

Legal Substance of Sale and Purchase of Land & Building in the Determination of BPHTB DPP in Land & Building Sale and Purchase Transactions in Medan City

Albert Lodewyk Sentosa Siahaan¹⁾, Andy Tonggo Michael Sihombing²⁾ & Ricky Banke³⁾

¹⁾ Faculty of Law, Universitas Pelita Harapan, Indonesia, E-mail: albertlodewyksiahaan@gmail.com

²⁾ Faculty of Law, Universitas Pelita Harapan, Indonesia, E-mail: mike281183@yahoo.com

³⁾ Faculty of Law, Universitas Pelita Harapan, Indonesia, E-mail: ricky.banke@uph.edu

Abstract. *BPHTB is a levy on the acquisition of rights to land and buildings. In a transaction involving the buying and selling of property, the BPHTB tax is the responsibility of the buyer. This tax is charged on the acquisition of land and property rights and is calculated based on the Tax Object Acquisition Value stated in the sale and purchase agreement. Following the passage of Law No. 1 of 2022 regarding Financial Relationships between the Central and Local Governments, Law No. 28 of 2009 concerning these financial relations is rendered obsolete. The primary question this study addresses is: What is the legal substance of the BPHTB DPP relating to land and building transactions within the city of Medan? This investigation employs normative research approaches. The theoretical framework applied is Lawrence Friedman's theory of legal effectiveness. The DPP BPHTB for property sales and purchases is governed by the relevant regulations in Medan City, specifically the Medan City Regional Regulation Number 1 of 2024. The essence of the law must achieve the law's core objectives of Justice, Certainty, and Benefit. Ultimately, it can be concluded that the DPP BPHTB outlined in the Medan City Regional Regulation Number 1 of 2024 does not meet the legal goals envisioned by the law itself for the sale and purchase of land and buildings.*

Keywords: *Building; Land; Purchase; Sale.*

1. Introduction

Law consists of a collection of regulations or principles, some documented and others not, regarding what is considered right and wrong, conduct, obligations, roles, and entitlements. Law as one of the human "means" to achieve common goals must of course be appropriate and relevant to human needs. In this case, the law must be related to the results of human creativity, taste, and karsa (Oka, 2021). As a result of copyright, taste, and human spirit, of course, the law which is the "creation" of one party must be understood and disseminated to other parties. The party that "officially" gets the legitimacy and authority to make law is the state (Disantara, 2020: 48-60). The state, which is present as an institution created by society to ensure order, affirm community rights, and ensure community protection and security, is actually given the authority to

make law. The state's authority to make law is certainly based on the fact that society has given up its right to make law to the state(Orlando,2022). Therefore, in the name of "handing over trust".

Legislation serves as a means of shaping society, influencing its habits and conduct to align with the established regulations preferred by the legal system. Lately, there have been many violations and crimes that have occurred in society, such as criminal, civil and administrative cases committed by people from various communities and even legal entities. There is indeed a study of law with regard to society which is a branch of Legal Science but is not referred to as the sociology of law but is referred to as Sociology of Jurisprudence (Effendi,2015).

Laws at both the local and national levels are designed so that both the community members and law enforcement personnel can apply them uniformly, without making distinctions among different communities. All individuals are treated equally under the law (legal equality). Nonetheless, in practice, the laws and rules that are put in place are frequently disregarded, leading to the conclusion that these regulations are not functional due to ambiguous or imprecise laws, an unreliable enforcement system, or a lack of community backing for the enforcement of such laws and regulations. When the law is enforced correctly, it is straightforward and self-explanatory, the enforcement bodies apply it diligently, and the community that is impacted by the regulations shows strong support.

Law as one of the subsystems of society is certainly expected to apply and work in society as the purpose of the law it self. The operation of law in society is actually as important as law making, law discovery, and law enforcement (Effendi,2015:2). The operation of law in society is expected so that the law works in accordance with its function, namely to bring fair order. Efforts to bring fair order, then the aspect of law enforcement (law in action) becomes important because it is in this aspect that the law blends and merges with society as a land of legal struggle to realize justice in society. The urgency of the operation of law in society is actually based on the idea that as a normative field, law does not only focus its attention on principles, theories, concepts, and court decisions oriented to (law in idea / law in book). Law must also be seen in a comprehensive paradigm perspective, including in the application of law in society (law in action). Lawrence M. Friedman's perspective states that the legal system is required to fulfill three elements so that law in action and law in book take place coherently.

