

Analysis of Reconstruction of Land Rights Acquisition Duty Verification Arrangements by the Regional Finance Agency to Realize Pancasila Justice

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Abstract

Transferring Land and Building Rights Acquisition Duty (BPHTB) from Central Tax to Regional Tax is a strategic step in implementing fiscal decentralization. The transfer of BPHTB to local taxes will be able to increase PAD to improve the quality of regional spending. The estimated price by BKD with the sale and purchase price between the seller and the buyer is different. For example, a seller needs money, so he sells at a low price, but BKD estimates it up to 2 times; finally, sometimes the transaction becomes void because the tax is too high. Based on the facts of BKD of Boyolali Regency, Surakarta City and BKD of Karanganyar Regency, in determining BPHTB is not by what is mandated by several regulations in the Boyolali, Surakarta and Karanganyar areas regarding Land and Building Rights Acquisition Duties. Regional Regulations (Perda) of Boyolali District, Surakarta and Karanganyar Cities, Determination of BPHTB in the NJOP, while BKD in the determination of BPHTB is the result of field verification so that there are differences in the determination of BPHTB that are not fair. This research uses an empirical juridical approach, namely a statutory, conceptual, case, and comparative study approach related to the reconstruction of verification arrangements by BKD in the era of regional autonomy to realize Pancasila justice. This research examined three regions, Boyolali, Surakarta and Karanganyar. The results of the study obtained that the Regional Head in determining the amount of the selling value of tax objects (NJOP) must base as ordered by Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central and Regional Governments, BPHTB in the Regional Bylaws of Boyolali Regency, Surakarta and Karanganyar reflects the actual value or market value, which is an NJOP based on the value of justice.

Keywords:

BPHTB; Area; Taxes; Justice; Pancasila

Article History:

Received: 07th Nov. 2022

Accepted: 21st Dec. 2022

Published: 10th Jan. 2023

1. INTRODUCTION

The concept of regional government autonomy is determined through Law Number 23 of 2014 concerning Regional Government (Local Government Law). The decentralization includes authority in foreign policy, defence, security, judiciary, monetary and fiscal, religion and other areas of authority established by government regulations. The general explanation of the Local Government Law states that the purpose of granting broad autonomy is to accelerate the occurrence of social community welfare through improved services, and so is the role and empowerment of the community.

Local governments in regulating land management in the era of regional autonomy so as not to commit arbitrariness in making tax collection regulations and legal protection to the community, the open list system was changed. The application of the open list system, as used in Law Number 1 of 2022, is related to the Financial Relationship between the Regional Government and the Central Government. Transferring from the Land and Building Rights Acquisition Duty (BPHTB) to the regional tax is a strategic stage in implementing fiscal decentralization. In this case, the transfer of BPHTB, which switches to local taxes, increases Regional

Original Income (PAD) to improve the quality of regional spending (local spending quality). Improving regional spending will improve public service quality, which is the goal of regional autonomy policies to improve community welfare.

Law Number 1 of 2022, concerning Financial Relations Between the Central Government and Local Governments (HKPD Law), regulates the above authority implemented by collecting regional taxes and levies. The law is a refinement of the previous law, namely Law No. 28 of 2009 concerning regional taxes and levies, along with Government Regulation (PP) Number 65 of 2001 concerning Regional Taxes and Government Regulation (PP) Number 66 of 2001 concerning Regional Levies. In adjusting the regional autonomy policy, regional tax arrangements are also amended by the enactment of Law Number 1 of 2022 concerning financial Relations between the Central Government and Regional Governments. Based on this law, local governments get an expansion of authority in terms of taxation by expanding local taxes, two types of additional local taxes for district governments/city governments, namely Land and Building Tax (PBB) and BPHTB, which were previously central taxes, but in determining the tax rate carried out In order to avoid setting a high tax rate, which allows increasing the burden on the community, local governments only have the authority to set tax rates within the maximum limit that local regulations have set.

