

Notary Liability That Does not Pay Bea Acquisition of Land And Building For Application Process Rights to Building

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ABSTRACT

Purpose of this paper is to determine whether the Notary authorized to make the deed of release and granting of land rights and whether Notary authorized to receive money deposits that are deposited from client BPHTB. The conclusions are as follows: Notaries have the authority to make the deed land rights, the release of land rights held, whereas subjects that require land does not qualify to be the holder of the rights to the land necessary so it can not be obtained with the purchase and land-rights holders are willing to relinquish their land rights. PT. Pawnshops do not qualify as holders of land titles it releases, so the release was not carried out in the presence of PPAT, but in the presence of a notary as public officials who have the authority a deed covenant (covenant waiver of land on ownership status). Notary authorized to receive money deposit BPHTB deposited from client, given notary as a public official in increasing source of state revenues from taxes, notary also plays a major role because they are assigned to investigate had paid income tax (VAT) of revenue as a result of transfer of rights over land and Customs Acquisition land and Building before a deed, this means that if client are not paying taxes to the Tax Administration, client can leave a notary public also plays a major role because they are assigned to investigate had paid taxes due to the transfer of rights over land and Customs Acquisition rights to land and Building.

Keywords: Accountability, Notary and, Tax on Acquisition of Land and Buildings.

1. INTRODUCTION

Privileges notary a deed of land of which made the Treaty Sale and Purchase Agreement (hereinafter abbreviated SPA), as well as the release of land rights, which is released into the ground state, because those who release did not have the right to buy a plot of them because of a legal entity that is not given authority to acquire land ownership status as article 21 paragraph (1) of the Constitution of the Republic of Indonesia Number 5 of 1960 on Basic Regulation of Agrarian (hereinafter abbreviated as BAL).

Notary a deed CSPA / waiver of the land in question for the filing requirements for the right on state land which included an obligation to the applicant to pay the money to the State Treasury, through a notary found to be used be used for private purposes, and the non-payment of fees SSB / BPHTB / Taxes Purchase , then the process of transferring the certificate name Broking No. 13 can not be processed into the name of the buyer's name, as the following case:



In April 2011, PT. Pawnshops intend to buy a plot of land to build a branch office in the area of Sukawati, Gianyar. Then there are deals and landowners on behalf of Ni Luh Kompiang Wedanti (seller) who intend to sell the land area of 700 m² in accordance SHM 256 / village Singapadu. PT. Pawnshops represented by Sundoyo to the office of Notary / PPAT US, SH, M. Hum to transact the sale and purchase. On June 28, 2011, made a binding deed of sale and purchase agreement (SPA) No. 14 and agreed the sale of the land is Rp. 2.75 billion, - (two billion, seven hundred and fifty million rupiah).

There was a problem regarding the extent of land to be sold, then the seller is asking to do, from 700 m² to 600 m². It was approved by the Board of Directors of PT. Pawnshops, which was made addendum to the SPA, in the addendum wide agreed to be sold is 600 m² at a price of Rp. 2.35 billion, - (two billion three hundred and fifty million rupiah). Not long after, Ni Luh Kompiang Wedanti implement fell heir to I Wayan Natih, so terbitlah SHM No.3097 / Village Singapadu on behalf of Ni Luh Kompiang Wedanti and Ni Wayan Warti. Due to a decrease in the right already finished, then PT. Pawnshops settle the remaining payment of Rp. 1.600.000.000, - (one billion six hundred million rupiah) in accordance with the deed of the SPA. At the request of the Notary / PPAT US, SH, M. Hum, the costs to be incurred by PT. Pawnshops for the certification process or behind the name in accordance with the letter number 371 / PPAT / IXI2011 Rp. 149 000 000, - (one hundred and forty-nine million rupiah). Apparently, Notary / PPAT US, SH, M. Hum does not pay the money to the State Treasury, because it has been used for personal gain. With the non-payment of fees SlipTax on Acquisition of Land and or Building (SSB/ BPHTB / Taxes Purchase), then the process of transferring the certificate name Broking No. 13 can not be processed into the name of PT. Pawnshops and now still in the name of Dra. Ni Luh Kompiang Wedanti and Ni Wayan Warti.

