

Juridical Analysis on Loading Acquisition of Land And Buildings (BPHTB) on The Transfer of Land And Building to Taxpayers in Pekalongan

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Abstract. Taxes as a source of revenue for the state should be a great reception because the source another in come. One type of tax is BPHTB imposed on taxpayers individuals or legal entities that transfer of land rights. Methods of using juridical empirical approach, analytical descriptive specification. Source data using primary data and secondary data, engineering data collection is by interview, documentation and literature, data analysis done qualitatively. The results showed that: 1) The amount of taxes payable in SKBKB will be subject to an administrative penalty of 2% calculated from tax under or over for a maximum period of 24 months from the date the tax is due, but if the taxpayer to report it / then not be subject to administrative sanctions ; 2) The application of tax rates on Acquisition of Land and Building is 5% (five percent); 3) Role the PPAT in giving the services to the people in application of making the land certificate based on the regulation and become registated in PPAT.

Keywords: *Cost, Supply Customs Land and Building (BPHTB), Taxpayer.*

1. Introduction

Taxes as a source of state revenue should be the major revenue sources of revenue for the others, in addition to taxes such as the income is very limited natural resource management. Therefore, the awareness of the people to pay taxes must be developed continuously so that the tax will be a major source of development finance.⁴

The role given by the tax as a source of funds in the national development, leading to the necessity of extracting the tax potential in society in accordance with the circumstances and economic conditions and the development of this nation. One potential source of tax that should be explored is the kind of tax Tax on Acquisition of Land and / or buildings (hereinafter referred to BPHTB).⁵

Imposition BPHTB charged to the individual taxpayer or entity conducting transition land rights. Imposition BPHTB also occurs in the buying and selling transactions, thus loading BPHTB in charge to the buyer while the seller is only charged to the Income Tax (Income Tax).

Based on the Indonesian Government Regulation No. 34 of 2016 regarding Income Tax on Income from Transfer of Land and / or buildings, and the Agreement on Enhancing Purchase of land and / or buildings and amendments amount of income tax on the

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⁴ Setu Setiawan 2009 *Perpajakan Indonesia* UMM Press Malang p.1

⁵ Marihot Pahala Siahaan 2005 *Bea Perolehan Hak Atas Tanah Dan Bangunan Dalam Teori Dan Praktek Edisi Revisi* PT Raja Grafindo Persada Jakarta p.6

transfer of rights to land and / or buildings as referred to in Article 1, paragraph (1) letter is as follows:

- 2.5% (two point five percent) of the gross value on acquisition of land and / or buildings in addition to the transfer of rights to land / or building in the form of Simple Houses or Flats Simple done by taxpayer whose main business transferred land rights and / or building;
- 1% (one percent) of the gross value on acquisition of land and / or buildings such as Simple House and Flats Simple done by taxpayer whose main business conduct on acquisition of land and / or building; or
- 0% (non per cent) on the transfer of hask of land and / or buildings to the government, or state-owned enterprises that receive special assignments from the Government, or regionally owned enterprises that receive special assignments from the head area, as defined in legislation governing the land acquisition for the construction of public interest.

In 2009 issued Act No. 28 of 2009 on Local Taxes and Levies (hereinafter referred to as Law PDRD 2009), then BPHTB is no longer the central taxes rather be local taxes, the levies are not on the government but on the Local Government Center.

Based on the description above, in the context of the writing of this paper, the author tries to examine and analyze more deeply developments in the field of transactions transfer of rights and imposition of taxes where there is a progressive tax on tariffs Tax on Acquisition of Land and Building (BPHTB) against changed Rights Land and buildings of more than 1 (one) field in the town of Pekalongan.

Based on the description of the background of the issues mentioned above, raises legal issues that can be formulated as follows: How imposition Tax on Acquisition of Land and Building (BPHTB) on Transfer of Rights to Land And Building Taxpayer if there are less pay ?; How the application of the Transfer of Rights Progressive Tax on Land and Building according to Regional Regulation No. 2 of 2011 ?; and How the roles and responsibilities of the Land Agreement Official (PPAT) in the implementation of the transfer of rights to land and buildings in the National Land Agency of Pekalongan?

