

# INCOME TAX IN THE ISSUING OF AUTHENTIC DEED OF SALE-PURCHASE RIGHTS ON LAND BY LAND DEED OFFICER IN INDONESIA

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## ABSTRACT

*The purpose of this study is to determine the applicability of government regulations (PP) 34 of 2016, by using sociolegal research method. The result of the research shows that there is a conflict of norm between Article 1868 of the Civil Code (KUHPerd) with Article 3 Section (5) PP 34 of 2016 which arises as a logical consequence of Article 3 Section (1) of the government regulations there is also a conflict between Article 1 and Article 3 Section (5) of the government regulations. Therefore, the provisions of Article 3 Section (1) PP 34 of 2016 should be changed and the provisions of Article 3 Section (5) of the PP shall be terminated.*

**Keywords:** Income Tax, Authentic Deed, Sale and Purchase of Land Rights, Land Deed Officer (PPAT).

## INTRODUCTION

Social human beings have always lived in a particular group called society. Every individual of that person always has interests that may differ from one to another, so that each individual will endeavor to protect his or her own interests from interference. Interference of interests or conflicts must be prevented or not allowed to continue, because it will disrupt the balance of the community order (Prayogo, 2018). Humans will always try to keep the community order in a balanced state, because a balanced society creates an orderly, peaceful and secure atmosphere that is a guarantee of its survival. Therefore, the balance of the disturbed social order must be restored to its original state (restitution in integrum) (Mertokusumo, 2008; Susilowati, 2018). The restoration of the original state aims to restore orderly society, or create an orderly society. In order to create an orderly society, there must be justice, and therefore necessary institutions that maintain and regulate justice (Wicaksono, 2018). Legal studies according to Roscoe (1965) talk about the implementation of justice, which means to regulate the relationships and to control of human behavior, and for that then created the norm or the law.

Rule of law according Mertokusumo (2008) serves to protect the interests of human or human groups, while the goal is to discipline the community. If human interests are protected, then the state of society will be orderly. The law is in charge of seeking the balance of order in society and the legal certainty to achieve its objectives, namely public order (Mertokusumo, 2008). In order to create public order in fulfilling obligations to the state to pay income tax from the transfer of land and/or building rights, then Government Regulation No.34 of 2016 on income tax on income from the transfer of land and/or building rights is made, and the Sale and Purchase Agreement on Land and/or Buildings and its Amendments (hereinafter referred to as Government Regulation No.34 of 2016). After the issuance of this regulation, there is a difficulty for Land Deed Officer in making an authentic deed on the transfer of land and/or building rights,

because in Article 3 Section (5) of the Government Regulation prohibits authorized officials (including Land Deed Officer) to sign deed (including deed of sale and purchase) before the taxpayer fulfills his obligation to pay the income tax, so this raises anxiety in the community who will do the sale and purchase of land rights. Likewise, to meet the community's need for legal certainty and to create legal order regarding the transfer of land and/or building rights, then the provisions of the competent authority to make the deeds of the land shall be made, namely the Land Deed Officer (PPAT) as an authentic deed, so that every transition of land rights is included through the sale and purchase, must be proven by the deed of Land Deed Officer. Buying and selling is a transfer of rights through legal acts or deliberate acts of a person transferring his rights to others, and to transfer (levering) over immovable objects including land, must be proven by an authentic deed, according to the provisions stipulated in law. The purpose of this study is to describe the legal consequences for the people who make the deed of buying and selling rights to the land in the presence of Land Deed Officer if it must first pay the income tax.

## RESEARCH METHODOLOGY

This research uses sociolegal research method. Sociolegal study is a study of law by using the approach of law science and social sciences (Sulistiyowati & Shidarta, 2009). It means to approach the legal problems in accordance with the fact that live in practical life in society. The nature of this research is descriptive, which is a study that provides a systematic description of the object of research (Sunggono, 2006).

The data used in this study consist of primary data and secondary data. Primary data is data directly obtained from the speakers in the field that has been selected (purposive sampling), i.e.

