

# Implementations of Notaries/Land Titles Registrar in the Field of Taxation

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## ABSTRACT

Notary is a public official, but do not receive a salary from the government. In addition, notary is also involved by the government, especially to assist with the collection of certain taxes, for example, Land and Building Rights Acquisition Fee and final income tax in the process of buying and selling land and buildings. The problem is what types of taxes are related to the notary profession and how the tax obligations are implemented. The research method used is juridical empirical, with descriptive analysis research specifications. The research location is in the city of Semarang. The results show that related to the notary profession are income tax, fees for acquisition of rights to land and buildings, stamp duty, value added tax and land and building tax. Other research results indicate that the notary has carried out its tax obligations in accordance with the provisions of the proper laws and regulations. However, in its implementation there is still in fulfilling its tax obligations.

**Keywords:** Notary, Tax, Self-Assessment, Tax Obligations

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## INTRODUCTION

Tax collection which is a necessity in people's lives is one thing that is certain to happen, therefore all the interests of the community cannot be fulfilled without tax. Likewise, in Indonesia, without taxes, it is certain that the government will not be able to run the wheels of government. Taxes are the backbone of state revenue (Illyas & Burton, 2018). State revenue is the realization of various revenues from sources regulated by statutory regulations. The sources of state revenue include tax revenue, non-tax revenue and receipt of grants from within and outside the country. Among the various sources of state revenue, tax revenue is the largest source of contributing to state revenue.

Given the large potential for this tax revenue, the government continues to try to optimize revenue from the taxation sector. Various studies show that the potential for taxes in Indonesia is still very large (Syadullah & Nizar, 2013). The tax ratio owned by Indonesia is in the range of 11%, this ratio is far behind in the ranks of middle-class countries, namely 14-15% and developed countries, namely 24-26% (Permata et al., 2018). The tax ratio is still very likely to be increased continuously. Tax revenues consist of: (a) domestic taxes such as: Income Tax from Oil and Gas, Non-Oil and Gas, Value Added Tax on Goods and Services, Sales Tax on Luxury Goods, Excise and other taxes and (b) International Trade Tax namely import duty and exit duty (Farouq, 2018). Regarding the meaning of tax, it is stated in Article 1 number 1 of Law Number 28 of 2007 concerning the third Amendment to Law Number 6 of 1983 concerning General Provisions and Taxation Procedures, which in essence states that the meaning of tax is the mandatory contribution of the taxpayer (personal or agency) owed to the state, is compulsion, collected based on law, there is no direct contribution/reward and is used for state needs (for the greatest prosperity of the people) (Ispriyarso & Saadah, 2019; Azhar et al., 2019).

There are various types of taxes in Indonesia from their respective classifications. Based on the category, taxes can be divided into Direct Taxes and Indirect Taxes.

Direct Tax is a tax that must be borne by taxpayers themselves, may not be borne by other parties. Indirect tax is a tax whose tax burden can be delegated to other parties (consumers). Based on their nature, taxes can be divided into subjective taxes and objective taxes. Subjective tax is a tax based on the subject, namely taking into account the condition of the taxpayer. Objective tax is a tax which is the benchmark to the object subject to the tax, namely what the object is found first, regardless of the taxpayer (Fidel, 2007). The current tax collection system after tax reform in Indonesia is Self-Assessment. The self-assessment system is implemented to provide the greatest possible trust and freedom to the public in order to increase awareness and public participation in paying their taxes (Radjijo, 2007). In this self-assessment system, the taxpayer's obligations include self-calculating the tax owed and reporting it.

Notary is an individual taxpayer who has a unique position. Notary is a public official, but do not receive a salary from the government. In addition, notaries are also involved by the government, especially to assist with the collection of certain taxes, for example Fees for Acquisition of Land and Building Rights (BPHTB) and final income tax in the process of buying and selling land and buildings (Liguna et al., 2018; Yulia et al., 2020; Yulia et al., 2018). In this regard, the problem is how the obligations of the Notary in this taxation sector and how it is implemented in the self-assessment system as well as what obstacles arise in the implementation of these tax obligations. The research was conducted on a notary in the city of Semarang.

## RESEARCH METHODS

The approach method used in this research is an empirical juridical approach. The empirical juridical approach is an approach that functions to see the law in a real sense and examine how the law works in society. This empirical juridical approach includes secondary data (literature study) and primary data (field research), which emphasizes primary data (data obtained directly

from field research). In this study, it focuses on how tax law regulations, especially those related to taxpayer obligations, are carried out by notaries in carrying out their tax obligations in accordance with the current self-assessment system. The research specification in this research is descriptive analysis. Qualitative data analysis was carried out in 3 (three) stages, namely data reduction, data presentation and conclusion. The types of data include primary and secondary data. Primary data were obtained through field research (field research) by conducting interviews with notaries who were sampled in this study (6 notaries). Secondary data is obtained from literature studies which include official documents, books, journals, research results in the form of research reports and so on.

