

# Legal Study of Legal Certainty in Determining Land Prices in the Implementation of Land Sale and Purchase Agreements According to the Land Sale and Purchase Deed and the Determination of the Batam City Regional Revenue Agency

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**Abstract.** *The determination of land prices for the purposes of tax administration and the issuance of land ownership certificates experiences a difference between the price agreed by the parties and stated in the Deed of Sale and Purchase with the price determined by the Regional Revenue Agency in Batam City. The approach method used in this qualitative legal research is the sociological legal approach method, namely an approach by seeking information through direct interviews with informants empirically first and then continuing by conducting secondary data research found in literature studies through theoretical steps. The implementation of land price determination based on the land sale and purchase agreement deed in Batam currently experiences a difference between the price agreed upon by the parties carrying out the land sale and purchase as then stated in the AIB and the price set by BAPENDA in Batam City.*

**Keywords:** *Buy; Land; Sell.*

## 1. Introduction

The sale and purchase of land that has been paid in full gives rise to legal consequences in the form of an obligation to include the results of the agreement in a deed of sale and purchase made by a Land Deed Making Official (hereinafter abbreviated as PPAT). Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration (hereinafter abbreviated as PP Land Registration) states that the transfer of land rights and ownership rights to apartment units through sale and purchase, exchange, gift, income in a company and legal acts of transfer of rights through auction can only be registered if proven by a deed made by an authorized PPAT according to the

provisions of applicable laws and regulations.<sup>1</sup>PPAT is a public official who is authorized to make certain land deeds. Agreements concerning the transfer of land rights must be made before the PPAT. The main duties of the PPAT are regulated in Article 2 of Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning the Regulations on the Position of Land Deed Making Officials (hereinafter abbreviated as PJ PPAT), namely carrying out part of the land registration activities by making deeds as evidence of certain legal acts concerning land rights or ownership rights to apartment units which will be used as the basis for registering changes to land registration data resulting from the legal act. The deed of sale and purchase made by the PPAT must be followed by registration at the local Regency/City Land Office no later than 7 days after the signing of the deed or 7 days after the date of the deed. The deed of sale and purchase serves as stronger evidence that a transfer of land rights has occurred. The deed of sale and purchase is also used as one of the requirements for registering the transfer of land rights at the Land Office along with supporting documents.<sup>2</sup>On the transfer of land rights in the case of sale and purchase, two types of taxes must be paid by each party, namely Income Tax (hereinafter abbreviated as PPh) which is a central tax reported to the Pratama Tax Service Office (hereinafter abbreviated as KPP), charged to the seller, and Land Acquisition Fee (hereinafter abbreviated as BPHTB) which is a regional tax reported to the Regional Tax Management Agency (hereinafter abbreviated as BPPD), charged to the buyer. The transfer of authority to collect BPHTB from the central government to the district/city government is in accordance with the mandate of Law Number 28 of 2009 concerning Regional Taxes and Regional Retributions (PDRD), thus since January 1, 2011 the Pratama Tax Service Office (KPP Pratama) has no longer served the management of BPHTB services, so that currently taxpayers who will pay and register the research of regional tax deposit letters (SSPD BPHTB) will be directly handled by the local district/city government. The imposition of BPHTB is further regulated by the respective regional regulations, the collection system for BPHTB is self-assessment, namely taxpayers are given full trust to calculate, account for, pay and report their own taxes owed, therefore every BPHTB taxpayer is required to calculate, account for, pay and report their own BPHTB owed using the SSPD BPHTB. In practice, the buyer authorizes the PPAT to take care of everything regarding the sale and purchase of land including paying BPHTB. The PPAT is only authorized to sign the deed if the Tax that has been paid has been verified by the Tax Office, both BPHTB and (PPH) Income Tax, against

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<sup>1</sup>Kian Goenawan, 2008, Guide to Managing Land and Property Permits, Pustaka Grahatama, Jakarta, page 77.