Land management arrangements by local governments in the era of regional autonomy, district governments/city governments obtain the right to take over the collection of BPHTB in their respective regions/cities throughout Indonesia. In practice, the basis for the imposition of BPHTB is often based on the transaction price agreed upon by the seller and the buyer but on the estimated price by BKD, who takes part in setting the land price. Sellers and buyers are not accessible in determining the price of land because BKD has set the price of land. The seller and the buyer must make a land sale and purchase transaction per the price set by BKD. BKD needs to pay attention to the purpose of a seller, whether they want to sell the land because they need money or not. The estimated price set by BKD differs from the sale and purchase price between the seller and the buyer.

Based on the NPOP, the results of verification by BKD in the field should not be able to defeat the sound of the rules of the HKPD Law Article 46 Number 3. In the case of the value of the acquisition of the tax object, as referred to in paragraph (2), if the NPOP is unknown or lower than the Selling Value of the Tax Object (NJOP) used in the imposition of land and building tax in the year of the acquisition, then the basis used for the imposition of BPHTB is NJOP which is used in the imposition of land and building taxes in the year of acquisition, becomes a reference for the Regency/City BKD in providing community services and carrying out the mandate of the task of collecting regional revenues.

BPHTB verification activities by BKD Boyolali Regency, BKD Surakarta City, and BKD Karangnyar Regency are outside the above regulations. They may need clarification regarding the transfer of land and building rights agreed upon by the parties. Verification arrangements in the era of regional autonomy in land management and determination of the sale and purchase price of land and buildings made by a Notary or PPAT are related to the verification obligation by BKD. The implementation of verification by BKD must be able to realize Pancasila Justice, especially the fifth precept contained in the values that are the state's goals as goals in realizing social justice for all Indonesian people.

2. RESEARCH QUESTIONS

Based on the description above, then the formulation of the problem is as follows:

1. Why has the verification of land rights acquisition duty (BPHTB) for determining the value of the acquisition of tax objects in the era of regional autonomy yet been adequate?
2. How is the regulation for verifying land rights acquisition duties (BPHTB) by BKD in the current era of regional autonomy?
3. How is the reconstruction of the regulation of verification of land rights acquisition duty (BPHTB) by BKD in the era of regional autonomy to realize Pancasila justice?

3. RESEARCH METHODS

This research paradigm uses constructivism. This paradigm is a fundamental belief or belief that leads a person to act on daily life and scientific research. Construction will be carried out by analyzing deviations through the interpretation of legal realities, both regarding behaviour and regulatory texts related to the reconstruction of verification arrangements by BKD in the era of regional autonomy to realize Pancasila justice.

This research uses an empirical juridical approach. The juridical approach is based on a normative

approach that analyzes various laws and regulations related to the reconstruction of verification arrangements by BKD in the era of regional autonomy to realize Pancasila justice. Empirical approach with a statutory approach, conceptual approach, case approach, and comparative study approach in the field of taxation in determining the selling price of fair land and building buying and selling transactions.

The research involved primary data in the form of the results of guided free interviews conducted with local governments, BKD Office Officials, notaries and PPAT, Land Office Officials, and the community who carried out the practice of buying and selling land and building rights in Boyolali and Karanganyar Regencies and Surakarta City. In addition, the study also involved secondary data consisting of primary, secondary, and tertiary legal materials. Meanwhile, the data analysis technique is descriptive qualitative, providing a unique picture based on qualitatively collected data.

4. RESULTS AND DISCUSSION

Verification for Determining the Value of Tax Object Acquisition (NPOP) in the Era of Regional Autonomy Has Not Been Effective

The conception of decentralization in Law Number 23 of 2014 divides autonomy into three patterns: provincial autonomy as limited autonomy, district/city autonomy as broad autonomy, and village autonomy as original and intact autonomy. It is not a gift from the Government; on the contrary, the Government is obliged to respect the original autonomy owned by the village. Taxation has a significant role in increasing accountability for implementing regional autonomy. Therefore the Government gives greater authority to taxes, so Law Number 1 of 2022 concerning Regional Taxes and Regional Levies was promulgated. Initially, the land and building tax (PBB) and the Duty to acquire land and building rights (BPHTB) were central taxes. However, Law Number 28 of 2009 delegated the authority of the two taxes into the scope of district or city taxes. Law Number 28 of 2009 was then replaced by Law Number 1 of 2022 concerning Financial Relations Between the Central Government and Regional Governments.

