

Tax Restitution for Acquisition of Land and Building Rights (Bphtb) for Default by the Buyer Resulting in the Cancellation of the Sale and Purchase Deed

Kamal Al Farra

Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA)
Semarang, Indonesia, E-mail: kmlalfarra92@gmail.com

Abstract. *This study aims to analyze the implementation of Land and Building Acquisition Tax (BPHTB) restitution in the event of a default by the buyer resulting in the cancellation of the Sale and Purchase Deed (AJB). This study uses a sociological juridical method, namely by examining the application of applicable legal provisions in practice through interviews, observations, and studies of real cases in the field. Data were obtained from interviews with relevant agency officials and the community who experienced the BPHTB restitution process, then analyzed qualitatively to obtain an empirical picture of the implementation of the policy. The results of the study indicate that normatively, BPHTB restitution applications can be made based on the provisions of Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments (HKPD Law) and Regulation of the Minister of Finance Number 51/PMK.07/2016 concerning Settlement of Refunds for Excess Payments of Land and Building Acquisition Tax and Settlement of Applications for Rural and Urban Land and Building Tax Services. In the context of a land sale or purchase that is cancelled due to default, land rights never transfer, so the BPHTB paid should be returned to the taxpayer. However, in practice, the restitution process often encounters administrative and legal obstacles, particularly regarding the cancellation of the AJB, which requires a court decision or a notarial deed of cancellation.*

Keywords: Purchase; Restitution; Sale; Tax.

1. Introduction

The transfer of land rights can be done in various ways such as buying and selling, exchanging, granting or due to inheritance. Based on Article 26 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Principles (hereinafter referred to as UUPA) which states that "buying and selling, exchanging, granting, giving by will and other acts intended to transfer ownership rights and their supervision are

regulated by Government Regulation. The making of a Deed of Sale and Purchase (hereinafter referred to as AJB) must be attended by the parties carrying out the legal act (seller and buyer) or a person authorized by them with a written power of attorney in accordance with applicable laws and regulations. Proof that a land right has been transferred is the making of a deed by a Land Deed Making Officer called PPAT.

The provisions contained in this article aim to provide legal certainty for each party who has agreed to enter into or execute an agreement. It is crucial for the parties to have legal certainty, given the frequent occurrence of defaults midway through an agreement that should be fulfilled. This ensures that the parties feel protected and that no one suffers any future losses. Once an agreement is made, the parties are bound to each other. An agreement is a legal act in which a particular person or group binds themselves to another person or group.

Default is behavior that does not fulfill, breaks a promise or is negligent in carrying out obligations carried out by one of the parties in an agreement.¹ Default is also divided into several criteria of actions, including:²

- 1) Achievements are not met at all.
- 2) Performing an imperfect performance.
- 3) Fulfilling the achievement late.
- 4) Violating things that cannot be done in the agreement,

The determination of a party's default is in the agreement, which aims to refrain from performing an act. Regarding an agreement to deliver an item or to perform an act, if the agreement does not specify a time limit but the debtor will be considered negligent upon the expiration of the specified time, the performance of the performance must first be demanded. The debtor must be warned that the creditor requires the performance of the agreement. If the performance can be done immediately, for example in the sale of a certain item already in the hands of the seller, then the performance can certainly also be demanded immediately.

If the performance cannot be achieved immediately, the debtor must be given a reasonable amount of time. This includes the sale of goods not yet in the seller's possession, the repayment of a loan, and so on.³

The imposition of Land and Building Acquisition Tax (BPHTB) is imposed when the buyer, applicant or recipient has officially received the rights to the land in question. In the essence of making a sale and purchase deed, the transfer of rights (receipt of land rights) only officially occurs when the sale and purchase deed for

¹Ahmadi Miru, *Contract Law and Contract Drafting* (Jakarta: Rajawali Pers, 2007), p. 74.

²ibid p.74.

³MA Moegni Djojodirjo, *Unlawful Acts*, (Jakarta: Pradnya Paramita, 2006), p. 11.

the land and building in question has been signed before an authorized PPAT. Article 3 paragraph (4) of PP Number 55 of 2016 stipulates that BPHTB is a type of tax that is paid independently based on calculations by the Taxpayer (self-assessment). The PPAT in the transfer of land rights has the authority to make a sale and purchase deed when an agreement is made regarding a plot of land ownership between the Seller and the Buyer. The PPAT requires both the seller and the buyer to pay Income Tax (hereinafter referred to as PPh) for the seller and Land and Building Acquisition Tax (hereinafter referred to as BPHTB) for the buyer. After receiving confirmation of the tax payment from the local tax office, the PPAT will then carry out the ratification and, within a maximum of 7 (seven) working days, the PPAT must register the Deed of Sale and Purchase with the land office. If any of the requirements for the Deed of Sale and Purchase are not met, the deed may be declared null and void or revoked.