2. WRITING METHOD

Researchis normative, ie research that is focused on reviewing the application of the rules or norms of positive law. Therefore, the research is intended to analyze the legislation, expert opinion and review the related Position As Official Notary Public. Thethe theories and concepts used in this research is the theory of the Authority, the authority theory, theory of occupation.

1. Authorities theory

terms authority or authority has the meaning of authority possessed by an institution to do something or not do something. According to Robert Biersedt that the authority is "*institutionalizedpower* institutionalizedor authority." Thus the factual level between



the powers of the authority is one side of the same coin, they are distinguishable but inseparable. Furthermore quoted Firmansyah Arifin that the term of authority or authorities to be aligned with the "authority" in English or "bevogheid" in Dutch. In the dictionary of *Black Law Dictionary*, states that *authority* as a "legal power: a right to command or to act, the right and power of public officers to require obedience to Reviews their orders lawfully issued in the scope of Reviews their public duties". (translation: the rule of law: is a right to command or to act, rights and powers of public authorities to comply with environmental laws in their public obligations). Here the authority is identified with the rule of law (*legal power*), the power to act or not to act according to the law within the limits of their authority run public authorities.

3. DISCUSSION

Deed by Pitlo is "a letter signed, have been taken to be used as evidence, and to be used by the people, for the purposes of whom the letter was made." According to Sudikno Mertokusumo, "the deed is a letter by the signature, which includes events into basis rather than a right or engagement made since the original intentionally to proof ". Deed is a letter, signed, loading events legal acts and used as proof. In contrast to Subekti, he expressed different certificate with a letter, explaining that the word "certificate" does not mean the letter, but must be interpreted with legal actions, derived from the word *acta* which in French means action.

Deed in the form of a letter, which indicates that the certificate must be made in writing. The deed as evidence of an agreement made in writing made by deed under the hand and even made by act, *authentic* which indeed made such deed requires regulation in the form of deed. *an authentic* Subekti above in providing a sense deed further highlight on the content of the deed, which contains legal acts made by the parties. The legal act embodied in a writing that is used as the evidence of a bond. Therefore contains a legal action between the parties and be used as evidence, the letter although made in written form, but because it does not contain any legal act, then the text can not be termed as a deed, but only regular mail.

According to Victor M. Situmorang, this means that the definition of deed is:

1. Deeds *handeling* / legal acts (*rechtshandeling*) in a broad sense, and
2. A posts made to be worn / used as evidence of fact,
the legal namely in the form of writings submitted to proving something.

3.1. Privileges Notary Deed Make acta And Granting Rights to Land

In previous descriptions mentioned that waiver because the buyer does not qualify as a buyer as a condition of the sale and purchase of material, therefore do not have the authority to make the PPAT deed of waiver. Waiver of land, plot maps to be transferred to another party based deed of waiver of land without minuta. Subject minutes of the original deed or deed of Notary, is one of the obligations of the notary in the running position.

Subject notary in the line of duty, should be guided by the Law Notary and Notary Code of Ethics. Both have been with the detailed rules for the authorities, obligations and prohibitions for notaries.

1. Notary authority, according to Article 15 of Law No. 2 of 2014 in conjunction with Law No. 30 of 2004 is made the authentic act of the deeds, agreements and statutes that are required by legislation and / or desired by the stakeholders to be stated in an authentic deed, guaranteeing the creation date of the deed, saving certificates, giving grosse, copy, and official copies all of it throughout the manufacture of the deed was not also be assigned or excluded to other officials or any other person specified by law.
2. Notary also has authority to:
 - a. To validate signatures and set a firm date in the letter under the hand by enrolling in special books;
 - b. Letters posted under the hand by enrolling in special books;
 - c. Make copies of the original letters under the hands of the copy that contains a description as written and illustrated in the letter in question;
 - d. Approve their suitability photocopy and the original letter;
 - e. Providing legal counseling in connection with the deed;
 - f. A deed relating to land; or;
 - g. Creating a treatise deed auction.
3. In addition to the authority referred to in paragraph (1) and (2) Notaries have other powers stipulated in the legislation.

