

# The Imposition of the Final Transfer of Rights to Land and/or Building Tax (PPHTB) in the Sale and Purchase Binding Agreement (PPJB)

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Article	Abstract.
Keywords: Building; Land; Rights..  Article History Received: 2022-08-22; Reviewed: 2022-09-20; Accepted: 2022-10-05; Published: 2022-10-06.  DOI: <a href="http://dx.doi.org/10.30659/jdh.v5i3.23916">http://dx.doi.org/10.30659/jdh.v5i3.23916</a>	The making of a binding sale and purchase agreement (PPJB) before or by a notary is subject to a tax on the transfer of rights to land and/or buildings, one of which is in the form of income tax on land and/or buildings (PPHTB) which is final. This study aims to discuss the imposition of the final PPHTB on the Sale and Purchase Binding Agreement (PPJB). The method used in this study was a normative research method. Normative or library research method was a method used by means of research on library materials or documents with the aim of reviewing existing written regulations. The assessment was carried out using a normative juridical method. The result of this study is that the imposition of the final PPHTB on the Sale and Purchase Binding Agreement (PPJB) is considered inappropriate, because in the making of the Sale and Purchase Binding Agreement (PPJB) the ownership rights to land and/or buildings have not yet been transferred but only occurred when the Sale and Purchase Deed was signed.
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## 1. Introduction

Every Indonesian citizen has the right to obtain land rights and obtain benefits and results both for himself and for his family as regulated in Article 9 paragraph 2 of the Basic Agrarian Law. Land rights are rights that give authority to those who have the right to use or benefit from the land they are entitled to. There are several types of land rights, one of which is land ownership rights. In Chapter 20 paragraph 1 BAL explained that right owned by right like on account the provisions in Article 6 of the LoGA.

Land rights can be transferred, where the transfer of land rights that are most often carried out in Indonesia are grants, buying and selling, inheritance and auctions. One of the transfers of existing land rights is the sale and purchase of land ownership rights. The sale and purchase of property rights on land is different from the sale and purchase of movable objects because land is an immovable object, therefore the sale and purchase of moving land is not the object of the land but the ownership rights to the land.

The sale and purchase of property rights to land is carried out by agreement between the two parties, namely the seller and the buyer without coercion from anyone by prioritizing the good faith of both parties. The sale and purchase of ownership rights to land as regulated in Government Regulation No. 24 of 1997 concerning Land Registration and Government Regulation No. 37 of 1998 concerning Regulation of the Position of Land Deed Maker (PPAT) must be carried out before an authorized official,

whose work area covers the area where the object is located.<sup>1</sup> It is carried out by making a deed of sale and purchase made by the Land Deed Making Officer or hereinafter referred to as PPAT. The making of the deed of sale and purchase by the PPAT can be done after all the conditions for making the deed are fulfilled. If one or more of the terms of the sale and purchase deed cannot be fulfilled, a Sale and Purchase Binding Agreement (PPJB) can be made by or before a Notary.

Sale and Purchase Binding Agreement (PPJB) is an agreement between the seller and the buyer before the sale and purchase is carried out due to the elements that must be met for the sale and purchase, among others, the certificate of land rights does not exist because it is still in process, or the price has not been paid or taxes due to the sale and purchase of land rights have not been paid either by the seller or the buyer.<sup>2</sup> PPJB is a form of agreement that is subject to the provisions of Act No. 1 of 2011 concerning Housing and Settlements and the Decree of the Minister of Public Housing No. 9 of 1995 concerning Guidelines for Binding Sales and Purchases as *lex specialis*, and if it is associated with the provisions of Article 1320 paragraph (1) According to the Civil Code (*lex generalis*), PPJB fulfills the elements as an agreement, which can lead to an engagement originating from an agreement.<sup>3</sup>

## 2. Research Methods

The method used in this study was a normative research method. Normative or library research method was a method used by means of research on library materials or documents with the aim of reviewing existing written regulations. The source used was secondary data. Secondary data was a source of research data obtained through intermediary media or indirectly in the form of books, records, existing evidence, or archives, both published and unpublished in general.

