

Incompatibility of The PPAT Deed Numbering Period with The BPHTB Validation Period at BAPENDA Jakarta

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Abstract. *Ownership of Rights to a person is proven by ownership of a Land Certificate that can be transferred to another person, one way is by Sale and Purchase between the Land Owner as the seller and the Buyer. In a transfer of such rights there are taxes that must be paid, one of which is the Land and Building Acquisition Tax or abbreviated as BPHTB and after payment, BPHTB Validation will be carried out with a Maximum Period of 30 Working Days based on the Governor's Regulation and requires a PPAT Deed Number for input. Meanwhile, based on Government Regulations, the PPAT Deed Number has a period of 7 working days from the time it is signed and must be registered with the National Land Agency. Therefore, this creates many multi-interpretations because there is no harmony between one regulation and another. The problem taken in this study is how the inconsistency of the PPAT Deed Number Period with BPHTB Validation. The method used is Normative Jurisprudence with Analytical Descriptive Specifications. The research results show that there is a mismatch between the PPAT Deed Number Period and the BPHTB Validation Period, this condition must be addressed by adjusting the Regulation of the Governor of the Special Capital Region of Jakarta Number 34 of 2022 with Government Regulation Number 24 of 1997 which based on the Hierarchy of Legislation is a higher regulation than the Governor's Regulation.*

Keywords: *BPHT; Deed; PPAT; Validation.*

1. Introduction

Proof of ownership of a person's rights is a Land Certificate, the certificate can also be transferred to another person, one of which is through a Sale and Purchase between the land owner and the person who wants to buy the land. The transfer of land is a tax object which of course has a value. (Prakoso & Tixatmojo, 2023), because the transfer can be transferred from the seller to the buyer. The transfer of rights is subject to tax, each party is subject to its own tax. The Seller's tax

imposed is in the form of PPH while for the buyer the tax imposed is in the form of Land and Building Acquisition Fee or abbreviated as BPHTB.

The process of transferring rights to land and buildings in Indonesia is not free from BPHTB Tax, because all people or bodies that obtain rights to land and buildings, for example, buyers of land and buildings, will be subject to tax on the acquisition of their rights. BPHTB was previously a tax managed by the region which was implemented with the aim of improving services to the community and encouraging regional independence. The transfer of land and buildings is obtained from legal events and legal acts carried out by individuals or bodies (Siahaan, 2011a).

Taxes owed usually occur when the authentic deed is made and signed, because it usually occurs in relation to or must be proven by the existence of an authentic deed, as stated in Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, hereinafter abbreviated as PP No. 24 of 1997. Deeds that prove that the rights have been transferred consist of two types, namely deeds made by an authorized PPAT according to applicable regulations and rules and deeds that are legalized by an official who has the authority according to applicable provisions. The type of deed legalized by the authorized official referred to here is the deed made not by the PPAT, but by a certain Public Official.

The BPHTB process requires validation first of all for BPHTB at Bapenda which is carried out by the Regional Tax Collection Service Unit (UPPPD). Validation is carried out by directly visiting the location. The validation is intended to see whether the tax paid is based on the correct calculation or not. (Jati & Andraini Fitika, 2024). Based on Article 13 paragraph (2) of the Regulation of the Governor of the Special Capital Region of Jakarta Number 34 of 2022 concerning Procedures for Payment, Reporting, Services, and Supervision of Land and Building Acquisition Fees Electronically or abbreviated as Pergub Number 34 of 2022, the validation requires a maximum of 30 Working Days from the time the taxpayer reports the Regional Tax Payment Letter (SSPD) BPHTB.

The Validation Period for BPHTB regulated in the Governor's Regulation above is not in line with Article 40 paragraph (1) of PP No. 24 of 1997, which states that within 7 working days from the date the PPAT deed was made and signed, the deed must be submitted to the National Land Agency along with related documents. In both Regulations, there is disharmony between the two, which should be interrelated. This also contradicts the Principle of *Lex Superior Deroget Legi Inferiori*, which states that higher regulations override lower regulations below them. Disharmony or inconsistency of regulations can result in legal uncertainty in society, as well as many multiple interpretations that confuse PPATs and the public, and also the laws and regulations below can be set aside.

