

Regulations of Buyer's Tax Imposition before Transfer of Land Rights

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Abstract. Taxes have a crucial role as a source of state revenue, including in Indonesia. The principle of fairness in tax collection includes horizontal, vertical, and geographical aspects. Seller Tax and Land and Building Rights Acquisition Duty (BPHTB) are essential in transferring land rights. Final Income Tax stipulates that Seller Tax must be paid before the Deed of Sale and Purchase (AJB), while the buyer is responsible for BPHTB. The problem arises when new regulations, such as Government Regulation Number 35 of 2023 concerning General Provisions for Regional Taxes and Regional Levies, require buyers to pay taxes on the sale and purchase binding agreement (PPJB) before AJB. This goes against the principle of ownership and can present difficulties for buyers. This research uses qualitative methods with a normative approach. The results include an analysis of regulations and public opinion, focusing on the differences between PPJB and AJB and their impact on tax liabilities. Public awareness of BPHTB's tax obligations is a significant issue, with regulation changes making it challenging to understand and implement. Data is obtained through primary, secondary, and tertiary sources, including legal documents and online news.

Keywords: Buyer; Land; Rights; Taxation; Transfer.

1. INTRODUCTION

Tax is a payment submitted by the community (taxpayer) to the government on a mandatory basis, aimed at funding needs carried out routinely by the state and development projects that do not get non-good compensation so that they can be identified directly.¹ This is a vital income, especially in almost all countries, including Indonesia, where taxes are the primary revenue.² The obligation of citizens to pay taxes creates a responsibility for the state to provide counterinterpretation in return for

¹ Rini Irianti Sundry. (2018). Pengalihan Bea Perolehan Hak Atas Tanah Dan Bangunan (BPHTB) Dari Pajak Pusat Menjadi Pajak Daerah Sebagai Upaya Peningkatan Pendapatan Asli Daerah (PAD). *Jurnal Aktualita*, 1 (1), 279-294.

² Satria Braja Harianja, Julia Rahma Sitepu, Margaretha Saragih. Pemungutan Bea Perolehan Hak Atas Tanah Dan Bangunan (BPHTB) Ditinjau Dari Undang-Undang Nomor 20 Tahun 2000 Tentang Bea Perolehan Hak Atas Tanah. (2019). *Jurnal Hukum Responsif FH UNPAB*, 7(7), 115 – 125.

taxes collected.³ Taxes play a crucial role in supporting internal funding. The obligation to pay taxes became a responsibility for the people, allowing them to participate constitutionally in financing development.⁴

The principle of 'fairness' regarding tax collection, as elaborated by Tjip Ismail in his work, refers to the concept of justice. This principle applies to the entire tax system, including local tax provisions. In this context, justice emphasizes the importance of clarity in the tax basis and payment obligations and opposes arbitrarily applying taxes. The principle of horizontal justice demands that the tax burden be applied fairly among groups of similar economic standing. This means that even if the groups have differences in specific characteristics, they are supposed to pay the same proportion of taxes if their economic standing is similar. This principle reflects the idea that the distribution of the tax burden should reflect inequalities in economic capacity. The principle of justice is also applied in a geographical context, where tax collection should be the same except for providing citizen services in the area.⁵

This tax is a consequence of the actions of sellers who relinquish title to land. The Final Income Tax rule stipulates that this tax must be paid before the purchase-sale agreement. Final income tax sets the final character of this tax, and the seller must make payment before the sale and purchase transaction is completed. This payment requirement is connected with submitting documents such as photocopies of Tax Deposit Letters or equivalent administrative documents.

The buyer should pay BPHTB, and this can be explored. This type of tax is an objective or material tax, where tax liabilities arise based on the tax object itself, then consider who the payer is. Involves actions to produce for whom the right should be granted, an individual or an institution.⁶

Land rights include management rights and buildings that stand on it, as explained in Law Number 5 of 1960 and other favorable laws.⁷ The obligation to pay BPHTB is provided before the signing of the AJB. BPHTB aims to improve the welfare of all people by supporting development. This tax is imposed on the community as an obligation that can be imposed by the party who collects it.⁸

When there is a transfer of BPHTB, there are several obstacles due to the level of public awareness in fulfilling the obligation to pay local taxes. The level of public awareness of the obligation to pay taxes is the main issue that can affect tax revenue.⁹ The situation affects tax revenues, regulations, and infrastructure that supports the

³Eka Wijaya Silalahi. (2019). Bea Perolehan Hak Atas Tanah Dan Bangunan (BPHTB) Atas Warisan, Apakah Warisan (Dalam Garis Keturunan Sedarah) Harus Dikenai BPHTB?. *Jurnal Hukum & Pembangunan*, 49 (4), 880 – 893.

