

Imposition of Land & Building Rights Acquisition Duty Taxes Dependent on Certificate of Property Rights in the Implementation of Complete Systematic Land Registration

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Abstract. *This study aims to find out & analyze procedures for the imposition of tax on the acquisition of land & building rights payable on certificates of ownership in the implementation of a complete systematic land registration, as well as to know & analyze legal consequences of the imposition of tax on the acquisition of land & building rights owed on certificates of ownership in the implementation of a complete systematic land registration. The approach method in this research is normative law (doctrinal). Normative legal research that is more specific discusses legislation or is also called normative juridical. Based on the results of the study, it was concluded: 1) Issues with Payable PPh & BPHTB in the implementation of Complete Systematic Land Registration (PTSL) which are regulated in Article 33 of Ministerial Regulation ATR/Ka BPN Number 6 of 2018 which provides space for convenience in implementing the PTSL Program, for those who do not or have not able to pay PPh & BPHTB by making a statement of PPh & BPHTB Outstanding, the certificate of land rights can still be issued. However, provisions regarding PPh & BPHTB payable in Complete Systematic Land Registration activities still require separate arrangements, especially regarding the billing mechanism & payment time that must be made by PTSL participants; 2) The provisions of Article 33 of Permen ATR/Head of BPN Number 6 of 2018, vertically, contradict the provisions of Articles 3 & 7 PP Number 34 of 2018 & Articles 90 & 91 of Act No. 28 of 2009. Legal consequences of the provisions of Article 33 of Permen ATR/Head of BPN Number 6 of 2018, namely causing legal uncertainty, legal injustice, & not fulfilling the legal force of land rights certificates as a strong means of proof. Legal uncertainty occurs because there is dualism in regulations governing procedures for paying PPh & BPHTB as well as uncertainty regarding the payment mechanism. Legal injustice occurs due to differences in the provisions for issuing certificates between Article 33 of Permen ATR/Head of BPN Number 6 of 2018 & Articles 3 & 7 of Government Regulation Number 34 of 2018 & Articles 90 & 91 of Act No. 28 of 2009, because of this.*

Keywords: Debt; Outstanding; Tax.

1. Introduction

One of the potential sources of tax that should be explored in accordance with the situation & economic conditions as well as the development of the nation's development today is the type of Land & Building Rights Acquisition Fee Tax (BPHTB). The purpose of BPHTB is the need to collect taxes on the Acquisition of Land & Building Rights, as has been implemented & carried out as an effort for national independence to fulfill government expenditures related to its duties in carrying out public administration & development. The function & role of land in various sectors of human life has four very strategic aspects, namely economic, political, legal & social aspects.¹ These four aspects are the most related central issues as an integrated whole in the land law policy making process carried out by the government. Based on this fact, many people want to own land complete with legal protection.

Efforts to overcome this problem can be carried out through a one-stop land certification process, by means of all of these processes being carried out at the BPN office (for example the Tax Office & PPAT have a separate room at the BPN Office), so that it can influence public interest in registering their land. Likewise, the problems of Payable PPh & BPHTB in the implementation of PTSL which are regulated in Article 33 of Ministerial Regulation ATR/Ka BPN No. 6 of 2018, which provides space for convenience in implementing the PTSL program, for those who do not or have not been able to pay PPh & BPHTB by making a statement of Outstanding PPh & BPHTB. However, the provisions of Article 33 still require further explanation, what is the billing mechanism & how long must it be paid because the provisions of laws & regulations do not yet regulate the PPh & BPHTB payable regarding land tax. Although Article 33 only explains that the Head of the Land Office is obliged to submit a list of BPHTB Payable and/or PPh Payable periodically within 3 (three) months to the local Regent/Mayor & if there is a transfer of rights or changes to the Land Book & Certificate of Land Rights, this can only be done after the person concerned has paid off the payable PPh & BPHTB.

The requirement for PPh fees, BPHTB, & making a deed is one of the main obstacles to land registration. So far, the public has the impression that getting a certificate is expensive, time-consuming, & complicated. Costs are expensive because you have to pay for deed, PPh, & BPHTB, the process is long because it takes time to arrange deeds, pay taxes, & administrative processes at BPN, it's complicated having to go back & forth to the PPAT office, Pratama Tax Office, & the Office of the Revenue Agency, Management Regional Finance & Assets & BPN.

¹Tri Ulfi Handayani, Agustina Suryaningtyas, and Anis Mashdurohatun, 2018, The Urgency of the Notary Honorary Council in Enforcing the Notary Code of Ethics in Pati Regency, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/akta/article/viewFile/2531/1893>, Deed Journal, (Vol 5 No 1 January 2018).

Provisions for PPh Payable are not regulated in Government Regulations, do not clearly state when the tax is Payable, it only stipulates that before the deed, minutes of auction or other letters are signed by the authorized official, proof of PPh payment must be shown first. In contrast to the provisions in the BPHTB which clearly state that the tax payable arises when the deed, minutes of auction or is quite reasonable when viewed from the latest provisions concerning Government Regulation of the Republic of Indonesia No. 34 of 2016 concerning Income Tax on Income from the Transfer of Rights over Land and/or buildings & binding sale & purchase agreements on land and/or buildings & their amendments.²

Referring to the background mentioned above, it is very important to study the tax on the acquisition of land & building rights payable in order to find out more deeply about the provisions for implementing the tax payable. Therefore, the author is interested in conducting research on the implementation of granting credit without a written agreement which will then be set forth in the form of a thesis with the title: "Imposition of Land & Building Rights Acquisition Fees Payable on Property Rights Certificates in the Implementation of Complete Systematic Land Registration".

This research aims to know & analyze the procedure for imposing tax on the acquisition of land & building rights owed on certificates of ownership in the implementation of complete systematic land registration, & to know & analyze the legal consequences of the imposition of tax on the acquisition of land & building rights owed on certificates of ownership in the implementation of complete systematic land registration.

