

LEGAL CERTAINTY ON TAX DETERMINATION ON ACQUISITION CHARGES FOR LAND AND BUILDING RIGHTS (BPHTB) AND TRANSFER REGISTRATION OF LAND RIGHTS

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ABSTRACT

This study describes and examines two main issues, first, how is the determination of tariff of BPHTB and obstacles faced in acceleration of land registration in Karanganyar Regency? Second, what are the legal measures that taxpayers can do if they can not afford the BPHTB? This research is descriptive normative legal research. The data used include primary and secondary legal materials. Data collection techniques used are literature studies or document studies, furthermore technical analysis used is a deductive method. The result of the research indicates that the regulation on the calculation of tariff on BPHTB is 5 (five) percent of The Acquisition Value of Object of Transfer of Right to Land and Taxable Buildings (NPOPKP). However, in the tariff setting still encountered a number of obstacles, ranging from the expensive money to be paid up to potential manipulation of data. Constraints if unable to pay the BPHTB can be overcome by proposing reductions, objections, and appeals. This proves that the problem of BPHTB needs to be considered so that it will not hinder the continuity in acceleration process of land registration.

Keywords: Acquisition of Land and Building Right; BPHTB; land registration

INTRODUCTION

Land for the people of Indonesia is the largest natural resource. According to the authority of the tax collector, taxes are divided into Central/State Taxes and Regional Taxes.¹ This tax distribution is related to the government hierarchy which is authorized to run the government and collect sources of state revenue/revenue, especially during the current era of regional autonomy.² Regional Tax is one of the taxes that has a major contribution in implementing the effectiveness of tax collection in our country. Because local taxes are taxes that are often easy to find in the community, because they are collected in the environment around the area where the authority to collect taxes is by the local government. At the same time, this regional tax is a form of implementation of the regional authority to regulate its own region (regional autonomy).

Based on Law Number 28 of 2009 concerning Regional Taxes and Regional Levies, regional taxes are mandatory contributions made by individuals and entities to the region without a balanced direct reward that can be imposed based on applicable laws and regulations, which are used to finance the implementation local government and regional development. So it is clear that according to the regional tax law and regional levies, local governments can issue regional regulations to collect taxes and levies in their respective regions. The collection of BPHTB as a regional tax is made a regional regulation with the approval of the Regional House of Representatives (DPRD) because it involves the rights, obligations and local people.³

The basis for the imposition of Customs on Acquisition of Land and Building Rights (BPHTB) on the acquisition of rights based on the legal act of buying and selling land is regulated in Article 87 paragraph (2) of Law Number 28 of 2009 concerning Regional Taxes and Regional Levies that buying and selling is the price transaction, or if the transaction price is unknown or lower than the Tax Object Sales Value (NJOP), the Land and Building Taxes used in the imposition of the BPHTB are the Tax Object Sales Value (NJOP). BPHTB is one of the requirements that must be met in a land registration application. Even the Customs for the Acquisition of Land and Building Rights (BPHTB) is one of the potential sources of tax that should be explored according to the current economic situation and condition as well as the development of the nation.⁴ So that BPHTB and land registration has a reciprocal relationship with each other.

The relationship between land and taxes as well as the relationship between land registration and land taxation has been known for a long time. This is marked by the introduction of land registration with the aim of providing legal certainty. Also known as land registration activities with different objectives, namely in the fiscal context, this activity is called land registration *Fiscal Cadastre* which is for the benefit of the government.⁵ In relation to legal certainty, the existence of legal certainty in a country really makes economic and industrial development. Thus, legal certainty is the driving force of a country's economic development.⁶ The legal certainty of the transaction value is involved in determining the validity of a sale and purchase, in this case is it true that the transaction value is either stated in the deed of sale or used as the basis for value certainty. Government Regulation Number 91 of 2010 concerning Types of Regional Taxes that are collected based on the determination of the regional head or paid by the taxpayer himself is the implementing regulation of Law Number 25 of 2009 concerning Regional Taxes and Regional Levies. In

¹Erly Suandy. *Tax law*. (Salemba Empat: Jakarta, 2014) pp. 36-37

²Marlon Gustia. 2016. *Application of the Law on the Imposition of Duties on the Acquisition of Land and Building Rights (BPHTB)*. IUS Journal of Legal and Justice Studies. Volume IV. Number 1. West Nusa Tenggara: University of Mataram. Page 96 accessed at <https://www.jurnalius.ac.id/ojs/index.php/jurnalIUS/article/download/294/250> on March 16, 2021 at 18.30 WIB