## 3. Result and Discussion

### 3.1. How is the imposition of tax burden on the sale and purchase binding agreement (PPJB) accompanied by the authorization to sell on the transfer of land rights?

In the transaction of transfer of land rights, an obligation to pay taxes on the transfer of land rights is charged. The sale and purchase of property rights on land which is a form of transfer of land rights, of course also carried out tax collection on the event. In the sale and purchase transaction of land ownership rights, a tax obligation is imposed in the form of Income Tax on the Transfer of Land and/or Building Rights (PPHTB) imposed on the seller and Land and/or Building Rights Acquisition Fee (BPHTB) imposed on the buyer.

The Sale and Purchase Binding Agreement (PPJB) accompanied by a Selling Authorization, which is a preliminary agreement on the transfer of land rights by buying

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<sup>1</sup>Fransiska Mayasari, Munyarif Abdul Chalim, Tinjauan Yuridis Pelaksanaan Pengikatan Jual Beli Hak Atas Tanah Berdasarkan Akta Notaris di Tegal, *Jurnal Akta*, Fakultas Hukum UNISSULA, Semarang, Vol. 14, No. 4, 2017. p. 516.

<sup>2</sup>R. Subekti, (1978), *Hukum Perjanjian*, Bina Cipta, Bandung, p.75

<sup>3</sup>Dewi Kurnia Putri, Amin Purnawan, Perbedaan Perjanjian Pengikatan Jual Beli Lunas Dengan Perjanjian Pengikatan Jual Beli Tidak Lunas, *Jurnal Akta*, Fakultas Hukum UNISSULA, Semarang, Vol. 4, No. 4, 2017, p. 633.

and selling before the transfer is made with a Sale and Purchase Deed before or by PPAT, is subject to tax on the transfer of land and/or building rights, namely Income Tax Transfer of Rights to Land and/or Buildings (PPHTB) and Fees for Acquisition of Rights to Land and/or Buildings (BPHTB) for the transfer of rights to land and/or buildings which will later be transferred with the Sale and Purchase Deed made by PPAT when all the requirements for making The Sale and Purchase Deed has been fully complied with in accordance with the laws and regulations. The imposition of taxes on this PPJB is regulated in Article 1 paragraph 3 of Government Regulation Number 34 of 2016 which states that: "Income from the sale and purchase binding agreement on land and/or buildings and their amendments as referred to in paragraph 1 letter b is income from the seller whose name is listed in the sale and purchase agreement when it is first signed or the buyer whose name is listed in the sale and purchase agreement before the change or addendum to the sale and purchase binding agreement occurs, on the occurrence of changes in the purchaser party in the sale and purchase binding agreement.

The provisions on PPHTB are regulated in Government Regulation Number 34 of 2016<sup>4</sup> which is the implementing regulation of Article 4 paragraph (2) of the Income Tax Law<sup>5</sup>.

Income Tax is a subjective tax, which is attached to the tax subject in accordance with Article 1 of Act No. 10 of 1994 concerning Income Tax is a tax imposed on the tax subject on the income received in the tax year. The tax subject will be subject to a tax burden if he has received and/or earned income<sup>6</sup>. Income Tax on the Transfer of Land and/or Building Rights (PPHTB) is a tax imposed on income received or earned by individuals or entities from the transfer of rights to land and/or buildings or binding sale and purchase agreements on land and/or buildings and their amendments.<sup>7</sup>The value of PPHTB in general is 2.5% of the value of the transfer of land rights, 1% of the value of the transfer for simple houses and simple flats carried out by taxpayers whose main business is to transfer rights to land and/or buildings, 0% for transfers rights to the Government and SOEs that received special assignments from the Government or BUMDs that received special assignments from the Regional Heads.<sup>8</sup>