<sup>2</sup>Kian Goenawan, 2008, Guide to Managing Land and Property Permits, Pustaka Grahatama, Jakarta, p. 77.

the Income Tax Payment Letter and the Land Acquisition Fee Payment Letter must be researched/validated.<sup>3</sup>

The transaction value agreed upon by the parties is not always accepted by the Batam City Regional Revenue Agency because the results of the BPHTB Verification show that the transaction value can be more than that proposed. This is often found in land sales based on a notarial PPJB deed, because the parties have agreed that payments will be made in stages and over a long period of time. This results in the price agreed upon by the parties not following the market price at the time the BPHTB payment is made. For example, from the transaction price proposed, the land value per meter was agreed to be IDR 3,000,000 (three million rupiah) by the parties, but based on the results of the Regional Revenue Agency verification, the NJOP per meter was considered higher, namely IDR 5,000,000 (five million rupiah) with a calculation method that is not stated in detail in the Batam City BPHTB Regional Regulation. This creates uncertainty in determining the results of the BPHTB SSPD Verification. In the event of a difference between the agreed transaction price and the Verification results set by the Batam City BPPD, the taxpayer will receive a Regional Tax Underpayment Determination Letter (hereinafter referred to as SKPDKB) and the taxpayer must pay the underpayment by filling out the SSPD BPHTB form again by stating the amount that has been paid and the amount of the underpayment. After payment of the underpayment is made, the SSPD BPHTB for the underpayment is also submitted for Verification again.

The authority of the Regional Revenue Agency in determining the transaction value based on the results of the SSPD BPHTB Verification which is different from the transaction value agreed upon by the parties indirectly violates the principle of freedom of contract in contract law, where the parties are free to determine the contents of the agreement including the sale and purchase price. Viewed from the principle of personality, the Regional Revenue Agency is not a party to the agreement that can also determine the value of the land sale and purchase transaction. The role of the PPAT is only to confirm the will of the parties and then stated in the form of a sale and purchase agreement. The difference in the transaction value agreed upon by the parties which will later be stated in the sale and purchase deed with the results of the Verification determined by the Regional Revenue Agency can create uncertainty in the sale and purchase deed itself which functions as evidence of the transfer of land rights and as one of the requirements for registering the transfer of land rights at the Land Office and as proof of transaction/receipt of payment, as this is clearly stated in one of the

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<sup>3</sup>Marihot Pahala Siahaan, 2013, Revised Edition of Regional Taxes and Regional Levies Based on Law Number 28 of 2009 Concerning Regional Taxes and Regional Levies, Rajawali Pers, Jakarta, p. 597.

articles in the sale and purchase deed which has been regulated by law.<sup>4</sup>The deed of sale and purchase which is one of the authorities of the PPAT in Dutch is called *acte van verkoop en aankoop* which is a deed or written evidence containing clauses related to the sale and purchase. The PPAT deed is one of the data sources for maintaining land registration data, so it must be made in such a way that it can be used as a strong basis for registering the transfer and encumbrance of the rights concerned. Therefore, the PPAT is responsible for checking the requirements for the validity of the legal act concerned. Among other things, matching the data contained in the certificate with the lists at the Land Office.<sup>5</sup>The fact that there is a difference between the land price based on the land sale and purchase agreement deed and the land price based on the verification price of the Regional Revenue Agency which is based on the SSPD BPHTB Verification, in its development can cause legal uncertainty for land buyers which ultimately has the potential to result in losses resulting from the absence of clear legality of land prices in land sales and purchases and culminating in the legality of the land sale and purchase deed made by the PPAT.

## 2. Research Methods

The approach method used in this qualitative legal research is the sociological legal approach method, namely an approach by seeking information through direct interviews with informants empirically first and then continuing by conducting secondary data research found in literature studies through theoretical steps.<sup>6</sup>

## 3. Results and Discussion

### 3.1. Implementation of Determination Land Prices Based on Land Sale and Purchase Agreement Deeds in Batam Currently

- a. Calculation of Land Purchase Price Using the BPHTB Method Based on Law of the Republic of Indonesia Number 7 of 2021 concerning Harmonization of Tax Regulations and Regional Regulation of Batam City Number 1 of 2011 concerning Land and Building Acquisition Fees In the process of buying and selling land and/or buildings, two taxes will be imposed, namely Land and Building Acquisition Tax (hereinafter referred to as BPHTB) for the buyer and Income Tax (PPh) for the seller. During the signing of the Deed of Sale and Purchase, the Land Deed Official (hereinafter referred to as PPAT) will ask the parties to show proof of BPHTB and PPh tax payments. This is in accordance with the legal provisions contained in Batam City

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<sup>4</sup>Salim HS, 2016, *Techniques for Making Deeds by Land Deed Making Officials (PPAT)*, Raja Grafindo Persada, Jakarta, p. 113.