2. Research Methods

The method used in compiling this writing uses the Normative Juridical research type and the specifications of this writing are Analytical Descriptive, by examining the Legislation in detail and linking it to the problems discussed, and also to describe an object to be studied.(Soekanto Soerjono, 2019). This writing uses primary data as supporting data to obtain directly in the field by interviewing several Bapenda employees and several PPATs.(Soekanto Soerjono, 2019), while secondary data uses primary legal materials in the form of Regulations related to writing, secondary legal materials in the form of books, journals and so on, and tertiary legal materials. The data collection technique used is Literature Study to collect regulations that govern, books and related documents and also uses field research in the form of interviews. The approach method used is the Law approach and the data analysis technique uses Qualitative Jurisprudence which refers to legal norms contained in various Laws and Regulations.

3. Results and Discussion

The acquisition of a right to land and buildings as is known is closely related to the emergence of a tax caused by the acquisition of a right to land and buildings. This tax is often referred to as BPHTB. BPHTB is a tax that is managed directly by a region with its policies regulated by the Regional Government of each region. Regional taxes based on Law No. 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments, Article 1 number 21, namely a Contribution to individuals or entities to regions that are mandatory based on the rules governing this matter, the compensation for which is obtained indirectly which is used for the needs of a region for the prosperity of the people. Before the enactment of the regulation, the management of BPHTB was carried out by the Directorate General of Taxes, Ministry of Finance of the Republic of Indonesia as the Central Government(Siahaan, 2011a).

The cause of the acquisition of land and buildings is due to a legal event such as inheritance and legal acts such as buying and selling. Types of land and building acquisitions include:(Siahaan, 2011b):

1. Acquisitions resulting from the transfer of rights such as Sale and Purchase, Exchange, Grant, Will Grant, Will, Income in a Company or other legal entity, Separation of rights resulting in transfer, appointment of a buyer in an auction, implementation of a judge's decision, business merger, business merger, business expansion, and gifts,
2. Acquisition due to the granting of new rights related to the acquisition of new rights to land and/or buildings as a release of rights, and the acquisition of new rights to land and/or buildings outside the release of rights.

The BPHTB tax payable is regulated in Article 49 of Law No. 1 of 2022, which states that BPHTB is determined to be payable from the time:

1. from the date of making and signing the Sale and Purchase Agreement for Sale and Purchase,
2. when a deed is made and signed for an exchange, gift, testamentary gift, inclusion in a company or other legal entity, separation of rights resulting in a transfer, business merger, business amalgamation, business expansion and/or gift.
3. on the date the heir or the person authorized by the heir registers the transfer of his rights at the land office for inheritance,
4. The Judge's Decision is from the date of the court decision which has permanent legal force,
5. granting of new rights to land as a continuation of the release of rights, namely from the date of issuance of the decision letter granting rights,
6. the granting of new rights outside of the release of rights is from the date of issuance of the decision letter granting rights,
7. The auction is from the date of appointment of the auction winner.

Proof that the acquisition of land and buildings has been obtained is by using an Authentic Deed, which is made by a PPAT Official as stated in Article 37 paragraph (1) of PP No. 24 of 1997 "Transfer of land rights and ownership rights to apartment units through sale and purchase, exchange, grant, income in a company and other legal acts of transfer of rights, except for transfer of rights through auction, can only be registered if proven by a deed made by an authorized PPAT according to the provisions of the applicable laws and regulations". So every acquisition of rights to land and buildings requires proof in the form of a PPAT deed because the authentic deed itself has perfect proof of its power.