In addition to PPHTB in PPJB, BPHTB is also subject to tax. Provisions regarding the imposition of BPHTB are regulated in Regional Regulations at each Level II (Regency/City) Government which is the implementing regulation of Act No. 28 of 2009 concerning Regional Taxes and Regional Levies. The object of BPHTB based on Article 85 paragraphs 1 and 2 letter a of Act No. 28 of 2009 is the acquisition of rights to land and/or buildings, where the acquisition of these rights includes buying and selling, exchanging, grants, wills, inheritance, and so on. According to Article 87 paragraphs 1, 2, and 3 of Act No. 28 of 2009, the amount of the Tax Object Acquisition Value (NPOP)

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<sup>4</sup>Government Regulation Number 34 of 2016 concerning Income Tax on Income from Transfer of Rights to Land and/or Buildings, and Sale and Purchase Agreements on Land and/or Buildings and their Amendments.

<sup>5</sup>Act No. 7 of 1983 concerning Income Tax as Amended by Act No. 36 of 2008.

<sup>6</sup>Paulus Meldif Dika Pratama, *Akibat Hukum Akta Kuasa Menjual Lepas Yang Dibuat Dalam Pembuatan Akta Jual Beli Tanah dan Bangunan Oleh Notaris*, Magister Kenotariatan UNISSULA, Vol. 4 No. 4, 2017. p. 725.

<sup>7</sup>Article 1 Government Regulation Number 34 of 2016

<sup>8</sup>*Ibid.*

is the basis for the imposition of the Land and/or Building Rights Acquisition Duty (BPHTB). The amount of NPOP from the sale and purchase of land rights is in accordance with the transaction value agreed by the parties from the sale and purchase. If the NPOP is unknown or the amount of NPOP is smaller than the Sales Value of the Tax Object (NJOP), then the basis for imposition of land and building tax is NJOP. Furthermore, the NPOP or NJOP is reduced by the Acquired Value of Non-Taxable Tax Objects (NPOPTKP), the amount of NPOPTKP stipulated in Article 87 paragraph 4 of Act No. 28 Year 2009 is a minimum of IDR 60,000,000.00 (sixty million rupiahs). Each regency or city has the right to determine the NPOPTKP through the provisions of regional regulations. Then in Article 88 of Act No. 28 of 2009 stipulates that the maximum amount of BPHTB Tax imposition is 5% (five percent). However, the imposition of new BPHTB taxes is payable when there has been a transfer of rights marked by the signing of the Sale and Purchase Deed (AJB) before the PPAT. In relation to BPHTB, PPAT can only sign the deed of transfer of land and or building rights after the taxpayer submits proof of tax payment.<sup>9</sup>

Based on Act No. 28 of 2009 PPJB does not cause BPHTB to be indebted. Normatively the imposition of tax on the transfer of rights to land and/or buildings in the Sale and Purchase Binding Agreement (PPJB), if the transaction price that has been agreed upon by the parties has been paid in full so that the transfer of rights to the land being traded occurs as evidenced by the Sale and Purchase Deed. So it can be said that the object of the BPHTB is the PPJB that has been carried out but the agreement on the price of the land rights has not been paid, or the payment system of the PPJB object for the land rights is processed in stages.

### **3.2. Imposition of Income Tax on the Transfer of Land and Building Rights (PPHTB) Final in the Sale and Purchase Binding Agreement (PPJB)**

Tax is a mandatory contribution given by the community to the government whose collection is carried out by force and the results of the tax are felt indirectly by taxpayers.<sup>10</sup> There are various types of taxes, one of which is Income Tax.

Income Tax Law, namely Act No. 36 of 2008 concerning Amendments to Act No. 7 of 1993 concerning Income Tax. Income Tax is imposed on any additional economic capacity received or obtained by the Taxpayer from wherever it originates which can be used for consumption or to increase the wealth of the Taxpayer.<sup>11</sup> One of the objects of Income Tax is the transfer of land rights by buying and selling, which is called Income Tax on Land and/or Buildings (PPHTB).

