

## **The Implementation of Determination of Duty on the Acquisition of Land and Building Right (BPHTB) on the Land or Building Sale and Purchase in Pekalongan City**

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**Abstract.** Regional taxes and regional retributions are one of the important sources of regional income to finance the implementation of regional governance. Both taxes and retribution are the source of regional income as mentioned in Law Number 28 year 2009 on Duty of the Acquisition of Land and Building Right (BPHTB). Pekalongan City has been managing Duty of the Acquisition of Land and Building Right since 2012. In the implementation of collecting tax and retribution management in Pekalongan City, it shows that there are still problems cause the target of BPHTB revenue to be hampered in the early years of the transition. This study aimed to find out and to describe the implementation of the determination of payment of duties on the acquisition of land and or building rights (BPHTB) for the sale and purchase of land and or buildings in Pekalongan City.

This research used normative juridical approach. The data sources were obtained from primary and secondary data sources. The focus of this research was the implementation of the determination of the payment of duties on the acquisition of land and or building rights (BPHTB) for the sale and purchase of land and or buildings in Pekalongan City.

**Keywords:** Taxes, Regional Taxes; Duty of the Acquisition of Land and Building Right.

### **1. Introduction**

Indonesia is one of the countries that implement the regional autonomy system, Law Number 23 year 2014 concerning Regional Government states that the implementation of regional governance is directed to accelerate the realization of public welfare through improving services, empowerment, and community participation, as well as increasing regional competitiveness by paying attention to principles of democracy, equality, justice, and peculiarities of a region in the system of the Unitary State of the Republic of Indonesia.

Autonomy given to the regency and city regions is carried out by giving the broadest, most real, and responsible authority to the Regional Government proportionally. It means, the delegation of responsibilities will be followed by the arrangement of distribution, and the fair use and national resources, as well as the central and regional financial balance. Autonomy is not a process of regional liberation which in the sense of independence (separate sovereignty). Moreover, autonomy cannot be interpreted as the absolute existence of absolute freedom from an area, because autonomy is a process to provide opportunities for regions to develop according to their potential.<sup>3</sup>

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One of the regional rights in carrying out regional autonomy is to collect its own taxes and levies by using Regional Regulations as regulated in Article 286 Paragraph (1) of Law Number 23 year 2014 concerning Regional Government. Tax is divided into two categories, namely direct and indirect taxes. Generally, the hierarchy of the government in Indonesia is divided into two, namely the central government and regional governments and taxes are also divided into central taxes and regional taxes.

New types of Regional Taxes that can be collected by the regions are regulated in the latest regulations. It is stated in Article 2 of Law Number 28 year 2009 concerning Regional Taxes and Regional Levies in which the delegation of authority to collect duties on the acquisition of land and or building rights (BPHTB) is added. It was originally a central tax. For the tax collection, especially the duties on the acquisition of land and or building rights (BPHTB) now with the Law Number 28 year 2009 concerning Regional Taxes and Regional Retributions submit the management of the import of duties on the acquisition of land and or building rights (BPHTB) is fully managed by the respective Regional Government. With the enactment of Law Number 28 year 2009 concerning Regional Taxes and Regional Retributions, local governments must have their own regional regulations to collect duties on the acquisition of land and or building rights (BPHTB) and the implementation instructions in Pekalongan city.

Tax is indeed an obligation of citizens in a country (including in Islamic countries), but the state is also obliged to fulfill 2 (two) conditions or conditions as follows: <sup>4</sup>

- Acceptance of tax results must be viewed as trustworthy and spent honestly and efficiently to realize tax objectives;
- The government must distribute the tax burden equally among those who are obliged to pay it.

Regional taxes and regional retributions are one of the important sources of regional income to finance the implementation of regional governance. Both tax and retribution are the source of regional income as mentioned in Law Number 28 year 2009, the Duty of the Acquisition of Land and Building Right is one of the tax mentioned (BPHTB).

Tax collection by the tax authorities brings several implications, one of which is tax payments in real terms will reduce disposable income taxpayers (in Indonesian called as *Wajib Pajak*). Therefore, taxpayers will always look for ways to reduce the burden of tax payments, even if it is necessary to avoid this obligation.<sup>5</sup>

From the background description above, the writer formulated the problem as follows: What is the implementation of the determination of Duty of the Acquisition of Land and Building Right (BPHTB) for the sale and purchase of land and/or buildings in Pekalongan City? What are the constraints in the implementation of determining the payment of duties on the acquisition of land and or building rights (BPHTB) for the sale and purchase of land and or buildings in Pekalongan City and what are the solutions?

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Kantor Dinas Pendapatan Pengelolaan Keuangan Dan Aset Daerah Kota Pekalongan) *Artikel Ilmiah Universitas Jenderal Soedirman* Purwokerto page. 4.

<sup>4</sup> Gusfahmi 2011 *Pajak Menurut Syariah* Edisi Revisi Cetakan Kedua Rajawali Pers Jakarta page. 161.