Research Methods

The method used in this research is empirical juridical approach, meaning that the data obtained by referring to the juridical aspects also guided by empirical aspects that are used as a tool. Thus any problems that arise can be resolved legally without obscure other aspects, so that in addition to guaranteed legal certainty, also found shards problem.⁶

Legal research using empirical methods are rather non doctrinal means using sources of primary data is data obtained directly from the public in addition to the sources of secondary data is data obtained through the study of the decision. Analytical descriptive. Is said to be descriptive because the research is expected to provide a detailed description, systematic, thorough look at all things related to the loading BPHTB on transfer of rights to land and buildings to the taxpayer.

⁶Ronny Hanitijo Soemitro *1988 Metodologi Penelitian Hukum da Jurimetri Ghalia Indonesia Jakarta p.36.*

2. Results And Discussion

2.1. Imposition of Tax on Acquisition of Land and Building (BPHTB) on Transfer of Rights to Land And Building Taxpayer If There Underpayment

Article 9, paragraph (1) of the Act No. 20 of 2000 includes about time the tax on acquisition of land and buildings as follows:

- Sale and purchase is made and the date of the signing of the agreement
- The exchange is the date made and the signing of the agreement.
- Grant is the date made and the signing of the agreement.
- Grants will is the date made and signed the agreement.
- Inheritance is the date of the respective registration of transfers of rights to the Land Office.
- Entered in the company or other legal entity is the date made and the signing of the agreement.
- Separation of rights resulting from the date of the transition is made, and the signing of the agreement.
- The judges' verdict was the date of a court decision which has the binding legal force.
- Granting new rights over land as a continuation of the waiver is the date of issuance of the letter / decision granting the right.
- Granting new rights beyond the waiver is since the issuance date of the decision granting the right.
- The business combination is the date made and the signing of the agreement.
- Consolidation is the date made and the signing of the agreement.
- Business expansion is the date made and the signing of the agreement.
- Gift is the date made and the signing of the agreement.
- The auction is from the date of appointment of the auction winner.

Where tax is payable is in the district, town, or province that includes the location of the land or building.

BPHTB the procedures of payment specified in article 10 of Law BPHTB elaborated further by the Finance Ministerial Decree No. 517 / KMK.04 / 2000 dated December 14, 2000 which was then followed up by the Director General of Taxes Decree No. 269 / PJ / 2001 of April 2, 2001 and Director General of Taxation Circular letter No. 09 / PJ.6 / 2001 dated April 6, 2001.

The procedure regarding the determination of BPHTB arranged in chapters 11 and 12 as follows:

- In a period of 5 years from the tax payable, based on the results of the examination are underpaid, the Directorate General of Taxation, in this case the Head Office of the United Nations / STO publish an assessment letter BPHTB underpayment (SKBKB) plus a penalty of 2% per month maximum for a period of 24 month (48%).
- After rising SKBKB, there are new data again so that the tax owed increases, the Head of the Office of the United Nations / STO publish BPHTB underpayment assessment letter Supplement (SKBKBT) plus the administrative sanction of 100%

of the amount of the increase, unless the taxpayer to report before the examination.

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2.2. Application of Progressive Tax on Transfer of Rights on Land and Building in Pekalongan According to the Regional Regulation No. 2 of 2011 and Comparison with Other District

2.2.1. Application of Progressive Tax in Pekalongan

The authority of local governments to make local regulations on taxes are clearly defined in Act No. 28 of 2009 on Local Taxes and Levies of Article 95 paragraph (1) Tax which is set by the Regional Regulation.

Progressive tax rate is the tax rate by a percentage greater (increased) if the amount of the tax base increases (rises). In other words a progressive rate is the tax rate pengennannya percentage increasing with the growing number of which should be taxed. The imposition of this tariff applies especially to taxes Subjective apprehending taxpayers bear.

2.2.1. Progressive Tax Application Comparison in Other District

Article 73 Kendal Regency Regulation No. 11 of 2011 on Regional Taxes stipulates Duty on Acquisition of Land and / or Building set at 5% (five percent) of the tax base. Articles 74 paragraph (1) and (2) explains that:

- Magnitude Principal Customs Acquisition of Land and / or buildings which are payable is calculated by transferring rate referred to in Article 73 and the tax base as referred to in Article 71 paragraph (1) after deducting NPOPTKP referred to in Article 72.
- In the case of NPOP as referred to in Article 71 paragraph (2) letter a to letter n unknown or lebh lower than SVTO used in the imposition of land and building tax in the year of acquisition, the principal amount the tax payable is calculated by diverting fare as referred to in Article 73 with SVTO land and building tax after deducting NPOPTKP referred to in Article 72.