<sup>5</sup>Boedi Harsono, 2007, *Indonesian Agrarian Law, History of the Formation of the Basic Agrarian Law, Contents and Implementation*, Djambatan, Jakarta, p. 507.

<sup>6</sup>*Ibid*, p. 324.

Regional Regulation Number 1 of 2011 concerning Land and Building Acquisition Tax, this provision states that: The Land Deed Official/Notary can only sign the deed of transfer of land and/or building rights after the taxpayer submits proof of tax payment, except for transactions with NPOP below or equal to NPOPTKP. The legal provisions governing BHTB start from Law Number 21 of 1997, then amended to Law Number 20 of 2000 concerning BPHTB. Further regulations are also regulated in Law Number 28 of 2009 concerning Regional Taxes and Regional Levies which were later revoked and declared no longer valid due to the issuance of a New Law, namely Law Number 1 of 2022 concerning Financial Relations Between the Central Government and Regional Governments. BPHTB is a tax imposed on the acquisition of rights to land and/or buildings. Acquisition of Rights to Land and/or Buildings is an act or legal event that results in the acquisition of rights to land and/or buildings by individuals or entities. Land rights are rights to land including management rights, along with buildings on it as in Law Number 5 of 1960 concerning Basic Agrarian Principles.<sup>6</sup> From several legal definitions, BPHTB is categorized as a Tax, not a Levy. The collection of BPHTB tax after the enactment of Law Number 28 of 2009 concerning Regional Taxes and Regional Retributions, and then the enactment of a New Law that revokes the PDRD Law, namely Law Number 1 of 2022 concerning Financial Relations Between the Central Government and Regional Governments, brought about a very significant change, namely changing the status of BPHTB collection which was originally a central government tax to a district or city government tax. Stating that BPHTB is collected using the Self Assessment System. The Self Assessment System is a taxation system where the initiative to fulfill tax obligations lies in the hands of taxpayers. In this procedure, tax collection activities are placed on the activities of the community itself, namely taxpayers are given the trust to:<sup>7</sup>

- 1) Calculate the tax owed yourself;
- 2) Calculate the tax owed yourself;
- 3) Pay the taxes you owe yourself;
- 4) Report the amount of tax owed yourself;
- 5) The tax authorities do not interfere and only supervise.

This legal provision is also in line with Batam City Regional Regulation Number 1 of 2011 Concerning Land and Building Acquisition Fees, which states that BPHTB is calculated and paid by the taxpayer himself using the Regional Tax Payment Letter (SSPD) which functions as the Regional Tax Notification Letter (SPTPD). The

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<sup>7</sup>Personal interview with Raja Azmansyah as Head of Bapenda Batam City on June 12, 2023.

basis for imposing BPHTB is the Taxable Object Acquisition Value. The Taxable Object Acquisition Value according to Article 46 paragraph (2) letter a of Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments, in the case of buying and selling is the Transaction Price. The Taxable Object Acquisition Value in the case of buying and selling according to Batam City Regional Regulation Number 1 of 2011 Concerning Land and Building Acquisition Fees. The transaction price here is the price agreed upon by the buyer and seller at the time the sale and purchase transaction is carried out, from this transaction price it will later be calculated by the taxpayer to pay the BPHTB tax.<sup>8</sup>

Paragraph 9 of Article 44 Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments states that:

- (1) The object of BPHTB is the acquisition of rights to land and/or buildings.
- (2) Acquisition of Land and/or Building Rights as referred to in paragraph (1) includes:
  - a. transfer of rights due to:
    1. buy and sell;
    2. exchange;
    3. grant;
    4. testamentary grant;
    5. inheritance;
    6. income in a corporation or other legal entity;
    7. separation of rights resulting in transfer;
    8. appointment of a buyer in an auction;
    9. implementation of a judge's decision that has permanent legal force;
    10. business merger;
    11. business merger;
    12. business expansion; or
    13. gifts; and
  - b. granting of new rights because:
    1. continuation of the release of rights; or
    2. outside the waiver of rights.
- (3) Rights to Land and/or Buildings as referred to in paragraph (1) include:
  - a. right of ownership;
  - b. Cultivation Rights;
  - c. building rights;
  - d. right of use;
  - e. ownership rights to apartment units; and
  - f. management rights.