2. Research Methods

The approach method in this research is normative law (doctrinal). Normative legal research that is more specific discusses legislation or is also called normative juridical. While the specification of this research is analytical descriptive, namely a research method whose aim is to provide a systematic, factual & accurate description of the facts & the relationship between the phenomena investigated for later analysis. The data collection method used in this research is to find the necessary data from the actual research object through the steps of collecting primary data, secondary data, & field studies. While the method of data analysis carried out is by using Qualitative analysis is an analysis that is carried out not by using numbers or statistical formulas, but by using words or descriptions of sentences by making judgments based on regulations, legislation, theory or opinion of experts & logic so that logical conclusions can be drawn & are the answer to the problem.

²Umar Ma'ruf and Dony Wijaya, 2015, Legal Review of the Position and Function of a Notary as a Public Official in Making Authentic Deeds (Case Study in Bergas District, Semarang Regency), <http://jurnal.unissula.ac.id/index.php/PH/article/view/1507/1174>, Journal of Legal Reform, (Volume II No. 3 September - December 2015).

3. Results and Discussion

3.1. Tax Procedures for Imposition of Land & Building Rights Acquisition Fees Payable for Property Rights Certificates in the Implementation of Complete Systematic Land Registration

1) Complete Systematic Land Registration Procedure

Complete Systematic Land Registration (PTSL) is a Land Registration activity for the first time which is carried out simultaneously for all Land Registration objects throughout the territory of the Republic of Indonesia in one village area or other name equivalent to that, which includes the collection of physical data & juridical data regarding one or several objects of Land Registration for the purpose of registration.

The purpose of Complete Systematic Land Registration is to realize the provision of legal certainty & legal protection of community land rights based on the principles of simple, fast, smooth, safe, fair, equitable, & open & accountable, so as to increase the welfare & prosperity of society & the country's economy, as well as reduce & preventing land disputes & conflicts. According to Eli Wuria Dewi,³ Guaranteed legal certainty & protection for holders of land rights will always create a just & prosperous society.

The complexity of land registration issues is one of the government's main concerns. As mentioned above, to overcome this problem, the government through the Ministry of ATR/BPN launched a Complete Systematic Land Registration (PTSL) as a National Priority Program. The program is outlined in the Regulation of the Minister of Agrarian Affairs & Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 6 of 2018 concerning Complete Systematic Land Registration (PTSL). This program is intended for the middle class to the lower economic class to be able to obtain certificates of land rights at low cost, as well as to provide guarantees of legal certainty to holders of land rights.

Based on the Regulation of the Minister of Agrarian Affairs & Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 6 of 2018 concerning Complete Systematic Land Registration (PTSL), There are several stages in the implementation of PTSL activities, namely:

a) Planning;

The implementation of PTSL can be carried out through PTSL activities, or a combination of PTSL activities with other programs and/or activities, namely the

³Eli Wuria Dewi, 2014, *Easily Manage Land Certificates and All Permits*, Smart Book, Yogyakarta, p. 41.

Cross-Sector Certification Program & the mass self-help Community Certification Program.

As an effort to improve efficiency & effectiveness in the implementation of PTSL activities, the Head of the Land Office gradually determines the location of the distribution of PTSL targets which are concentrated in several villages and/or sub-districts. For this reason, the Head of the BPN Regional Office can mobilize/assign employees from the BPN Regional Office & from the Land Office to other Land Offices by paying attention & taking into account the availability of human resources in the Land Office & Regional Offices of the National Land Agency.

b) location determination;

The Head of the Land Office determines the location of PTSL activities in his working area. Location determination can be carried out in one village area or in stages in one stretch. Location Determination is carried out with the following conditions:

(1)Based on the availability of the PTSL budget that has been allocated in the APBN/APBD, PNBP, Corporate Social Responsibility (CSR) or other PTSL funding sources;

(2)Priority is given to village locations with PRONA/PRODA activities, cross-sectoral, Mass Self-Help Certificates (SMS), CSR and/or other mass land registration programs, or based on the availability of legal funds in accordance with laws & regulations, for 1 (one) PTSL village;

(3)Consider the ability of human resources/PTSL implementing officers at each Land Office.

If the specified location consists of several villages, efforts are made to ensure that the villages that are PTSL objects are located close together. Location Determination is made in the form of a decision attached with a location map. However, in certain circumstances the Land Office may change the location of the PTSL that has been determined. The change in location determination is made in the form of a decision by the Head of the Land Office regarding the change in PTSL location.

c) Preparation;

Based on Article 9 of the Regulation of the Minister of Agrarian Affairs & Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number

6 of 2018 concerning Complete Systematic Land Registration (PTSL), the Head of the Land Office prepares for the implementation of PTSL activities by preparing:

- (1) Facilities & infrastructure for implementing PTSL activities;
- (2) Human Resources;
- (3) Transportation needs;
- (4) Coordination with other government apparatus; and
- (5) Budget allocation.

After the location of the PTSL has been determined, the Head of the Land Office prepares a base map for registration in the form of a line map or photo map. In the event that the basic registration map is not yet available, the Head of the Land Office prepares another map which is used as a working map which contains the mapping of land parcels whose rights have been registered. In the event that the registered land parcels have not been mapped or have been mapped but not in their actual position, then the mapping of the land parcels is carried out simultaneously with the systematic mapping of the results of land plot measurements.

d) Establishment & determination of the PTSL adjudication committee & task force;

The Head of the Land Office forms & determines the PTSL Adjudication Committee & the task force, which are set forth in the form of a decision. Before carrying out their duties, the PTSL Adjudication Committee & the task force must take an oath before the official who appointed them.

The PTSL Adjudication Committee established by the Head of the Land Office consists of:

- (1) Chairman concurrently a member, held by an employee of the Land Office;
- (2) Vice Chairman for the physical field concurrently serving as a member, held by an employee of the Land Office who understands land infrastructure matters;
- (3) Deputy Chairperson for juridical affairs concurrently serving as a member, held by an employee of the Land Office who understands the affairs of land legal relations;
- (4) Secretary, who is held by an employee of the Land Office;

(5) Head of the local Village or *Pamong Desa* appointed by him;

(6) Members from elements of the Land Office, as needed.