<sup>5</sup> Amin Purnawan 2011 *Rekonstruksi Politik Hukum Pajak Penghasilan (PPH) Badan Berbasis Nilai Keadilan (Studi Tentang Keadilan Beban Pajak)* summary of dissertation Doctoral Program in Law Science Universitas Diponegoro Semarang page. 3 and 4.

## **2. Discussion**

### **2.1. Implementation of the determination of Duty of the Acquisition of Land and Building Right (BPHTB) for the sale and purchase of land and or buildings in Pekalongan City?**

The implementation of the determination of payment of duties on the acquisition of land and or building rights (BPHTB) for the sale and purchase of land and/or buildings in Pekalongan City is based on Law Number 28 year 2009 concerning Regional Taxes and Regional Levies. One of the types of central Tax which change into Regional Taxes is the Duty of the Acquisition of Land and Building Right (BPHTB). Transfer of Duty of the Acquisition of Land and Building Right (BPHTB) begins with the formulation of policies as outlined in Law Number 28 year 2009 concerning Regional Taxes and Regional Retributions.

Transition of Land and Building Rights Because of Sale and Purchase, Article 1 paragraph 42 of Law Number 28 year 2009 concerning Regional Taxes and Regional Retribution states "Acquisition of Rights to Land and/or Buildings is an act or legal event that results in obtaining land rights and/or buildings by individuals or entities. "

Acquisition of land and building rights occurs because of a transfer of rights which includes legal events and legal actions. These occur between a person or legal entity as a legal subject which by law and the applicable legal regulations are given the authority to own land and building rights, and according to the law of transfer of rights occurs because of two things, namely the right to switch and the right to be transferred.

Every transfer of land rights must be registered in the Land office to ensure legal certainty and protection for the rights holders. In the registration of land rights requires the role of the Land Deed Officials (PPAT). Article 37 paragraph (1) of the Government Regulation of the Republic of Indonesia Number 24 year 1997 states that every transfer of rights to land and ownership rights to units of flats through sale and purchase, exchange, grants, income in the company and other legal acts of transfer of rights, except the transfer of rights through an auction can only be registered if it is proven by the deed made by the authorized PPAT according to the provisions of the prevailing laws and regulations.

The position of Land Deed Officials according to the Government Regulation of the Republic of Indonesia Number 37 year 1998 basically has a very important role in maintaining land registration data, namely by making evidence about the occurrence of legal actions regarding a particular piece of land which is then used as a basis for registering changes in juridical data caused by legal action.

As a formal provision, Land Deed Official makes a deed from a legal act of transfer of rights due to the sale and purchase of the form, content and method of making it as stipulated in Government Regulation Number 24 year 1997, Government Regulation Number 37 year 1998 jo Regulation of the Head of the National Land Agency Number 1 of 2006 and Regulation of the Minister of Agrarian Affairs/Head of BPN Number 3 year 1997. In the administration process of signing a sale and purchase deed between the seller and the buyer before the Land Deed Officials (PPAT), PPAT requires the Taxpayer to submit proof of payment or payment of BPHTB tax payable through the form of Regional Tax Payment Duty of Land and Building Rights ( SSPD BPHTB) and has been validated by the DPKAD.

The purpose of transferring BPHTB based on Law No. 28 year 2009 is none other than to increase the local taxing power of Regencies and Cities which have not been running optimally, although the locality of the object of Land Tax and Rural and Urban Buildings and BPHTB is located in the district and city. The transfer of BPHTB collection from the Center to the Regions is not only limited to collection, but also to data collection, assessment, determination, and comprehensive services in addition to the administration that must be carried out in the regions.

The Regional Head in carrying out the overall management of regional finances formed the Regional Financial Management Work Unit (SKPKD). SKPKD is a regional apparatus for regional governments as budget users/goods users, who also carry out regional financial management. Furthermore, the Regional Finance Management Officer (PPKD) is the head of the regional financial management work unit, hereinafter referred to as the SKPKD head who has the task of carrying out the APBD management and acting as the Regional General Treasurer.

One form of local tax revenue is derived from the duty on the acquisition of Land and Building Rights (BPHTB). The biggest transaction that generates income from BPHTB is the transfer of rights to and building, especially the sale and purchase transaction of land and building rights. Therefore, it is not excessive if it is said that the role of Notary as PPAT is very significant in achieving the acceptance of BPHTB targets and securing BPHTB receipts from transitional transactions land and building rights.

When the tax is owed on the acquisition of land and or building rights because the sale and purchase are from the date the sale and purchase deed is made and signed, this is in accordance with the provisions of Article 90 paragraph 1 letter a of Law Number 28 year 2009 concerning Regional Taxes and Regional Levies. In the administrative process of registering the transfer of rights due to sale and purchase at the Regency/City Land Office, the Head of the Office of the National Land Agency will request proof of repayment or payment of BPHTB to the Taxpayer before the issuance of a land certificate. Proof of repayment or payment itself must also be signed and validated by the Regional Finance Agency.

