



Legal Consequences of Verification and Validation on Fees for Acquisition of Land and Building Rights (BPHTB) by the Regional Revenue Service to Conveyancer Deed

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Abstract

Due to the obligation to carry out verification and validation on the Fees for Acquisition of Land and Building Rights (BPHTB), the Conveyancer in charge and authorized to make the deed also faces obstacles in carrying out his/her duties and authority. Thus, it impedes Conveyancer in providing services to clients which results in the delay in the process of transferring land rights which should have been completed in a relatively shorter time. The objective of this study is to determine the legal consequences of verification and validation of BPHTB on Notarial/Conveyancer deeds in Central Lombok Regency. This type of legal research is normative and empirical. In addition, this study employs a statute approach, a conceptual approach, and a sociological approach. The results of the study found that the legal consequences of verification and validation of BPHTB on notarial deeds or conveyancers were not in accordance with the process because they did not verify and validate BPHTB on notarial deeds. Therefore, the agreement is generally null and void and can be canceled. This relates to the sale and purchase of parties who have not gone through verification and validation at BPHTB of notarial or conveyancer deeds in Central Lombok Regency who are not through the law.

Keywords: Notary; Notarial Deed; Land; BPHTB

Introduction

Land is a valuable thing for humans. Once the land is valuable, people will always try to get it, such as through the opening of forests or fields, buying land sold from their owners, making exchanges, and other efforts. Due to the above acts, land ownership and acquisition rights shift from one party to another.

The transfer of rights to land and buildings is closely related to legal certainty and is marked by evidence of the transfer of rights. To provide legal strength and certainty, land and building ownership of each transfer of rights to land and/or building must be carried out in accordance with the deed made by the authorized official and must be registered with the competent authority at the local district/city Land

Office (Winoto, 2009). As such, the rights to land and buildings are legally on the party who obtained these rights and can be defended before all parties (Siahaan, 2003).

The transfer of land and building rights creates rights and obligations for both the transferring party and the party receiving it (Hartanto, 2018). The government has regulated in the prevailing laws and regulations whereby every individual or entity who obtains land and building rights must pay the Fees for Acquisition of Land and Building Rights tax known as BPHTB (Fauzan & Ardiyanto, 2012). The Fees for Acquisition of Land and Building Rights (BPHTB) is one of the potential sources of taxation that must be studied in accordance with the current economic situation and conditions and the improvement of the nation's development (Kosasih *et al.*, 2012).

Central Lombok Regency Regulation No. 14 of 2010 concerning Regional Taxes is a guideline for taxpayers in calculating the tax value of the transfer of land rights transactions. As regulated in Article 69 of Central Lombok District Regulation No. 14 of 2010 concerning Regional Taxes, it is stipulated that the BPHTB rate is 5% (five percent) using the Tax Object Sale Value in Land and Building Tax (NJOP PBB) as the basis for the imposition of BPHTB (Aktapragia *et al.*, 2019).

Based on the facts in Central Lombok Regency the withdrawal of Fees for Acquisition of Land and Building Rights is not in accordance with the regional regulation of Central Lombok District No. 14 of 2010. A case in point is the transfer of land rights. In this case, the legal subject has made a deed which explains the agreement of the parties at a price above the Tax Object Sale Value (NJOP) but the Regional Revenue Service determines the BPHTB which is not in accordance with what is mandated by the Central Lombok District Regulation (Usui *et al.*, 2004). It does the calculation by not looking at transaction prices or the Tax Object Sale Value (NJOP). BPHTB is calculated from the results of field verification. Field verification itself is a process of checking directly in the field of objects that are processed from legal actions or legal events. The reason for checking carried out by the Regional Revenue Service is because the transaction price for the tax object is too low even though the SPPT PBB was issued by the Regional Revenue Service itself. However, this becomes an obstacle for both conveyancers and taxpayers when they have agreed on prices but are not approved by the Regional Revenue Service.

This field verification is not regulated in detail in Law No. 28 of 2009 concerning Regional Taxes and Regional Retribution as well as Central Lombok District Regulation No. 14 of 2010 concerning Regional Taxes. In terms of field verification, the Regional Revenue Service is not fundamental or does not have legal certainty in collecting BPHTB taxes. Circular letter that becomes a guideline for the Regional Revenue Service makes a difference between the taxpayer and the Regional Revenue Service in assessing the amount of tax BPHTB that must be paid (Gustia, 2016).

The implementation of BPHTB collection and collection carried out by the Regional Revenue Office experienced several problems. Related to this issue, taxpayers who previously used the self-assessment system felt that the Regional Revenue Service did not believe in what the taxpayer did because the Regional Revenue Service was of the opinion that the transaction price for the tax object was too low.