Taking into account the availability of human resources, each PTSL Adjudication Committee can be formed for more than 1 (one) or for several sub-districts by involving elements from each village concerned.

The PTSL Adjudication Committee is assisted by the Physical Task Force, Juridical Task Force & Administrative Task Force. The Physical Task Force consists of elements of the Ministry's State Civil Apparatus, Non-Permanent Employees/Non-Ministerial Government Employees, Licensed Cadastral Surveyors, Licensed Cadastral Surveyor Assistants and/or KJSKB chaired by the Deputy Chairperson for the physical field of the PTSL Adjudication Committee.

e) Extension;

Counseling is carried out by the Head of the Land Office & the PTSL Adjudication Committee, the Physical Task Force & the Juridical Task Force. Counseling is carried out by providing at least an explanation of:

(1) Benefits for the community, government & the state for the results of implementing PTSL activities;

(2) Stages & mechanisms of PTSL activities;

(3) Determination & installation of boundary signs for each plot of land;

(4) Juridical documents that need to be prepared;

(5) Schedule of measuring land parcels & collecting juridical data by the Physical Task Force & the Juridical Task Force;

(6) Final results of PTSL activities;

(7) Financing provided by the Government and/or other legitimate sources through PTSL activities;

(8) Legal consequences that occur if the obligations & responsibilities referred to in letters c & d above are not fulfilled;

(9) The right to object to the adjudication results announced during the announcement period; and

(10) Fees and/or taxes to be borne by PTSL activity participants.

Counseling is carried out to the community, both those who have & do not have a certificate. In addition to the community, counseling can also be carried out to local governments, related agencies, law enforcement and/or community leaders.

f) Collection of physical data & collection of juridical data;

The collection, processing & maintenance of physical data & juridical data on land rights determination & registration uses checklists, blanks, maps & other lists as well as entries or entries in the KKP application.

The Head of the Land Office must ensure the suitability of the data generated from the Complete Systematic Land Registration activity with the electronic data in the KKP application. Unless otherwise specified, fill-in lists, blanks, maps & other lists, use checklists, blanks, maps & other lists in accordance with the provisions of laws & regulations with adjustments to the needs of the Complete Systematic Land Registration activity. As an effort to optimize & simplify the implementation of PTSL activities, then:

(1) Physical data collection activities by the Physical Task Force & juridical data collection by the Juridical Task Force, carried out by 1 (one) team for each village where the PTSL object is located;

(2) Physical data collection activities & identification of land parcels can optimize third parties & community participation;

(3) Juridical data collection activities must be coordinated with the Village Government, so that the juridical data of participants in PTSL activities can be collected collectively at a predetermined location for each village.

g) Research on juridical data to prove rights;

For the purposes of proving rights, the PTSL adjudication committee conducted research on juridical data. In the event that proof of community land ownership is incomplete or nonexistent, it can be supplemented & proven by a written statement regarding the ownership and/or physical control of the land parcel in good faith by the person concerned.

The element of good faith consists of physically possessing, using, utilizing & maintaining land for generations within a certain time and/or acquiring it in a way that does not violate the provisions of laws & regulations.

h) Announcement of physical data & juridical data & their ratification;

Recapitulation of juridical data that has been set forth in the Minutes of Research on Juridical Data regarding land parcels that have been mapped on a map of land parcels, is included in the List of Juridical Data & Physical Data of Land Sector. To fulfill the principle of publicity in proving land ownership, juridical data & physical data on land parcels & maps of land parcels are announced using the Announcement form for Physical Data & Juridical Data (DI 201B) for 14 (fourteen) calendar days at the PTSL Adjudication Committee Office & Head of Village Office.

Interested parties are given the opportunity to submit objections regarding the Announcement of Physical Data & Juridical Data (DI 201B) as mentioned above during the announcement period. After the announcement period as referred to in paragraph (2) ends, the physical data & juridical data are ratified by the PTSL Adjudication Committee which is made in the form of Minutes of Ratification of the Announcement of Physical Data & Juridical Data (DI 202).

If at the time of ratification of the physical data & juridical data there are still incomplete data or objections that have not been resolved, then the physical data & juridical data will still be ratified by providing notes in the Minutes of Ratification of Physical Data & Juridical Data regarding incomplete matters and/or unresolved objections.

If there are parties who object, a written notification will be given to immediately file a lawsuit with the court. Furthermore, the objection is recorded in the List of Objections/Rebuttals to the Announcement of Research Results on Physical Data & Juridical Data (DI 309).

i) Affirmation of conversion, recognition of rights & grant of rights;

If the land parcel with physical data & juridical data fulfills the requirements for the issuance of a Land Rights Certificate (Cluster 1), then based on the Minutes of Ratification of Physical Data & Juridical Data, the Chairperson of the PTSL Adjudication Committee will follow up with:

(1) Affirming the conversion to ownership rights on behalf of the last right holder, for land parcels where the written evidence is complete & the written evidence is incomplete but there is witness testimony or the statement concerned.

(2) Establish recognition/affirmation as Property Rights, for parcels of land for which there is no evidence of ownership but has been proven by the fact of continuous physical control for 20 (twenty) years including its predecessors.

(3) Propose decisions on granting rights, for land parcels which are state land by collectively proposing to the Head of the Land Office using the List of Proposals for the Granting of Property/Building Use/Use Rights (Systematic) (DI 310) & attached with the Minutes of Research on Juridical Data, DI 201B & IN 201C.

j) bookkeeping of rights;

Confirmation of Conversion & Acknowledgment of rights as referred to in the Affirmation of conversion, recognition of rights & grant of rights mentioned above in letters a & b, ownership rights, building use rights, usufructuary rights and/or *waqf* are recorded in the relevant land book.

In the bookkeeping of these rights, the restrictions related to these rights include restrictions on the transfer of rights, restrictions on the use of land relating to coastal demarcation lines, rivers & others, restrictions on the use of land rights in protected areas are also recorded. Regarding the signing of the Land Book, it is carried out by the Head of the Adjudication Committee on behalf of the Head of the Land Office. Regarding land parcels that meet the requirements for certificate issuance but there are cases in the Court (Cluster 2), then do:

- 1) Bookkeeping of rights by leaving the names of the rights holders blank;
- 2) Issuance of certificates of Land Rights after a court decision has permanent legal force, & the decision states that one of the parties is entitled.