1. Mr. I Ketut Nuridja, S.H., M.Kn, as PPAT of Tabanan Regency.
2. Mr. Richard Yerry Puryatma, S.H., M.Kn, as PPAT of Badung Regency.
3. Mr. I Gusti Kardinal Made Mas Wibawa, S.H., M.Kn, as PPAT of Denpasar City.
4. Mr. Anak Agung Gede Oka Aryana, S.H., M.Kn, as PPAT of Gianyar Regency.
5. Mr. I Nyoman Mudra, SE,MM as the seller of the land.
6. Mr. I Gede Nyoman Chidi Anom, A.Md, as a land buyer.

Secondary data in the form of data obtained from the review of literature (literature) associated with this research, when viewed from the angle of the binding force according Soerjono (1986) consisting of: (1) primary legal materials in the form of the Civil Code (KUHPerd), Law Number 5 of 1960 on Basic Regulation of Agrarian Principles, Law Number 7 of 1983 on Income Tax follows all the amendments, Government Regulation No.24 of 1997 on Land Registration, Government Regulation No. 37 of 1998 on the Regulation of Officials of the Land Deed Authority which has been amended to Government Regulation No.24 of 2016 on Amendment to Government Regulation Number 37 of 1998 on the Regulation of Officials of the Land Deed Authority, Government Regulation No.34 of 2016, Regulation of the Minister of Agrarian Affairs/Head of National Land Agency Number 3 of 1997, and Regulation of Head of National Land Agency Number 8 of 2012; (2) secondary law material that explains the primary legal material, in the form of books, articles, journals, papers, research reports relating to the object of research; (3) tertiary legal material that provides explanations or guidance on primary and secondary legal materials in the form of dictionaries.

Data collection tools in this study there are two, namely literature review and interview. Library study is useful to collect literature related to the object of research (Creswell, 2009).

Interview guidelines as a structured interview or unstructured interview for researchers who will ask for information from resource persons (Neuman, 2006). In order to obtain information and input from informants conducted through in-depth interviews (Utsman, 2010).

This research is undertaken through three stages: first, library research; second, field research; third, analyzing the data and compiling the research report. Data analysis is done qualitatively, considering the data collected is qualitative data (Moleong, 2005) by using the hermeneutic interpretation method. Interpretation of legal hermeneutics (Hamidi, 2011), is the interpretation of legal texts not solely from the formal legal aspects of the content of the text, but also from the factors behind the socio-political and cultural aspects. The logic used is the deductive logic that departs from the theoretical framework then correlated with objective reality. From the results of the analysis will be obtained answers to problems that have been formulated at the same time take its conclusions.

## RESULTS

### Authentication Deed Procedures

Deed is a certificate (acknowledgment and so on) witnessed or endorsed by one government agency (notary and so on) (Poerwadarminta, 2006), a deed is a letter that serves as a proof of the truth of something signed by an interested party (Umar & Jimmy, 2012), while authentic means trustworthy or true (Poerwadarminta, 2006), and an authentic deed means a deed or letter made in the presence or by a notary with witnesses or authorized officials (Umar & Jimmy, 2012). So the authentic deed means a letter made in front of and by a notary or authorized official who is trustworthy to the truth.

According to Thong (2007), the authentic deeds in its manufacture shall meet three conditions, namely: first, to be made in the presence or by a general official (*openbaar ambtenaar*) that is authorized; second, to be attended by witnesses; and third, should be read by the notary and thereafter signed immediately. The word "*in front*" indicates that the deed was made at the request of a person, while the word "*made by*" because of an event, examination, decisions, and so forth such as news of the meeting, news of the drawing event, and others. The word "*authoritative public authority*" means that the general official to which the deed is made or who makes the deed, is a public official authorized to make a deed in that place. The Authority (*bevoegd*) in this case specifically concerns: (1) his title and the type of deed he made; (2) day and date of the deed; (3) the place of deed is made.