Notary authority to be determined is the authority that will arise or be determined by legislation. In this regard needs to be given the limits of the legislation in question. These limits can be seen in the provisions of Article 1 paragraph 2 of the Law of the Republic of Indonesia Number 12 of 2011 Concerning the Establishment Regulation Legislation is written statutes containing legal norms binding in general and formed or defined by state agencies or competent authorities through the procedure set out in legislation. Based on

the above, that the authority of the Notary to be determined that the regulations established by the State agency generally binding.

Broadly speaking, the Notary authority under Article 15 of Law No. 2 of 2014 in conjunction with Law No. 30 of 2004 can be divided into general authority Notary, notaries special powers and authority of the notary to be determined later.

Under Law No. 2 of 2014 in conjunction with Law No. 30 of 2004, it appeared as a notary public officials acquire attribution of authority, because authority is created and given by Law No. 2 of 2014 in conjunction with Law No. 30 of 2004 itself, so it does not come from other agencies such as the Ministry of Justice and Human Rights.

In connection with the notary authority in the running of their office, notaries are only allowed to do his post in the area of domicile. Thus, notaries are required to have only one office and with only one office, it means that the notary is prohibited have branch offices, representatives and / or other forms. Besides the notary is not authorized to regularly run outside his domicile. That is as far as possible notarial deed was held in the office of Notary except manufacture of certain deeds. If this is violated, then the deed made by the notary is not authentic and only have the power as a deed under the hand.

The authority notary a deed transfer of rights on land owned by the state on the basis of a waiver by the developer, which means in relation to the authority of the notary a deed relating to land as Article 15 paragraph (2) letter f UUJN, this means that notaries have the authority to make deed transition map based plot deed of waiver of land.

Based on the description and discussion related to the authority of the Notary a deed release and granting of land rights can be explained that the waiver of the land done, whereas subjects that require land does not qualify to be the holder of the rights to the land necessary so it can not be obtained with the purchase and holders rights to land are willing to relinquish their land rights. PT. Pawnshops do not qualify as holders of land titles it releases, so the release was not carried out in the presence of PPAT, but in the presence of a notary as public officials who have the authority a deed covenant (covenant waiver of land on ownership status). The authority of the notary make land deed is in line with the provisions of Article 15 paragraph (2) letter f UUJN-change that in addition to the authority referred to in paragraph (1), notary authorities also made a deed relating to land. This means that notary having authority a deed waiver of land between PT. Pawnshops with holders of land rights on ownership status

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holders are willing to relinquish their land rights. PT. Pawnshops do not qualify as holders of land titles it releases, so the release was not carried out in the presence of PPAT, but in the presence of a notary as a public official who has the authority a deed covenant (covenant waiver of land on ownership status)

Tax on Acquisition of Land and Building (BPHTB), initially set in the Law of the Republic of Indonesia Number 21 Year 1997 on Customs acquisition of Land and Buildings (Official Gazette of the Republic of Indonesia Number 44, Supplement to the State Gazette of the Republic of Indonesia Number 3688) as amended by Republic Act Indonesia Number 20 Year 2000 on the Amendment of Act No. 21 of 1997 on Customs acquisition of land and buildings (Official Gazette of the Republic of Indonesia Number 130, Supplement to the State Gazette of the Republic of Indonesia Number 3988) then these laws repealed by the Law of the Republic Indonesia Number 28 Year 2009 on Regional Taxes and Retribution (Law No. 28/2009) in accordance with the provisions of Article 180 paragraph (6) of Law No. 28/2009). BPHTB interpreted as a tax on acquisition of land and / or buildings. BPHTB including one type of local taxes in accordance with the provisions of article 2, paragraph (2) letter k that tax type district / municipality comprised of BPHTB, the object consists of acquisition of land and buildings, including the transfer of rights for the sale and purchase; exchange; grant; grant probate; inheritance; inclusion in the company or other legal entity; separation of rights resulting transition; designation buyers in the auction; the implementation of the verdict which has permanent legal force; merger; consolidation; business expansion; or gifts, granting new rights for the continuation of a waiver; or outside waiver.