As for the court decision that has permanent legal force as referred to above, it is determined after the fiscal year for PTSL activities ends, the Head of the Land Office who signs & issues the Certificate of Land Rights, which is carried out without changing the land book signed by the PTSL Adjudication Committee.

k) Issuance of certificates of land rights;

Ownership rights, building use rights, usufructuary rights & endowments that have been registered in the land book & meet the requirements to be given proof of rights, are issued certificates of land rights.

Juridical data included in the certificate includes restrictions including restrictions on the transfer of rights, restrictions on the use of land regarding the coastline or other restrictions. Documents as proof of old rights which form the basis of bookkeeping are crossed out with ink without causing the existing writing/signs to be unreadable or given a stamp or writing stating that the document has been used for bookkeeping of rights, prior to being stored as *warkah*.

l) Documentation & submission of activity results;

The Complete Systematic Land Registration Adjudication Committee (PTSL) carries out PTSL data collection, grouping, processing & storage activities, which include:

(1) Juridical data documents consisting of the identity of the right holder, the basis of the rights, minutes made by the committee, proof of announcement, Minutes of Ratification of physical data & juridical data & letters of decision granting rights;

(2) Documents of physical data: measurement data & calculation of measurement results, measuring drawings, land plot maps, & measurement letters;

(3) Filling list of land registration & land rights;

(4) land book;

(5) Land Title Certificate;

(6) Evidence of financial administration; and

(7) Other administration data

The Chairperson of the PTSL Adjudication Committee submits the results of implementing PTSL activities to the Head of the Land Office at the end of PTSL activities & is accompanied by PTSL data.

m) Reporting.

Reporting on the implementation of Complete Systematic Land Registration (PTSL) activities is carried out when:

(1) Problems occur in the implementation of PTSL activities; and

(2) PTSL has been completed.

Reporting when problems occur in the implementation of PTSL activities as referred to above, is carried out by the Chairperson of the PTSL Adjudication Committee to the Head of the Land Office with copies to the Director General of Agrarian Legal Relations & the Head of the BPN Regional Office. While reporting when PTSL is completed, it is carried out in stages & periodically from the Head of the Land Office, Head of the BPN Regional Office, & the Minister.

3.2. Tax Imposition of Land & Building Rights Acquisition Fees (BPHTB) Payable on Property Rights Certificates in the Implementation of Complete Systematic Land Registration

a) Taxes Payable

The arrangements for PPh & BPHTB payable are clearly regulated in Article 33 of the ATR/BPN Ministerial Regulation No. 6 of 2018 concerning Complete Systematic Land Registration, as follows:

(1) In the event that the recipient of the Land Title Certificate is not or has not been able to pay the BPHTB and/or there are still arrears in PPh payments by other parties for the land in question, then the Land Title Certificate can still be issued.

(2) In the event that PTSL participants do not or have not been able to pay the BPHTB, the person concerned must make a statement letter on the BPHTB Outstanding.

(3) In the event that the land parcel originates from a sale & purchase in the past & the current buyer does not have proof of PPh payment from the seller in the past, then the person concerned must make a statement of PPh Payable.

(4) The statement letter of Outstanding BPHTB & the statement letter of Outstanding PPh is contained in the Decree on the Granting of Land Rights & is subsequently recorded in the Land Book & Certificate as Outstanding BPHTB from the land owner concerned or the PPh payable by the land seller or the person concerned.

(5) The Head of the Land Office is obliged to submit a list of BPHTB Payable/or PPh Payable periodically within 3 (three) months to the local Regent/Mayor for BPHTB, while to the local Primary Tax Office for PPh.

(6) The transfer of rights or changes to the Land Book & Certificate of Land Rights can only be carried out after the person concerned can prove that the BPHTB Debt and/or PPh Payable has been paid by each taxpayer.

(7) The statement letter of BPHTB payable, certificate of income tax payable & the format for filling in the BPHTB/PPh payable are bolted in accordance with the format as set out in Appendix VIII, Appendix IX & Appendix X which are an integral part of this Ministerial Regulation.

b) Payable PPh

Income tax from transactions on the transfer of assets in the form of land and/or buildings is regulated in Article 4 paragraph (2) letter (d) of Act No. 36 of 2008 concerning the Fourth Amendment to Act No. 7 of 1983 concerning Income Tax, which states that taxes the income is final, which is regulated by or based on Government Regulations. According to Gunadi, there are considerations underlying the separate treatment referred to, among others, simplicity in tax collection, fairness & equity in the imposition of taxes & attention to economic & monetary developments.⁴

These considerations also underlie the need to provide separate treatment for the imposition of taxes on income from the transfer of assets in the form of land & or buildings, as well as certain other types of income. Therefore, the imposition of Income Tax including the nature, amount, & procedures for implementation is regulated separately in a Government Regulation.⁵

The emergence of Income Tax Payable in accordance with the definition of tax payable in Article 1 number (10) of Act No. 28 of 2007 concerning General Provisions & Tax Procedures is tax that must be paid at a time, in the tax period, in the Tax Year or in Parts of the Year Tax in accordance with the provisions of the legislation. Due to the final nature of Income Tax from the transfer of rights over land and/or buildings, the provision for the emergence of tax payable is based on separate provisions, namely Government Regulations.⁶ However, the provisions governing the payment of taxes before the transfer of rights is carried out are intended to increase taxpayer compliance so that state revenues from the tax sector can increase. So that the arrangement of tax payments before the transfer of rights is carried out in accordance with the principle of certainty, which means certainty is not only about certainty regarding the subject of tax (and its exceptions),⁷ tax objects (and exceptions), tax bases & tax rates, but also regarding procedures for fulfilling their obligations, including payment & reporting procedures, as well as the implementation of their tax rights.