The PPAT deed is also needed in the BPHTB Validation process and in the name change process at the National Land Agency. Of course, each has stages of the process from the time period to other things related to it. BPHTB validation is carried out by Bapenda or the Regional Revenue Agency via the website for us to input into its system. After that, it is given to the Regional Tax Collection Service Unit (UPPPD), the unit is positioned under and responsible to Bapenda. The validation process is by bringing to the field related to the object of acquisition obtained by the person subject to tax, in this case the buyer. This validation is also carried out to check whether the tax that has been paid by the taxpayer is in accordance with the object or not and is also correct for the calculation (Jati & Andraini Fitika, 2024). The BPHTB Validation Period based on Article 13 paragraph (2) of Pergus 34 of 2022 is a maximum of 30 working days since the taxpayer

reports the Regional Tax Highlight Letter (SSPD) BPHTB on the Bapenda Website. In practice, this period is stated on the Bapenda Website that validation takes a maximum of 30 working days.(Regional Revenue Agency (Bappenda) of DKI Jakarta Province, 2023).

The regulation with the Government Regulation is actually disharmonized with the term of the PPAT Deed itself. The term of the PPAT Deed has been regulated in PP Number 24 of 1997, Article 40 paragraph (1) which states that no later than 7 working days since the deed was signed by the person concerned, the PPAT must report the deed to the Land Registration Office to be registered. In the world of practice, for the management of BPHTB Validation at Bapenda, especially in the Special Capital Region of Jakarta, a PPAT Deed is required for Validation and input into the Bapenda system. So, there is confusion because BPHTB Validation is carried out with a maximum period of 30 working days while the PPAT Deed itself has a period of only 7 working days since it was signed.

In practice, related to the Governor Regulation and the Government Regulation above, there are many differences, where there is a UPPPD which states that the reverse registration process at the National Land Agency (BPN) can be carried out even though it is still in the BPHTB Validation process without waiting for the results of the BPHTB Validation, while from the BPN side, you have to wait for the results of the BPHTB Validation first before the PPAT Deed can be registered. As a result, this makes the PPAT have to make a Letter of Application for Delay in Registration of Transfer of Rights to the BPN regarding the PPAT Deed.

The relationship between the Governor's Regulation and the Government Regulation above can be seen through the Regulation Hierarchy, which is a system of bookkeeping in Indonesia that determines the level of importance and power of legal regulations.(Annisa, 2023). The hierarchy of regulations in Indonesia is regulated in the provisions of Article 7 paragraph 1 of Law No. 12 of 2011 concerning the Formation of Legislation which consists of(Abqa et al., 2024):

1. The 1945 Constitution of the Republic of Indonesia
2. Decree of the People's Consultative Assembly
3. Law/Government Regulation in Lieu of Law
4. Government regulations
5. Presidential decree
6. Provincial Regional Regulations, and
7. District/City Regional Regulations.

Based on the provisions above, the hierarchy of the highest legislation is the 1945 Constitution of the Republic of Indonesia and the lowest is the Regency/City Regional Regulation or also the Governor's Regulation. The hierarchy above is the same as that put forward and developed by Hans Kelsen or known as the Stufenbau Theory or hierarchical theory, according to this theory, the most basic norm is called (Grundnorm) which occupies the highest rank.

Regarding the hierarchy above, there are several principles that we need to pay attention to, these principles were used by Hans Kelsen.(Kusumohamidjojo, 2016):

1. Principle of *Lex Superior Deroget Legi Inferiori*

The meaning of this principle is that higher rules override lower laws. If a Ministerial Regulation is inconsistent with a Law or regional regulation that conflicts with national regulations, then the ministerial regulation is void.

2. Principle of *Lex Posterior Derogat Legi Priori*

The meaning of this principle is that the latest law overrides the old law. If there is a new regulation that regulates a problem that is similar to a problem regulated by an earlier regulation and has the same hierarchical position as the latest regulation, then the old regulation becomes invalid.

3. Principle of *Lex Specialis Derogat Legi Generalis*

The meaning of this principle is that the law that applies specifically overrides the law that applies generally.