Rights to the land in question is proprietary; Cultivation Rights; building rights; use rights; ownership of the apartment units; and management rights sesuai with Article 85 of Law No. 28/2009. Tax Subject Customs acquisition of land and building is a private person or agency that obtaining the right to land and / or buildings. Taxpayers Customs acquisition of land and building is a private person or agency that obtaining the right to land and / or building in accordance with article 86 of Law No. 20/2009.

Transfer of rights to land based on the transaction can not be separated from the participation of the officials who have the authority to make the deed transfer of land rights that Deed Official Land (PPAT) as defined by Article 37 paragraph (1) of Government Regulation No. 24 of 1997 on Land Registration (Regulation No. 24 of 1997) that the transition of land and property rights to the apartment units through purchase, exchange, donation, inclusion in the Vendor and other legal acts of transfer, unless assignment through auction can only be registered if evidenced by certificates

made by PPAT authorized under the provisions of the legislation in force. BPHTB is a source of local revenues and spearheading BPHTB tax collection is PPAT as the party that has the authority to make evidence of the transition of land rights.

Regarding the transfer of land rights BPHTB taxable value of the transaction based on the regional Regulation of each regency / city, but in essence that the Directorate General of Taxation has stressed that the limit value of transactions that should not be burdened BPHTB Rp60,000,000.00 (sixty million rupiahs) down, which means that the tax burden is the value BPHTB transfer of land rights object more than Rp 60,000,000, - (sixty million rupiahs). This problem needs to be solved because of the imposition BPHTB at low transaction values will depress purchasing power of poor people who wanted to have occupancy.

But on the basis of the publication of BPHTB not only a deed made before PPAT as a deed of transfer of right, because as defined in Article 103 of Agrarian Candy Head of BPN No. 9 In 1999, the release of land rights aktanya Notary also incurred the obligation to pay BPHTB

3.2. Responsibility Notaries In Civil Upper unpaid BPHTB and Money Into Cash Countries

Associated with a notary that US, SH, M. Hum a notary to Denpasar Bali has made PPJB on plot of 700 m² in accordance SHM 256 / village Singapadu between client Ni Luh Kompiang Wedanti (seller) who intend to sell the land area. PT. Pawnshops, against the deed of waiver was made not to cause problems, the problem arises because the US, SH, notary M.Hum not pay the money deposited from PT pawnshops to pay BPHTB found to be used for US interests, SH, M. Hum own.

Linked to the obligation in the implementation of other tasks that the obligations as stipulated in Article 16 paragraph (1) UUJN that the notary in carrying out his duty to act trustworthy, honest, thorough, independent, impartial, and safeguard the interests of those involved in the act of law, Notary *US, SH, M. Hum* which a deed **RELEASE OF RIGHTS** and receive payments BPHTB custody, was not paid so in a deed was not independent and impartial, because it is influenced by the obligation to pay BPHTB client. Notary in carrying out his dishonest, because BPHTB deposited is not paid to the Tax Administration, resulting in PT Pawn (Persero) suffered a loss, the notary may be sued for damages on the grounds has committed an unlawful act.

Change losses recognized in the Civil Code, which occurs because of the broken promise or breach of contract and for their tort or *onrechmatige daad*. Gugatan damages incurred due to illegal acts, defined in Article 1365 of the Civil Code, which specifies:



"Any action against the laws, which bring harm to another person, require a person who because of his fault publish those losses, replace these losses ". If the provisions of Article 1365 of the Civil Code of the above, there is the element - the element as follows:

1. The act of unlawfully(*onrechtmatigedaad*);
2. There must be a mistake;
3. There must be losses;
4. The causal relationships between actions and loss.

Unlawful act consists of two words that act and against the law. According Riduan Syahrani unlawful act, namely: "To do or not do violate the rights of others, or contrary to the legal obligations of those who do it themselves, or are contrary to morality or caution traffic as appropriate within the community, to themselves or belongings goods of others ". Do or not do, which means that an unlawful act is either intentionally or unintentionally commit unlawful acts both written and unwritten. US, SH, M. Hum., As a notary in running post a deed waiver and receive care BPHTB as he made the deed waiver requirements, so that if in the office running dishonest and biased, it can be said to have committed unlawful acts that violate UUJN. Therefore, the elements must exist against the law have been met.