The amount of tax payable is 5% of the gross amount of the income value of land and/or building rights, except for the transfer of rights to simple houses or simple flats carried out by taxpayers whose main business is to carry out transfer activities of land and/or building rights subject to income tax. 1% of the gross value of the transfer of rights. The simple houses & simple flats in question are

⁴Gunadi, 2002. Basic Provisions for Income Tax, Salemba Empat, Jakarta, p. 57.

⁵Ibid.

⁶Ratih Mega Puspa Sari and Gunarto, 2018, The Role of PPAT in Land Certification Due to Sale and Purchase, <https://media.neliti.com/media/publications/324960-peranan-ppat-dalam-pensertifikatan-tanah-e029b56a.pdf>, Journal Deed, (Vol 5 No 1 March 2018).

⁷Gunarto, 2014, Law Enforcement Agenda and Its Relevance to Nation Development, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/PH/article/view/1455/1126>, Journal of Legal Reform, (Volume I No.1 January –April 2014).

those which according to the provisions of the law are exempt from Value Added Tax.

The basis for calculating the gross amount of income is the highest value between the value based on the Deed of Transfer of Rights & the Selling Value of the Tax Object of the land and/or building in question as contained in the Notification Letter of Taxes Payable Land & Building Tax for the year concerned, if it has not been issued then the value used is Sale of Tax Object (NJOP) according to the Land & Building Tax Payable Notification Letter of the previous year, if the transitional object has not been registered, then a Certificate issued by the Head of the Regional office covering the location of the land and/or building is used, with the exceptions namely:

- (1) In the event that the transfer of rights to the government is based on the decision of the official concerned;
- (2) In the event that the transfer is in accordance with the Auction Rules, the value is based on the minutes of the auction.

Exceptions to the obligation to pay Income Tax are as follows:

- (1) Individuals who have income below Non-Taxable Income, who make transfers with a gross amount of less than IDR 60,000,000.00 (sixty million rupiah), which is not a broken down amount;
- (2) Individuals or entities that derive income from the transfer of land and/or building rights to the government;
- (3) Individuals who make donations to one degree of straight blood relatives, or for social, religious & educational purposes that are not related to business relations, employment, ownership of control between the parties concerned;
- (4) Agencies that make grants for social, religious & educational activities, small entrepreneurs, with no relation to the business, work or control of the parties concerned;
- (5) Transfer of rights due to inheritance.

The use of tax based on separate rates for certain types of income, in addition to general rates, Article 4 paragraph (2) seems to introduce a scheduler tax system (tax imposition with a separate schedule for an income category). Because it is imposed on the basis of gross income & commensurate rates without regard to the personal condition of the Taxpayer, for the purposes of vertical equity, in the long term this approach must be returned to its basic path (unitary system). If

people's tax compliance is good enough, a unitary system (with a general rate), can provide greater revenue than the provisions of Article 4 paragraph (2), apart from being more just & equal (and equal).⁸

Procedures for paying income tax on the transfer of rights over land and/or buildings owed:⁹

(1) Individuals or entities that receive or earn income from the transfer of rights over land and/or buildings from parties other than the government are required to pay their own taxes.

(2) Individuals or entities that receive or earn income from the transfer of rights to land and/or buildings from parties other than the government who do not require special requirements for Income Tax to be collected by the Treasurer or official making the payment or official agreeing to the exchange. The authorized official only signs the deed, decision, agreement, agreement or minutes of auction for the transfer of land and/or building rights if it is proven to him that the income tax payable has been paid by submitting a photocopy of the tax payment slip (SSP) showing the original.

c) Outstanding BPHTB

BPHTB tax collection involves many related parties, namely the Land Office, Land Deed Officials (PPAT) & the local government.¹⁰ Furthermore, what is the object of tax on Land & Building Rights Acquisition Fees according to the provisions of Article 2 paragraph (1) of the BPHTB Law is the acquisition of land & or building rights, while what is meant by the acquisition of land & building rights according to Article 2 paragraph (2) of the BPHTB Law , includes:

(1) Transfer of rights due to:

(a) Buy & sell;

(b) Exchange;

(c) Grant;

(d) Will grant;

⁸Ibid., p. 59.

⁹Alsah Sjarifuddin A., 2003. Withholding-Collection of Income Tax, Second Print, Kharisma Bintang Kreativitas Prima, Jakarta, p. 170.

¹⁰Marlon Gustia, 2016. Application of the Law on the Imposition of Land and Building Rights Acquisition Fees (BPHTB). IUS Journal. Vol IV. No. 1. Law and Justice Studies. Thing. 96.

- (e) Inheritance;
- (f) Entry into a company or other legal entity;
- (g) Separation of rights resulting in a transition;
- (h) Appointment of buyers in the auction;
- (i) Implementation of the judge's decision that has permanent legal force;
- (j) business combination;
- (k) business consolidation;
- (l) business expansion;
- (m) Present.

(2) Granting of new rights, because:

- (a) Continuation of rights release;
- (b) Excluding waiver

The acquisition of land & building rights is based on 3 types, namely as follows:

1) Transaction price.

The transaction price is the price that occurs & has been agreed upon by the parties concerned. The transaction price is determined in terms of:

- a) Buy & sell;
- b) Appointment of buyers in the auction

2) Market value.

Market value is the average price of a fair sale & purchase transaction that occurs around the location of the Land & Buildings. In the event of an exchange, the two parties are subject to Land & Building Rights Acquisition Fees. Market value is used in terms of:

- a) Exchange.

- b) Grant.
- c) Will grant.
- d) Inheritance.
- e) Entries in issues or other legal entities.
- f) Separation of rights resulting in a transition.
- g) Transfer of rights due to the implementation of a judge's decision that has permanent legal force.
- h) Grant of new rights.
- i) Business combination.
- j) Business dissolution.
- k) Business expansion.
- l) Present.

3) The Sales Value of the PBB Tax Object (NJOP PBB) is used if the Acquisition Value of the Tax Object (NPOP) is unknown or lower than the Selling Value of the PBB tax object.