This is the reality found in the Collection of Duty on the Acquisition of Rights to Land and Buildings; regardless of the Value of Acquisition of Tax Objects obtained, the basis for calculating the Duty on the Acquisition of Rights to Land and Buildings is the Selling Value of Tax Objects (NJOP) listed in the Regional Notification Letter. Furthermore, taxpayers will resist when the transaction value is less than the Selling Value of Tax Objects because it is still calculated that the collection of Land and Building Rights Acquisition Duty is based on the Selling Value of Tax Objects. So public complaints arise about the high Duty on the Acquisition of Rights to Land and Buildings.

The main obstacle in the implementation of the essential determination of the imposition of duties on the acquisition of land and building rights (BPHTB) in the sale and purchase of land and buildings is that the buyer must accept the determination of the acquisition value/transaction price decided by BKD so that the BPHTB tax collection system has shifted from a self-assessment system to an official assessment system because what determines the amount of acquisition value/transaction price as the basis for the imposition of tax is that the taxation apparatus and the taxation apparatus ignore the existence of a procedural law mechanism if there is a shortage of payments, bills, objections, appeals, lawsuits against BPHTB taxes. Government officials (in this case, BKD) no longer uphold the enactment of laws and regulations governing validation (formal research) of land and building rights acquisition duties (BPHTB), namely Law No. 1 of Th. 2022 as well as regional regulations in each regency/city area.

As the results of research regarding the main obstacles in the implementation of the primary determinant of the imposition of duties on the acquisition of land and building rights (BPHTB) in the sale and purchase of land and buildings, namely: 1). Recent developments of BKD which determines unilaterally the number of transaction prices that are used as the basis for taxation, so that BKD has implemented an official assessment system in collecting BPHTB taxes; and 2). BKD unilaterally in determining the amount of the transaction price is always higher than the amount of the transaction price as evidenced by the sale and purchase receipt and statement letter of the seller and buyer made under the hand. Suppose the buyer objects to the determination of the amount of the transaction price. In that case, BKD asks for evidence that must not be fulfilled by the buyer, namely a photocopy of the sale and purchase deed from PPAT, because, indeed, the sale and purchase deed cannot be made before the PPAT.

Regulation for the Implementation of Verification of Land Rights Acquisition Duty (BPTB) by

the Regional Finance Agency (BKD) in the current Era of Regional Autonomy in Boyolali Regency, Surakarta City and Karanganyar Regency

The legal basis of BPHTB is Law Number 28 of 2009 concerning regional taxes and regional levies, as replaced by Law Number 1 of 2022 concerning Financial relations between the central Government and local governments, from now on referred to as the HKPD Law. The BPHTB tax system adheres to a self-assessment system; it is based on the provisions of the law, which is meant by self-assessment, namely taxpayers on their awareness of paying taxes owed without waiting for the issuance of a regional tax decree (SKPD).

Based on the observations' results, it is known that the field verification report that has been printed is then submitted to the Head of the Sub-Division of Data Collection and Assessment of Other Regional Taxes to approve by signing if the field verification report is approved. Then the signed field verification report is submitted to the Head of Data Collection and Assessment for ratification. Before being submitted to the service field to be notified to the taxpayer, the field verification report is carried out by the data collection and assessment officer. Finally, the data collection and assessment officer registers the file and submits the application file and BPHTB field verification report to the service sector.

