accessoir of the reciprocity agreement, and the recipient no longer represents the legal interests of the grantor but the authority is given solely to exercise the recipient's rights power, even power granted by the clause cannot be revoked by the authority. Power consists of 2 kinds, namely:

1. Power that is independent / independent: power that is personal and ends in accordance with the provisions of 1813 Civil Code, that is, by the death of the authority or revoked.
2. Power derived from the principal agreement: power that does not end even if the author has died and can not be revoked because the granting of power is in the interest of the authority.

The meaning or definition of tax since Indonesia became independent until 2007 is not regulated in writing in the applicable tax law in Indonesia. It was only on July 17, 2007, on the enactment of Law No. 28 of 2007 on the amendment of the General Taxation Terms Act, in Article 1 of Law No. 28 of 2007 it was expressly stated that taxes are a mandatory contribution to the state owed by the individual or a body that is constitutional in nature, by not receiving direct compensation and being used for the needs of the country for the greater good of the people.

Meanwhile, Prof. Rochmat Soemitro, Tax is the people's contribution to the state treasury based on law (which can be enforced) without receiving lead services (counter-achievement) which can be directly addressed and used to pay for general expenses, The elements of tax are:¹¹

- 1) People 's contributions to the state, which are entitled to collect taxes are the state, contributions in the form of money, not goods.
- 2) Based on law, taxes are collected based on or with the force of law and the implementing regulations.
- 3) Without reciprocal services or counter-achievement from the state, it can be directly

10. Sudikno Mertokusuma, *Hukum Acara Perdata Indonesia*, Liberty, Yogyakarta, 2002, page. 91

11. Diana Sari, *Konsep Dasar Perpajakan*, PT Refika Aditama, Bandung, 2012, page.33.

appointed, in the payment of taxes it cannot be shown that there are individual contrasts by the government.

- 4) Used to finance state households, namely expenditures that benefit the wider community.

Income is tax imposed on an individual or entity on income received or earned in a tax year. Referred to as income is any additional economic capacity originating from Indonesia or outside Indonesia that can be used for consumption or to increase wealth in any name or form. Thus, the income can be in the form of business profits from salaries, honors, prizes, and so on. Income tax is a tax imposed on an individual or entity on income received or earned in a tax year.¹²

According to Article 1 of Law Number 36 Year 2008 concerning Income Tax, Income Tax is a tax imposed on a tax subject on income received or earned in one tax year. In the explanation of Article 1 of Law Number 36 of 2008 concerning Income Tax, it is stated that this Law regulates the imposition of Income Tax on tax subjects with respect to income received or earned in a tax year. The tax subject is subject to tax if he receives or earns income, in this Law it is called a Taxpayer. Taxpayers are subject to income tax that is received or earned during a tax year or may be subject to tax on income in part of the tax year if the subjective tax liability begins or ends in the tax year.

Income tax in Indonesia adheres to a self-assessment system, which gives taxpayers the authority, trust and responsibility to calculate, calculate, pay and report the amount of tax owed themselves, while Fiskus is only tasked with providing direction, counseling, guidance, services, and supervision of taxpayers in order to fulfill their obligations properly. This is regulated in Article 12 of Law Number 28 of 2007 concerning General Provisions and Tax Procedures.

Article 4 paragraph (2) of Law Number 36 Year 2008 concerning Income Tax classifies income subject to final tax, namely:

- a. Income in the form of interest on deposits and other savings, interest on bonds and government bonds, and interest on deposits paid by individual cooperatives to members of individual cooperatives;
- b. Income in the form of lottery prizes;
- c. Income from transactions in shares and other securities, deviative transactions that are traded on the exchange, and transactions for selling shares or transfer of equity participation in partner companies received by venture capital companies;
- d. Income from transfer of assets in the form of land and / or buildings, construction service business, real estate business, and land and / or building leasing;
- e. Other certain income which is regulated by or based on Government Regulation.

12. Adrian Sutedi, *Hukum Pajak*, Sinar Grafika offset, Jakarta, 2011, hlm.51.

Income from transfer of property in the form of land and / or buildings, construction services business, real estate business, and rental of land and / or buildings is included in the income subject to final tax at a certain rate, whereby the income is only subject to tax based on the determined rate. Government Regulations and does not need to be reported back in a tax return, the Government Regulation in question is Government Regulation Number 36 of 2014 concerning Income Tax on Income from Transfer of Rights to Land and / or Buildings, and Agreement on Sale and Purchase of Land and / or Building Together. The change.

With regard to the imposition of final Income Tax on the transfer of Rights to Land and / or Buildings, prior to the issuance of Government Regulation Number 36 of 2014 concerning Income Tax on Income from the Transfer of Rights to Land and / or Buildings, and the Sale and Purchase Agreement of Land and / or Buildings and Amendments also issued the Director General of Taxes Regulation Number PER-26 / PJ / 2010 concerning Procedures for Investigating Tax Payment Notes on Income from Transfer of Rights to Land and / or Buildings, which was stipulated on May 4, 2010.