Concerning the definition of authentic deed, it is contained in Article 1868 of the Civil Code, which states:

*"An authentic deed is a deed which is in the form prescribed by law, made by or in the presence of the ruling public officials for it in the place where the deed is made".*

Authentic deeds or writings are one of the proofs in writing, as specified in Article 1867 of the Civil Code. Article 1869 of the Civil Code determines that if a deed is due to not having the power or incompetence of the making official, or because of a defect in its form, can not be treated as an authentic deed, but only acts as a deed under the hand, while Article 1870 of the Civil Code provides that authentic deeds provide a perfect proof for the parties who make it and

all their heirs. Conversely, if a public official declares in a deed, that he has undertaken the actions to be taken in authentic deed making, but in reality, it is not, for example a deed is actually signed on January 10, 2018 but the deed is written on January 25, 2018, if it is proven (verification can be done by witness), the general official has made intellectual forgery (intelektuele vervalsing) (Thong, 2007).

Thus, the deed is not an authentic deed, but merely a deed under the hand (Article 1869 of Civil Code).

Thus, the central position of authentic deeds in society. Authentic deeds not only provide a strong proof, but provide perfect evidence. Etymologically perfect means: (1) intact and completely correct (no less); (2) complete; (3) is done with the best; regularly well; (4) very well; the best (Poerwadarminta, 2006), thus it may be understood that authentic deeds provide full, complete, orderly, excellent, and complete proof, so there is nothing more to question about it. Authentic deeds provide certainty, that what is written in the deed, so events that occur no less and no more.

The guaranteed certainty in the authentic deed is:

1. It must be about his legal deed, that is: it is true that the legal act that occurs is a legal act that is written in the deed is not another legal act.
2. Definitely about the time (when the occurrence of legal action/when the act of law is done), means: true on the date stated in the deed is when the act of law is done, not another date.
3. It must be about the legal subject, means: the true subject of the law contained in the deed is the subject of law that performs legal acts, not other legal subjects.
4. It must be about the object. Meaning: true objects or things that become the object of legal action on that date conducted by the subject of the law is the object or thing contained in the deed, not objects or anything else.

Therefore, it must be understood and should always be considered true, that everything written and stated in an authentic deed is a real thing as it is not any other event (Puspadma, 2015). So that the deed of sale and purchase of land rights made in the presence of Land Deed Officer can be regarded as an authentic deed, shall comply with the provisions of certainty in the authentication of the deed, which is certain of his legal deeds, must be on the date, definitely about the subject and the object.

## Land Deed Officer

Arrangement of Official Deed of Land Deed Officer (PPAT) is contained in Government Regulation Number 37 of 1998 on Regulation of Position of Land Deed Officer (PJPPAT) as amended by Government Regulation Number 24 of 2016 on Amendment to Government Regulation Number 37 of 1998 on the Regulation of Position of Land Deed Officer (PJPPATP). In Article 1 point 1 PJPPATP determines:

*“Land Deed Officer, hereinafter referred to as PPAT, is a public official authorized to make authentic deeds of certain legal acts concerning land rights or the Right to Own of Flats”.*

Article 1 point 24 PP 24 of 1997 determines: *“Land Deed Officer, hereinafter referred to as PPAT is the General Official authorized to make certain deeds of land”.* Article 1 Sub-Article 4 of Law No. 4/1996 concerning the Right of Allies to Land and Land-Related Materials (UUHT) determines: The Land Deed Officer, hereinafter referred to as PPAT, is a public official authorized to issue deeds for the transfer of land rights, deeds for the imposition of land rights,

and the deeds of authorization shall impose the Mortgage Right under prevailing laws and regulations. The official of the Deed of Land in making a deed to be authentic in accordance with the intended Article 1868 of the Civil Code, must comply with the requirements of the deed as regulated in Article 96 Section (1) of Regulation of Head of National Land Agency (Perbaban) Number 8 of 2012 and Article 101 Section (1) letter a of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency (PMNA/KBPN) 3 of 1997 as follows: The form of deed used in the deed of making as referred to in Article 95 Section (1) and Section (2), and the procedures for filling are made in accordance with the Attachment to this Regulation consisting of the Deed of Sale and Purchase, it is further determined that the deed of sale and purchase shall be attended by the seller, the buyer, two witnesses and Land Deed Officer (Article 101).