³Murtir Jedawi. *Implementation of Regional Autonomy Policy (Analysis of Authorities, Institutions, Personnel Management, and Regional Regulations)* (Yogyakarta: Total Media, 2008) page 39

⁴Siahaan, Marihot Pahala. *Customs for Acquisition of Land and Building Rights Theory and Practice. Edition I. Printing I*. (Jakarta: PT. Raja Grafindo, 2003) page 6

⁵Parlindungan, AP. *Land Registration in Indonesia*. (Bandung: Mandar Maju, 1994 Bandung. Page 72

⁶Sunaryati Hartono. *Indonesian Development Economic Law*. (Bandung: Binacipta, 1982) page 3

this regulation, it is stipulated that the collection of BPHTB is carried out based on the principle of calculating and paying the tax payable by (*self-assessment system*).⁷

The provisions on the basis used as the basis for calculating BPHTB, both regulated in the BPHTB Law and in the PDRD Law, are to use the transaction value. It is the value which is an agreement between the parties conducting the transaction, as in buying and selling, it is between the seller and the buyer. The legal certainty of the transaction value participates in determining the validity of a sale and purchase, in this case it is true that the transaction value, both stated in the deed of sale and used as the basis for calculating BPHTB, is actually in accordance with the facts that have been approved or agreed upon by the parties who are conducting the transaction.⁸

According to Douglas J. Willem, land registration is a continuous and consistent work on the registration of one's rights so as to provide information from administrative data on the parts of land that have been registered.⁹ The government has made efforts in such a way as to

1. Lack of public awareness to register land;
2. The performance of officers who are still not optimal in carrying out land registration services;
3. An administrative system that seems difficult, convoluted, and expensive.

The third obstacle factor is the reason people often choose as the main factor why people are reluctant to register their land. The administrative system seems convoluted with a number of administrative requirements which are quite time consuming in the management process coupled with high costs, mainly in the payment of BPHTB for land and building rights.

The acceleration of land registration is intensively carried out in Indonesia, one of which is optimizing the Land Administration Project. In fact, Karanganyar Regency has scheduled a Complete Systematic Acceleration of Land Registration project which will begin in January 2018. The project is realized by accelerating Land Registration through systematic, mass registration of land and without registration fees.

The Complete Systematic Land Registration (PTSL) activity has been initiated since 2017 in order to realize the national target, namely by 2025 complete land registration for all land parcels in Indonesia. However, until 2020 the achievement of PTSL's target completion still needs to be improved.¹⁰ Meanwhile, the implementation of certificate acceleration has the potential to hamper by the problem of land tax which in this case is related to BPHTB, which is considered to often hamper the Land Registration Process. So, legal certainty is absolutely necessary. It quoted from Aiste Samulyte that "*Possibly could allow solving the currently relevant problem issues regarding the violation of the principle of legal certainty* " which means that with legal certainty, every problem will be resolved appropriately.¹¹

Based on the background above, it can be identified into various problems, among others, first, how to determine the Rates for the Acquisition of Land and Building Rights (BPHTB) and the obstacles faced in accelerating land registration in Karanganyar Regency? Second, what are the legal steps that taxpayers take if they are unable to pay the Customs for the Acquisition of Land and Building Rights (BPHTB).

RESEARCH METHODS

The legal research method is used to find out the process of solving the problems encountered by using a method or process in the form of testing the truth by collecting case data then after the data is obtained and draws conclusions about the process where collecting legal rules from the collection will produce arguments, theories, new concept to face.¹² Approach Method used in this research is a normative legal research method. Normative legal research is research aimed at obtaining objective law or legal norms, namely conducting research on legal issues.¹³ In writing this research is normative juridical research that is researching library sources that are relevant to the research topic, collecting research data using library research is done by searching, obtaining, analyzing all research references in the form of laws, various sources of books, documents, and other written sources related to the title raised. Field Studies are data collection methods using techniques or approaches to obtain primary data. The data obtained from this study used a qualitative research method, which was initiated by collecting data both in the field and with a literature study, then the data that had been obtained was compiled in the form of compiling data showing legal certainty over the Determination of Rates for the Acquisition of Land and Building Rights (BPHTB) And Registration of Transfer of Land Rights according to the law in force in Indonesia.