The basis for the imposition of BPHTB tax is then determined by the Regionally determined Non-Taxable Tax Object Acquisition Value (NPOPTKP), which means it is determined based on a decision from the Regional Government, in accordance with the provisions of Article 7 paragraph (1) of the BPHTB Law, not more than IDR 60,000,000.00 (sixty millionrupiah) except in the case of obtaining rights due to inheritance, or testamentary grants received by individuals who are still in a blood relationship in a straight line one degree up or one degree down with the grantor of inheritance, including husband/wife, the Acquisition Value of the Tax Object Not subject to tax determined regionally at most IDR 300,000,000.00 (Three hundred Million Rupiah).

Issues with Payable PPh & BPHTB in the implementation of PTSL which are regulated in Article 33 of the Ministerial Regulation ATR/Ka BPN Number 6 of 2018 which provides a space for convenience in implementing the PTSL Program, for those who do not or have not been able to pay PPh & BPHTB by making a statement of Outstanding PPh & BPHTB. However, based on the results of the research, the provisions regarding PPh & BPHTB payable in Complete Systematic

Land Registration activities still require separate arrangements, especially regarding the billing mechanism & payment time that must be made by PTSL participants. In this case,

Based on Article 1 number (10) of Act No. 28 of 2007, the definition of tax payable is tax that must be paid at one time, during the tax period, in the tax year or in parts of the tax year in accordance with the provisions of the tax laws & regulations. PPh & BPHTB tax arrangements are regulated by different laws, where PPh is regulated in Act No. 28 of 2007 concerning the Third Amendment to Act No. 6 of 1983 concerning General Provisions & Procedures for Taxation along with its implementing regulations. Meanwhile, BPHTB is regulated in Act No. 28 of 2009 concerning Regional Taxes & Regional Retribution.

According to Widyawati, in theory, tax laws can be divided into two, namely Material Tax Law & Formal Tax Law. Material tax law regulates provisions regarding who is subject to tax, who is excluded, what is subject to tax & what is excluded & how much tax is payable.¹¹ While the formal law regulates how to implement material tax laws, regulates procedures (ordinances) for fulfilling tax rights & obligations.

Provisions for PPh Payable are not regulated in Government Regulations, do not clearly state when the tax is payable, it only stipulates that before the deed, minutes of auction or other letters are signed by the authorized official, proof of PPh payment must be shown first.

In contrast to the provisions in the BPHTB which clearly state that tax payable arises when the deed, minutes of auction or other related letters are signed by an authorized official, on the other hand, the authorized official is prohibited from signing the deed, minutes of auction or other related letters before proof of payment of BPHTB is shown.

Along with the blank PPh & BPHTB regulations which are clear enough to address these problems, it is necessary to provide special provisions for Outstanding PPh & BPHTB in the implementation of PTSL. This arrangement must be in the form of a Government Regulation so that it is equal to the implementing regulations related to taxation, because in principle laws & regulations can be applied to the *lex specialis derogate legi generali* principle, namely special regulations override general regulations.

Formally, the Government's authority to regulate the land sector grows & is rooted in Article 33 paragraph (3) of the 1945 Constitution which confirms that

¹¹Widyawati, 2010. "Indebted PPh and BPHTB for land and or buildings", Thesis in the Notary Masters Study Program, Faculty of Law, Airlangga University.

the land, water & natural resources contained therein are controlled by the state to be used for the greatest prosperity of the people. Then it was firmly finalized in Act No. 5 of 1960 concerning Basic Agrarian Regulations (UUPA). Then it spread to various organic regulations in the form of Government Regulations, Presidential Decrees, Presidential Regulations & Regulations issued by heads of technical agencies in the land sector.¹² Meanwhile, substantially, the government's authority in regulating the land sector, especially in terms of legal traffic & land use, is based on the provisions of Article 2 paragraph (2) of the BAL, namely in terms of the authority to regulate & administer allotment, use, supply & maintenance of land, including determining & regulating legal relations between people & legal actions concerning land.

With these provisions the Government has been given juridical authority to make rules & regulations (bestemming) in the agrarian field in the form of land, as well as carry out these rules (execution) concerning subjects, objects & legal relations between the subject & the object as long as it concerns agrarian resources.¹³

The importance of registering land for the community is obtaining legal certainty. Legal certainty is legal protection against arbitrary actions, which means that someone will be able to get something that is expected in certain circumstances. The community expects legal certainty, because with legal certainty the community will be more orderly. The law is tasked with creating legal certainty because it aims at public order.¹⁴ By using Gustav Radbruch's concept of legal certainty, registered land parcels will avoid arbitrariness.¹⁵ The arbitrariness of certain parties who have bad faith in admitting ownership of other people's land. While Prof. Dr. Regarding legal certainty, Sudikno Mertokusumo stated that without legal certainty it would cause unrest.¹⁶ Unrest is defined as the emergence of land disputes which are very detrimental to the parties to the dispute.

3.3. Legal Consequences of Tax Imposition of Land & Building Rights Acquisition Fees Payable on Property Rights Certificates in the Implementation of Complete Systematic Land Registration

Permen ATR/Head of BPN Number 6 of 2018 was formed & stipulated by the Minister of Agrarian Affairs & Spatial Planning/Head of BPN. The Minister of Agrarian Affairs & Spatial Planning/Head of BPN has the authority to form &

¹²Md. Yamin Lubis and Abd. Rahim Lubis, 2008. Land Registration Law, Bandar Maju Publisher, Bandung, p. 1.

¹³Ibid.

¹⁴Sudikno Mertokusumo, 1988. Knowing the Law: An Introduction. Liberty, Yogyakarta, p. 136.

¹⁵Bernard L. Tanya, Yoan N. Simanjuntak and Markus Y. Hage, 2010. Legal Theory: Human Orderly Strategies across Space and Generations, Genta Publishing, Yogyakarta.

¹⁶ ¹⁶Sudikno Mertokusumo, Op.Cit.

stipulate Permen ATR/Head of BPN Number 6 of 2018, based on the delegated authority from the President through Presidential Instruction Number 2 of 2018 concerning Acceleration of Complete Systematic Land Registration. The regulation instructs the Minister of ATR/Head of BPN to make regulations as normative guidelines for the PTSL Program. The substance of regulating the procedures for paying PPh & BPHTB according to the provisions of Article 33 of the Ministerial Regulation of ATR/Head of BPN Number 6 of 2018 which contradicts the provisions of Articles 3 & 7 PP Number 34 of 2016 & Articles 90 & 91 of Act No. 28 of 2009 cannot be justified.