In the execution of legal practices, there are occasions when a clash arises between the idea of justice and the assurance of legality. While justice remains a theoretical concept, certainty is something tangible and straightforward, leading to a notable distinction at the societal level that can be experienced by those with vested interests in the law.

Article 46 paragraphs (1), (2) and (3), Law No. 1 Year 2022 on Financial Relations Between the Central Government and Local Governments, states that the price used as NPOP serves as the foundation for taxation, being defined as the greater value when comparing NJOP and the transaction price in the AJB. In the execution of the law within Medan City, the Medan City Regional Regulation Number 1 of 2024 concerning Regional Taxes and Levies specifies in Article 13 paragraphs (1), (2a), and (3) the details regarding BPHTB DPP in transactions involving sales and purchases. (1) The foundation for levying BPHTB is the Acquisition Value of the Tax Object as described in the legal provisions related to taxes and levies. (2a) The Acquisition Value of the Tax Object

mentioned in paragraph (1) will be determined as follows:a. (3) If the acquisition value of the tax object outlined in paragraph (2) is either unknown or lower than the NJOP applied for land and building tax during the year of acquisition, the NJOP from that year will serve as the basis for assessing BPHTB.

In assessing the legal essence regarding the DPP of BPHTB in sale and purchase dealings, it is essential to analyze the legal aims of the legal provisions outlined in the Medan Mayor's Regional Regulation No. 1 Year 2024 concerning Regional Taxes and Levies. This regulation addresses the DPP of BPHTB in land and building sale transactions, focusing on three key aspects of legal objectives: fairness, certainty, and the advantages of the law itself.

2. Research Methods

This research used normative research methods. Normative legal research was a type of research that emphasizes the study of legislative texts, court decisions, legal teachings, and other legal sources. Type of Approach used in this research, among others : The Statute Approach, Analitical & Conseptual Approach. The concept applied is the legal effectiveness theory developed by Lawrence Friedman. This theory states that the legal system consisted of elements of legal structure, legal substance, and legal culture.

3. Result and Discussion

Regional Regulation of the Mayor of Medan Number 1 Year 2024 on Local Taxes and Local Levies, Regarding the imposition of taxes on fees related to the acquisition of rights concerning land and buildings during property sale and purchase activities, then there are three aspects that can be seen, namely Justice, Certainty and Benefit from the law.

3.1. Aspect of justice

In the aspect of justice, the justice in question is the inappropriateness of the tax imposition basis in reality or actual aspects. The Tax Imposition Base should be taken from the acquisition price or cost of the transaction aligns with the principles of BPHTB, which is the Fee on Acquisition. This indicates that the value of the acquisition being referred to is the amount specified in the Sale and Purchase Deed. If there is a mistake in making the price, then it is the examining officer whose role is to conduct an examination to reveal the actual price guided by the code of ethics and applicable laws. In accordance with the principle of Self Assessment that exists in taxation, the government should believe in what taxpayers do, (calculate, report, calculate and pay themselves) and if there is a mistake it is the responsibility of the tax authorities (tax officials) to conduct an examination and may issue a responsible examination result letter in accordance with applicable law. Friedmann stated that the Science of Law serves to solve concrete problems with the aim of achieving justice, stability and welfare. From Friedmann's opinion, it can be concluded that the law is an institution of justice, therefore, talking about the law as well as talking about justice to enforce the law means justice. Paul Scholten stated that the study of law is essentially the study of fairness; therefore, it can be inferred that ensuring legal assurance fundamentally involves maintaining justice.

Pompe stated that law is trust. Thus, law enforcement is intended to strengthen trust. Sudarto stated that law is nothing but love. Enforcing the law is enforcing compassion. Meanwhile, Barda Nawawi Arief argues that in law there is a principle of balance, a balance between the interests of individuals and society, a balance between certainty and justice, a balance between the formal and the material, a balance between formal law (law) and living law (Wibawa & Iskandar,2017).