The provisions of Law Number 1 of 2022 concerning financial relations between the central Government and local governments stipulate that further provisions regarding the types of taxes that can be collected based on the determination of the Regional Head or paid by the taxpayer himself and other provisions related to the collection of taxes are regulated by the Government Regulation. This means that the provisions of Article 7 paragraph 2 of Regional Regulation Number 13 of 2010 concerning Land and Building Rights Acquisition Duties which delegate to the Mayor to regulate the BPHTB collection system and procedures are not by the authority mandated and regulated in Law Number 1 of 2022 concerning Financial relations between the central Government and local governments.

In general, in both central and local taxes, there are often obstacles or debilitating obstacles in tax collection. These constraints include 1). Regulations for implementing laws that are inconsistent with the law; 2). Lack of guidance between local taxes and national taxes; 3). Database, which still needs to be added to International standards. Another obstacle facing the tax apparatus is that the database is still far from standard; and 4)—weak law enforcement on compliance with paying taxes for state organizers.

Based on observations from the community, especially ordinary people, they need to learn that there is a fulfilment of BPHTB payments if there is a transfer of rights to land/buildings and fulfilment of payments/reporting using the Self Assessment system. As a result, the Land Deed Making Officer (PPAT) not only plays a role in assisting taxpayers in making BPHTB payments in the transfer of land rights but also provides information, explanations, appeals and socialization about the emergence of BPHTB and also PPAT helps deposit the tax with Local Government Banks, besides that PPAT also plays a role in submitting regular monthly reports.

Land and Building Rights Acquisition Duty is a tax related to the registration of land rights. Article 19 of the UUPA states that land registration is held throughout the territory of the Republic of Indonesia to ensure legal certainty by the Government. According to the provisions regulated by Government Regulations. Based on Article 37 paragraph (1) of Government Regulation 24 of 1997 concerning Land Registration, any transfer of land rights except those through auction can only be registered if the legal act of transferring rights to the land is based on the PPAT deed. In validating BPHTB, tax officials (Fiscus) carry out validation as material activities or inspection activities and obtain materials to determine regional tax decrees (SKPD). From this validation activity, problems begin to arise because there will be differences in the pricing of the sale and purchase of land and buildings as the basis for the imposition of land and building rights acquisition duties (BPHTB) between prospective land buyers and DPPKAD.

Reconstruction of Arrangements for Verification of Land Rights Acquisition Duties by Regional Financial Agencies (BKD) in the Era of Regional Autonomy to Realize Pancasila Justice

The principle of fairness in taxes is that everyone in the same circumstances should be treated equally and fairly, not to be distinguished from one another. In tax law, this principle of non-discrimination is firmly held to realize justice. One principle that measures whether or not a tax collection is fair is the principle of legal certainty, namely that taxpayers must be clear and specific about the time, amount, and method of tax payment. According to article 12 paragraph (1) of Law number 16 of 2009 concerning general provisions and procedures for taxation adheres to the material teaching on the emergence of tax debts, which confirms that every taxpayer pays taxes owed based on the provisions of laws and regulations, without relying on a tax

determination letter.

The main provisions regarding the basis for taxation, the value of the acquisition of non-taxable tax objects (NPOP-TKP), and tax rates in law Number 1 of 2022 favourable financial balance between the Central Government and the Daerah Government, namely Article 46 paragraphs (3), (4), (5), (6), (7), (8), Article 47 paragraphs (1), (2), and Article 48 paragraph (1). From the results of the analysis, it was found that in Boyolali, Karanganyar, and Surakarta Regencies, data were obtained that the regional regulations have uniformity in terms of regulating the basis for the imposition of BPHTB, which includes:

The basis for the imposition of BPHTB is the value of the acquisition of tax objects (NPOP);

1. NPOP in buying and selling is the transaction price;
2. If NPOP is lower than NJOP-UN, the basis for its imposition is NJOP-UN;
3. The amount of the acquisition value of non-taxable tax objects (NOPO-TKP) is IDR 80,000,000;
4. The tax rate is set at 5%;
5. BPHTB payable = rate x [NPOP – NPOP. Crime Scene];
6. If the NPOP is lower than the NJOP-UN, the outstanding BPHTB is calculated in the way that it = rate x [NJOP. UN – NPOP. Crime Scene];
7. SSPD-BPHTB is submitted to the regent/mayor as material for validation/verification; and
8. The form, content, and delivery of the SSPD-BPHTB are further regulated by regent regulations/mayor regulations.

