

Legal Problematics Differences in Land & Building Transactions with Validation of Cost of Obtaining Rights to Land & Building (Perda No. 2 of 2011 In Kendari City)

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Abstract. Tax is one of the largest revenues from the State of Indonesia, in this case one of the results of tax collection is the tax on the acquisition of rights to structures and buildings (BPHTB). the existence of regional autonomy, collection of fees for the acquisition of land rights and this building is collected by each region independently. The issuance of Act No. 28 of 2009 concerning local taxes and levies made Kendari city regions issue regulations related to local taxes. It is Kendari city regional regulation No. 02 of 2011 regarding local taxes. The amount of collection of fees for acquisition of land and building rights is 5% (five percent) of the value of the acquisition of tax objects (NPOP), this is stated in Article 54. Meanwhile, the collection of fees for the acquisition of rights to land and buildings is carried out by the regional revenue agency. This study aims to determine the determination of the transaction value as the basis for BPHTB validation by the Bapenda of Kendari and to find out legal problems that can arise due to differences in actual transaction prices with BPHTB verification by the Bapenda of Kendari. The method taken by the author is a normative method. The normative approach is an approach that is carried out based on the main legal material by examining theories, concepts, legal principles and laws and regulations.

Keywords: BPHTB Tax; Tax Object Processing Value (NPOP).

1. Introduction

Currently, taxes are the main source of funds for development because most of the revenue sources in the State Revenue and Expenditure Budget (APBN) come from taxes. Taxes have become the backbone of the dominant wheel of development. It cannot be denied that taxpayers have become development

contributors for the sake of the country's existence. Meanwhile, Fiskus as the official in charge of collecting taxes has also contributed a lot in the process of collecting development funds.

Paying taxes is a state obligation. This obligation is the obligation of the entire nation. Paying taxes means committing yourself to the country's development. Paying taxes also means that there is a willingness to sacrifice for the country. It is therefore necessary to give taxpayers pride and service. It is necessary to provide facilities for paying taxes so that the enthusiasm and compliance of paying taxes can be maintained even if it is possible to improve. In this context, various facilities and service facilities for taxpayers are conceptually enhanced. This service facility is not only contained in statutory provisions, but also in various administrative, procedural and operational tax policies. The quality of these tax facilities is always upgraded in accordance with the development of society and the ability of the government.¹

In general, taxes in Indonesia are divided into 2 (two), namely:

1. State / Central Tax, namely taxes collected by the central government, the implementation of which is carried out by the Directorate General of Taxes, is used to finance state households in general.
2. Regional taxes, namely taxes collected by provinces, regencies / cities, for the purpose of financing their respective regional households.²

The Directorate General of Taxes is an institution designated by law to carry out service, supervision and law enforcement functions for the taxpayer community and organizer of state / central tax collection.

Article 1 No. 1 of Act No. 28 of 2007 Concerning the Third Amendment to Act No. 6 of 1983 Concerning General Provisions and Tax Procedures states that what is meant by tax is a mandatory contribution to the state owed by an individual or entity that is compelling. based on law, without obtaining direct contribution and used for the state's needs for the greatest prosperity of the people. This is in accordance with Act No. 28 of 2007 concerning Third Amendment to Act No. 6 of 1983 regarding General Provisions and Procedures for Taxation carried out by the Government has directions and objectives for:

1. Increase the efficiency of tax collection in order to support state revenue;
2. Improve services, legal certainty and justice for the community in order to increase competitiveness in the investment sector, while still supporting the development of small and medium enterprises;

¹ Salamun A.T, "*Pajak, Citra dan Upaya Pembaruannya*", Bina Rena Pariwara, Jakarta, 1991, p. 209

² Ida Zuraida, *Penagihan Pajak, Pajak Pusat dan Pajak Daerah*, Ghalia Indonesia, Bogor, 2011, p. 9.

3. Adjusting the demands of the social and economic development of the community as well as developments in the field of information technology;
4. Improve the balance between rights and obligations;
5. Simplify tax administration procedures
6. Increase the application of the self-assessment principle in an accountable and consistent manner; and
7. Supporting a more conducive and competitive business climate.

In every transaction on the transfer of land rights, there are two types of taxes that must be paid by each of the parties, namely Income Tax (PPh) which is the central tax reported to the Primary Tax Office (KPP Pratama), charged to the seller, and Customs. Acquisition of Land Rights (BPHTB), which is a regional tax reported to the Regional Revenue Service (Dispenda), is borne by the buyer.