In practice in the field, it is indeed true that verification has been carried out by a tax official. However, the background of the employee's ability is unknown because the officer was not known by the parties in the transfer of land rights transaction during verification (Sarhini, 2017). Verification and validation are a research procedure for BPHTB Regional Tax Payment (SSPD BPHTB) related to the completeness of documents and correctness of tax object data contained in SSPD BPHTB. This procedure is carried out after the taxpayer makes payment of the owed BPHTB. If all completeness and suitability of tax object data are fulfilled, the service function will sign the BPHTB SSPD.

Due to the obligation to carry out verification and validation on the BPHTB, the Conveyancer in charge and authorized to make the deed also faces obstacles in carrying out his duties and authority. Thus, it impedes conveyancer in providing services to its clients. That results in a delay in the process of transferring land rights which should have been completed in a relatively shorter time.

The verification and validation process on BPHTB, to determine the transaction value of a legal sale and purchase of land and building rights which by the Central Lombok District Government, is basically legal according to the Law but that violates the essence of a sale and purchase agreement. The legal act of buying and selling is basically an agreement of the parties. Verification and validation regarding the sale value of the tax object of BPHTB seems to indicate that the sale and purchase agreement was made not because of the agreement of the parties in determining the sale value of the land but because of the intervention of the Regional Government.

Research Method

This type of law is normative and empirical. Then, this study employs statutory approach, conceptual approach, and sociological approach. The type of research data is primary data obtained directly from respondents and informants as the main source through field research (Marzuki, 2009). Secondary data is also used which is obtained from legislation, literature, etc. which have to do with the problems discussed in this paper.

These legal materials are collected using the following techniques:

- a. Primary data is carried out by conducting direct interviews by preparing in advance the questions as guidelines that allow the interview situation. Interview is a face to face role situation when the interviewer asks questions that are designed to obtain answers relevant to the research problem to the respondent. As well as for the substance that is related to the subject of study or research.
- b. Secondary data is data collected using document study techniques by collecting and studying sources such as literature, books, scientific articles, research results and legislation relating to the subject matter.

Data, obtained through interviews and literature review at the Central Lombok District Revenue Service and Conveyancer in Central Lombok District, were analyzed qualitatively by describing data quality in the form of regular, concise, logical, non-overlapping and effective sentences so as to facilitate understanding and data interpretation. Then the discussion is carried out from which the results are used to draw conclusions from the discussion. Based on the results of the discussion then drawn deductively as an answer to the problem under study.

Findings and Discussion

Legal Consequences of Verification and Validation on BPHTB to Notarial Deed or Conveyancer in Central Lombok Regency

1. The Validity of the Joint Circular Letter

Legal certainty is a feature that cannot be separated from the law, especially for written legal norms. Law without certainty will lose its meaning because it can no longer be used as a code of conduct for everyone. *Ubi jus incertum, ibi jus nullum* (where there is no legal certainty, there is no law). It means that legal certainty is a guarantee to run the law in a good and proper way. So, it must be based on three aspects namely philosophically, juridically, and sociologically.

Legal theory is usually distinguished between 3 types of things in terms of the rule of law as a rule, as follows:

a. The law applies philosophically

It means that it is in accordance with the ideals of the law as the highest positive value. Every society always has a “*rechtsidee*” or what people expect from the law; for instance, the law guarantees justice, expediency and order and welfare. The legal ideal grows in the society’s value system about good and bad, about their views on individual relations and society and so forth, including about the unseen world view. All of this is philosophical which means that it involves a view of the nature of things.

The law is expected to reflect the value system as a means of protecting values as well as a means of realizing it in people’s behavior.

b. The law applies legally

This is when the provisions are based on higher-level norms (Hans Kelsen) or are formed in a predetermined manner or when showing necessity between a condition and its consequences. Juridical or normative behavior of a rule or rule is when the rule is part of a certain legal rule within the legal norms pointing to one another. Such a legal system consists of a whole. Hierarchy of special legal principles rests on general legal principles. In the lower specific rules of law, the higher legal rules are invaded.

The validity of the juridical rules of law by Bagir Manan is detailed with the following conditions:

- 1) Requirement regarding the existence of statutory authority. Every statutory regulation must be made by an authorized body or official, otherwise the statutory regulation is null and void, deemed to have never existed and all consequences are null and void. For instance, formal laws and regulations must be made jointly between the president and the House of Representatives if the Law is null and void.
- 2) The necessity of conformity in the form or type of a statutory regulation with the material that is regulated, especially if it is governed by a higher or equal statutory regulation. Discrepancies in this form can be a reason to cancel the laws and regulations. For instance, if the 1945 Constitution or the previous Law states that something must be regulated by a Law, then in the form of the Law it is regulated. If it is arranged in another form, for instance a presidential decree, the decision can be canceled.