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<sup>8</sup>Location, cit.

- (4) What is excluded from BPHTB objects is the Acquisition of Rights to Land and/or Buildings:
- a. for government offices, regional governments, state administrators and other state institutions which are recorded as state property or regional property;
  - b. by the state for the implementation of government and/or for the implementation of development for the public interest;
  - c. for international bodies or representatives of international institutions on the condition that they do not carry out business or undertake other activities outside the functions and duties of the bodies or representatives of the institutions as regulated by the Ministerial Regulation;
  - d. for diplomatic representatives and consulates based on the principle of reciprocal treatment;
  - e. by an individual or entity due to conversion of rights or due to other legal acts without a change of name;
  - f. by individuals or bodies due to endowments;
  - g. by individuals or bodies used for religious purposes; and
  - h. for low-income communities in accordance with the provisions of laws and regulations.

Paragraph 9 of Article 45 Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments states that:

- (1) The BPHTB Tax Subject is an individual or entity that obtains Rights to Land and/or Buildings.
- (2) BPHTB Taxpayers are individuals or bodies who obtain rights to land and/or buildings.

Paragraph 9 of Article 46 Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments states that:

- (1) The basis for imposing BPHTB is the acquisition value of the taxable object.
- (2) The acquisition value of the tax object as referred to in paragraph (1) is determined as follows:
  - a. transaction price for buying and selling;
  - b. market value for exchange, grant, testamentary grant, inheritance, income in a company or other legal entity, separation of rights resulting in transfer, transfer of rights due to the implementation of a judge's decision that has permanent legal force, granting of new rights to land as a continuation of the release of rights, granting of new rights to land outside the release of rights, business mergers, business amalgamations, business expansions, and gifts; and

c. the transaction price listed in the auction minutes for the appointment of a buyer in the auction.

(3) In the case where the acquisition value of the taxable object as referred to in paragraph (2) is unknown or is lower than the NJOP used in imposing land and building tax in the year of acquisition, the basis for imposing BPHTB used is the NJOP used in imposing land and building tax in the year of acquisition.

(4) In determining the amount of BPHTB owed, the Regional Government determines the acquisition value of non-taxable tax objects as a reduction in the BPHTB tax base as referred to in paragraph (1).

(5) The amount of the acquisition value of non-taxable taxable objects is set at a minimum of IDR 80,000,000.00 (eighty million rupiah) for the acquisition of the first rights of Taxpayers in the Regional area where the BPHTB is owed.

(6) In the case of obtaining rights due to a will or inheritance grant as referred to in Article 44 paragraph (2) letter a number 4 and number 5 received by an individual who is still related by blood in a direct line of descent one degree upwards or one degree downwards with the grantor of the will or inheritance grant, including husband/wife, the value of the acquisition of the non-taxable tax object is set at a minimum of IDR 300,000,000.00 (three hundred million rupiah).

(7) For the acquisition of rights due to certain bequests or inheritances, the Regional Government may determine the acquisition value of non-taxable tax objects which is higher than the acquisition value of non-taxable tax objects as referred to in paragraph (6).

(8) The acquisition value of non-taxable tax objects as referred to in paragraph (5) and paragraph (6) is determined by Regional Regulation.

Paragraph 9 of Article 47 Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments states that:

(1) The BPHTB rate is set at a maximum of 5% (five percent).

(2) The BPHTB rates as referred to in paragraph (1) are determined by Regional Regulation.

Paragraph 9 Article 48 Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments states that:

(1) The principal amount of BPHTB owed is calculated by multiplying the BPHTB tax base as referred to in Article 46 paragraph (1) after deducting the acquisition value of non-taxable tax objects as referred to in Article 46 paragraph (5) or paragraph (6), by the BPHTB rate as referred to in Article 47 paragraph (2).

(2) BPHTB is collected in the regional area where the land and/or building is located.



Paragraph 9 of Article 49 Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments states that:

When the BPHTB debt is determined:

- a. on the date on which the sale and purchase agreement for the sale and purchase is made and signed;
- b. on the date of making and signing of the deed for exchange, grant, testamentary grant, inclusion in a company or other legal entity, separation of rights resulting in transfer, business merger, business amalgamation, business expansion and/or gift;
- c. on the date the heir or the person authorized by the heir registers the transfer of his rights at the land office for inheritance;
- d. on the date of the court decision which has permanent legal force for the judge's decision;
- e. on the date of issuance of the decision letter granting rights for granting new rights to land as a continuation of the release of rights;
- f. on the date of issuance of the decision letter granting rights for granting new rights outside of the release of rights; or
- g. on the date of appointment of the auction winner for the auction.