The provisions of Article 10 paragraph (1) of Act No. 30 of 2014 which contains AUPB elements are used as benchmarks related to the fulfillment of the elements in forming & establishing the ATR/Head of BPN Regulation Number 6 of 2018. The ATR/Head of BPN Regulation Number 6 of 2018 2018 apparently did not meet several elements of AUPB, namely the principle of legal certainty, the principle of accuracy, & the principle of abuse of authority. AUPB has a very important role in governance in order to avoid abuse of authority.¹⁷The provisions of Article 33 of Permen ATR/Head of BPN Number 6 of 2018 cannot be justified legally, because it was formed & determined by the Minister of ATR/Head of BPN who does not have the authority to make ministerial regulations, & these regulations are vertically contradictory to government regulations & laws.

The law can carry out its function only because it is fair & carried out with certainty. Certainty in this case is definitely an enforceable guideline, & fair because the enforceability guideline must support an order that can be judged reasonable. Legal certainty is a question that can only be answered normatively, not analyzed from a sociological perspective.¹⁸

The provisions of Article 33 of Permen ATR/Head of BPN Number 6 of 2018 which apply to regulate the procedures for paying PPh & BPHTB in the PTSL Program have three legal consequences, namely creating legal uncertainty, legal injustice, & not fulfilling the legal force of land title certificates as a means of proof the strong one.

The procedure for payment of tax on the transfer of rights to land and/or buildings in the framework of land registration for the first time, either through systematic land registration or sporadic land registration, prior to the entry into force of Article 33 of the Ministerial Regulation ATR/Head of BPN Number 6 of

¹⁷ Susila, 2014. *Crime of Multiple Land Certificates*, University of Brawijaya Press, Malang.

¹⁸ Dominikus Rato, 2010. *Searching for Legal Philosophy: Understanding and Understanding Law*. Laksbang Pressindo, Yogyakarta.

2018 is regulated by the provisions of Article 3 & 7 Government Regulation Number 34 of 2016 & Articles 90 & 91 of Act No. 28 of 2009.

The enactment of Article 33 of Permen ATR/Head of BPN Number 6 of 2018 creates legal uncertainty because it creates regulatory dualism regarding procedures for paying PPh & BPHTB & the unclear mechanism for paying PPh & BPHTB. The dualism of regulating procedures for paying PPh & BPHTB occurs due to vertical legal conflicts which result in legal uncertainty.

Vertical legal conflict occurred between Article 33 of the Ministerial Regulation of the ATR/Head of BPN Number 6 of 2018 & Articles 3 & 7 PP Number 34 of 2018 & Articles 90 & 91 of Act No. 28 of 2009. The certificate is based on the provisions of Article 33 of the Regulation of the Minister of ATR/Head of the National Land Agency Number 6 Year 2018 can be issued to the applicant even though PPh & BPHTB have not been paid. This is contrary to the provisions of Articles 3 & 7 PP Number 34 of 2018 & Articles 90 & 91 of Act No. 28 of 2009 which state that certificates cannot be issued before PPh & BPHTB payments are first paid.

Based on this explanation, it can be seen that there is overlap between regulations that have a low level, namely ministerial regulations, & regulations that have a higher level, namely laws & government regulations.

The provisions of Article 33 of Permen ATR/Head of BPN Number 6 of 2018 also creates legal uncertainty regarding the PPh & BPHTB payment mechanisms. This relates to payment or billing, time of payment, & the amount of fines to be paid.¹⁹Some of these things make the buyer or seller in the process of transferring land rights do not obtain clarity regarding procedures for paying PPh & BPHTB, so legal certainty cannot be obtained in the provisions of Article 33 of Permen ATR/Head of BPN Number 6 of 2018.

The provisions of Article 33 of Permen ATR/Head of BPN Number 6 of 2018 give rise to legal injustice, which justice should be one of the goals of law. Legal norms are structured in such a way as to realize legal justice. The legal norms that apply are not harmonious, meaning that normatively contradicting legal norms of a higher level will ultimately only result in injustice. Law was created as a means to create the rights & obligations of legal subjects, so that they can carry out their obligations & obtain their rights fairly. Law is also a means to protect the rights & obligations of the legal subject.²⁰The legal subject in question is the

¹⁹Dian Aries Mujiburohman, 2018. Potential Problems with Complete Systematic Land Registration (PTSL). *Bhumi*, Vol. 4 No. 1, p. 88-101.

²⁰Irwan Permadi, 2019. Legal Protection for Dual-certified Land Buyers in Good Faith for the sake of Legal Certainty. *Yustisia*, Vol. 5 No. 2, p. 448-467.

community applying for the registration of land rights for the first time, either sporadically or systematically through the PTSL Program.

Article 33 Permen ATR/Head of BPN Number 6 of 2018 which provides convenience in the form of suspension of PPh & BPHTB payments in the PTSL Program, does not prevent the issuance of certificates of land rights. This will be felt unfair by the people who arrange certificates of land rights through sporadic land registration. Arrangements for PPh & BPHTB payment procedures in sporadic registration are guided by Articles 3 & 7 PP Number 34 of 2016 & Articles 90 & 91 of Act No. 28 of 2009. PPh & BPHTB taxes according to these two provisions must be paid at the time of the transfer of land rights. so that the certificate cannot be issued by an authorized official, in this case the Head of the Land Office.

The non-fulfillment of the legal force of land title certificates as a strong means of proof is a separate problem in the PTSL Program. A certificate of land rights is a very important document because it is a form of control over a parcel of land.²¹The certificate is a proof of right that applies as strong evidence regarding the physical data & juridical data according to what is contained therein, as long as the physical data & juridical data match the data in the measurement certificate & land book concerned.²²The certificate is a combination of a land book containing juridical data & a measuring letter containing physical data, bound & covered, the form of which is stipulated by a government regulation.²³Issuance of land rights certificates should be able to provide flexibility for the holder to take legal action, including transferring land rights in accordance with applicable laws & regulations.