## RESULT

Notary is a public official who has the authority to make authentic deeds and has other powers as referred to in Law Number 30 of 2004 concerning the Position of Notary Public as amended by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public. The authority of a notary can be seen in Article 15 paragraph (1) of Law 2/2014. The notary is authorized to make authentic Deeds regarding all actions, agreements, and stipulations required by laws and regulations and/or those interested in being stated in the authentic Deed, guarantees the certainty of the date of making the deed, keeps the deed, provides grosses, copies and excerpts of the deed, all of this as long as the making of the Deed is not assigned or excluded to other officials or other people as stipulated by law. Apart from having this authority, notaries also have other powers, namely as stated in Article 15 paragraph (2) of Law No 2/2014.

The Official for Making Land Deeds is a General Official who is given the authority to make authentic deeds regarding certain legal actions regarding land rights or property rights over apartment units (Article 1 paragraph 1 of the Republic of Indonesia Government Regulation Number 37 of 1998 in conjunction with Regulation State Minister for Agrarian Affairs/Head of the National Land Agency Number 4 of 1999 concerning Regulation of Land Deed Making Officials with reference to Gov. Reg. No. 37 of 1998 concerning Land Deed Making Officials in its development is amended by Government Regulation Number 24 of 2016. Usually this position is concurrently held by a Notary who has met the requirements to become Land Titles Registrar (PPAT). Notary and PPAT are officials who have the authority to make authentic deeds based on law (Khusna 2017). An authentic deed is a deed which, in the form prescribed by law, is made by or in front of a public official who has the authority to do so at the place where the deed was made. Notaries are said to be public officials, because notaries are appointed and dismissed by the government. Although notaries are appointed and dismissed by the government, notaries are not employees according to the civil service law. Notaries do not receive salaries from the government but receive honoraria from their clients based on the prevailing laws and regulations.

Based on the results of the research, in addition to the authority to make these deeds, from the taxation aspect, there are several obligations that must be fulfilled by a notary. Some of the obligations of a notary in the field of taxation, among others, are obligations in the types of Land and Building Tax, Fees for Acquiring Rights on Land

and Buildings, Value Added Tax for Goods and Services, Stamp Duty and Income Tax. In the type of land and building tax, namely the obligation of a notary, like other Land and Building Tax taxpayers, must make Land and Building Tax payments on the house he occupies and/or on the land and building that is used as his office. Land and Building Tax is a levy on land and buildings that arises because of profits and/or socio-economic position for a person or entity that has a right on it or obtains benefits from it.

In the types of BPHTB and final income tax, notary is indirectly obliged to supervise the settlement of BPHTB and final income tax. The PPAT is a public official related to land sale and purchase transactions, PPAT will sign an authentic deed after the BPHTB tax is paid in full by the taxpayer. The Official for Making Land Deeds can only sign the deed of transfer of rights to land and or buildings after the taxpayer submits proof of tax payment (Ravianto, 2017). This is in accordance with what Article 91 paragraph (1) of Law Number 28 of 2009 on Regional Taxes and Levies affirms, which states: "Land Deed Making Officials/Notaries can only sign the Deed of Sale and Purchase after the taxpayer submits proof of tax payment". The taxes related to this sale and purchases are BPHTB and final income tax. If this is violated, the sanctions that will be accepted by the public notary, for violations as stated in Article 91 paragraph (1) will be subject to administrative sanctions in the form of a fine of Rp. 7,500,000.00 (seven million and five hundred thousand rupiah).

Other tax obligations for notaries are obligations in the type of VAT tax. Based on the provisions of Article 4A paragraph (3) Law on VAT. Article 5 Gov. Reg No 144 of 2000 concerning Types of Goods and Services that are not subject to Value Added Tax, it can be seen that services in the notary sector are not included in the formulation of types of services that are exempted from VAT and VAT for luxuries, so notary services are included in services that are subject to VAT, so notaries are included in the Taxable Entrepreneur category and are required to collect 10% VAT for services rendered.

In the type of Stamp Duty tax based on Law Number 13 of 1985 concerning Stamp Duty, deeds made by notaries or PPAT based on Stamp Duty Law are included in the documents imposed by Stamp Duty. This is as regulated in Article 2 of the Stamp Duty Law. Therefore, the deed made by the notary including the copy as well as the PPAT deed including in duplicate must be paid by Stamp Duty. The parties owed by Stamp Duty in the notary deed are the parties who make the agreement before the notary.

The obligations of a notary in the type of income tax, based on Law Number 36 of 2008 concerning Income Tax, are quite numerous. Notary who has been registered as an individual taxpayer will be classified as a taxpayer who owns a business and free work.

As for the implementation of notary tax obligations as mentioned above, in practice it is based on the results of research conducted on 6 notaries.