Chapter III of Batam City Regional Regulation Number 1 of 2011 concerning Land and Building Acquisition Fees, Article 4 states that:

- 1) The basis for imposing Land and Building Acquisition Tax is the Acquisition Value of the Taxable Object.
- 2) The Acquisition Value of Taxable Objects as referred to in paragraph (1), in the case of:
  - a. buy and sell is the transaction price;
  - b. exchange is market value;
  - c. grant is market value;
  - d. testamentary gifts are market value
  - e. inheritance is market value;
  - f. income in a corporation or other legal entity is the market value;
  - g. the separation of rights that results in the transfer is market value;
  - h. transfer of rights due to the implementation of a judge's decision which has permanent legal force is the market value;
  - i. the granting of new rights to land as a continuation of the release of rights is the market value;
  - j. granting new rights to land beyond the release of rights is market value;
  - k. business combination is market value;
  - l. business merger is market value;
  - m. business expansion is market value;

- n. the prize is the market value; and/or
- o. The designation of the buyer in an auction is the transaction price listed in the auction minutes.

(1) If the Acquisition Value of the Taxable Object as referred to in paragraph (2) letters a to n is unknown or is lower than the NJOP used in imposing Land and Building Tax in the year the acquisition transaction occurs, the tax base used is the NJOP for Land and Building Tax.

(2) In the event that the NJOP for Land and Building Tax as referred to in paragraph (3) has not been determined at the time the BPHTB is owed, the NJOP for Land and Building Tax can be based on the NJOP for Land and Building Tax Certificate.

(3) The Land and Building Tax NJOP Certificate as referred to in paragraph (4) is temporary.

(4) The Land and Building Tax NJOP Certificate as referred to in paragraph (4) can be obtained at the Tax Service Office or authorized agency for Batam City.

(5) The amount of the Non-Taxable Tax Object Acquisition Value is set at IDR 70,000,000.00 (seventy million rupiah) for each Taxpayer.

(6) In the case of obtaining rights due to inheritance or testamentary grant received by an individual who is still related by blood in a direct line of descent one degree upwards or one degree downwards with the grantor of the testamentary grant, including husband/wife, the Non-Taxable Tax Object Acquisition Value is Rp. 350,000,000.00 (three hundred and fifty million rupiah).

Chapter III of Batam City Regional Regulation Number 1 of 2011 Concerning Land and Building Acquisition Fees, Article 5 states that "The Land and Building Acquisition Fee rate is set at 5% (five percent)".

Chapter III of Batam City Regional Regulation Number 1 of 2011 concerning Land and Building Acquisition Fees, Article 6 states that:

(1) The principal amount of Land and Building Acquisition Tax owed is calculated by multiplying the rate as referred to in Article 5 by the tax base as referred to in Article 4 paragraph (1) after deducting the Acquisition Value of Non-Taxable Tax Objects as referred to in Article 4 paragraph (4) or paragraph (5).

(2) In the event that the Acquisition Value of the Taxable Object as referred to in Article 4 paragraph (2) letters a to n is unknown or is lower than the NJOP used in imposing Land and Building Tax in the year of acquisition, the principal amount of Land and Building Acquisition Tax owed is calculated by multiplying the rate as referred to in Article 5 by the NJOP of Land and Building Tax after deducting the Acquisition Value of the Non-Taxable Taxable Object as referred to in Article 4 paragraph (4) or paragraph (5).

Chapter III of Batam City Regional Regulation Number 1 of 2011 concerning

Land and Building Acquisition Fees, Article 7 states that:

The amount of Land and Building Acquisition Fee due to the granting of Management Rights is as follows:

- a. 0% (not per cent) of the Land and Building Acquisition Fee that should be owed, in the case where the recipient of the Management Rights is a Department, Non-Departmental Government Institution, Provincial Government, Regency/City Government, other government institutions, and the National Housing Development Public Company (Perum Perumnas);
- b. 50% (fifty percent) of the Land and Building Acquisition Fee that should be owed in the case of recipients of Management Rights other than those referred to in letter a.