Based on the above research, it can be determined that PPAT is a public official authorized to make an authentic deed regarding the transfer and imposition of land rights. Since PPAT is a public official, he is subject to the provisions of Article 1868 of the Civil Code and in exercising his authority to make a deed which is an authentic deed, he is subject to the conditions of making authentic deeds.

### **The Rights on Land and Sale-Purchase of Land Rights**

Land rights are regulated in Act No. 5 of 1960 on Basic Regulations of Agrarian Principles commonly referred to as Basic Agrarian Law abbreviated as BAL and hereinafter shall be called BAL. The source of BAL is customary law as specified in Article 5 of the BAL. Because agrarian law derives from customary law, then all agrarian law institutions are also sourced from customary law including the definition of buying and selling.

The concept of customary law regarding the sale and purchase of land according to Maria (1993), is:

1. Cash, meaning the transfer of land rights by the land owner (seller) is done simultaneously with the payment of the price by another party (the buyer). With the legal act of buying and selling, then immediately there is also a transfer of land rights. The price paid at the time of the transfer of rights does not have to be paid off or full and this does not diminish the nature of the cash. If there is a difference/residual of the price, then this is considered as a buyer's debt to the seller who is subject to the law of accounts receivable.
2. Real, meaning the will or intention that is spoken must be followed by actions that clearly show the purpose of buying and selling them, for example by the receipt of money by the seller, and the making of the agreement in the presence of the village head.
3. Clear, meaning that the legal act must be done in the presence of the village chief (customary head) as a sign that the act does not violate the applicable legal provisions.

Regarding the making of the deed of transfer of rights including the sale and purchase by Land Deed Officer is regulated in Government Regulation number 24 of 1997 concerning Land Registration (PP 24 of 1997) with the provisions of its implementation regulated in PMNA/KBPN 3 of 1997 as amended by Perbaban No. 8 of 2012. The purpose of making PP 24 Year 1997 is to guarantee legal certainty, as specified in the consideration of Considering letter a of PP 24 of 1997.

The transfer of rights to land through the sale and purchase of a plot of land in a certificate, by PP 24 of 1997 referred to as change of juridical data of land registration. Juridical data according to the provisions of Article 1 point 7 of PP 24 of 1997 are: a description of the

legal status of land and apartment units listed, the rights holder and the rights of the other party and any other burdensome burdens. Certificate according to Article 1 number 20 PP 24 of 1997 is a letter of proof of rights as referred to in Article 19 Section (2) letter c UUPA for land rights, management rights, state land, property rights of apartment units and mortgages, each of which has been proven in the relevant land books. According to Article 19 Section (2) letter c of the, letters of proof of rights (certificates) serve as a powerful evidentiary tool.

Regarding the transfer of land rights regulated in Article 37 Section (1) PP 24 of 1997 determines: The transfer of landrights and property rights of apartment units through sale and purchase can only be registered if proven by deed made by Land Deed Officer authorized according to the prevailing laws and regulations. Further PMNA/KBPN 3 of 1997 in Article 95 Section (1) letter a determines: Deed of land made by Land Deed Officer to be used as the basis for registration of land registration data changes is the deed of sale and purchase, which in its manufacture must be attended by: seller, buyer, and two witnesses, and must be read (Article 101 PMNA/KBPN 3 of 1997).

Based on the above research it can be observed that someone will earn money which is the income from the sale of rights to his land after the deed signed in the presence of Land Deed Officer.