The legal basis for validation is stipulated in the Directorate General of Taxes Regulation No. 16 of 2008 concerning Procedures for Investigating BPHTB Deposit (SSB) in Article 3 paragraph (1) that the provisions as referred to in article 2 then (the Land and Building Tax Office / Primary Tax Office follow up with :

1. Matching the Tax Object Value (NOP) stated in the SSB with the NOP listed on the photocopy of Receipt of Deposit (STTS) or other proof of PBB payment;
2. Matching the land NJOP per square meter listed in SSB with the land NJOP per square meter in the PBB database;
3. Matching NJOP of buildings per square meter, which is stated in SSB with NJOP of buildings per square meter in PBB database;
4. Examining the accuracy of the calculation of BPHTB which includes the components of the Acquisition Value of Tax Objects (NPOP), Acquisition Value of Non-Taxable Tax Objects (NPOPTKP), the rate of imposition of certain tax objects, the amount of BPHTB owed and BPHTB to be paid; and 5). Examining the correctness of the paid-in BPHTB calculation, including the amount of deduction calculated by itself.

The amount of BPHTB is regulated in Article 51 of Kendari City Regional Regulation No. 2 of 2011 concerning Regional Tax, that in the transfer of sale and purchase rights, the tax rate is set at 5% (five percent) of the land price (transaction price).

The acquisition value of non-taxable tax objects is set at IDR 60,000,000, - (sixty million rupiah) for each taxpayer. In the event that the acquisition of rights due to an inheritance or will received by an individual who is still in a bloodline family relationship in a straight line one degree up or one degree down from the person giving the will, including husband / wife, the

acquisition value of the tax object is not taxable. in the amount of IDR 300,000,000, - (three hundred million rupiah). The tariff for Acquisition of Rights on Land and Buildings is set at 5% (five percent).³

Collecting BPHTB is one of the most important parts in the process of transferring rights (transfer of name) to land and buildings in Indonesia, because Notaries and Land Deed Making Officials (PPAT) are prohibited from signing deeds of transfer of rights before taxpayers pay BPHTB properly.⁴

2. Research methods

Based on the formulation of the problem and research objectives, the approach method used is a normative approach. The normative approach is an approach that is carried out based on the main legal materials by examining theories, concepts, legal principles and laws and regulations related to this research.

3. Results and Discussion

3.1 Determination of Transaction Value as Basis for Validation of BPHTB by Bapenda of Kendari

The acquisition value of non-taxable tax objects is set at IDR 60,000,000, - (sixty million rupiah) for each taxpayer. In the event that the acquisition of rights due to an inheritance or will received by an individual who is still in a bloodline family relationship in a straight line one degree up or one degree down from the person giving the will, including husband / wife, the acquisition value of the tax object is not taxable. amounting to IDR 300,000,000, - (three hundred million rupiah). The tariff for Acquisition of Rights on Land and Buildings is set at 5% (five percent).⁵

The general tax collection system in Indonesia adopts a self-assessment system, where taxpayers are given the confidence to be able to calculate, calculate, and pay their own taxes owed, so that through this system the implementation of tax administration is expected to be neat, controlled, simple, and easy for understood by members of the taxpayers' society.⁸ The characteristics of the Self Assessment System are: a. the authority to determine the amount of tax payable rests with the taxpayer itself; b. active taxpayers, starting from calculating, depositing and reporting the payable tax themselves; c. Fiscus does not interfere and is only watching.⁶

Except for certain taxes, such as Land and Building Tax, the calculation is determined by the government. Meanwhile, the collection of BPHTB is basically

³ Kendari City Regional Regulation Number 2 of 2011 concerning Regional Taxes

⁴ Marihot Paha Siahaan, 2010, *Kompilasi Peraturan Di Bidang BPHTB, Panduan Dalam Penyusunan Aturan Pelaksanaan Peraturan Daerah Tentang BPHTB*, Graha Ilmu, Yogyakarta, p. 7.

⁵ Kendari City Regional Regulation Number 2 of 2011 concerning Regional Taxes

⁶ Y. Sri Pudiarmoko, *Pengantar Hukum Pajak*, Penerbit Andi, Yogyakarta, 2002, p. 61.

also based on a self-assessment system, so that those who obtain land and building rights as taxpayers must calculate, calculate and pay the tax themselves. Thus, it is necessary to have high awareness and honesty for the taxpayer community to carry out their obligations in paying taxes, and the role of tax officers is needed in supervising taxpayer compliance in paying taxes, as well as in revenue and management.