## **2.2. Constraints in the implementation of determining the payment of duties on the acquisition of land and or building rights (BPHTB) for the sale and purchase of land and or buildings in Pekalongan City and what are the solutions?**

There are several factors that can be an obstacle to BKD in collecting land taxes and rural and urban buildings. These factors are as follows:<sup>6</sup>

- Legal Factors, in this case the laws and regulations. The regulations in the tax collection carried out by the BKD are fundamental to Law Number 28 year 2009 concerning Regional Taxes and Regional Levies and Regional Regulations of Pekalongan City Number 8 year 2010 concerning the Obligation to Obtain Land and Building Rights are considered sufficient, only on the application the regulation is still not implemented optimally. There are some implementation rules that have not been implemented until now.

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<sup>6</sup> Soerjono Soekanto 2013 *Faktor-faktor yang Mempengaruhi Penegakan Hukum* PT Raja Grafindo Persada Jakarta page 8.

- Facilities and infrastructures factors support law enforcement. Lack of human resources both in terms of quality and quantity in supporting the implementation of the BKD related to the verification process or validation of the tax object directly BPHTB tax in Pekalongan City. Limitations of human resources cause less than optimal implementation of BPHTB collection in Pekalongan City by BKD.
- Community and Culture Factors, in this discussion it is not distinguished between community factors and cultural factors because cultural factors are closely related to community factors. Culture itself is formed based on patterns of community behavior. The more the era develops, the behavior patterns of the community will also develop.<sup>7</sup> This developing community behavior pattern is not in line with public awareness as a taxpayer to pay tax payable. Dishonesty of taxpayers in reporting Value Transaction of sale and purchase carried out still often occurs in an effort to reduce BPHTB tax payments than they should.

### 3. Conclusion

Based on the results of the research and discussion on the Implementation of Determining the Value of duties on the acquisition of land and or building rights (BPHTB) on the Sale and Purchase of Land and or Buildings in Pekalongan City, a conclusion can be obtained as follows:

First, the implementation of the collection of Land and Building Rights Acquisition in the process of buying and selling land and buildings in Pekalongan City is carried out with a self-assessment system that gives confidence to the Taxpayers to calculate, count, pay their own taxes by using the SSPD BPHTB form obtained by Taxpayers from BKD Pekalongan City. Determination of the sale value of land in BPHTB is based on Law Number 28 year 2009 and Pekalongan City Regional Regulation Number 8 year 2010. The sale value of land in BPHTB is based on the transaction value that occurred on sale and purchase in accordance with the receipt or as stated in the Selling Deed Buy or match other authentic evidence that can be accounted for by the Taxpayer.

Second, obstacles in the Implementation of Determining the Customs Value of duties on the acquisition of land and or building rights (BPHTB) on the Sale and Purchase of Land and or Buildings in Pekalongan City include the lack of socialization regarding the procedures for BPHTB payments to the public. The level of public awareness is still very limited to tax payment obligations, the dishonesty of the taxpayer in including the value of the sale and purchase transaction on the sale and purchase deed, the lack of personnel who are experts in BKD. Furthermore, the constraints arising from the bank/regional cash office that has been appointed to receive BPHTB payments can be solved by efforts such as by conducting socialization regarding the procedure for payment of BPHTB to the public in order to increase public awareness to pay taxes. It can be done by cooperating with the Notary/PPAT in determining the rules for BPHTB payments in accordance with the laws and regulations and set a sanction for fraud / violation of BPHTB payments. Verification and validation activities by the BKD of Pekalongan City caused a lack of legal certainty regarding the sale and purchase deed. The weakness of legal certainty is caused by a verification and validation process that can sometimes annul the transaction price in the

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<sup>7</sup> Shintya Andini Sidi 2015 Penilaian Komisi Yudisial Terhadap Kebebasan Hakim Dalam Memutus Perkara (Tinjauan Yuridis Di Pengadilan Tindak Pidana Korupsi Jakarta) *Skripsi Universitas Jenderal Soedirman Purwokerto* page. 126.

sale and purchase deed that has become an agreement between the seller and the buyer. The obligation of taxpayers to verify and validate NPOP BPHTB also causes the implementation of signing of the sale and purchase deed and registration of the transfer of rights to their land.

Based on the conclusions as stated above, there are several things that the author recommends in the effort of Implementing the Determination of the duties on the acquisition of land and or building rights (BPHTB) on the Sale and Purchase of Land and or Buildings in Pekalongan City: first, the Regional Government should pay attention to several aspects in issuing regulations or policies concerning the Obligation to Obtain Land and Building Rights. These aspects include the condition of tax objects and the condition of the community, so that the rules or policies are beneficial and not burdensome to the community. Second, the Regional Finance Agency (BKD) of Pekalongan City in determining the policy of collecting the Acquisition of Rights on Land and Building must cooperate with the Notary/PPAT and the local Land Office. Third, the Regional Finance Agency (BKD) of Pekalongan City must conduct socialization regarding the payment of Land and Building Rights Acquisition Fees in the sale and purchase transaction to the public. It is needed to increase public awareness in paying taxes on the sale and purchase transactions they have done.

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