- 3) Must follow certain procedures. If the procedures are not followed, the laws and regulations are null and void or do not yet have binding legal force. For instance, regional regulations are made jointly between the Regional House of Representatives and regional heads, if there are regional regulations that do not include the approval of the Regional House of Representatives, then it is null and void.

c. The Law Applies Sociologically

If the rules are effective, the authorities can force the enforcement of these rules even if they are not accepted by the community or not valid because they are not accepted or recognized by the community. The basis applies empirically/sociologically the meaning is if the community members obey the law where the law is enforced. Empirical behavior can be seen through means of empirical research on the behavior of citizens. If the research shows that the public behaves with reference to the whole rule of law, then there is an empirical rule of law. Thus, legal norms reflect the reality that lives in society.

With a sociological basis of legislation made and accepted by the community in a natural and even spontaneous manner, Soerjono Soekanto and Purnadi Purbacaraka noted two theoretical foundations as a sociological basis for the rule of law as follows:

- 1) Sociological theory of rule of law applies because the coercion of the authorities, whether or not accepted by the community.
- 2) The theory of recognition is the rule of law that applies based on acceptance from the community where the law applies.

Related to the empirical enforcement of the rule of law in society, there are at least 3 factors that are quite dominant that influence the process of law enforcement which includes:

- 1) First, the substance of the legal substance intended by the rules, norms, patterns of real human behavior within the system. Substance also means products produced by people who are in the legal system, including the decisions they issue, the new rules they draft. The substance also includes the applicable law and not just the rules contained in the Statutory Book.
- 2) second, structural factors which means the part that has survived or the part that gives some form and shape to the whole. In Indonesia, for instance, we talk about the structure of the Indonesian legal system, then it includes the structure of law enforcement institutions, such as the police, prosecutors and courts. It also includes the structure of the number and type of court, and how and why. Clearly, the structure is like a still photo that stops motion.
- 3) third, cultural factors in this case are human attitude and the legal system of belief, the value of thought and expectations. In other words, legal culture is a state of mind that determines how law is used, avoided or abused. Without legal culture, the law is helpless like dead fish lying in a basket and not like fish that live at sea. In brief, other ways to describe the three elements of the legal system are as follows:

- a) the structure is likened to a machine;
- b) substance is what is done and what the machine produces;
- c) legal culture is anything or anyone who decides to turn on or turn off the machine, and decides how the machine is used.

In the formation of laws and regulations, the process of the realization of the values contained in the ideals of the law into legal norms depends on the level of awareness and appreciation of the legislators for these values. The lack of awareness of these values will lead to a gap between legal ideals and legal norms.

If the Minister Circular Letter is related to legal, philosophical and sociological validity, it can be presented as follows:

- a. Judicially, the regulation regarding Minister Circular Letter is not regulated in any statutory regulation but it is part of *freis ermessen* from the government to issue whatever is considered good and does not conflict with any statutory regulations.
- b. Philosophically, the Minister Circular Letter is a technical requirement to clarify the norms that are not yet clear, so that it is regulated further through a circular letter.
- c. Sociologically, a Minister Circular Letter is urgently needed in conditions that are urgent to meet the legal vacuum. However, ministerial regulations should not conflict with higher regulations.

Thus if its validity is questioned, it is concluded that the Joint Circular Letter of the Minister of Finance, Minister of Home Affairs and Head of the National Land Agency Number SE-12/MK.07/2014, Number 593/2278/SJ, Number 4/SE/V/2014 remains must be considered valid as long as it regulates the vertical internal level of the state administration officials in its environment, while still taking into consideration the juridical, philosophical and sociological aspects in the formation of regulations. However, if it goes against the rules above, it must be ruled out based on Law No. 12 of 2011 concerning Formation of Statutory Regulations.

2. The Validity of the Agreement of the Parties Conducting the Sale and Purchase of Land

In Article 1313 of the Civil Code “an agreement is an act in which one or more people commit themselves to one or more other people. From this incident, arises a legal relationship between two or more people called a union in which there are rights and obligations of each party”.

Regarding the agreement is valid or not, we must first look at what are the legal conditions of the agreement. The legal conditions for an agreement can be seen in Article 1320 of the Civil Code, as follows:

- a. Agreement from those who bound themselves;
- b. The ability to make an engagement;
- c. A certain thing;
- d. A lawful cause.