Indonesia adheres to a taxation system with a scheduled taxation system, namely income tax on certain types and sources of income with separate and different treatment of imposition of nature, rates, and procedures. This PPh is Final (abbreviated as Final PPh). A scheduled tax system with a separate rate is applied to certain incomes that are subject to Final Income Tax based on the provisions of the PPh Law. The object

<sup>9</sup>Marihot Pahala Siahaan, (2013), *Pajak Daerah & Retribusi Daerah berdasarkan Undang – Undang Nomor 28 Tahun 2009 tentang Pajak Daerah dan Retribusi Daerah (edisi revisi)*, Jakarta, Rajawali Pers, p.612.

<sup>10</sup>Harits Manggala Tama, Anis Mashdurotun, Peran Badan Pengelolaan Pendapatan Daerah Dan Pejabat Pembuat Akta Tanah Terhadap Wajib Pajak Bea Perolehan Hak Atas Tanah Dan Bangunan Yang Kurang Bayar Didalam Pembayaran Pajak, Fakultas Huum UNISSULA, Jurnal Akta, Vol. 4, No.4, 2017.p. 521.

<sup>11</sup>Atep Adya Barata, (2011), *Panduan Lengkap Pajak Penghasilan*, Transmedia Pustaka, Jakarta, p. 21

of Final Income Tax, namely income received or earned, will be subject to income tax at a certain rate and a certain tax base at the time the income is received or earned. Final PPh imposed, whether deducted by other parties or deposited by yourself, is not an advance payment for the PPh payable but has already paid off the PPh payable for that income.<sup>12</sup>

In Article 4 paragraph (2) of the Income Tax Act No. 36 of 2008, there are several types of income which are taxed as Final Income Tax, one of which is income and transactions on the transfer of rights to land and/or buildings. Based on Article 1 paragraph (1) point b of PP Number 34 of 2016 which revokes Government Regulation Number 48 of 1994 as amended several times, most recently by Government Regulation Number 71 of 2008 (third amendment) it is stated that the income received or earned by an individual or entity from the binding sale and purchase agreement on land and/or buildings and their amendments are included in the qualification of the tax object subject to final Income Tax.

The government stipulates in Government Regulation Number 24 of 1997, that PPAT can make a deed when the terms of payment of PPHTB on the transfer of land rights have been paid with proof of Income Tax Payment Letter as regulated in Government Regulation Number 48 of 1994 concerning Payment of Income Tax on Income from Transfer of Rights to Land and Buildings in conjunction with Government Regulation Number 27 of 1996.

Meanwhile, the transfer of land ownership rights, based on Article 37 paragraph 1 (UUPA) of Government Regulation Number 24 of 1997 concerning Land Registration, any transfer of land rights except auctions can only be registered if the legal act of transferring land rights is based on the PPAT deed.<sup>13</sup>

If there are requirements to make a Sale and Purchase Deed cannot be fulfilled, it can be done by making a Sale and Purchase Binding Agreement (PPJB) made before or by a Notary. According to Herlien Budiono, a sale and purchase agreement is an assistance agreement that functions as a free preliminary agreement.<sup>14</sup>The binding sale and purchase according to R. Subekti is an agreement between the seller and the buyer before the sale and purchase is carried out because there are elements that must be met for the sale and purchase, among others, for the certificate not yet available because it is still in process, and the price has not been paid.<sup>15</sup>

The Sale and Purchase Binding Agreement (PPJB) is a preliminary agreement made before the implementation of the main agreement or the main agreement.<sup>16</sup>The Sale and Purchase Binding Agreement (PPJB) contains promises that must be fulfilled first by one of the parties or the parties before the main agreement can be carried out which is the ultimate goal of the parties<sup>17</sup>

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<sup>12</sup>Ibid, p. 55

<sup>13</sup>Ferri Adhi Purwantoro, Akhmad Khisni, Tinjauan Yuridis Implikasi Perjanjian Jual Beli Dalam Keluarga Yang Dibuat Oleh Notaris Terhadap Kedudukan Ahli Waris, Fakultas Hukum UNISSULA, *Jurnal Akta*, Vol. 5, No. 1, 2018. p. 99.