The notary action said to have been contrary to the legal obligations of the creator, that is in violation of obligations based on the law, both written and unwritten. Notary in making authentic act and the requirements made authentic deed the deed of waiver must first pay the SPA, should be subject to the rules in UUJN, and if the notary a deed waiver and pay BPHTB, which means it can be said the notary a deed waiver in the form of the SPA without prior notice requirement waiver certificates made, it can be said to violate the obligations of the notary deed as authentic.

Tort that violates someone's right if it is associated with the profession of notary notary can be said to do an unlawful act if the notary in performing his respective duties intentionally perform an act that is detrimental to either or both parties or the parties who appear before them in the creation of a deed and it really can be seen that the notary acts contrary to the law notary can be held accountable by the construction of a tort.

Included in tort if the notary who has the task of providing services to people or people who need his services in the drafting or preparation of a deed, then in the deed contained a clause which is contrary to the law so as to cause harm to others while the parties client altogether do not know, then with passivity and silence the notary in question can be accounted for through tort. This can happen because the notaries have

less knowledge(*onvoldoendekennis*);experience less(*onvoldoendeervaring*);and / or have less understanding(*onvoldoendeInzicht*).

The element must be a mistake. Subject fault in tort, in civil law does not distinguish between errors caused by willful perpetrator, but also because of negligence or carelessness, her perpetrator. This provision is in accordance with that proposed by Riduan Syahrani as follows: "does not distinguish between intentional and errors in the error in the form of lack of caution". Notary who has made a deed of waiver, but the deed was created when client ineligible BPHTB payments, which means that these actions done deliberately. This means that the element must be a mistake has been fulfilled.

The element must be a loss. According Riduan Syahrani, concerning damages in tort, "can be any material losses and loss can be immaterial". Losses in the form of material, namely loss amount can be calculated, whereas immaterial damages, the amount can not be calculated, for example, his reputation tainted, causing death. Notary who has a deed that is not in accordance with the procedure (deed of waiver was made without first paying BPHTB) is, and in carrying out its activities as a notary lead others in this case PT Pawn (Persero) suffered losses of Rp 149 million (one hundred and four twenty-nine million rupiah). So that the element must be a loss incurred has been fulfilled.

The existence of a causal relationship or a causal relationship means that losses are incurred or caused by the unlawful act committed by the offender. This is consistent with the proposed Riduan Syahrani quoting Von Kries theory as follows: "The new thing can be called a cause of an effect, if, according to people's experiences can be presumed that because it will be followed by the result." This means that if there is a cause, but because it does not cause a loss or incurred a loss, but not caused by the offender, it can not be said to be the existence of a relationship between the cause of action with losses. *US, SH, M. Hum* a deed BPHTB whereas his waiver has not pay (paid but used for private purposes notary) resulted PT Pawn (Persero) suffered losses. This means that the element must be a causal relationship between the act with the loss incurred has been fulfilled.

If the notice the description above can be explained that a claim for damages on the basis of tort if the perpetrators commit acts that fulfill all elements of Article 1365 of the Civil Code. As to who is required to prove the existence of an unlawful act, pursuant to Article 1865 of the Civil Code determines: "Everyone who argues that he has a right, or in order to confirm its own right and denied a right of others, refers to an event, required to prove their rights for the incident ". This means that within a tort, which is required to prove the existence of an unlawful act is the party whose rights have been violated must prove that the rights have been violated by others. Therefore if the parties feel that their

rights are impaired, but can not prove the infringement because one element is not fulfilled, the claim for damages on the basis of tort will not succeed.