Provisions of Article 33 paragraph (4) of Permen ATR Number 6 of 2018 which explains that unpaid PPh and/or BPHTB can result in the non-fulfillment of the legal force of a certificate which should be a strong means of proof. This is due to the absence of explanation regarding the payment of PPh and/or BPHTB, as well as the amount of the fine & the term of payment. Therefore, if the land seller or buyer does not pay the tax, then the certificate cannot be transferred as stipulated in the laws & regulations.

Proper regulatory formulation regarding procedures for paying PPh & BPHTB is urgently needed to provide guarantees of legal certainty to the community. Legal certainty guarantees for a parcel of land can be obtained through written legal

²¹Isdiyana Kusuma Ayu, 2019. Legal Certainty of Land Ownership through Complete Systematic Land Registration in Batu City. Law Platform, Vol. 31 No. 3 October 2019, p. 338-351.

²²Adrian Sutedi, 2006. Transfer of Land Rights and Their Registration. Sinar Graphics, Jakarta.

²³Anisa Rahma Hadiyanti, Rachmad Safa'at, & Tunggul Anshari, 2017. Position of Grant Deed in Land Ownership Disputes. Law Lantern, Vol. 4 No. 3, ISSN 2355-4673, p. 205-220.

instruments, complete, clear, & implemented consistently in accordance with the spirit & content of the applicable provisions.²⁴There are two alternative legal formulations that are appropriate for regulating the procedures for paying PPh & BPHTB in the PTSL Program.

The first alternative can be done by establishing & establishing a ministerial regulation as a normative guideline for the PTSL Program. The regulation regulates the procedure for paying PPh & BPHTB in accordance with the provisions of Government Regulation Number 34 of 2016 which regulates the procedure for paying PPh & Act No. 28 of 2009 which regulates the procedure for paying BPHTB. Regulating procedures for paying PPh & BPHTB in the mass & simultaneous PTSL Program, the implementation of the administration is facilitated by the relevant agencies, namely the Tax Service Office (KPP) which handles the administration of PPh payments & the Regional Revenue Agency (BAPENDA) which handles the administration of BPHTB payments. The agency needs to visit or establish a service post in the village or kelurahan where the PTSL Program is held,

The second alternative relates to the formation & stipulation of laws & regulations which are the normative guidelines for the PTSL Program which should not be fully implemented by the Minister of ATR/Head of BPN. This is because the PTSL Program is not a program of the ATR/BPN Ministry, but a government program. The Ministry of ATR/BPN is only the executor, so that all PTSL Program matters including the formation of laws & regulations which become normative guidelines for the PTSL Program should not be the responsibility of the Ministry of ATR/BPN. The formation & establishment of laws & regulations that are contrary to higher laws & regulations, clearly exceeds their authority because they violate the provisions of Articles 7 & 8 of Act No. 12 of 2011 which regulate the procedure for forming statutory regulations.

Procedures for paying PPh & BPHTB should be established & stipulated in a government regulation as a normative guideline for the PTSL Program, while the Minister of ATR/Head of BPN is sufficient to form a ministerial regulation containing guidelines for the implementation of government regulations that have been made specifically as normative guidelines for the PTSL program. This is intended if in substance there are provisions in the Government Regulation concerning the PTSL Program that are contrary to Government Regulation Number 24 of 1997 or other equivalent laws & regulations, this will not cause legal problems because it is a legal conflict horizontally. Horizontal legal conflict is not a legal conflict that violates legal provisions.

²⁴Florianus SP Sangsun, 2007. Procedures for Managing Land Certificates, Visimedia, Jakarta.

The correct formulation for setting the PPh & BPHTB payment procedures in the PTSL Program is if the PPh payment procedures are regulated according to the provisions in government regulations. The regulation on the procedure for paying BPHTB according to the provisions of this government regulation requires the Regent or Mayor to establish statutory regulations governing the procedure for paying BPHTB specifically in the PTSL Program. This is in accordance with the provisions of Act No. 28 of 2009 that BPHTB is the authority of the regional government, in this case the district government & city government, so that those who have the authority to form statutory regulations regarding BPHTB are the Regent/Mayor together with the Regency/City DPRD.

4. Conclusion

Issues of Payable PPh & BPHTB in the implementation of Complete Systematic Land Registration (PTSL) which are regulated in Article 33 of the Ministerial Regulation ATR/Ka BPN Number 6 of 2018 which provides an easy space for implementing the PTSL Program, for those who do not or have not been able to pay PPh & BPHTB by making a statement of PPh & BPHTB payable, the certificate of land rights can still be issued. However, provisions regarding PPh & BPHTB payable in Complete Systematic Land Registration activities still require separate arrangements, especially regarding the billing mechanism & payment time that must be made by PTSL participants. In this case, the provisions of Article 33 only explain that the Head of the Land Office is obliged to submit a list of BPHTB Payable and/or PPh Payable periodically within 3 (three) months to the local Regent/Mayor & if there is a transfer of rights or changes to the Land Book & Certificate of Land Rights it can only be done after the person concerned has paid off the payable PPh & BPHTB; Furthermore, The provisions of Article 33 of Permen ATR/Head of BPN Number 6 of 2018, vertically, contradict the provisions of Articles 3 & 7 PP Number 34 of 2018 & Articles 90 & 91 of Act No. 28 of 2009. Legal consequences of the provisions of Article 33 of Permen ATR/Head of BPN Number 6 of 2018, namely causing legal uncertainty, legal injustice, & not fulfilling the legal force of land rights certificates as a strong means of proof. Legal uncertainty occurs because there is dualism in regulations governing procedures for paying PPh & BPHTB as well as uncertainty regarding the payment mechanism. Legal injustice occurs due to differences in the provisions for issuing certificates between Article 33 of Permen ATR/Head of BPN Number 6 of 2018 & Articles 3 & 7 of Government Regulation Number 34 of 2018 & Articles 90 & 91 of Act No. 28 of 2009, because of this.

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