3.2. Aspects of Legal Certainty

In terms of legal certainty, Satjipto Rahardjo defines it as beginning with the clarity of regulations. When regulations are clear, legal certainty emerges, as it defines the rights and duties of citizens according to their respective roles. In the view of Rosseau, lawmaking reflects the collective will of the populace directed through their governmental representatives. Legal certainty, as interpreted by Pancasila, honors human dignity and considers the social equity among its citizens. Hans Kelsen states that law constitutes a framework of norms. Norms consist of expressions that focus on the aspect of "should" or *das sollen*, incorporating rules regarding actions to be taken. Norms arise from thoughtful human endeavors.

Regulations that encompass broad principles serve as standards for people to conduct themselves within a community, both in their interactions with others and in their connection to society at large. These principles act as a restraint for society in imposing obligations or taking measures against individuals. The presence and enforcement of these principles foster a sense of legal assurance. Gustav Radbruch suggests that legislation should encompass three core values of identity, which are outlined as follows :

1. The concept of legal certainty encompasses an evaluation from a legal standpoint.
2. The concept of legal justice examines the issue from a philosophical perspective, emphasizing that fairness means equal rights for everyone in the eyes of the law.
3. The concept of legal expediency pertains to practical usefulness or effectiveness.

Legal goals that align closely with reality include legal certainty and legal advantages. The Positivist approach tends to emphasize legal certainty, while Functionalists focus on the practicality of law. It can be said that the phrase "*summum ius, summa injuria, summa lex, summa crux,*" suggests that strict laws can cause harm, whereas justice has the ability to provide assistance. Therefore, even though justice is not the only aim of the law, it is the most significant legal objective.

Certainty refers to the assurance of legal regulations or provisions. Fundamentally, laws must be both certain and equitable. This requires that they serve as definitive guidelines for behavior and that they are just, as these guidelines need to support an order deemed reasonable. The law can only

perform its role effectively if it is fair and applied with certainty. He argues that certainty and justice go beyond mere ethical demands; they truly define the nature of law. Laws that lack both certainty and justice are not merely poor laws; they are not laws in any sense. These two traits are intrinsic to the concept of law itself.

Law consists of a set of rules or regulations that govern communal life, establishing the overall behavior guidelines applicable in society, which may be enforced through penalties. Legal certainty is a fundamental attribute of the law, especially concerning written regulations. A law devoid of certainty loses its significance as it can no longer serve as a guide for behavior. The principle "ubi jus incertum, ibi jus nullum" emphasizes that in the absence of legal certainty, there is no true law. According to Apeldoorn, legal certainty encompasses two dimensions. First, it pertains to the ability to determine the law regarding specific monetary issues, meaning that individuals seeking justice must understand the relevant law for their case before approaching the courts. Second, legal certainty refers to legal protection, ensuring parties are safeguarded against judicial unpredictability. The concept of legal certainty is indeed intertwined with how laws are applied in practice, and it does not adhere to a simplistic notion of "button pushing" or automatic application; it involves complex interactions with factors beyond the legal framework itself.

Regarding certainty, Radbruch argues that it is more relevant to focus on the certainty of the existence of regulations or their certainty (*sicherheit des Rechts*). Given this context, it is pertinent to question whether the law in Indonesia truly guarantees legal certainty. The number of laws made by the House of Representatives (DPR) is based on their interests and the laws are made not for the welfare of the people but for their own personal benefit, therefore many products made do not guarantee legal certainty and what is really ironic is that there are no laws that prosper the people. Indonesia is known as a rich country, a country that is strategically located and is nicknamed as the country that is the heart of the world. But that is just a fairy tale because the reality is that many Indonesians do not feel that wealth and they even have to sleep under bridges and many sleep in shop fronts. It is all due to the arbitrariness of the leaders who are selfish (Sukawan, 2019:57-64).

Legal certainty necessitates initiatives to establish regulations in legislation created by parties with authority and legitimacy, ensuring that these laws possess judicial elements that provide assurance that they act as obligatory norms. In his work *The Morality of Law*, Lon Fuller identifies eight essential principles that legislation should adhere to; failure to comply means that it cannot rightfully be considered law, indicating the importance of legal certainty. The eight principles are as follows:

1. A legal framework comprised of rules that are not founded on incorrect judgments regarding specific issues;
2. The regulations are communicated to the general population;
3. They should not apply retroactively, as this could jeopardize the cohesiveness of the system;
4. Formulated in a way that is clear and comprehensible to the public.
5. Conflicting rules should be avoided entirely;

6. Requirements should not exceed what is achievable;
7. Changes should not occur often;
8. The rules and the law's execution must align with one another.