In the type of land and building tax, all notaries interviewed by the author have carried out their tax obligations as specified in the regulations/laws related to PBB. They carry out their PBB payment obligations before the deadline for PBB payment expiration (before 6 months after the date of issuance of PBB Tax Payable Tax Returns).

In the types of BPHTB and final income tax taxes, the notaries interviewed by the author all have obligations in

accordance with applicable tax regulations. They sign the deed after paying the taxes related to the sale and purchase concerned. Notary also provides assistance in calculating the final BPHTB and income tax, including assisting in the payment process.

Apart from the above taxes, Notary Public has obligations in the field of Value Added Tax (VAT). According to Miftahudina & Irawan (2020), VAT is a tax on the consumption of goods or services in the customs area by an individual or entity. The obligation of a Notary in the field of PPN, namely a Notary who meets the requirements as a Taxable Entrepreneur (PKP) is obliged to collect VAT for the services it provides. In the type of VAT tax, based on interviews with 6 notaries, they stated that they did not collect 10% VAT for the services they provided, because they did not meet the requirements as PKP (Taxable Entrepreneurs). In the type of Stamp Duty tax, based on the results of interviews with 6 notaries, they stated that they had fulfilled the duty to fulfill stamp duty as stipulated in the statutory regulations governing Stamp Duty.

### DISCUSSION

Based on the research results above, it can be seen that there are several types of taxes related to the notary profession. Several types of taxes include land tax, BPHTB, final income tax, VAT, and Stamp Duty. Regarding these types of taxes, there is one type of tax that is considered controversial, namely VAT. The controversy occurred because according to the PPN Law, notaries were indirectly included as "entrepreneurs", so as a result they were obliged to pay 10% VAT for the services they provided. This is considered inaccurate, because notaries are General Officials as regulated in the Law on Notary Position. The existence of this controversy must be ended immediately so that there is legal certainty regarding the obligations of notaries in the field of taxation (VAT).

Furthermore, regarding the obligations of notaries, in the field of final BPHTB and PPH related to the making of sale and purchase deeds for land and buildings, so far there has been no certainty about the price of land and/or buildings which are used as the basis for the government to validate, this also creates legal uncertainty this also immediately looked for a solution. There should be uniformity in the price of land and/or buildings, between the city/regency governments, the Land Office and the Land and Building Tax office. So far, the prices for land and buildings vary between the three agencies. The United Nations Office to collect PBB, the price of land and or buildings is based on the Selling Value of the Tax Object. The land office to collect PNPB (Non-Tax State Revenue) is based on ZNT (Land Value Zone), while the City Government to carry out validation, there is no certainty about the legal regulations which are used as the basis for determining the price of land and or buildings for the validation.

Furthermore, regarding the implementation of notary obligations in the field of taxation, the notaries have carried out tax obligations in accordance with applicable legal provisions. This can be seen from the results of the research, related to the taxes they have to pay, they have fulfilled their tax payment obligations and their reporting is in accordance with the time limit and provisions required by the tax law concerned. However, for VAT, this obligation has not been implemented because it is not included as a Taxable Entrepreneur as stipulated in the VAT Law. In addition, there has also

been no law enforcement action for PPATs that are already PKP but do not collect VAT.

Associated with the notion of legal compliance which states legal compliance is the condition of a citizen who is subject to obeying one applicable rule of the game (law). In the field of taxation, taxpayer compliance is also influenced by several factors including the tax administration system of a country, services to taxpayers, tax law enforcement, tax inspection and tax rates (Lasmaya & Fitriani, 2017). Taxpayer compliance is one of the keys to ensuring the success of the government in collecting tax revenue so that it can be used to support development financing. This taxpayer compliance issue is very important for the success of tax collection. The self-assessment system that is currently applied in tax collection will not be successful if it is not supported/supported by very high tax compliance (Ispriyarso, 2020). According to Indriyani & Sukartha, (2014), one of the most serious problems for economic policymakers is increasing the level of taxpayer compliance. From the legal compliance aspect, it can be said that notaries have complied with their duties in the taxation sector. This can be seen from the results of research, submission of Annual Tax Letter (SPT) reports, tax payments made by the Notary in accordance with the time period stipulated in the applicable tax law.

### CONCLUSION

Tax obligations related to the notary profession in accordance with the provisions of the current tax law, include land and building tax, income tax, stamp duty, BPHTB and final income tax and VAT. The notary has carried out their tax obligations in accordance with the provisions required in the applicable tax law. As for the suggestions that can be put forward in this research, there should be strict provisions in the future, regarding the notary profession as an entrepreneur or not, so that there is legal certainty regarding the obligations of notaries in collecting VAT for services provided. Regarding the validation of the final income tax and BPHTB, there should be legal regulations that can be used as the basis for determining the price of land and/or buildings for the city government in validating.

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