In validating BPHTB, the tax apparatus (Fiscus) performs validation as a material activity or inspection activity to obtain materials in determining regional tax provisions (SKPD). From this validation activity, problems begin to arise because there will be differences in the determination of the sale and purchase price of land and buildings as the basis for the imposition of duties on the acquisition of land and building rights (BPHTB) between prospective land buyers and BKD. Validation should be carried out with a self-assessment system, but in practice, it is carried out with an official assessment system. So tax officials in validating SSPD – BPHTB in Boyolali Regency, Surakarta City, and Karanganyar Regency have abused their authority because they have exceeded their authority, which is contrary to the provisions of the law. To get validation, it must accept the price provisions set by BKD to ignore the mechanism for calculating taxes by self-assessment. The determination of the imposition of BPHTB carried out with the official assessment system is not based on the selling value of tax objects that reflect market value, so it does not reflect legal certainty and is not by the carrying capacity of taxpayers so that it has not reflected fairness or is contrary to the theory of fairness in tax collection.

5. CONCLUSION

Based on the results of the research and analysis carried out, several conclusions were obtained as answers to the problems that have been formulated; these conclusions are:

Based on Law No. 1 of 2022, the implementation of the determination of the sale and purchase price of land and buildings as the basis for the imposition of duties on the acquisition of land and building rights (BPHTB) in Boyolali is regulated in Boyolali Regency Regional Regulation No. 12 of 2020 concerning Amendments to Regional Regulation No. 2 of 2011 while in Surakarta City is regulated in Perda No. 13 of 2010, Perwali No. 1 Th. 2013, while Karanganyar is regulated in Perda No. 14 of 2010. In order to uniformly regulate the following, the amount of BPHTB is $[5\% \times (NPOP - NPOPTKP)]$ or $[5\% \times (NJOP \times \text{Land Area} - NPOPTKP)]$, Validation of SSPD-BPHTB is to ensure that the tax has been paid, the basis for imposition of tax is correct, the UN has been repaid.

Validation should be carried out with a self-assessment system, but in practice, it is carried out with an official assessment system. So tax officials in validating SSPD – BPHTB in Boyolali Regency, Surakarta City, and Karanganyar Regency have abused their authority because they have exceeded their authority, which is contrary to the provisions of the law.

BKD validates as a material research activity or inspection activity, so there are often differences in the pricing of buying and selling land and buildings between land buyers on the one hand and BKD on the other. To get validation, it must accept the price provisions set by BKD to ignore the mechanism for calculating taxes by self-assessment.

The condition to be able to carry out the process of returning the name of the sale and purchase is that the prospective buyer of the land must have paid the BPHTB, which has received validation from BKD. However, in its implementation, the validation process at BKD takes time so returning the name becomes hampered; this is an act of absence of legal certainty by BKD.

The reconstruction of its value is based on the n I law of justice, namely the Regional Head in determining the amount of the selling value of the tax object (NJOP) must base as ordered by Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central and Regional Governments article 1 number 21 and Boyolali Regency Regional Regulation Number 2 of 2012 which has been changed to Perda Number 12 of 2020 Article 1 number 8; Karanganyar district bylaw No. 14 of 2010 article 1 number 4; Surakarta City Bylaw Number 13 of 2020 article 1 number 8; i.e. it reflects the actual value or market value, which is an NJOP based on the value of fairness.

The determination of the imposition of BPHTB carried out with the official assessment system is not based on the selling value of tax objects that reflect market value, so it does not reflect legal certainty and is not by the carrying capacity of taxpayers so that it has not reflected fairness or is contrary to the theory of fairness in tax collection.

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