



## Legal certainty in the payment of fees on acquisition of land and building rights on tax object acquisition value stated inconsistently

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### Abstract

In the legal act of sale and purchase of land and or building rights, the buyer is subject to Land and Building Acquisition Fees, which is a tax collection that was originally a central tax which is now a local tax based on Law No. 1 of 2022 concerning Financial Relations Between the Central Government and Regional Governments, before Law No. 28 of 2009 concerning Regional Taxes and Regional Retributions which aims to increase the local revenue budget. In order to achieve the local government's target in collecting the government often uses the interpretation of the sale and purchase price with validation and verification, namely conducting field checks to determine the authenticity of the sale and purchase value of the land used in the transaction so that it is not in accordance with the principle of self-assessment. The purpose of this research is for legal certainty against the payment of acquisition duty on land and buildings for the acquisition value of the tax object paid is declared inappropriate in the validation and verification process. This type of research is using normative legal research. The study shows that the local government, namely BPPD, does not have the authority to determine the sale and purchase price of land for buyer and seller transactions, this is not regulated in the legislation. With the collection carried out by the local government is not in accordance with the self-assessment system but tends to official assessment. The local government conveys the transactions that the parties make to get a transaction value that is close to the actual local government by issuing a verification note as the transaction value. The existence of validation and verification creates legal uncertainty in the transfer of rights transaction, which should have the right to determine the sale and purchase price of land only the buyer and seller.

**Keywords:** BPHTB tax, price fixing, legal certainty

### Introduction

Indonesia is a State of law, this is expressly and clearly stated in the 1945 Constitution of the Republic of Indonesia. As a State of Law, of course, all actions in the life of the nation and state must be regulated by law. The law as a social institution has a very important role in community life to create benefits, justice, legal certainty as well as regulate all prohibited and ordered actions. Every society has different interests. So that the law is needed to regulate the differences in these interests. Indonesia, which adheres to Pancasila and is characterized by a modern welfare state, aims to create justice and legal certainty and welfare for all people and the government wants to study and comply with applicable tax regulations in Indonesia. (Rochaeti 2012) <sup>[19]</sup>.

Taxes are the most potential source of income for the state where the results are used to carry out state development with the aim of the welfare and prosperity of the people. Tax payment and reporting can be interpreted as a legal obligation carried out by all citizens against the state as a form of responsible participation in the development and progress of the country. (Sumadi and Noviani 2014) <sup>[23]</sup>. Taxes are contributions to the state that are imposed, which are owed by those who are obliged to pay according to statutory regulations by not getting a return achievement, which can be directly appointed and used to finance public expenditures in connection with the state's duty to organize the government (Brotodihardjo 1987) <sup>[2]</sup>. (Brotodihardjo 1987) <sup>[2]</sup>.

The division in taxes is related to the hierarchy of government authorized to run the government and collect sources of income or state revenue, especially in regional autonomy. In the taxation system in Indonesia, there are two

groups of taxes related to the institution authorized to collect taxes, including central taxes and local taxes. (Gustia 2016) <sup>[7]</sup>.

One type of tax that is a potential source of tax revenue that should be taken into account according to the situation and conditions of the economy and the development of national development is the type of tax on acquisition of land and building rights. With the increase in activities in all fields with this causes the need for the availability of land and or buildings. Meanwhile, land and or buildings are in very limited supply. So it is only natural that individuals or legal entities who obtain economic value and benefits from land and or buildings due to the acquisition of rights to land and or buildings are taxed by the state.

Acquisition of rights to land and or buildings is a legal act or event that results in the acquisition of rights to land and or buildings by individuals or entities. The legal rules governing BPHTB tax are contained in Law No. 1 of 2022 on Financial Relations Between the Central Government and Regional Governments which revokes Law No. 28 of 2009 on Regional Taxes and Regional Levies which is declared no longer valid.

BPHTB tax collection is carried out by means of self-assessment, namely the taxpayer is given the trust to calculate and pay the tax owed and report it without basing it on the existence of a tax assessment letter. (Chrissanni and Purnawan 2017) <sup>[3]</sup>. In addition to being collected by tax officials, there are also self-assessment taxes or those that are collected by the community itself, one of which is BPHTB. (Siahaan Paha 2005) <sup>[21]</sup>. In addition, for those who obtain rights to land and buildings, they are obliged to deposit to the state through tax payments, in this case BPHTB.