The first and second conditions are subjective conditions while the third and fourth conditions are objective conditions. If subjective conditions are not met, the agreement can be canceled. Meanwhile, if the objective conditions are not met, the agreement is null and void. In buying and selling land, there are

procedures that must be passed. Buying and selling legitimate land and buildings usually involves the buying and selling process before the conveyancer and witnesses. If we purchase and sell without their involvement, the conveyancer will make a Deed of Sale (AJB). AJB is one of the requirements for name retrieval on certificates. Before making AJB, the conveyancer will ensure that the seller has paid taxes including Land and Building Tax (PBB) in the current year and the buyer has paid the buyer's tax. After that, the seller's name listed in the certificate will be crossed out by the land office and then replaced with the buyer's name. After we receive the certificate, double check the contents of the certificate. Make sure there are no writing errors. If there are errors, ask to revise them immediately. A certificate is a proof of right which is used as a strong proof. However, the certificate process can only be carried out after first verifying and validating sales tax data.

Every land sale and purchase transaction would require the making of AJB. This deed must be made by the conveyancer because only the conveyancer is entitled to make AJB. AJB is one of the requirements for making certificates of asset ownership. The following are some of the steps to create AJB. Both the seller and buyer must come to the conveyancer by completing the requirements that must be met such as a Family Card (KK), Taxpayer Identification Number (NPWP), proof of PBB payment (seller), certificate of ownership, KTP, wife's KTP (for the seller), and books marriage seller. The seller will pay income tax (PPH) and the buyer will pay the Fees for Acquisition of Land and Building Rights (BPHTB) before signing the AJB. Then, the deed of sale is prepared based on the agreement of the seller and buyer. The conveyancer will read the contents of the AJB before signing the AJB. The signing will be carried out in front of two witnesses if an agreement has been reached and both parties have agreed on the contents of the AJB. After the construction of the AJB is complete, the second owner can process the land certificate.

Therefore, the Legal Impact of Verification and Validation of BPHTB on notarial deeds or conveyancers in Central Lombok Regency is not in accordance with the process because it does not verify and validate BPHTB on notarial deeds. Therefore, the agreement is generally null and void and can be canceled. This relates to the sale and purchase of parties who have not gone through verification and validation on BPHTB of notary deeds or conveyancers in Central Lombok Regency, which are not through the law. So, verification and validation again and the deed that has been issued will go through changes again. The agreement made by both parties is legally valid because it fulfills Article 1320 of the Civil Code. However, by law administration, if a formal defect occurs in the issuance of the certificate, as in Law No. 28 of 2009 concerning Regional Taxes and Regional Levies, NJOP is the average price obtained from a sale and purchase transaction that occurs fairly. If there is no sale and purchase transaction, NJOP is determined through price comparison with other similar objects, or new acquisition value, or replacement NJOP determined through data verification and validation on BPHTB against notary deed or conveyancer in Central Lombok Regency. Then, the taxpayer is an individual or entity, including taxpayers, tax cutters, and tax collectors, who have taxation rights and obligations in accordance with the provisions of local tax laws. Article 87 basically regulates the basis for the imposition of Fees for Acquisition of Land and Building Rights, namely the Value of Obtaining Tax Objects. Acquisition Value of Tax Object sale and purchase is the price of the transaction.

Conclusion

The legal basis for verification and validation, in the collection of Fees for Acquisition of Land and Building Rights in the process of buying and selling of Fees for Land and Building Rights (BPHTB), is a tax imposed on the acquisition of land and building rights based on Circular of the Head of Agency Republic of Indonesia National Land Number 5/SE/IV/2013 concerning Registration of Land Rights or Registration of Transfer of Land Rights Related to the Implementation of Law No. 28 of 2009 concerning Regional Taxes and Regional Levies. Regarding Verification and Validation on Collection of Fees for the Acquisition of Land and Building Rights, the Process of Buying and Selling and Selling Value of Tax Objects (NJOP) is regulated in Article 66 to Article 77 of Law No. 28 of 2009 concerning Regional Taxes and Regional Levies.

The Legal Consequences of Verification and Validation of BPHTB on notarial deeds or conveyancers in Central Lombok Regency are not in accordance with the process because they do not verify and validate BPHTB on notarial deeds. Therefore, the agreement is generally null and void and can be canceled. This relates to the sale and purchase of parties who have not gone through verification and validation on BPHTB of notary deeds or conveyancers in Central Lombok Regency, which are not through the law. So, verification and validation again and the deed that has been issued will go through changes again.

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