⁷Iswari Ramadhani Saragih. *VALIDATION TAX OF LAND AND BUILDING TITLE TRANSFER FEE (BPHTB) WHICH TRANSACTION VALUE REFERS TO LAND AND BUILDING TAX (PBB) CASE STUDY AT MEDAN CITY REGIONAL REVENUE OFFICE*. Journal of Lex Justitia, Vol. 2 No. January 1, 2020 page 61 accessed at <https://www.bing.com/search?q=jurnal+about+bphtb+&q&form=QBRE&sp=-1&pq=jurnal+about+bphtb+&sc=1-21&sk=&cvid=F4FCB6B13FA2462197B6BE4E060B3F9C> on March 16, 2021 at 18.30 WIB

⁸R. Murjiyanto and Samun Ismaya. *Certainty of Basic Value Calculation of Duties on Acquisition of Land and Building Rights (BPHTB)*. Journal of Law IUS QUIA IUSTUM NO. 3 VOL. JULY 22 2015:page 491 accessed at <https://www.bing.com/search?q=kepastian+Hukum+jurnal+R.+Murjiyanto+dan+Samun+Ismaya&cvid=e13a5df681e8404ab4f89cec90349bc8&aqs=edge..69i57.16641j0j9&FORM=ANAB01&PC=U531> on March 16, 2021 at 18.30 WIB

⁹Douglas J. Willian. 1982 *The Torren System In Australia*. (Melbourne Brisbane Perth. Australia.1982) p. 18

¹⁰Strategy to Accelerate Complete Systematic Land Registration in Riau Archipelago Province through Portfolio Analysis Approach | Land Journal (atrbpn.go.id) accessed on March 16, 2021 at 18.30 WIB

¹¹Aiste Samulyte-Mamontove. 2014. *Principle Of Legal Certainty And (In)Direct Effect Of Directives. Social Transformations in Contemporary Society. Social Transformations in Contemporary Society (STIC) Journal Number 2 of 2014*. Lithuania. Mykolas Romeris University. Page 1 Accessed in http://stics.mruni.eu/wp-content/uploads/2014/08/STICS_2014_2_57-68.pdf on March 16, 2021 at 18.30 WIB

¹²Peter Mahmud Marzuki. *Legal Research Revised Edition*. (Jakarta: Kencana Prenada Media Group, 2014). p. 35

¹³Peter Mahmud Marzuki. *Legal Research*. (Jakarta: Kencana, 2010) page 93

DISCUSSION

1. Regulations regarding the Customs for the Acquisition of Land and Building Rights in Karanganyar Regency

Juridically, the arrangements related to the Customs for the Acquisition of Land and Building Rights (BPHTB) are contained in the legislation, which is constitutionally regulated in Law Number 20 of 2000 concerning Amendments to Law Number 21 of 1997 concerning Customs for the Acquisition of Land Rights and Building (BPHTB). The enactment of Law Number 28 of 2009 concerning Regional Taxes and Regional Levies participates in increasing Regional Tax Revenue. Law Number 28 of 2009 regulates related to the addition of new types of taxes, expansion of the tax base, as well as the flexibility to determine tax rates. One of the central taxes transferred to the regions based on the law is the Customs for the Acquisition of Land and Building Rights (BPHTB).¹⁴

Where the issuance of the law is a legal product to support the government's policy which initially imposed BPHTB as a central tax which from 1 (one) January 2009 was delegated to each region. This is an implication of the implementation of regional autonomy in which the regulations related to BPHTB are taken over by the regional government by enacting it in Law Number 28 of 2009 concerning Regional Taxes and Regional Levies.

The basis for the imposition of BPHTB collection is the Acquired Value of Tax Objects or usually abbreviated as NPOP. The Acquired Value of the Tax Object can be assessed based on the transaction price or market value. If there is a situation where the NPOP is unknown or lower than the Sales Value of the Tax Object (NJOP) used in the imposition of Land and Building Tax (PBB) in the year the acquisition occurs, the basis of calculation that is used as a benchmark is the NJOP of Land and Building Tax. The BPHTB object may not be subject to tax liability if the amount of the Non-Taxable Tax Object Acquired Value (NPOPTKP) of the object is set at a minimum of Rp 60.000.000,00 (sixty million rupiah) for each taxpayer. In addition, for the right to acquire rights obtained due to legal acts of inheritance or grants or wills by blood relatives in a straight line up or down, the NPOPTKP value imposed is Rp. 300.000.000,00 (Three Hundred Million Rupiah). So it can be concluded that the Acquired Value of a Non-Taxable Tax Object (NPOPTKP) is a certain amount of the Acquired Value of a Taxable Object (NPOP) which is not subject to tax.