In the framework of monitoring taxpayer compliance, as well as effectiveness in paying BPHTB taxes, a validation process is carried out by the regional tax service office, which was originally also carried out by the central tax service office through the Primary Tax Service Office (KPP Pratama). In this validation process the officer will examine several things including the suitability of the tax object with the Tax Object No. (NOP) on the land and building concerned, the suitability of the tax subjects, the suitability of the transaction value used as the basis for the imposition of BPHTB taxes. Thus the BPHTB collection system does not fully adhere to the self-assessment system, in this case even though taxpayers are entrusted with being able to calculate, calculate and pay the tax owed themselves, there is the possibility of tax officer interference in determining the fair value. In the validation process, if there is any doubt from the tax officer regarding the transaction value used as the basis for the imposition of BPHTB, there is a possibility that a careful research will be carried out, if necessary, a site inspection will be held by field officers by looking for general value information fairly by comparing the NJOP of land and buildings concerned. So based on the validation results, there is a possibility that the value proposed as the basis for the imposition of BPHTB will be changed according to the actual transaction value in a fair manner. There is a possibility that a careful research will be carried out, if necessary, a field officer will conduct a site inspection by looking for general value information fairly by comparing the NJOP of the land and building concerned. So based on the validation results, there is a possibility that the value proposed as the basis for the imposition of BPHTB will be changed according to the actual transaction value in a fair manner. There is a possibility that a careful research will be carried out, if necessary, a field officer will conduct a site inspection by looking for general value information fairly by comparing the NJOP of the land and building concerned. So based on the validation results, there is a possibility that the value proposed as the basis for the imposition of BPHTB will be changed according to the actual transaction value in a fair manner.

The BPHTB imposition rate for buyers or those who obtain rights to all land transfer transactions is 5%. With the calculation: the acquisition value minus the non-taxable acquisition value (NPTKP) for the Kendari City area of IDR 60,000,000, - times the rate of 5%. For example, a transaction with an acquisition cost of IDR 200,000,000, -. BPHTB that must be paid is = IDR 200,000,000, - - IDR 60,000,000, - = IDR 140,000,000, - x 5% = IDR 7,000,000. In addition, the seller or the transferor is subject to Income Tax on the sale of land and buildings at a rate

of 5%, so that the acquisition value is IDR 200,000,000, - then the seller will be subject to income tax of = 200,000,000, - x 5% = IDR 10,000,000, -.

But if the Tax Object Selling Value (NJOP) value is higher than the transaction price, then the BPHTB imposition rate is based on the total NJOP. Example of a transaction with an acquisition cost of IDR 200,000,000, - and a total NJOP of IDR 280,000,000, -. Then the BPHTB that must be paid is IDR 280,000,000, - - IDR 60,000,000, - = IDR 220,000,000, - x 5% = IDR 11,000,000.

There are basically two types of land sale and purchase tax, namely the seller tax or income tax due to sales (PPh) for the seller, and the buyer tax due to obtaining rights to land and buildings, which are called Land and Building Acquisition Fees (BPHTB). In general, the community does not know that there is an obligation to pay transitional taxes, both BPHTB for buyers and PPh for sellers.

3.2 Legal Problems That Can Arise Due to Differences in Actual Transaction Prices and BPHTB Verification by the Bapenda of Kendari

In Article 53 of Kendari City Regulation No. 02 of 2011, the basis for the imposition of Land and Building Rights Acquisition Fee (BPHTB) is the acquisition value of tax objects. The acquisition value of the tax object in question is:

1. Sale and purchase is a transaction price;
2. exchange rate is the market value;
3. a grant is a market value;
4. a testament grant is a market value;
5. inheritance is market value;
6. entry into a company or other legal entity is market value;
7. separation of rights resulting in the transfer is market value;
8. transfer of rights due to the implementation of a judge's decision which has permanent legal force is the market value;
9. the granting of new land rights as a continuation of the release of rights is the market value;
10. granting new rights to land beyond the release of the customary rights of the pasaf value;
11. business combination is market value;
12. business consolidation is market value;
13. business expansion is market value;
14. prize is market value; and / or
15. Buyer appointment in auction is the transaction price stated in the minutes of auction.

If the acquisition value of the tax object as referred to above is unknown or lower than the NJOP used in the imposition of Land and Building tax in the year the acquisition is made, the basis for imposition is Land and Building Tax NJOP. But if the NJOP is higher than the transaction price, then the basis for the imposition of BPHTB is based on the NJOP. As I explained at the top.

However, it should be noted that in this BPHTB tax collection adheres to the principle of justice, in this principle of justice one of the priorities is the attitude of equal treatment to all taxpayers, in this BPHTB tax collection there is a limit, namely Taxpayers whose transaction value is below IDR 60,000,000, - (sixty million rupiah) and total NJOP of IDR 60,000,000, - (sixty million rupiah) are not subject to tax, so justice is reflected in the imposition of this BPHTB tax.

BPHTB taxpayers must have paid the tax payable before the sale and purchase deed is issued or signed by the PPAT / Notary. The deed is here as evidence that there has been a sale and purchase of land and or buildings.