## **Income Tax**

Income tax is regulated in Act Number 7 of 1983 on Income Tax, as amended by Act Number 7 of 1991 on Amendment to Act Number 7 of 1983 on Income Tax, which has been amended again with Act Number 10 of 1994 on Amendment to Act Number 7 Year 1983 on Income Tax as which has been amended by Act Number 7 of 1991 which has been amended by Act No. 17 of 2000 on Third Amendment of Act Number 7 of 1983 on Income Tax, and lastly amended by Act Number 36 of 2008 on the Fourth Amendment of Act Number 7 of 1983 on Income Tax.

Regarding the imposition of income tax is regulated in Article 1 of Act no. 7 of 1983 as amended by Act no. 10 of 1994, as follows:

*“Income Tax imposed on the Tax Subject to Income received or accrued in the tax year”.*

This Article expressly provides that any income received by the subject shall be subject to withholding tax. This means that the tax is levied on the subject of the income tax, not before receiving income.

Regarding the subject of income tax is regulated in Article 2 Section (1), Section (1a) and Section (2) of Act no. 36 of 2008, as follows:

### **Article 2**

The subject of the tax is:

1. Person & The undivided inheritance as a whole replaces the rightful ones.
2. Entity/entreprise.
3. Permanent establishment.

The permanent establishment is a tax subject whose tax treatment is equal to the tax subject of the entity.

The subject of tax is differentiated to be subject to domestic tax and foreign tax subject.

This Article determines, that one of the tax subject is an individual, whether residing in Indonesia or not in Indonesia.

Regarding tax object is regulated in Article 4 of Law no. 36 of 2008, and the final tax shall be stipulated in Article 4 Section (2) letter d, which sets forth as follows:

*“Earnings below may be subject to final tax: income from transactions of property transfers in the form of land and/or buildings, construction services business, real estate business, and land and/or building lease. Regulated by or based on Government Regulation”.*

The Government Regulation organizing it is Government Regulation Number 48 of 1994 concerning Income Tax Payment on Income from Transfer of Land and/or Buildings, which has undergone several changes and lastly amended by PP. 34 of 2016 concerning Income Tax on Income from Transfer of Right to Land and/or Buildings, and the Sale and Purchase Agreement on Land and/or Building and its Amendments, which until now is still valid.

Government Regulation Number 34 of 2016 concerning Income Tax on Income from Transfer of Land and/or Buildings, and Sale and Purchase Agreement on Land and/or Building and its Amendment which is the last change of Government Regulation Number 48 of 1994 is Government Regulation (PP) which is enacted under the order of Article 4 Section (2) letters d Law no. 36 of 2008. Government Regulation No. 34 of 2016 regulates the payment of income tax (PPH) of income from the transfer of land and/or building rights which are final, which in this study is special about the sale and purchase of land rights only, while the transfer of land rights other than for sale and purchase is not the object of this research.

The articles in Government Regulation No. 34 of 2016 relating to this research are as follows:

### **Article 1**

1. On income received or derived by an individual or entity from:
  - i. Transfer of land and/or building rights.
  - ii. Agreement on the sale and purchase of land and/or building and its amendment, is set forth in the final Income Tax.
2. Income from the transfer of land and/or building rights as referred to in Section (1) letter a is income received or acquired by the parties transferring the rights of land and/or buildings through sale, exchange, disposal of rights, assignment of rights, auctions, grants, inheritance, or other means agreed between the parties.
3. Income from binding agreement of sale and purchase of land and/or building and its amendment as referred to in Section (1) letter b is income from:
  - i. The seller whose name is listed in the sale and purchase agreement at the time of signing.
  - ii. The buyers whose names are listed in the purchase binding agreement prior to any change or addendum of the sale and purchase agreement, to the occurrence of changes in the buyer in the purchase binding agreement.

Based on the provisions of article 1 of the Government Regulation No. 34 of 2016, then a person or entity that has received income or has obtained income from sale or purchase binding agreement on land and/or building rights, tax payable is final. So after a person or entity receives income, then that is concerned owe final income tax, not before income is received or earned.