⁴ Article 23A, Constitution of the Republic of Indonesia of 1945

⁵ Tjip Ismail. (2018). *Potret Pajak Daerah Di Indonesia*. Kencana, Jakarta, p. 33.

⁶Ronal Raviyanto, Amin Purnawan. (2017). Peran Pejabat Pembuat Akta Tanah (PPAT) Dalam Pemungutan Bea Perolehan Hak Atas Tanah Dan Bangunan (BPHTB) Dengan Pendekatan Self Assessment System. *Jurnal Akta*, 4 (4), 567 – 574.

⁷ Suryanto, Bambang Hermanto, Mas Rasmini. (2018). Analysis Of Potential Land And Building Transfer Tax As One Of The Local Taxes. *Jurnal Adbis Preneur*, 3 (3), 273 – 281.

⁸ Mardiasmo. (2009). *Perpanjangan*. Penerbit CV Andi, Yogyakarta.

⁹ Budi Ispriyaso. (2005), Aspek Perpajakan Dalam Pengalihan Ha Katas Tanah Dan/Atau Bangunan Karena Adanya Transaksi Jual Beli, *Jurnal Masalah-Masalah Hukum*, 34 (4).

implementation of tax laws or regulations, as well as the level of citizens who are aware.¹⁰

Problems arise when the issuance of Government Regulation Number 35 of 2023 which becomes the implementing regulation of Law Number 1 of 2022 as Article 18 of this Government Regulation states that when BPHTB is payable, it is determined at the time of acquisition of land and/or buildings with the following conditions: a. on the date of making and signing of a binding sale and purchase agreement for sale and purchase, and in the case of sale and purchase of land and/or The building does not use the sale and purchase binding agreement as referred to in paragraph (2) letter a, when BPHTB owes for sale and purchase is at the time of signing the sale and purchase deed. Looking at the nature of PPJB so that there is a sale and purchase agreement for further legal actions, namely the creation of AJB. When signing the Deed of Ju a l Buy legally, there is a transfer of rights or acquisition of rights for the buyer. PPJB is a notary official, while AJB is the authority of PPAT.

PPJB is a binding agreement that continues the AJB process. PPJB is made by parties who will carry out land purchase-sale transactions, containing an agreement between those who want to sell and those who want to buy about the price of land, how to pay, and the date of making the sale and purchase deed.¹¹

The difference between PPJB and AJB lies in their legal force. PPJB is a temporary agreement, while AJB is a permanent agreement. PPJB cannot yet be used to prove ownership of the purchased land. AJB is an agreement stated in the form of a deed carried out by PPAT. AJB signifies a lawful transfer of rights.¹²

The obligation to pay buyer tax before the previous signature of AJB is Article 90, paragraph (1) letter a of Law Number 28 of 2009 concerning Regional Taxes and Regional Levies. This Article stipulates that the time of BPHTB tax payable for sale and purchase is from the date of making and signing of the deed. This means that BPHTB tax is only payable when the sale and purchase deed is made and signed.

In contrast, in the new regulation, buyers must pay tax on the sale and purchase agreement. The buyer's obligation to pay taxes is contrary to the principle of ownership. The principle of ownership is that the owner of an item has the full right to use, collect the proceeds, and enjoy the item. At the time of signing the sale and purchase binding agreement, there was no transfer of land rights from the seller to the buyer. The sale and purchase binding agreement is only an agreement that binds the parties to carry out their respective achievements in the future, namely the preparation of the sale and purchase deed. Thus, at the time of the signing of the PPJB, the buyer did not have complete control over it. Thus, the buyer should not be taxed on the sale and purchase binding agreement.¹³

¹⁰ Suryanto. (2016). Analisis Pajak Daerah Di Kota Cimahi. *Jurnal Agregasi*, 4 (2), 211-226

¹¹ Tresna Puja Asmara, T., dkk. (2023). Perjanjian Pengikatan Jual Beli Tanah: Pengertian, Fungsi, dan Permasalahan. *Jurnal Hukum dan Peradilan*, 12(2), 272-290