The Governor's Regulation and Government Regulation must of course be immediately harmonized between the two so that the community and PPAT get legal certainty and are not confused about which regulations are used and which they obey. Legal certainty has been stated in the 1945 Constitution of the Republic of Indonesia, hereinafter referred to as the 1945 Constitution, Article 28 D paragraph 1 which states "Everyone has the right to recognition, guarantee, protection, and fair legal certainty and equal treatment before the law"(1945 Constitution of the Republic of Indonesia, nd). The 1945 Constitution clearly states that legal certainty is the right of every person so that they are treated fairly and do not cause confusion for them.

According to the Theory of Legal Certainty, as defined by Sudikno M., it is a guarantee that if a law is implemented, those who are entitled according to the law can obtain their rights and the decision can be implemented.(Mertokusumo, 2007). Legal certainty functions as a rule that is obeyed, not only in relation to the regulation being implemented but also in relation to the norms or material contained in the regulation, there are basic legal principles.(Prayogo, 2016). According to Radbruch, legal certainty is defined as a situation in which the law can function as a regulation that must be obeyed. Based on the explanation of the

theory above, legal certainty is a guarantee of a regulation that is running and must be obeyed by everyone.

Harmonization of a regulation is defined by several experts, one of whom is according to L. Gandhi, who is of the opinion that harmonization is related to the adjustment of a statutory regulation, Government Decisions and Judges' Decisions, the legal system, and legal principles which aim to increase legal unity, legal certainty, fairness, and harmony, the function and clarity of the law without eliminating and inciting Legal Pluralism.(S, 2010). In addition, Mahendra Putra Kurnia also believes that legal harmonization is a legal activity to attempt to resolve various interests, in line with higher, equal, lower legal norms and non-legal norms as well as effective and efficient efforts of a legal concept with existing regulations. It can be concluded from the explanations above that harmonization is the conformity between one regulation and another in order to achieve the function and objectives of the law in a useful and harmonious manner so that there is no overlap (Regulate Overlapping) which can cause a conflict between one legal provision or statutory regulation and another.

The impact of disharmony or inconsistency of the rules in this case is the inconsistency of Article 40 paragraph 1 of PP Number 24 of 1997 concerning Land Registration which provides a period of 7 (seven) working days for the Deed Number and its supporting documents to be registered at the BPN. Meanwhile, in the Governor's Regulation Number 34 of 2022 in Article 13 paragraph 2 it states that BPHTB validation requires a period of 30 (thirty) working days, which in this case it is clear that the BPHTB validation process exceeds the time period for making deeds and documents at the BPN. This inconsistency can certainly result in many multifaceted and legal uncertainties for the community, including the Land Deed Making Officer (PPAT). In practice, in the field, Land Deed Makers (PPAT) often feel the direct impact of this, in which case the Land Deed Maker (PPAT) must make a Letter of Request for Delay addressed to the BPN so that the deed to be registered can still be processed after receiving BPHTB Validation, this of course can indirectly cause losses both materially and immaterially.

Based on the explanation above, the Regional Regulation Number 34 of 2022 with Government Regulation Number 24 of 1997 has a different level, where according to the Hierarchy of Legislation Article 7 paragraph 1 of Law No. 12 of 2011 concerning the Formation of Legislation, Government Regulations are higher than Governor Regulations. This is also reinforced by the Principle of *Lex Superior Deroget Legi Inferiori*, where higher rules override lower rules.

4. Conclusion

The conclusion that can be put forward is that there is a disharmony regarding the PPAT Deed Number Period and BPHTB Validation. The disharmony is between PP Number 24 of 1997 and Pergub Number 34 of 2022, disharmony, for that it is

necessary to carry out harmonization between the two regulations which are based on the Hierarchy of Legislation and the theory of *Lex Superior Deroget Legi Inferiori* which has a higher position is the Government Regulation and the one below it needs to be harmonized or adjusted with the regulations above it. Harmonization of these regulations is carried out by submitting a Harmonization Application to the Head of the Regional Office to submit a harmonization between the two regulations.

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