The above description can be explained that US, SH, M. Hum as a notary can be held accountable insured for damages suffered by PT Pawn (Persero) on the grounds has committed an unlawful act which acts which fulfill all elements of Article 1365 of the Civil Code. Notary is said to have committed acts against the law for committing acts contrary to the legal obligations of the creator, which makes the deed of relinquishment of rights to land, but BPHTB his private use notary

3.3. Authority of Notary Receiving Money Deposit BPHTB entrusted

Need for services of a notary in modern societies are unavoidable. Notary as a public official appointed by the government and the government as a state organ to lift the notary is not merely for the sake of a notary itself, but also for the public interest given by the notary, closely linked to the issue of trust between the parties, that is to say give great confidence to the notary and thus it can be said that giving credence to the notary notarized means inevitably has to be said also assume responsibility this responsibility may be liable legally and morally. Notary office regulations are regulations that exist in relation to the profession of notary in the notary Indonesia. Regulated in Indonesia is UUJN. About responsibility notary is explicitly mentioned in Article 65 UUJN which states that the notary is responsible for every deed he had done, even though the protocol notary has been assigned or transferred to the notary protocol storage.

Responsibilities in relation to the obligations of the notary in the running position is based on the provisions of Article 16 UUJN. Notary who made the deed of relinquishment of rights, previously did not know the client in this case the giver of power of attorney, which means that the notary did not read the deed because in this case VRC not recognized by *the US, SH, M. Hum* as a notary.action, *US SH, M. Hum* notary deedmade *RELEASE OF RIGHTS* based on false power of attorney, meaning not fulfill its obligations as a notary in a deed as dishonest and biased as Article 16 (1) UUJN.

Under the provisions of article referred to above can be explained that a deed made before a notary only has the strength of evidence as the deed under the hand or a certificate becomes null and void are the things that are technical and formal as well as a standard that must be fully understood by notary or negligence against it causing a notary can be held accountable or guilt so that those who suffered losses have legitimate reasons to demand reimbursement of expenses, damages and interest to the notary.

This normative provisions that regulate notary notaries in their profession is always controlled by the formalities have notary profession demands refers to the shape of the



resulting deed not the substance (matter) certificate. Material certificates and responsibility for its contents rests with the parties to agreement. sometimes in a deed contains certain legal constructions in the constellation of treaty law that may be breached by the parties. On this notary is obliged to remind or notify the parties that the actions contrary to the applicable law.

Regarding the responsibility of the material to a deed made before a notary must be stressed that the notary authority in making authentic act does not mean that a notary can freely according to his will create authentic act in the absence of the parties who commissioned his deed (Roesli, Heri, & Rahayu, 2017). The notarial deed is the parties concerned, not notary concerned. Therefore, in the event of a dispute of the covenants contained in notarial made to them and before notary then bound are those who hold the treaty itself, while the notary is not bound to fulfill the promise or obligation as stated in notarial deed made in front and notary altogether beyond those who become parties.

Apart from liability notary in the running position, that the notary as a public official in increasing source of state revenues from taxes, PPAT also plays a major role because they are assigned to investigate had paid income tax (VAT) of revenue as a result of transfer of rights over land and Customs Acquisition Rights Land and Building before a deed, as General explanation PP 37 of 1998 jo PP 24 Year 2016 on the Rules of Land Deed Official Position. This means that if are not paying taxes to the Tax Administration, can deposit on PPAT also plays a major role because they are assigned to investigate had paid taxes due to the transfer of land and Customs Acquisition Rights to Land and Buildings.

Notary authorized to receive money deposit BPHTB deposited from client, given notary as a public official in increasing source of state revenues from taxes, notary also plays a major role because they are assigned to investigate had paid income tax (VAT) of revenue as a result of transfer of rights over land and Customs Acquisition land and Building before a deed, this means that if client are not paying taxes to the Tax Administration, client can leave a notary public also plays a major role because they are assigned to investigate had paid taxes due to the transfer of rights over land and Customs Acquisition rights to land and Buildin.

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- Undang-Undang Republik Indonesia Nomor 30 Tahun 2004 tentang Jabatan Notaris
- Undang-Undang Republik Indonesia Nomor 2 Tahun 2014 tentang Perubahan Atas Undang-Undang Republik Indonesia Nomor 30 Tahun 2004 tentang Jabatan Notaris
- Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah
- Peraturan Pemerintah Nomor 37 Tahun 1998 tentang Peraturan Jabatan Pejabat Pembuat Akta Tanah.