## Article 2

1. The amount of Income Tax from the transfer of land and/or building rights as referred to in Article 1 Section S (1) letter a is equal to:
  - i. 2.5% (two point five percent) of the gross amount of the transfer of rights to land and/or buildings in addition to the transfer of land and/or building rights in the form of Simple Houses or Simple Flats carried out by a Taxpayer whose main business undertakes the transfer of land and/or building rights.
  - ii. 1% (one percent) of the gross amount of the transfer of land and/or building rights in the form of Simple Houses and Simple Flats carried out by a Taxpayer whose main business undertakes the transfer of land and/or building rights.
  - iii. 0% (zero percent) of the transfer of land and/or building rights to the government, a state-owned enterprise that receives a special assignment from the Government, or regionally-owned enterprises that receive special assignments from the regional head, as defined in the law regulating the procurement of land for development for the public interest.
2. The value of the transfer of land and/or building rights as referred to in Section (1) shall be:
  - i. Value is based on the decision of the competent authority, in the case of transfer of rights to the government.
  - ii. Value according to the auction minutes, in the case of transfer of rights in accordance with the auction rules (Vendu Reglement Staatsblad of 1908 Number 189 and its amendments).
  - iii. The value that should be received or earned, in the case of transfer of land and/or building rights is done through sale and purchase that is affected by a special relationship, other than the transfer referred to in letter a and letter b.
  - iv. Actual value received or obtained, in the case of transfer of land and/or building rights through sale and purchase which is not affected by a special relationship, other than the transfer referred to in letter a and letter b.
  - v. The value that should be received or earned is based on the market price, in the case of transfer of land and/or building rights through exchange, disposal of rights, assignment of rights, grants, inheritance, or other means agreed between the parties.
3. The amount of Income Tax on income from the sale and purchase agreement of land and/or building along with the amendment as referred to in Article 1 Section (1) letter b based on the rates as referred to in Section (1) of the gross amount, that is:
  - i. Actual value received or acquired, in the case of land and/or building transfers is made through transfers not affected by a special relationship.
  - ii. The value that should be received or earned, in the case of transfer of land and/or building, is done through a diversion that is affected by a special relationship.
4. Simple House Criteria and Simple Flats as referred to in Section (1) letter a and letter b, in accordance with the criteria of Simple House and Simple Flats that have facilities exempted from the imposition of Value Added Tax in accordance with the provisions of the laws and regulations in the field of taxation.

The provisions of this article confirm that income received or obtained by the subject of taxes due to the sale of land and/or buildings is subject to final income tax, with a tariff of 2.5% of the gross sales value of land and/or building rights, or 1% of the gross amount of the sale value of land and/or buildings in the form of Simple House (RS) or Simple Flats (RSS) made by the Taxpayer (WP) whose main business transfers rights to land and/or buildings (Developer), or 0% of the transfer of land and/or building rights to the government, a state-owned enterprise (BUMN) that gets a special assignment from the Government, or regional-owned enterprises (BUMD) that get special assignment from the regional head, as defined in the law regulating the procurement of land for development for the public interest. The tariff is calculated from the



amount of the sale value of land and/or building rights, namely: the value that should be received or obtained, in the event that the transfer is made through a sale and purchase that is affected by a special relationship, or the actual value received or obtained, in the event that the transfer is made through a sale and purchase that is not affected by a special relationship, or the value that should be received or obtained at market prices.

Based on the provisions of Article 2 Section (1) letter a, juncto Article 2 Section (2) letter d of the PP 34 of 2016, then any person who is not engaged in business as a developer conducting the sale of land and/or building rights shall be subject to a final tax of 2.5% of the value (sale price) received, and based on Article 1 Section (1) of the Government Regulation No. 34 of 2016, The final income tax must be paid after the seller earns from the sale of his/her land rights.