The Acquisition Value of the Tax Object according to Article 46 paragraph (2) letter a of Law Number 1 Year 2022 concerning Financial Relations between the Central Government and Regional Governments in the case of sale and purchase is the transaction price. The transaction price is the price agreed upon by the buyer and seller at the time of the sale and purchase transaction, based on which the transaction price will be calculated by the taxpayer to pay BPHTB tax. And the provisions related to Law Number 1 Year 2022 must be in line with the Regional Regulation in each region.

Based on this *Self-Assessment* system, taxpayers determine the amount of tax to be paid, calculate and report BPHTB themselves to the State / regional treasury, the tax authorities only determine the Principal Value of Taxable Objects (NPOTKP) and BPHTB rates to be used as the basis for calculating the amount of BPHTB to be paid. So in this case the local government does not have to interfere in determining related BPHTB tax payments.

Based on the practice in the Agam Regency area, the law of determining BPHTB tax does not use the transaction price as determined in the existing laws and regulations, where in this case when the buyer and seller agree to determine the sale and purchase price, then the Land Deed Official (PPAT) writes down the price to submit an application for BPHTB tax payment. Verification as a determinant of the sale value of the sale and purchase transaction creates injustice to taxpayers, where the results of verification are often the sale value determined by the Regional Revenue Management Agency is much higher than the actual value and the notification letter (SPT) filled out and reported by the taxpayer. So the Agam Regency Regional Revenue Management Agency employees tend to replace or exchange the sale and purchase price based on the market price set by BPPD. (Harina, Azheri, and Mannas 2023) <sup>[8]</sup>.

Government intervention in setting land sale and purchase prices can be a solution in overcoming problems related to land utilization and management in Indonesia. Local governments must pay attention to various factors such as land value, market conditions, and public needs in setting fair and reasonable land sale and purchase prices. However, the government needs to see that the intervention is carried out with transparency and fairness as well as careful consideration. The government in setting the sale and purchase price of land has different legal consequences depending on the policies applied and the scope of intervention. (Prabuningtyas 2021) <sup>[17]</sup>. Setting an upper or lower limit price for every land sale and purchase carried out in the region. In this context, local government intervention in determining the sale and purchase price of land can result in several things, among others, the Local Government can set the sale and purchase price of land by regulating the market price.

Local Government based on local regulations that apply in the area, local tax which is a local tax imposed in accordance with national regulations, but the amount of the acquisition of value is only assigned to the Local Government tax managed by the Government but the collection is shared by Local Government (Davey 1988) <sup>[4]</sup>. It is as if the taxpayer is forced by the local government to sell the land at a level higher than the Tax Object Sale Value (NJOP). In fact, the NJOP in the elite area is very high, so it is difficult if it is sold at the same level or above the NJOP price, especially if the property is in an elite area. so it does

not rule out the possibility of arbitrariness of the Local Government in determining the tax to be paid for the BPHTB.

Increasing tax revenue requires an increase in taxpayer compliance. The level of taxpayer compliance is one of the factors that affect the success of tax collection. In the vision and mission of the Directorate General of Taxes, the first mission is to collect revenue based on high voluntary tax compliance and fair law enforcement. (Directorate General of Taxes 2016) <sup>[11]</sup>. Perceptions of justice are formed if taxpayers realize their rights, expect these rights to be fulfilled and if in reality they receive fair treatment for their rights, taxpayers will be more compliant with tax obligations. One of the factors that influence taxpayer compliance is the perception of fairness felt by taxpayers and the ways in which tax authorities interact with taxpayers will affect public perceptions of the tax system.

Reviewed by the change in price determined by the Regional Revenue Management Agency employees, where the price agreed by the parties is not applied or not used. It can be said that with the interference of employees or fiscus in determining the price of the sale and purchase transaction, it is clear that the application of self-assessment should be questioned whether it has been implemented correctly or not. The focus of the discussion in this paper is whether legal certainty has been applied to the payment of acquisition duties on land and or buildings on the processing value of tax objects that should be based on the laws and regulations paid not in accordance with the existence in the validation and verification process. Therefore, legal certainty is needed in the payment of BPHTB by reviewing Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments before revoking Law Number 28 of 2009 concerning PDRD. This is the duty and authority of the Notary / PPAT to make a deed for the transfer of rights to land and / or buildings, besides that BPHTB payments that refer to transaction prices and / or market values can affect the final payment to be paid by taxpayers.

Based on the introduction above, the problem formulation for this paper is: How is the legal certainty of the payment of acquisition duty on land and buildings for the acquisition value of the tax object paid declared inappropriate in the validation and verification process?