In paying fees for the acquisition of rights to land and buildings which are obstacles and the process for field verification takes a long time, the calculation of the collection of fees for acquiring rights to land and buildings is 5% (five percent) of the results of field verification, even though Kendari city regulation No. 02 of 2011 concerning regional tax, article 53 paragraph (1) says "*The basis for the imposition of fees on land and building rights is NPOP*" So the correct calculation for calculating the cost of acquiring rights to land and buildings is 5% (five percent) of the Tax Object Acquisition Value (NPOP).

If you look at the calculation of fees for the acquisition of land and building rights that are in accordance with Act No. 20 of 2000 concerning amendments to Act No. 21 of 1997 concerning fees for the acquisition of rights to land and buildings, Law 28 of 2009 concerning Regional Taxes and Regional Levies , and Kendari City Regional Regulation No. 02 of 2011 concerning Regional Taxes, namely:

$$\begin{aligned} \text{BPHTB} &= \text{NPOPKP} \times \text{Tax Rate} \\ &= (\text{NPOP} - \text{NPOPTKP}) \times 5\% \\ &= \text{IDR } 200,000,000 - \text{IDR } 60,000,000 \times 5\% \\ &= \text{IDR } 7,000,000.- \end{aligned}$$

The calculation above is what both taxpayers and regional revenue agencies should pay close attention to. By using this method the public has clear legal certainty and is open to the public who will pay or settle the acquisition of land and building rights.

In the legal event or legal action exemplified above, that some Kendari City Notaries / PPATs declare the collection of fees for the acquisition of land and building rights (BPHTB), that the NPOPTKP is set for all taxpayers of IDR 60,000,000.- (sixty million rupiah) and for inheritance or testament grants in the amount of IDR 300,000,000.- (three hundred million rupiah) can be seen in article 53 paragraph (4) and paragraph (5) of the Kendari city regional regulation No. 02 of 2011 concerning regional taxes. This should be the basis for calculating the cost of land and building land rights sharing, not other things such as field reviews conducted by regional revenue agencies, which they see as the object of legal action or the legal event itself.

If in the collection of land and building rights acquisition fees occur, it does not match the NPOP that has been stated in the PBB SPPT. Then the Taxpayer can submit an appeal request only to the Tax Court against the decision regarding his

objection determined by the Regional Head. The application for the appeal referred to can be submitted in writing in Indonesian language, with clear reasons within 3 (three) months from the date of receipt of the decision, attached with a copy of the decision on the objection. Filing an appeal suspends liability pay taxes up to 1 (one) month from the date of issuance of the decision on appeal, as stipulated in Article 69 paragraph (1), (2) and (3) Regional Regulation of Kendari City No. 02 of 2011.

What is called justice must be carried out well and maximally because this has an impact on people's lives. From the process of collecting fees on land and building rights, this principle of justice must be adhered to by every device. If it is not implemented properly, there will be chaos in the taxation system, especially in Kendari City. The emergence of legal uncertainty will inevitably arise as well as injustice for the taxpayers themselves. Notary

4. Closing

4.1 Conclusion

Based on the analysis and discussion above, several conclusions can be drawn as follows:

1. The rate of imposition of BPHTB for buyers or those who obtain rights to all land transfer transactions is 5%. With the calculation: the acquisition value minus the non-taxable acquisition value (NPTKP) for the Kendari City area of IDR 60,000,000, - times the rate of 5%. For example, a transaction with an acquisition cost of IDR 200,000,000, -. BPHTB that must be paid is = IDR 200,000,000, - - IDR 60,000,000, - = IDR 140,000,000, - x 5% = IDR 7,000,000. But if the Tax Object Selling Value (NJOP) value is higher than the transaction price, then the BPHTB imposition rate is based on the total NJOP. Example of a transaction with an acquisition cost of IDR 200,000,000, - and a total NJOP of IDR 280,000,000, -. Then the BPHTB that must be paid is IDR 280,000,000, - - IDR 60,000,000, - = IDR 220,000,000, - x 5% = IDR 11,000,000.

2. There is a field verification by the Kendari city regional revenue agency to determine the amount of fee for land and building rights sharing:

a. Change the payment system for the acquisition of land and building rights from a self-assessment system to an official assessment system.

b. There is no legal certainty so that it does not reflect justice

4.2 Suggestions

1. It is advisable for Kendari city regional revenue agency to facilitate the management of BPHTB tax payments related to the transfer of land rights, especially in terms of time. Since all this time it is considered quite time

consuming in the validation process, the process is carried out so that the buyer can immediately arrange land rights.

2. It is necessary to continue to socialize about BPHTB so that the public has a better understanding of the tax provisions, especially BPHTB so that they can calculate for themselves the amount of BPHTB they have to pay.

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