Regarding the time of payment of income tax to the State is regulated by the Government Regulation 34 of 2016 in Article 3, as follows:

### Article 3

1. An individual or entity receiving or obtaining income from the transfer of land and/or building rights as referred to in Article 1 Section (1) letter a, shall deposit the income tax payable as referred to in Article 2 Section (1) letter a and letter b to bank/phonyperi post before the deed, decision, agreement or minutes of auction on the transfer of land and/or building rights signed by the authorized official.
2. For an individual or entity whose main business undertakes the transfer of land and/or building rights receiving or obtaining income from the transfer of land and/or building rights as referred to in Article 1 Section (1) letter a, Income Tax as referred to in Section (1) shall be payable upon receipt of part or all of the payment of the transfer of land and/or building rights.
3. Income Tax as referred to in Section (2) shall be calculated based on the amount of each payment including advances, interest, levies, and other additional payments fulfilled by the buyer, in connection with the transfer of such land and/or building rights.
4. The payable income tax as referred to in Section (2) shall be paid by the individual or the concerned entity to the bank/postal perception no later than the 15<sup>th</sup> (fifteenth) of the following month after a month of payment receipt.
5. The competent authority shall only sign the deed, decision, agreement or minutes of the auction on the transfer of land and/or building rights if it is proved by the individual or entity that the obligations referred to in Section (1) has been fulfilled by submitting a photocopy of Tax Payment Deposit or the printout of other administrative means which is equated with the relevant Tax Payer Letter which has been conducted by the Tax Office.
6. Officials that is authorized to sign a deed, decision, agreement, or minutes of auction shall submit monthly reports concerning the issuance of deeds, decrees, agreements or minutes of auction on the transfer of land and/or building rights as referred to in Section (2) to the Director General of Taxes.
7. The competent authorities as referred to in Sections (5) and (6) includes the officials of the land deed, auctioneer, or other officials authorized in accordance with the provisions of the law.

Based on the above provisions, the seller of land right as a Tax Payer (WP) shall pay the income tax that is payable to the bank/post perception before the deed is signed by the authorized official. In the case of the sale and purchase of land rights, the acts must be made in the presence of Land Deed Officer in order to be re-registered in the Land Affairs Office (Article 37 section (1) 24 of 1997 juncto Article 95 section (1) letters a PMNA/KBPN 3 of 1997). This is in contrast to developers who are required to pay income tax that is payable by no later than the 15<sup>th</sup> of the following month. It turns out that the Government Regulation o. 34 of 2016 gives different treatment between individuals or entities that are not developers with developers, where an individual or entity that is not a developer is required to pay the income tax payable before the

act is authorized by the authorized Officer while the developer has the obligation to pay the income tax that is payable on the 15<sup>th</sup> of the following month.

## DISCUSSION

The results of the study were analyzed using the theory of legal certainty and authority theory. The theory of legal certainty used is from Sudikno Mertokusumo (2007), which states that legal certainty is a fair protection against arbitrary acts, which means that a person will be able to obtain something to be expected under certain circumstances (Mertokusumo, 2008), while the authority theory used is from Bagir Manan, which states that authority also means rights and obligations. The right contains the freedom to do or not to take certain actions, or to require another party to perform or not to take certain actions, while the obligation contains the obligation to perform or not to perform certain actions (Wiyono, 2004; Arif, 2018; Mulyawan, 2018).

The deed of sale and purchase made in the presence of Land Deed Officer is an authentic deed which provides the perfect proof for the who makes and all his heirs including others as long as the formal conditions in its manufacture are met. One of the conditions that must be met is the signing of the deed must be concurrent between the seller, the buyer, the witnesses and the Land Deed Officer and the date on which the signing is a date listed on the deed of sale and purchase, on the other hand, the Income Tax must be paid before the sale and purchase deed is signed by Land Deed Officer. Of these two provisions there is a distortion of interest between the making of authentic deeds and the interests of the state in levying taxes (Results of interview with Land Deed Officer I Ketut Nuridja, S.H., M.Kn. on November 30, 2017 at his office in Tabanan, also with Land Deed Officer Richard Yerry Puryatma, S.H., M.Kn, at his office at Jl. Nakuta, Kuta, on September 27, 2017, and Land Deed Officer I Gusti Kardinal Made Mas Wibawa, S.H., M.Kn, at his office at Jl. Hayamwuruk, Denpasar on October 24, 2017).