Taxes are contributions of the people to the state's treasury in accordance with the law (to allow it to be enforced) without any immediate compensation. Taxes are levied based on legal norms to cover (Nasriyan & Iyan, 2019). This means that the community by paying taxes does not directly automatically get reciprocal services from the state, where taxes are coercive which if violated based on the law will get clear sanctions the costs of producing collective goods and services to achieve public welfare.

BPHTB functions as a local tax, where the valuation of BPHTB is determined by the tax amount that needs to be remitted. This is based on the greater value between the transaction amount and the Object's Sale Value, indicating that it is not derived from the acquisition value. This situation contradicts the principle of legal certainty outlined by Lon Fuller in his work, the *Morality of Law*, which states that laws should not contain contradictions, should not require actions beyond what is possible, and should ensure alignment between legal provisions and their execution. Consequently, regarding legal certainty, the framework for BPHTB taxation established in Law No. 28 of 2009 concerning Regional Taxes and Levies, later revised into Law No. 1 of 2022 regarding Financial Relations between Local and Central Governments, does not meet the anticipated legal certainty that the law aims to achieve.

3.3 Legal Benefit

Legal expediency is very important in legal science, legal discussions and debates and the science of law itself. Expediency will talk about the usability of a law to what extent, and for whom the usability of the law is used. The concept regarding the role of law in a developed society can be viewed from two perspectives. The first perspective highlights that societal advancement in multiple areas necessitates legal regulations to oversee it. Consequently, the legal domain is influenced by the growth of the community. From the second side is where good law can develop society or direct the development of society (Nazarudin, 2017:73).

Roscoe Pound holds a view regarding law that focuses on the aspect of discipline through his theory, which he describes as "Law as a means for social engineering" (meaning that law serves to reshape or improve society). In order to effectively serve this purpose, Roscoe Pound subsequently developed a categorization of the interests that the law should safeguard, namely as follows:

1. Public Interest
 - a. The interests of the state as a legal entity.
 - b. The interests of the state as the guardian of the interests of society.
2. Social Interest
 - a. The interest in peace and order
 - b. Protection of social institutions
 - c. Prevention of moral degeneration
 - d. Prevention of rights violations
 - e. Social welfare.
3. Private Interest

- a. Individual interest
- b. Family interest
- c. The interests of property rights (Meda,2017).

BPHTB as a source of regional income is very important for the progress and development in the Medan City area, but not at the expense of the community, especially the poor. The interests of the community are higher than those of the state. The state must always enforce the law against delinquent taxpayers who do not pay taxes, especially BPHTB. For substance, it is necessary to study the relief, especially the NPOPTKP which varies in each region.

NPOPTKP in accordance with the inflation rate and fairness in the community will definitely foster public awareness of paying taxes. The NPOPTKP in Medan City itself can be said to be unfavorable to the community if only a value of IDR 80,000,000 is made, based on Article 13 paragraph (4) of Regional Regulation Number 1 Year 2024 concerning Regional Taxes and Regional Retributions. The value is the lowest value set by the government which is a minimum of IDR 80,000,000 based on Article 46, Law No. 1 Year 2022 on Financial Relations between the Central Government and Regional Governments. The increase due to inflation compared to the increase in NPOPTKP in determining the value of BPHTB has not been balanced, so it only seems to have an impact on the state as a source of regional income, where the BPHTB collection should be targeted with the Medan city regional revenue target, making the state ignore the community with the circumstances and ability to pay BPHTB.

4. Conclusion

Based on this study, it can be inferred that the DPP of BPHTB related to the sale and purchase of land and buildings in Medan City does not meet the intended goals of legal equity, assurance, and practicality as outlined in the Medan City Regional Regulation No. 1 of 2024 concerning Regional Taxes and Levies. Consequently, it is essential to modify the DPP of BPHTB for these transactions to derive from a single value, specifically the price of the acquisition transaction, in alignment with the principles governing the acquisition of land and building rights. This should be accompanied by effective oversight and enforcement of the law during the implementation of BPHTB collection for sale and purchase activities.

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