¹² *Ibid*

¹³ *Ibid*

2. RESEARCH METHODS

This research uses qualitative methods, where normative legal research methods are used. The normative approach involves examining the dimensions of reality from a normative perspective. In this context, qualitative methods are used for data collection and qualitative analysis to identify patterns, root causes, and underlying reasons underlying a particular event. The implementation of this method requires the analysis of documents, such as related regulations and public opinion. Furthermore, case studies are conducted to provide empirical evidence related to implementing regulations. Analytical descriptive data is obtained from various research sources, especially documents and news contained in online media.¹⁴

Data for writing this Article comes from primary, secondary, and tertiary sources derived from *library* research without involving field research.¹⁵ Information and data are obtained from e-books, e-journals, and online mass media news. These sources have been collected and then selected according to the research theme. After that, the texts are analyzed and mapped to provide comprehensive answers to the issues raised in this Article.

3. RESULTS AND DISCUSSION

In this modern era, in any legal action between individuals in society, it is crucial to establish a legal relationship that is valid and has legality. Notaries and PPAT have the right to issue authentic deeds. Buying and selling is part of the process that requires the creation of the above.¹⁶ Then, the binding agreement for sale and purchase is included in the anonymous or *innominate* agreement, arising because of the nature of the opening of the third book of the Civil Code.

BPHTB is managed and maximized by local governments.¹⁷ Taxpayers feel they are responsible for the BPHTB tax collection system, but the public considers this unfair. A warning letter is mandatory for the payer to report tax payments. The payer must truthfully provide all information related to personal data, business, and the amount of wealth collectively related to the tax liability.¹⁸

Adrian Sutedi gave the following understanding: PPJB is an agreement that wants to sell and who wants to buy something, and if it has been paid in full, the right to transfer if the requirements and rules have been fulfilled as per Government Regulation Number 24 of 1997.¹⁹ Herlien Budiono said that PPJB is a preliminary agreement before the main agreement that the parties want to transfer rights.²⁰ Redirects have a significant relationship to definite laws and are characterized by documentation that

¹⁴ Muhaimin. (2023). *Metode Penelitian Hukum*. Mataram University Press, NTB, p.48

¹⁵ Bachtiar. (2018). *Metode Penelitian Hukum*. UNPAM Press, Tangerang Selatan, p.60

¹⁶ Yuliana Zamrotul Khusna, Lathifah Hanim. (2017). Peran Notaris dan PPAT Dalam Mencegah Terjadinya Penyalahgunaan Kuasa Jual Untuk Penghindaran Pajak. *Jurnal Akta*, 4 (3), 395 – 400.

¹⁷ Silvia Christina Panggabean. (2015). Pemungutan Bea Perolehan Hak Atas Tanah Dan Bangunan (BPHTB) Di Kabupaten Samosir. *Jurnal Ilmu Administrasi*, XII(1), 119-136.

¹⁸ Anak Agung Triana Putri, Ida Ayu Putu Widiati, I Wayan Arthanaya. (2021). Pelaksanaan Pemungutan Bea Perolehan Hak Atas Tanah Dan Bangunan (BPHTB) Di Kota Denpasar. *Jurnal Konstruksi Hukum*, 2(3), 450 – 455.

¹⁹ Adrian Sutedi. (2010). *Hukum Rumah Susun & Apatemen*. Sinar Grafika, Jakarta, p.124

²⁰ Herlien Budiono. (2004). Pengikatan Jual Beli Dan Kuasa Mutlak. *Majalah Renvoi*, 1(10), p.57

validates the event.²¹ Maria S.W Sumardjono understood the sale and purchase agreement related to the strata-title sales pattern, namely PPJB if the building is finished, certified, and has a proper occupancy permit."²² Maria S.W Sumardjono understood the sale and purchase agreement related to the strata-title sales pattern, namely PPJB, if the building is finished, certified, and has a proper occupancy permit.

Article 40 of Law Number 1 of 2022 stipulates that the objects be paid by the buyer in the sale and purchase transaction, as referred to in paragraph (1) point a number (1), including the transfer of rights to land and/or buildings due to the sale and purchase. Article 18 of the PP on Regional Taxes and Regional Retribution, the implementing rule of the Law, specifies the obligation to pay BPHTB at the time of PPJB.