The state's interest in tax collection causes the provision of the income tax to be paid before the deed is signed. To comply with these conditions, it is likely that Land Deed Officer will take one of the two steps below:

1. Deed signed but not dated, after the income tax is payable and then the deed is dated. The following income tax payments and validation of the tax office may take several days, meaning that the date on which the deed is signed is different from the date stated in the deed.
2. The seller pays the Income Tax first without signing the deed, after the proof of payment of tax is validated by the tax office, then the deed is signed and dated.

In the first step, there is clearly a violation in the making of an authentic deed which resulted in the deed becoming a deed under the hand and therefore can not be used to register back the name of the certificate in the Land office, and as a result may be detrimental to the buyer. Conversely if the second step taken, then no one can guarantee the buyer is willing to sign the deed, so potentially harm the seller (Results of interview with Land Deed Officer Anak Agung Gede Oka Aryana, S.H., M.Kn, by phone on November 24, 2017).

A person who sells land rights, certainly hopes to get the money into his income and also used to pay income tax, but if the provision of paying taxes before the deed is signed remains in force, then based on the above two possibilities, the expectation becomes not realized, thus potentially causing harm to the seller, thus contrary to the theory of legal certainty (Result of interview with I Nyoman Mudra, SE, MM, and I Gede Nyoman Chidi Anom, A.Md, at their own house in Gablogan, Berembeng Viilage, Tabanan Regency, on January 20, 2017.).

The State in exercising its authority has collected the payment of the Income Tax before the deed is signed, so that the state has earned its right, but the state does not fulfill its obligation to provide legal certainty to the public, and therefore contrary to the theory of authority.

## CONCLUSION

Based on the result of the research and discussion, it can be concluded that the obligation to pay the Income Tax before the deed is signed as regulated in Article 3 Section (5) of the Government Regulation 34 of 2016 contradictory to Article 1868 of the Civil Code which results in the absence of guaranteed legal certainty and protection, thereby potentially causing harm to the public. Because of the potential of causing harm to the community, the objective of PP 24 of 1997, contained in the consideration of “*Considering*” letter b, namely to provide assurance of legal certainty potentially will not be realized. Given these disagreements, this has the potential to disrupt the balance of the community order.

Therefore, the provision of Article 3 Section (5) of Government Regulation 34 of 2016 is contradictory to Article 1868 of the Civil Code, then based on the principle of *lex specialis derogat legi generali* the provision of Article 3 Section (5) of the Government Regulation No.34 of 2016 shall be disregarded and the date of the deed shall remain the same as the date the deed is signed. In addition, at the time the deed is made, the seller has not received any income from the transfer of land and/or building rights, the seller will receive an income after the deed is signed, therefore it is reasonable that the payment of income tax is made after the deed is signed as stipulated in Article 1 of the Government Regulation No. 34 of 2016. With also happened conflict between Article 1 with Article 3 Section (3) and Section (5) in the Government Regulation No.34 of 2016.

## RECOMMENDATION

The emergence of the provisions of Article 3 Section (5) of the Government Regulation No. 34 of 2016 is a logical consequence of the provision of Article 3 Section (1) of the Government Regulation No.34 of 2016 which is the main source of disruption of the balance of the community order. Since the balance of society is disrupted, it must be restored to its original state (restitution in integrum). In order to recover as it was, the recommendation can be given:

1. Changing the provisions of Article 3 Section (1) of the Government Regulation No. 34 of 2016 shall be as follows:

*“An individual or entity receiving or obtaining income from the transfer of land and/or building rights as referred to in Article 1 Section (1) letter a, shall deposit the income tax payable as referred to in Article 2 Section (1) a and b to the bank/periphery post after the deed, decree, agreement or auction of the transfer of land and/or building rights shall be signed by the competent authority.”*

2. Eliminating the provisions of Article 3 Section (5) of the Government Regulation No. 34 of 2016.

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