## Research Methods

The method that will be used in this research will use the type of normative research method, which is a type of research carried out by examining legal documents and legal literature in order to provide understanding and understanding of the applicable law or legal issues at hand. (Suhaimi 2018) <sup>[22]</sup>. The approach method that researchers use is a statutory approach and a conceptual approach. Primary legal materials come from legal provisions that regulate the government's authority in determining the sale and purchase price of land carried out by individuals or legal entities. The legal provisions referred to are Law Number 1 of 2022 concerning Financial Relations Between the Central Government and Regional Governments, Law Number 20 of 2000 concerning Fees for Acquisition of Land and Building Rights, Government Regulation Number 35 of 2023 concerning General Provisions for Regional Taxes and Regional Retribution. Secondary legal materials are sourced from several literatures such as books, journals,

and the views of experts, as well as other literature similar to the legal issues studied.

## Results and Discussion

### 1. Subjects and Objects of Fees on Acquisition of Land and Building Rights (BPHTB)

Article 1 point 1 of the BPHTB Law, BPHTB is the imposition of tax on the acquisition of land and buildings. In this case what is meant by the replacement of ownership so as to obtain rights to land and or buildings. That is a legal activity carried out by the taxpayer or legal event that makes the impact of obtaining land and / or building rights from individuals or legal entities. One type of local tax that is absorbed and controlled by the Local Government, BPHTB is included in the type of local tax that can be used to pay for all activities carried out by the Local Government and become a development in the area.

The tax subject imposed in the BPHTB tax is stated in Article 45 paragraph 1 of Law Number 1 Year 2022, which states that the subject of BPHTB tax is an individual or entity that acquires land and / or buildings. Meanwhile, related to the object or what can be used as the purpose of BPHTB is the transfer of ownership of rights to land and or a building mentioned in Article 44 paragraph 2 of Law Number 1 Year 2022, which includes:

#### A. Transfer of rights due to:

1. Buying and selling;
2. Swap;
3. Grants;
4. Testamentary grants;
5. Inheritance;
6. Incorporation in a Company or legal entity;
7. Separation of rights resulting in transfer;
8. Appointment of a buyer in an auction;
9. Implementation of judicial decisions that have permanent legal force;
10. Business merger;
11. Business consolidation;
12. Business expansion; or
13. Gifts; and

#### B. Granting new rights due to:

1. Continuation of relinquishment of rights; or
2. Outside of the release of rights.

There are 5 principles that are held and carried out in Indonesia in the implementation of BPHTB collection, namely: (Pahala Siahaan 2003) <sup>[16]</sup>

1. The implementation of the Tax on Acquisition of Land and Building Rights is based on the Self-Assessment system, where taxpayers calculate and pay their own tax debts.
2. The amount of a burden is determined at 5% (five percent) of the Taxable Tax Object Acquisition Value (NPOPKP). Unpaid taxes are not directly charged on the NPOP which is the reference for tax collection, but first deducts the NPOPTKP (non-taxable tax object acquisition value) where the value has been determined from the NPOP that cannot be charged for tax.
3. In order for the implementation of the BPHTB Law to be carried out effectively, public officials or taxpayers who commit an offense or have not been able to implement what is regulated by the regulations will be

subject to sanctions according to the applicable laws and regulations.

4. The proceeds from BPHTB are state revenues that are not fully channeled to local governments. Some of these funds are used to increase local finances, which are essential to finance local government activities and support the implementation of regional autonomy.
5. With the existence of laws governing BPHTB, BPHTB is the only tax that can be obtained on the income of rights to land and building objects because all of its collection is related to the income of rights. Therefore, all tax revenues on land and or building objects that violate the regulations governing BPHTB are not permitted. This condition is very important so that citizens are not charged with withdrawals that are not in accordance with regulations related to income on a land and / or building object.

### 2. Consideration of determining the value of the sale and purchase price of land and or building in BPHTB tax

In general, the sale and purchase process between the seller and the buyer is carried out at the PPAT office. (Muhasan 2018) <sup>[13]</sup>. Where the seller and buyer will submit to PPAT to carry out the entire transfer process. Land rights can be obtained by individuals or legal entities. Sale and purchase is a way for a person to obtain rights to land and or buildings which is basically an act of transferring rights to someone, namely from the seller to the buyer. (Murjiyanto and Ismaya 2016) <sup>[15]</sup>. Sale and purchase of land and or buildings is carried out in front of a Land Deed Official (PPAT).