If we look at the provisions of Article 18 P of government Regulation Number 35 of 2023 and Article 49 of Law Number 1 of 2022, they are very different from the provisions of Articles 90 and 91 of the old regulation, namely U U Number 28 of 2009. It is stated that the BPHTB tax was payable from the deed's signing date. PPJB is temporary, and AJB is a permanent agreement.

For example, A and B make land PPJB worth Rp 100 million. Based on the agreement, B will pay the price of the land gradually until it is paid off before it can be handed over to B by A. B does not have proof of ownership of the land. Based on the new regulation, A must pay income tax from the PPJB. Income tax where subject to liability is IDR 2.5 million. The seller's obligation is very realistic because the seller has received money from the sale even though there are stages and supporting documents for the sale, and the Purchase Deed has not yet been signed, so they cannot be signed. This arrangement is imitated in implementing the new buyer's tax / BPHTB, even though the signing of the sale and purchase binding agreement does not prove that there has been a transfer of ownership.

BPHTB arrangements create legal injustice and uncertainty for buyers. The parties are uncertain whether the arrangement will remain in effect or will be amended in the future. This can create uncertainty in financial and business planning. The arrangement has several impacts, including creating unnecessary economic burdens for buyers. The following is a further explanation of the new arrangement: *first*, income tax on PPJB is payable when making and signing PPJB. *Second*, tax or BPHTB on the sale and purchase binding agreement is owed to PPJB when the AJB is made and signed. *Third*, BPHTB is on the binding agreement to sell and purchase the outstanding purchase when making and signing the PPJB. The new provisions contained in Law Number 1 of 2022 and P P Number 35 of 2023 are burdensome for buyers. One of the reasons for making a Sale and Purchase Binding Agreement is due to the buyer's economic ability, which is that they have not been able to pay the sale and purchase price or do not have the money to pay the buyer's tax / BPHTB.

The buyer's need for PPJB is a solution for buyers who have not had enough funds to pay the buyer's tax on ownership in the future because ownership documents are

²¹ Indra Lestari, Rosmidah. (2023). Mekanisme Pengenaan Pajak Bea Perolehan Hak Atas Tanah Dan Bangunan (BPHTB) Pada Program Pendaftaran Tanah Sistematis Lengkap (PTSL). *Recital Review*, 5(1), 174 – 193

²² Maria S.W Sumardjono. (2001). Kebijakan Pertanahan Antara Regulasi & Implementasi. Penerbit Buku Kompas, Jakarta, p. 116

being processed at the Land Office either because of the process of breaking certificates, returning names to heirs or being managed for recognition of rights, extension of rights and others. In order to avoid denial in the future, PPJB is carried out by listing all the rights and obligations of the parties. After the issuance of the new regulation, the buyer becomes burdened if the buyer has enough money for all the management of the sale and purchase; of course, the buyer does not need a Binding Sale and Purchase Agreement, directly AJB.

Against the new regulation, problems still arise, such as a seller wanting to sell part of his plot of land, which is 250 M² of his 400 M² land area. The seller is carrying out the process of splitting the land parcel at the land office where the territory of the object of sale and purchase is located. Before the new rules take effect, the seller can already receive payment from the selling price of the land and is bound to sell to the buyer. The seller should pay taxes because the seller has received payment either partially or entirely. Conversely, because the buyer does not yet have, the buyer's obligation to pay BPHTB has not arisen.

Based on the new regulation, buyers must pay BPHTB to the Regional Revenue Management Agency (BAPPENDA) with data using the master certificate number, then complete the breakdown and the newly issued certificate for each split area. Then, the PPAT must correct BPHTB to adjust to the new certificate number. The next stage can be continued validation. Adjustment of the certificate number in BPHTB is needed when changing names at the Land Office, and all data must be synchronized, including data in BPHTB. Another problem is that if PPJB is canceled due to one party defaulting, then the processing of BPHTB returns from BAPPENDA takes months. Correction is needed if there is an error on the part of PPAT, but there is no error in BPHTB payments to PPJB. Instead, the mechanism is complicated and corrects the buyer and PPAT.

4. CONCLUSION

PPJB is an agreement towards AJB. Before AJB, there was no transfer or acquisition of rights while BPHTB's tax obligations were determined. This creates legal uncertainty, especially in the financial and business planning of the parties involved in land sale and purchase transactions. This provision burdens buyers because BPHTB tax is charged to buyers. Of course, it is detrimental because AJB has not been done. Many factors affect one of them: not having enough funds for repayment. However, it is precisely added to the burden that the buyer should not bear.

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