Each region has a regional regulation to determine the customs tariffs on Acquisition of Land and / or buildings, in addition to Kendal governing customs tariffs on Acquisition of Land and / or Building Regulation The terrain is Tegal. In the District Regulation Tegal No. 1 of 2012 on Regional Taxes pasal 74 explained that the Customs Tariff Acquisition of Land and / or Building set at 5% (five percent) of the tax base, in Article 75 paragraph (1) and (2) ,

2.3.Role and Responsibilities of Land Agreement Official (PPAT) Role In The Implementation of the Transfer of Rights on Land and Building

Land Agreement Official (PPAT) is a public official who is authorized to make the agreements of authentic regarding certain legal actions regarding land rights.

- Main Duties and Authority PPAT

Pursuant to Article 2, paragraph (1) of Government Regulation No. 37/1998 PPAT principal task is to implement part of land registration activities with an agreement as proof he had done certain changes regarding the rights of Land Rights, which will be the basis for the registration of land registration data changes caused by the legal acts. Special PPAT is only authorized to make the agreement of the legal act which is mentioned specifically in the appointment. The legal actions are the sale and purchase, exchange, donation, distribution of collective rights, granting Broking / Right of Use of Land Properties, granting Mortgage and giving the authority to the security rights (SKMHT).

- **Making Implementation Agreement By Land Agreement Official**
At the time of signing the agreement is done, the first blank agreement is filled with the names of PPAT following with witnesses of PPAT whose area of work covers the area where the object land rights are located, as well as have the names of the parties, the object of sale purchasing based on the documents and data that have been submitted by the parties. The agreement then by PPAT read out to the parties and then only after the parties have understood the contents of the agreement, the parties signed the agreement, then by witnesses and PPAT. PPAT Agreement made with the form prescribed by Ministry. All types PPAT agreement given a serial number that repeats the formely calendar.
- **Transition Through Land Rights Purchase**
The transition of land rights is a legal act of transfer of rights over land that was done on purpose so that these rights regardless of its original holders and the rights of others. Since the enactment of the BAL, transfer of rights over land can be made through purchase, exchange, grant, administration with the will, according to the customs administration and other actions intended to move the property.
- **Role PPAT In the Land Registration**
PPAT as a public official who is authorized to make the agreements of the transfer of rights to land, the agreement of loading as well as power of attorney loading encumbrance, is also responsible for assisting the Head of National Land in implementing the land registration to make the agreements of certain evidence has been doing a legal act particular concerning rights to land and or building will be used as the basis for proof of registration.

3. Conclusion

From the discussion preceding chapters, it can be summed up as follows:

- Determination BPHTB regulated in Act No. 20 of 2000 article 11 and 12 that is based on the examination results are less pay administrative sanction of 2% a month calculated from the tax less or overdue for a maximum period of 24 months (to a maximum of 48%) starting from the date the tax becomes due. While the shortage of tax payable in SKBKBT subject to administrative sanctions in the form of an increase of 100% from the amount of the tax shortfall, the SKB repayment period is one month from the date of issuance of assessments.
- Local authorities to develop local legislation are clearly defined in the Tax Act No. 28 of 2009 on Local Taxes and Levies of Article 95 paragraph (1) that "Taxes are set by the Regional Regulation". The provision is clearly ordered the local government to make local regulations that specifically regulate taxes already transferred the

collection to the area. Each region has a regional regulation to determine the customs tariffs on Acquisition of Land and / or buildings.

- PPAT role in providing services to the public include petitions to make the agreements of certain lands referred to in the regulations with regard to the land registry office and its regulation PPAT. In the face of such petitions PPAT shall take the decision to deny or grant the request that thing. PPAT as a public official, the agreement had made given the position as the authentic act, the agreement made to prove the existence of certain legal actions that resulted in the transfer of land rights and buildings. PPAT Agreement is an agreement on acquisition of land and property rights to the apartment units through purchase, exchange, donation, inclusion in the company and other legal acts assignment,

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