BPHTB collection uses a self-assessment system, in which the obligor is given the responsibility, trust and authority to determine pay and report his own tax payable. (Ravianto 2017) <sup>[18]</sup>. Before the sale and purchase deed is made, the buyer must fill in and pay the calculation of the SSPD sheet (local tax deposit letter) before signing the sale and purchase deed in front of the PPAT. (Husodo, Sihabudin, and Harjati 2017) <sup>[10]</sup>. If the local government official has not signed the SSPD BPHTB, the sale and purchase cannot be carried out before the PPAT. BPHTB is a tax that must be paid by the buyer for acquiring rights to land and or buildings.

Validation is carried out to verify the field which has the aim of knowing the existence of the object, as well as to determine the fair value of the transaction based on the physical existence of the object and so that the value of the object can be adjusted to the condition factors found in the field. (Setyawati 2019) <sup>[20]</sup>. In order to ensure the compliance of taxpayers and determine the effectiveness of the BPHTB payment process, public officials, in this case the local government, conduct validation through the Regional Revenue Management Agency. (Murjiyanto and Ismaya 2015) <sup>[14]</sup>. In Article 40 paragraph 6 of Law Number 1 Year 2022 in determining NJOP related to the determination of the period, it is determined every 3 (three) years, except for certain tax objects that can be determined annually in accordance with the development of the region. Based on PMK Number 139/PMK. 03/2014, adjustments are made every 1 (one) year. Banjarmasin City is one of the areas that conducts appraisals in this case carried out by the Local Government (which is represented by BPPD Banjarmasin City) where the price itself is outside of what is determined by the provisions in the NJOP in conducting a

validation process in the form of field verification to ensure the truth of the object of sale and purchase of land and or building rights. The local government assumes that the value of the transaction. According to the Local Government, the transaction value is said to be too low when compared to the NJOP, if you look at the mechanism in determining the NJOP itself, it is precisely the Local Government that determines the NJOP for the land, therefore the field verification process is what is not regulated at all in any laws and regulations of Banjarmasin City itself. In this case, it becomes a problem related to the NJOP in Land and Building Tax (PBB) that has followed the provisions, but why is it increased by BPPD, in this case it is argued that the Regional Revenue Management Agency deviates from the data or NJOP that it has made itself. (Fitriady, Effendy, and Buana 2023) <sup>[5]</sup>.

Another region that also conducts validation and verification is Agam Regency, West Sumatra Province. The transaction price, in this case the BPHTB collection in Agam Regency, is predominantly based on the market price in the local location. This market price is the price that is reviewed and surveyed by the BPPD of Agam Regency. If this price is approved by the Agam Regency BPPD, then the price value is approved by the BPPD, then the price value is used instead of the transaction price in the BPHTB tax calculation. Regarding the transaction price, it is still recognized and used by BPPD, if the price is approved, in the sense that if the buyer and seller agree to the price listed for the sale and purchase process of land and buildings, BPPD conducts verification related to the object of BPHTB, if the price proposed by the buyer and seller is approved, then the price is used. However, if the proposed price is not approved, it will be replaced with the market price determined in the BPHTB verification process. (Harina, Azheri, and Mannas 2023) <sup>[8]</sup>.

Local governments conduct field validation or verification in adjusting prices used in transactions by buyers and sellers against market prices in the field. If a difference is found between the price stated and the price in the field, the local government changes the price agreed by the buyer and seller to match the price set by the respective local government. Transfer of land and or building rights cannot be carried out if the transaction price used for the sale and purchase transaction is not approved by the local government.

### **3. Legal Certainty Against Payment of Fees on Acquisition of Land and Building Rights on the Acquisition Value of Tax Objects Paid Declared Incompatible in the Validation and Verification Process**

In the scope of law, legal certainty is something that can be answered normatively based on applicable laws and regulations, not sociologically. Normative legal certainty is when a statutory regulation is made and promulgated with certainty because it regulates clearly in the sense that it does not cause doubt, and logical means being a system of norms with other norms, so that they do not clash with each other. Gustafianof, "The Formation of Internal Hospital Regulations for the Sake of Legal Certainty of Good Health Services in Indonesia", Dissertation in Law, (University of Andalas, 2022). Legal Certainty Theory has 2 (two) meanings, namely:(Mahmud Marzuki 2008) <sup>[12]</sup>

- a. The existence of general rules makes individuals know what actions they can and cannot do;
- b. In the form of legal security for individuals from government authority because of this general rule of law, individuals can know what the state imposes or does to individuals.