For the acquisition of a tax object that turns out to be owed, it has an obligation to pay BPHTB taxes. The amount of the Taxable NPOP can be calculated by subtracting the Acquired Value of the Taxable Object with the Acquired Value of the Non-Taxable Object.

$$\text{NPOPKP} = \text{NPOP} - \text{NPOPTKP}$$

The rate used in the implementation of the BPHTB tax collection is based on Article 5 of the Karanganyar Regency Regulation Number 14 of 2010 concerning Customs for the Acquisition of Land and Building Rights, which is set at 5% (five percent). Thus, the tax rate paid as BPHTB payable is 5% (five percent) of the NPOPKP.

$$\text{BPHTB Payable} = 5\% \times \text{NPOPKP}$$

Before calculating the amount of BPHTB tax, we must first know the Acquired Value of Taxable Objects (NPOP) and the Acquired Value of Non-Taxable Tax Objects (NPOPTKP). After that, the amount of NPOP is reduced by NPOPTKP, so that the Acquired Value of the Taxable Tax Object (NPOPKP) will be obtained. Furthermore, the amount of the NPOPKP is multiplied by the tax rate, which is 5% (five percent). Then we will find a large amount of BPHTB owed that we have to pay.

The procedure for paying BPHTB taxes in Karanganyar Regency has been constitutionally regulated in the Regulation of the Governor of Karanganyar Regency Number 8 of 2010 concerning Customs for Acquisition of Land and Building Rights and their explanations. The following are the technical steps for BPHTB payments in Karanganyar Regency:

1. Before going to the BPHTB payment process, usually in the process of buying and selling land, the seller and the buyer have contacted PPAT. The supporting documents can be in the form of agreement letters, sale and purchase documents, grant letters, inheritance letters, and others indicating that there has been a transfer of rights to ownership of land and/or buildings. The Taxpayer then submits an application for the processing of the Deed of Transfer of Rights to Land and/or Buildings to PPAT.
2. The PPAT party accepts the application for the management of the deed and supporting documents for the acquisition of land and/or building rights from the Taxpayer, then checks the completeness of the supporting documents. If the supporting documents are considered complete, the PPAT submits a request for inspection of tax object data to the Head of the Karanganyar Regency National Land Agency Office.

¹⁴Ida Nur Asiah Jamil. *ANALYSIS OF THE EFFECTIVENESS OF RECEIVING DUTY FOR THE ACQUISITION OF LAND AND BUILDING RIGHTS AND THEIR CONTRIBUTION TO LOCAL TAX REVENUE (STUDY AT THE OFFICE OF REGIONAL INCOME IN MALANG CITY, 2011-2014)*. Journal of Taxation (JEJAK) Vol. DOC. January 1, 2020 page 61 accessed at <https://www.bing.com/search?q=jurnal+about+bphtb+&qs=n&form=QBRE&sp=-1&pq=jurnal+about+bphtb+&sc=1-21&sk=&cvid=F4FCB6B13FA2462197B6BE4E060B3F9C> on March 16, 2021 at 18.30 WIB

3. At the request of PPAT, the Land Agency Office of Karanganyar Regency submits tax object data to PPAT. After receiving the tax object data, PPAT checks the correctness of the tax object data with supporting documents for land and/or building rights with tax object data from the Karanganyar Regency National Land Agency Office.
4. The PPAT party prepares a draft of the Deed of Transfer of Land and Building Rights. Where the document is a draft deed of transfer of rights to land and/or buildings that has not been signed by PPAT. In the SSPD BPHTB form, it is filled with the calculation of the value of the outstanding BPHTB that must be paid by the Taxpayer. The form is then signed by the taxpayer and the PPAT.
5. The taxpayer then makes payment to the designated bank. Payment of BPHTB taxes is made through Central Java Bank / Central Java Bank as the appointed bank in order to accommodate tax payments. The Central Java Bank then checks the completeness of filling out the SSPD BPHTB and the suitability of the amount of the BPHTB Payable.

The Regional Finance Agency of Karanganyar Regency in the interest of BPHTB research services, the main important parts are the P3 section (Data Collection, Processing, and Determination of BPHTB) and the PKP section (Billing, Objections, and Examination of BPHTB).