Chapter III of Batam City Regional Regulation Number 1 of 2011 concerning Land and Building Acquisition Fees, Article 8 states that:

The Land and Building Acquisition Fee payable for the acquisition of rights due to inheritance and testamentary gifts is 50% (fifty percent) of the Land and Building Acquisition Fee that should be payable.

The calculation provisions for BPHTB tax are the Transaction Price minus Rp. 70,000,000, the result is then multiplied by 5% (according to Chapter III of Batam City Regional Regulation Number 1 of 2011 Concerning Land and Building Acquisition Fees (Article 5), then the result will be used as the amount of BPHTB tax. The figure is Rp. 70,000,000 (seventy million rupiah (according to Chapter III Batam City Regional Regulation Number 1 of 2011 Concerning Land and Building Acquisition Fees Article 4 number (7))) this value is the acquisition value of non-taxable tax objects. This 4% figure is the BPHTB rate stipulated in Chapter III of Batam City Regional Regulation Number 1 of 2011 Concerning Land and Building Acquisition Fees. The following is the formula related to calculating land prices based on the BPHTB value based on Chapter III of Batam City Regional Regulation Number 1 of 2011 Concerning Land and Building Acquisition Fees Jo. Paragraph 9 of the Republic of Indonesia Law Number 1 of 2022 Concerning Financial Relations Between the Central Government and Regional Governments:<sup>9</sup>

$$\text{(Land Sale and Purchase Transaction Value - Acquisition Value of Non-Taxable Tax Objects) X Land and Building Acquisition Fee Rate} = \text{Land Price Based on BPHTB Tax}$$

<sup>9</sup>Location, cit.

### Calculation of Land Sale and Purchase Price Based on Notary/PPAT Sale and Purchase Deed

Nowadays, legal regulations regarding land, including the transfer of land rights, have been regulated by Law Number 5 of 1960 concerning Basic Agrarian Principles (hereinafter abbreviated as UUPA) as stated in Article 5 of UUPA, namely:

The agrarian law applicable to the earth, water and airspace is customary law, as long as it does not conflict with national and state interests, which are based on national unity, with Indonesian socialism and with the regulations contained in this Law and with other laws and regulations, all of which take into account the elements based on religious law.

It can be said that UUPA is based on customary law provisions, so that the transfer of land rights in terms of sale and purchase adopts the principle of cash and clear. In practice, the sale and purchase of land is not always paid for in cash or in other words paid in installments, therefore as an effort to protect the law, each party is made a Deed of Sale and Purchase Agreement made before a notary (hereinafter abbreviated as a notarial PPJB deed). Article 15 paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (hereinafter abbreviated as UUJN) a notary is authorized to make authentic deeds regarding all acts, agreements, and provisions required by laws and/or desired by the interested party to be asked in an authentic deed, guarantee the making of the deed, store the deed, provide grosse, copies and extracts of all of that as long as the making of the deeds is not also assigned or excluded to other officials or other people determined by the Law. In the case of a sale and purchase of land that has been paid in full, it must be stated in a deed of sale and purchase made by a Land Deed Making Official (hereinafter abbreviated as PPAT). Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration (hereinafter abbreviated as PP Land Registration) states that the transfer of land rights and ownership rights to apartment units through sale and purchase, exchange, gift, income in a company and legal acts of transfer of rights through auction can only be registered if proven by a deed made by an authorized PPAT according to the provisions of applicable laws and regulations.<sup>10</sup>

PPAT is a public official who is authorized to make certain land deeds. Agreements concerning the transfer of land rights must be made before the PPAT. The main duties of the PPAT are regulated in Article 2 of Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning the Regulations on the Position of Land Deed Making Officials (hereinafter abbreviated as PJ PPAT), namely

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<sup>10</sup>Interview with Jumala as a Notary/PPAT in Batam City, on May 12, 2023.

carrying out part of the land registration activities by making deeds as evidence of certain legal acts concerning land rights or ownership rights to apartment units which will be used as the basis for registering changes to land registration data resulting from the legal act.<sup>11</sup>