2. Income Tax Payment Constraints

The government has issued a fiscal policy through the distribution of revenue allocations which are very important for the State of Indonesia. Through state revenue, the government in the form of taxes can develop several programs to build all physical and non-physical facilities to realize the prosperity of the Indonesian people.¹³

In line with the implementation of regional autonomy, the Regional government is given the authority to explore the potential for Regional Original Revenue (PAD) in the form of regional taxes, regional levies, BUMD business results and other original regional income. The impact of regional autonomy and fiscal decentralization in the beginning was the occurrence of "euphoria diseases" where the Regional Government has made so many Regional Tax and Retribution Regional Regulations (PDRD) that cause various problems that are contrary to public interests and / or higher regulations.¹⁴

Tax on Acquisition of Land and Buildings is one of the activities in the form of tax receipts acquisition of land and buildings held by the Indonesian government in order to finance government expenditures to organize the administration and development. Whereas tax on the acquisition of land and buildings is one of the activities in the form of tax revenue received by land and buildings owned by the Indonesian government to finance government

13. Rofily Putriyandari, Oktavianti Setiawanti, Pengaruh Jumlah Transaksi Jual Beli Tanah dan atau Bangunan dan Pajak BPHTB Terhadap Pajak Daerah Kota Bandung, *Jurnal Kajian Ilmiah Universitas Bhayangkara Jakarta Raya*, Volume 18, No. 2, Mei 2018, page.155-167

14. Amin Purnawan, Siti Ummu Adillah, kebijakan pajak daerah berbasis keadilan untuk Mendorong pertumbuhan usaha kecil menengah (ukm) di jawa tengah, *Jurnal Pembaharuan Hukum*, Volume I No. 3 September-Desember 2014, page.241-251

expenditures to regulate administration and development.¹⁵

In carrying out the settlement of the sale and purchase of land before the Deed of Sale and Purchase is made and signing of the Deed of Sale and Purchase, the tax payments related to the sale and purchase must first be made, sometimes there are several constraints in paying taxes, First, the limited administrative capacity of the agency taxation and the lack of awareness of taxpayers in exercising their rights and fulfilling their tax obligations are still difficult to reach by taxes, some of them even do not have a Taxpayer Identification Number. Meanwhile, the price of land and building has soared so rapidly that it has resulted in an increase in the number of people involved in doing business by avoiding taxes.

Second, such as the buyer, in a land and / or building sale and purchase transaction, asks to make a separate selling power (deed of power to sell off) with a deed of sale and purchase agreement before a notary public. With this separate selling power, the buyer can then enter into a sale and purchase transaction of land and / or buildings with another party, without notifying the other party who is going to buy, that the selling power is part of the sale and purchase agreement that was previously made. So as if the First Party only gave the power to the Second Party to sell to another party the land and / or buildings from the First Party. In this way, in the first sale and purchase transaction of land and / or buildings based on the Sale and Purchase Agreement with the selling power made before the Notary, there is no levy on income tax and fees for the acquisition of rights to land and buildings.

Third, with the sale and purchase agreement deed before a Notary, that is, the Taxpayers can cooperate with each other to avoid paying income tax and fees for the acquisition of land and building rights when providing information and pouring the nominal price in the deed comparisons not in accordance with the actual transaction price. , in such cases there is the potential for tax smuggling or in other words a reduction in state rights over tax revenues.

Of course, these things become obstacles or obstacles for Notaries in making payment of tax obligations on land and buildings. If in making the deed of power to sell off, the taxpayer does not pay income tax obligations on the land and building then the Notary / PPAT makes the sale and purchase deed, then it is very clear that the Notary / PPAT has violated the provisions of Law Number 28 of 2009 Regarding Regional Taxes and Regional Retributions as stated in Article 91 paragraph (1): Land Deed / Notary Officials may only sign the deed of transferring Rights to Land and / or Buildings after the Taxpayer submits proof of Tax payment.

Where this has legal consequences for a Notary / PPAT who makes a sale and purchase deed based on the deed of power to sell and the parties in the power of sale deed intend to evade tax, the Notary / PPAT may be subject to strict administrative sanctions in accordance

15. Tarmizi, H.B, Daulay, M dan Muda, *Impact of the Economic Growth and Acquisition of Land to the Construction Cost Index in North Sumatra*. IOP Publishing, Conf. Series: Materials Science and Engineering 180, 2017. Page.23

with Article 93 paragraph (1) Law Number 28 of 2009 concerning Regional Taxes and Regional Charges, namely: Land Deed / Notary Officials and heads of offices in charge of state auction services, violating the provisions referred to in Article 91 paragraph (1) and paragraph (2) subject to administrative sanctions in the form of a fine of Rp. 7,500,000.00 (seven million five hundred thousand rupiah) for each violation.

D. Conclusion.

Taxpayers' lack of awareness in exercising their rights and fulfilling their tax obligations is still difficult for tax to reach, some of them even do not have a Taxpayer Identification Number. Meanwhile, the price of land and building has soared so rapidly that it has resulted in an increase in the number of people involved in doing business by avoiding taxes. Care is needed, understanding of the duties, authorities and responsibilities imposed by law on the Notary in making deed of power to sell off, therefore the Notary / PPAT must uphold the norms and laws and regulations governing the deed of selling power imposed. payment of income tax burden and fees for the acquisition of rights to land and buildings in order to avoid tax avoidance, this is in accordance with Article 1 of Government Regulation Number 34 of 2016 concerning Income Tax on Income from Transfer of Rights to Land and / or Buildings, and Sale and Purchase Agreement On land and / or buildings and their amendments.

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