In practice, it is no longer a secret that in the implementation of the land registration process, various obstacles are encountered. These obstacles arise not only from internal land registration implementing agencies, namely the National Land Agency of Karanganyar Regency, but also from the community itself. Constraints that generally come from the agency are difficult, expensive, and convoluted services. Meanwhile, the obstacle that comes from the community itself is the level of public awareness that is still lacking to register their land with the Land Office in the local district/city.

Furthermore, the obstacle that was found at the Land Office, especially in the National Land Agency of Karanganyar Regency was the BPHTB verification process which had the potential to hinder the process of accelerating land registration. In Karanganyar Regency, the BPHTB verification process in the land registration process is also carried out at the Land Office which in this case is the authority of the Karanganyar Regency National Land Agency.

The obstacles faced by the parties involved in the process of accelerating land registration are not only experienced by the National Land Agency of Karanganyar Regency. The party who was the collector of BPHTB in the first step, namely the Regional Finance Agency of Karanganyar Regency, also experienced difficulties. Among them is in determining the certainty and correctness of the transaction value that triggers the potential discrepancy between the transaction value and the actual land transaction in the field.

This is an easy matter in order to guarantee the correctness of a practice of manipulation of transaction values. Checks in the form of validation need to be carried out to know carefully the transaction value. In this case, validation to carry out verification and research is absolutely necessary in order to prove the truth of the data included in the proof of payment of BPHTB.

2. Legal Steps If the Taxpayer is Unable To Pay the BPHTB.

In the objection process, taxpayers are allowed to file a tax objection on the payment of BPHTB taxes accompanied by clear reasons which must later be included in the objection letter. The period for submitting the objection is no later than 3 (three) months from the receipt of the Notice of Customs for Acquisition of Land and Buildings Underpayment Assessment or Notice of Customs for Acquisition of Land and Buildings Additional Underpayment Assessment or Notice of Customs for Overpayment on Land and Buildings Rights or Nil of Customs Assessment for Acquisition of Land and Buildings by the taxpayer, unless there are circumstances beyond his control so that the period exceeds 3 (three) months. And the issuance of the Letter of Objection does not delay the obligation to pay taxes and the implementation of tax collection. Head of the Regional Finance Agency of Karanganyar Regency on behalf of the Regent of Karanganyar has the authority to issue a decision on Submission on the Acquisition of Land and Building Rights in the event that the tax owed is at most Rp. 1.000.000.000,00 - (One billion rupiahs).

Regarding the provision of tax deductions, taxpayers are also entitled to apply for tax deductions to the Head of the Karanganyar Regency Regional Finance Agency for certain reasons. The process of submitting the application for the reduction will be processed within a maximum period of 3 (three) months from the date the application for the reduction of BPHTB is received. Head of the Regional Finance Agency of Karanganyar Regency on behalf of the Regent of Karanganyar has the authority to issue a decision on Submission on the Acquisition of Land and Building Rights in the event that the tax owed is at most Rp. 1.000.000.000,00 - (One billion rupiahs) Taxpayers who meet the requirements can calculate the amount of tax deduction themselves before making BPHTB payments.

CONCLUSION

1. The rate used in the implementation of the BPHTB tax collection is based on Article 5 of the Karanganyar Regency Regulation Number 14 of 2010 concerning Customs for the Acquisition of Land and Building Rights, which is set at 5% (five percent). Thus, the tax rate paid as BPHTB payable is 5% (five percent) of the NPOKP. Implementation of the collection of Duties on the Acquisition of Land and Building Rights in Karanganyar Regency has not been fully good in terms of coordination between the Karanganyar Regency Regional Finance Agency and the Karanganyar Regency National Land Office. This is because the validation or verification function which is carried out twice makes the time in the land registration process inefficient.
2. If the taxpayer experiences difficulties in paying the Customs Fee for Land and Building Rights in full, then he/she can apply for a reduction, objection and appeal. This is carried out in order to expedite the process of collecting Duties on the Acquisition of Rights on Land and Buildings so that later it does not hinder the land registration process. When the land registration applicant is unable to pay until the BPHTB is paid, the land registration process will automatically be hampered. Because the Karanganyar Regency National Land Agency only processes files that have complete requirements, including proof of payment of BPHTB. So the payment of BPHTB is very influential in the land registration process.

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