According to Article 3 paragraph (4) of Government Regulation Number 35 of 2023 concerning General Provisions of Regional Taxes and Regional Retribution which states that "Types of Regency / City taxes as referred to in Article 2 letter b which are collected based on their own calculations by taxpayers consist of BPHTB" (self-assessment). The collection of BPHTB is a very important part of the process of transferring rights to land and or buildings, because PPAT is prohibited from signing the deed of transfer of rights before the taxpayer pays and pays off the BPHTB tax properly. (Akbar, Atmanto, and Jauhari 2015) <sup>[1]</sup>.

Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments clearly regulates the determination of the value of transactions in the sale and purchase of land and / or buildings is clearly regulated in Article 46 paragraph (1), namely the basis for the imposition of BPHTB is the Tax Object Acquisition Value (NPOP). Furthermore, paragraph (2) explains that the Tax Object Acquisition Value as referred to in paragraph (1), in letters: (a) the transaction price of sale and purchase; (b) the market value for exchange, grant, bequest, inheritance, entry in a Company or legal entity; (c) the transaction price stated in the minutes of auction for the appointment of a buyer in the auction. Furthermore, in paragraph (3) in the event that the acquisition value of the tax object as referred to in paragraph (2) is unknown or lower than the NJOP used in the imposition of land and building tax in the year of acquisition, the basis for the imposition of BPHTB used is the NJOP used in the imposition of land and building tax in the year of acquisition.

Based on Government Regulation Number 35 of 2023 concerning General Provisions of Regional Taxes and Regional Retribution in Article 60 paragraph (1) letter a, that the Land Deed Official or Notary in accordance with the authority is obliged to request proof of BPHTB payment to the taxpayer, before signing the deed of transfer of rights to land and or buildings. Thus, the existence of validation and verification hampers the work of PPAT. The results of validation and verification can be obtained several possibilities, including the actual Tax Object Acquisition Value being lower than the Tax Object Acquisition Value of the verification result or the actual tax object acquisition value being higher than the tax object acquisition value of the verification result. Verification is carried out through procedures by BPPD to examine the correctness of the data and completeness of the Regional Tax Payment Letter for Acquisition of Land and Building Rights (SSPD BPHTB) and other supporting domiciles and is accompanied by field checks.

Based on the self-assessment system, more trust is given to the community to carry out their tax obligations, which provides legal guarantees and legal certainty regarding tax rights and obligations for taxpayers so that it is expected to further increase tax awareness and responsibility in the community. Article 10 of Law Number 20 Year 2000

concerning BPHTB states that BPHTB collection uses the principle of self-assessment, which authorizes tax calculations to taxpayers. Strengthened by Government Regulation Number 91 of 2010 concerning Types of Local Taxes whose collection is based on the Decree of the Local Government or taxpayers who pay their own taxes, the local government only supervises and does not intervene in the authority contained in the taxpayer. (Hidayah, Masriani, and Suroto 2021)<sup>[9]</sup>.

The rules applied by the local government to the BPHTB collection must consider the principles that underlie tax collection. Regarding clear tax collection, it will provide legal certainty of the rights and obligations of taxpayers so that it will increase taxpayer awareness, and the determination of taxes must be clear and not carried out arbitrarily where taxpayers must know clearly and surely the amount of tax payable. In this case, the local government should exercise its authority in accordance with the BPHTB Law. The validation process carried out by the local government causes the transaction price to change is an action that has changed the system where it should use self-assessment but become official assessment. As a result of the determination of transaction prices by the local government, validation is carried out, causing legal uncertainty for the community who will carry out transactions.

### Conclusion

The BPHTB collection system by the local government through the Regional Revenue Management Agency based on the mandate of Law Number 1 of 2022 concerning Financial Relations Between the Central Government and Regional Government, previously Law Number 28 of 2009 concerning PDRD makes BPHTB collection carried out by the local government. In the process of collecting BPHTB, there is government intervention (official assessment) by conducting field verification in order to adjust the prices used in transactions by buyers and sellers to market prices in the field. By issuing an estimated value determined at the beginning before the transaction, it is contrary to the principle of presumption of innocence which is the philosophy of the self-assessment system so that there is no conformity between the existing laws and regulations and the form of application in the self-assessment system itself so that it changes the system used in BPHTB payments, namely self assessment to official assessment. The rules regulated by the law related to government collection do not have the authority to determine the sale and purchase price because this is not regulated in the law. The existence of government intervention is not in accordance with the principle of legal certainty. Based on this principle, the government cannot participate in the agreement, namely regarding the sale and purchase of land and or buildings that should have the right to determine the sale and purchase price only between the buyer and seller.

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