The deed of sale and purchase made by the PPAT must be followed by registration at the local District/City Land Office no later than 7 days after the signing of the deed or 7 days after the date of the deed. The deed of sale and purchase serves as stronger evidence that there has been a transfer of land rights. The deed of sale and purchase is also used as one of the requirements for registering the transfer of land rights at the Land Office along with supporting documents. Article 103 paragraph (2) of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 states that:

In the case of transferring rights to a land plot that already has a certificate or Ownership Rights for a Strata Title Unit, the documents as referred to in paragraph (1) consist of:

- 1) Letter of application for registration of transfer of rights signed by the recipient of the rights or his/her proxy;
- 2) Written power of attorney from the recipient of the rights if the person submitting the application for registration of transfer of rights is not the recipient of the rights;
- 3) A deed regarding the legal act of transferring the relevant rights made by a PPAT who at the time the deed was made was still in office and whose work area includes the location of the land in question;
- 4) Proof of identity of the party transferring the rights;
- 5) Proof of identity of the recipient of the rights;
- 6) Certificate of land rights or Ownership Rights for the transferred Apartment Unit;
- 7) Permission to transfer rights as referred to in Article 98 paragraph (2);
- 8) Proof of payment of Land and Building Acquisition Fee (hereinafter abbreviated as BPHTB) as referred to in Law Number 21 of 1997, in the event that the fee is owed;
- 9) Proof of payment of Income Tax as referred to in Government Regulation Number 48 of 1994 and Government Regulation Number 27 of 1996, in the event that the tax is owed.

Based on Article 19 of Law No. 5 of 1960 concerning Basic Agrarian Provisions in conjunction with Article 37 paragraph (1) of PP No. 24 of 1997 concerning Land Registration, which in essence stipulates that registration of the transfer

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<sup>11</sup>Interview with Jumala as a Notary/PPAT in Batam City, on May 12, 2023.

of land rights by way of sale and purchase can only be carried out if proven by the existence of a Deed of Sale and Purchase (AJB) made by an authorized official according to the provisions of applicable laws and regulations. Calculation of Land Sale and Purchase Price Based on Prices Prevailing in the Community.<sup>12</sup>

The provision stipulates that the deed of transfer of land ownership must be made by a Land Deed Making Officer (PPAT), in which case the PPAT is usually also held by a Notary. Where in making the deed, both regarding the form, content, and method of making it, as stipulated in PP No. 24 of 2016 concerning PPAT. However, in practice, the making of AJB is sometimes not in accordance with the provisions of the law that have been set, so that it poses a risk to the legal certainty of land ownership rights. AJB is an authentic deed that has perfect evidentiary value to the parties as stated in Article 1870 of the Civil Code. Thus, if a problem occurs with the deed, the consequence is that it is canceled or declared null and void by law by the court. The legal obligations of the Notary/PPAT are reflected in the purpose of making the AJB, namely for legal certainty and benefit for each party, where the Seller has the right to receive an amount of money according to the price of the land, while the Buyer has the right to receive ownership rights to the land he purchased from the Seller. However, in the case of the making of a deed containing legal defects, due to errors/negligence of the maker, it will result in difficulties for the parties to exercise their rights. Moreover, if the AJB made for the transfer of ownership of the land, then by the court through its decision is declared null and void. As a result, the AJB cannot be used by the parties and the AJB as an authentic deed loses its function as an authentic deed. The price of land in the sale and purchase of land listed in the AJB is the existing price agreed upon by the parties in the sale and purchase agreement which is not based on BPHTB.<sup>13</sup>

### **3.2. Obstacles Causing the Implementation of Real Land Price Determination Not to Be in Accordance with the Price Based on the Current Land Sale and Purchase Agreement Deed in Batam**

Based on the explanation above, there is a difference between determining the price of land according to the BPHTB governance and the price of land according to the Deed of Sale and Purchase made by a Notary/PPAT in Batam City. The determination of BPHTB tax in Batam City in its legal practice does not use the transaction price as determined in existing laws and regulations, where in this case when the buyer and seller agree to determine the sale and purchase price, then the Land Deed Making Officer (PPAT) writes the price to be submitted for payment of BPHTB tax in Batam City, then the employees of

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<sup>12</sup>Interview with Jumala as a Notary/PPAT in Batam City, on May 12, 2023.