<sup>14</sup>Herlien Budiono, artikel "Pengkatan Jual Beli Dan Kuasa Mutlak" *Majalah Renvoi*, edition I, No. 10, March 2004.p.57.

<sup>15</sup>R. Subekti, (2002), *Hukum Perjanjian*, Jakarta, Intermedia, p. 75

<sup>16</sup>H.S.Salim, (2017), *Teknik Pembuatan Akta Perjanjian (TPA DUA)*, PT. Raja Grafindo Persada, Jakarta,

<sup>17</sup>Herlien Budiono, Op.cit. p. 270

The binding sale and purchase agreement (PPJB) is an obligatory agreement, i.e., even though there has been an agreement between the parties making the agreement, it does not result in the transfer of land rights from the seller to the buyer because there has been no transfer of rights to the land being traded. The making of a binding sale and purchase agreement (PPJB) is only an agreement that must be followed by a laving agreement in the form of signing the deed of sale and purchase before the PPAT.<sup>18</sup>What is meant by delivery according to civil law is the surrender of an object by the owner of the object to another party with the aim that this other party becomes the owner of the object being handed over.<sup>19</sup>According to the Civil Code, an agreement that intends to transfer ownership rights to objects does not simply transfer ownership rights to the objects, but must be accompanied by delivery; the existence of an obligatory agreement; and material agreements (*zakelijke overeenkomst*). The transfer of rights to land and/or buildings which are immovable objects, according to Article 616 of the Civil Code, is carried out through the announcement of the deed in question in the manner specified in Article 620 of the Civil Code, among others, by recording it in the register. Specifically for the transfer of rights to land and the objects attached to it, the provisions stipulated in Government Regulation Number 24 of 1997 concerning Land Registration apply.

Therefore, the provision in Government Regulation Number 34 of 2016 which states income from PPJB as the object of final income tax is not correct. The regulation regarding the imposition of income from PPJB as the object of final PPh, can be seen as the inclusion of a 'new norm' outside the content material whose regulation is delegated by Article 4 paragraph (2) of the PPh Law. Based on the provisions in PP Number 34 of 2016 regarding final Income Tax payable (PPh Final) on PHTB PPJB, its implementation by a notary is still carried out at the time of the sale and purchase through the Sale and Purchase Deed (Before the signing of the Sale and Purchase Deed). This is because the Final PPHTB rules on PPJB in PP Number 34 of 2016 only refer to the provisions in article 1 paragraph (1) and paragraph (3), article 2 paragraph (3) and article 5.

#### **4. Conclusion**

In the Sale and Purchase Binding Agreement (PPJB) tax is imposed on the transfer of rights to land and/or buildings, namely in the form of Income Tax on the Transfer of Rights on Land and/or Buildings (PPHTB) imposed on the seller and Customs on Acquisition of Rights on Land and/or Buildings (BPHTB) charged to the buyer. The Income Tax on the Transfer of Land and/or Building Rights (PPHTB) imposed on the Sale and Purchase Binding Agreement (PPJB) is a Final PPh, which should be the imposition of Final PPh on this Sale and Purchase Binding Agreement (PPJB) because the sale and purchase is carried out by signing PPJB before a Notary has not yet transferred the rights to land and/or buildings, but the transfer occurs when the transfer has been made with the signing of the Sale and Purchase Deed before the PPAT.

#### **5. References**

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<sup>18</sup>Made Ara Denara Asia Amasangsa, *Perjanjian Pengikatan Jual Beli Dalam Peralihan Hak Atas Tanah Dan/Atau Bangunan*, Jurnal Hukum, Vol. 8, No. 1, 2019, p. 7.

<sup>19</sup>Surini Ahlan Sjarif, (1984), *Intisari Hukum Benda*, Jakarta, Galia Indonesia, p.9-10.