<sup>13</sup>Interview with Jumala as a Notary/PPAT in Batam City, on May 12, 2023.

the Batam City Regional Finance Agency tend to replace or exchange the sale and purchase price based on the market price set in Batam City, not based on the existing BPHTB. The Batam City Regional Finance Agency tends to use the market value in the sale and purchase transaction rather than the sale and purchase transaction price itself, where in this case the provisions are regulated in Article 46 paragraph (2) letter a of Law Number 1 of 2022 concerning Financial Relations Between the Central Government and Regional Governments stating that the Basis for Imposing BPHTB in the case of Sale and Purchase is the Transaction Price. This is in line with Article 4 paragraph (2) letter a Chapter III of Batam City Regional Regulation Number 1 of 2011 concerning Land and Building Acquisition Fees. Such circumstances cause land prices to not match the land price according to BPHTB, according to AJB, and according to data verification carried out by the Batam City Regional Revenue Agency which underlies the land price value based on land sale and purchase transactions which also do not match the value of the AJB. PPAT as a party providing land deed making services is very much needed by the community. This is in accordance with the legal provisions contained in Batam City Regional Regulation Number 1 of 2011 concerning Land and Building Acquisition Fees. In this provision it is stated that the Land Deed Making Officer/Notary can only sign the Sale and Purchase Deed after the Taxpayer submits proof of BPHTB and PPh Tax Payment. The role of PPAT in relation to BPHTB is to check the truth of whether tax collection can be carried out on the tax object. The time of tax debt in the case of land and building sale and purchase is when the deed of sale and purchase (AJB) is signed, therefore before the AJB is signed, the PPAT is obliged to check the certificate, to ensure that the data contained in the certificate is in accordance with the data contained in the Land Book. When faced with parties who want to carry out a land and/or building sale and purchase transaction, the PPAT will ask how much the price will be agreed upon by the parties, after the parties have determined the sale and purchase price, the PPAT will prepare an application file to the Batam City BAPENDA to determine the BPHTB price, if the Batam City BAPENDA does not accept the agreed sale and purchase price, then the PPAT has no right to deny the statement of the Batam City BAPENDA. In the case of buying and selling land and/or buildings, the party that has full authority to determine the sale and purchase price is the Batam City BAPENDA itself. This is indicated by the many files whose sale and purchase prices are not approved by the Batam City BAPENDA, even though this sale and purchase price has been agreed upon by the parties by attaching proof of receipt and proof of a statement of truth of the sale and purchase price of the land and/or building. The Batam City BAPENDA seems to have full authority in terms of determining the sale and purchase price of this land and/or building on the BPHTB tax. This makes the PPAT, like it or not, have to follow the procedures set by the Batam City

BAPENDA, for the sake of the smooth running of the BPHTB application files, so that the name change on the certificate is carried out. The following is a table of prices agreed upon by the parties, which were then rejected and changed by the Batam City BAPENDA during the BPHTB verification.<sup>14</sup>As a result, there is a difference in land prices in the AJB, provisions regarding the determination of land prices based on the BPHTB value with land price verification carried out by BAPENDA Batam City. The following is data related to differences in land in land sales that occurred in Batam City:<sup>15</sup>

**Table: Differences in Land Prices in Land Purchase and Sale in Batam City**

PPAT Office in Batam City	Price Agreed by the Parties	Prices Set by BAPENDA Batam City	Information
<b>Notary/PPAT Rian Suiti</b>	Rp. 250,000,000,-	Rp. 310,000,000,-	Land area 132M2 located on Jalan Pasir Putih Block D, Batam City
<b>Notary / PPAT Hanugrah</b>	Rp. 560,000,000,-	Rp. 780,000,000,-	Land area 200M2 located on Jalan Imam Bonjol, Lubuk Baja, Batam City
<b>Notary/PPAT Jumala</b>	Rp. 610,000,000,-	Rp. 650,000,000,-	Land area 267m2 located on Jalan Raja Ali Haji, Sei Jodoh Batu Ampar, Batam City

#### 4. Conclusion

The implementation of land price determination based on the land sale and purchase agreement deed in Batam currently experiences a difference between the price agreed upon by the parties carrying out the land sale and purchase as then stated in the AJB and the price set by BAPENDA in Batam City.

#### 5. References

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<sup>14</sup>Interview with Jumala as a Notary/PPAT in Batam City, on May 12, 2023.

<sup>15</sup>Interview with three Notaries/PPAT from Batam City in different areas on June 11, 2023.



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