**Journals:**

- [1] Dewi Kurnia Putri, Amin Purnawan, Perbedaan Perjanjian Pengikatan Jual Beli Lunas Dengan Perjanjian Pengikatan Jual Beli Tidak Lunas, *Jurnal Akta*, Fakultas Hukum UNISSULA, Semarang, Vol. 4, No. 4, 2017.
- [2] Ferri Adhi Purwantoro, Akhmad Khisni, Tinjauan Yuridis Implikasi Perjanjian Jual Beli Dalam Keluarga Yang Dibuat Oleh Notaris Terhadap Kedudukan Ahli Waris, Fakultas Hukum UNISSULA, *Jurnal Akta*, Vol. 5, No. 1, 2018.
- [3] Fransiska Mayasari, Munsyarif Abdul Chalim, Tinjauan Yuridis Pelaksanaan Pengikatan Jual Beli Hak Atas Tanah Berdasarkan Akta Notaris di Tegal, *Jurnal Akta*, Fakultas Hukum UNISSULA, Semarang, Vol. 14, No. 4, 2017.
- [4] Harits Manggala Tama, Anis Mashdurotun, Peran Badan Pengelolaan Pendapatan Daerah Dan Pejabat Pembuat Akta Tanah Terhadap Wajib Pajak Bea Perolehan Hak Atas Tanah Dan Bangunan Yang Kurang Bayar Didalam Pembayaran Pajak, Fakultas Huum UNISSULA, *Jurnal Akta*, Vol. 4, No.4, 2017.
- [5] Made Ara Denara Asia Amasangsa, *Perjanjian Pengikatan Jual Beli Dalam Peralihan Hak Atas Tanah Dan/Atau Bangunan*, *Jurnal Hukum*, Vol. 8, No. 1, 2019,
- [6] Paulus Meldif Dika Pratama, Akibat Hukum Akta Kuasa Menjual Lepas Yang Dibuat Dalam Pembuatan Akta Jual Beli Tanah dan Bangunan Oleh Notaris, Magister Kenotariatan UNISSULA, Vol. 4 No. 4, 2017.

**Books:**

- [1] Atep Adya Barata, (2011), *Panduan Lengkap Pajak Penghasilan*, Transmedia Pustaka, Jakarta,
- [2] H.S.Salim, (2017), *Teknik Pembuatan Akta Perjanjian (TPA DUA)*, PT. Raja Grafindo Persada, Jakarta,
- [3] Herlien Budiono, (2016), *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan*, PT. Citra Aditya Bakti, Cetakan Ke-IV, Bandung,
- [4] Marihot Pahala Siahaan, (2013), *Pajak Daerah & Retribusi Daerah berdasarkan Undang – Undang Nomor 28 Tahun 2009 tentang Pajak Daerah dan Retribusi Daerah (edisi revisi)*, Jakarta, Rajawali Pers
- [5] R. Subekti, (1978), *Hukum Perjanjian*, Bina Cipta, Bandung,
- [6] R. Subekti, (2002), *Hukum Perjanjian*, Jakarta, Intermedia,
- [7] Surini Ahlan Sjarif, (1984), *Intisari Hukum Benda*, Jakarta, Galia Indonesia,
- [8] Urip Santoso, (2010), *Pendaftaran dan Peralihan Hak Atas Tanah*, Prenamedia Group, Cetakan Ke-1, Jakarta,

**Articles:**

- [1] Fanny Dewi Sukmawati, Abdul Rachmad Budiono, Nurdin, Pembayaran Pajak Penghasilan (PPH) Dan Bea Perolehan Hak Atas Tanah Dan Atau Bangunan (BPHTB) Dalam Pengalihan Hak Atas Tanah Dan Atau Bangunan, Magister Kenotariatan Universitas Brawijaya, Malang, 2016.
- [2] Herlien Budiono, artikel “Pengikatan Jual Beli Dan Kuasa Mutlak” Majalah Renvoi, edition I, No. 10, March 2004.

**Regulation:**

- [1] Act No. 7 of 1983 concerning Income Tax as Amended by Act No. 36 of 2008

- [2] Code of Civil law
- [3] Government Regulation Number 34 of 2016 concerning Income Tax on Income from Transfer of Rights to Land and/or Buildings, and Sale and Purchase Agreements on Land and/or Buildings and their Amendments