Tax restitution is a request for the return of excess tax payments made by taxpayers to the state. The right to restitution is one of the basic rights of taxpayers that must be protected. Restitution can arise if the taxpayer pays more tax than his tax obligation, which is caused by either tax installments paid by the taxpayer himself or taxes collected or deducted by other parties.⁴

Tax overpayments can occur in all types of taxes, one of which occurs in BPHTB. Based on the Regulation of the Minister of Finance of the Republic of Indonesia Number 51/PMK.07/2016 Concerning Settlement of Refunds for Excess Payments of Land and Building Acquisition Tax and Settlement of Applications for Rural and Urban Land and Building Tax Services, it explains that BPHTB overpayments are caused by the amount of BPHTB that has been paid being greater than the BPHTB owed or payments for BPHTB that should not be owed.

In its development, the background of the problem arose when a sale and purchase transaction that was to be carried out before a Land Deed Official (PPAT) was canceled and the buyer intended to request a refund (Restitution) of the BPHTB that had been paid. The occurrence of an overpayment of BPHTB that should not have been owed is usually caused by the BPHTB having been paid by the taxpayer before the deed was signed, but then the acquisition of the land and/or building rights was canceled.

Land and Building Acquisition Tax is a tax on the acquisition of land and/or building rights. Law Number 1 of 2022 states that the acquisition of land and/or building rights is a legal act or event that results in the acquisition of land and/or building rights by an individual or entity.

The definition of Land and/or Building Acquisition Tax (BPHTB) is a tax imposed on the acquisition of land and/or building rights. The legal basis for BPHTB is Law Number 21 of 1997 in conjunction with Law Number 20 of 2000 concerning

⁴Febriyanto, Inside Tax Magazine. (Jakarta: Tiga Serangkai. 2009), p. 8.

Amendments to Law Number 21 of 1997 concerning Land and Building Acquisition Tax. Then this tax is included in Law Number 28 of 2009 concerning PDRD Articles 85 to 93, then the most recent is Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments (HKPD Law) articles 44 to 49.

Land and/or building rights are rights to land, including Management Rights, including buildings thereon, as referred to in Law No. 5 of 1960 concerning Basic Agrarian Regulations (UUPA), Law No. 16 of 1985 concerning Apartments, and other applicable statutory provisions. BPHTB is only imposed on the acquisition of rights regulated in the UUPA, the Apartment Law, and Management Rights. The acquisition of other land rights that develop in indigenous communities but are not recognized by the UUPA may not be subject to BPHTB.

Based on Law No. 1 of 2022, Article 46 Paragraph (1) states that the basis for imposing BPHTB is the Taxable Object Acquisition Value (NPOP). The NPOP which is the basis for imposing BPHTB based on Article 46 Paragraph (2) is as follows:

- a. transaction price for buying and selling;
- b. market value for exchange, gifts, testamentary gifts, 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.

The BPHTB rate is set at a maximum of 5% (five percent) and for each region it is determined by its regional regulations (Article 47 of Law No. 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments). Each region is given the authority to determine the rate for regional taxes because the types of taxes that are considered to have the potential to support regional revenue differ from one region to another.

Based on the background above, the researcher is interested in discussing a study entitled Restitution of Land and Building Acquisition Tax (BPHTB) for Default by the Buyer which results in the Cancellation of the Sale and Purchase Deed.

2. Research Methods

The approach used in this research is a sociological-juridical method. This sociological-juridical approach is used to analyze and provide answers to legal issues in accordance with the intended target.⁵ Furthermore, according to Amiruddin, it is explained that "sociological legal research is legal research that uses secondary data as its initial data, which is then continued with primary data or field data, examining the effectiveness of a law and research that wants to find a relationship (correlation) between various symptoms or variables as a data collection tool consisting of document studies, observations (observations)⁶ The data analysis method that will be used is a qualitative descriptive analysis method, namely after the data is collected, it is then presented in the form of a logical and systematic description, then analyzed to obtain clarity in solving the problem, then conclusions are drawn deductively, namely from general things to specific things.⁷

3. Results and Discussion

3.1. Legal consequences for the sale and purchase deed due to default by the buyer.

Authentic deeds as written evidence also have certain legal consequences in the evidentiary process before the court. According to Yahya Harahap, authentic deeds have perfect evidentiary force (*volledig bewijs*), meaning that the information written therein is presumed to be true until other evidence weakens or invalidates it.⁸

On the other hand, legal consequences also arise if an authentic deed is declared legally flawed. Legal flaws in an authentic deed can occur for several reasons, such as failure to fulfill the valid requirements of the agreement, falsification of data, fraud, abuse of circumstances, or the incompetence of the official who issued the deed. According to Sjaifurrachman, there are several consequences that arise if an authentic deed is legally flawed, namely:⁹

- a. the deed was demoted to a deed under hand,
- b. the deed can be cancelled by a court decision, or
- c. the deed is null and void if it conflicts with the provisions of the law.

The creation of a deed, which contains an agreement between the parties, must

⁵Burhan Ashshofa, 2007, *Research Methods*. Media Press, Semarang, p. 46

⁶Amiruddin and Asikin Zainal, H, 2012. *Introduction to Legal Research Methods*, PT. Raja Grafindo Persada Jakarta, p. 37.

⁷Tohirin, 2012, *Qualitative Research Methods in Education and Counseling*, Raja Grafindo Persada, Jakarta, p. 3

⁸M. Yahya Harahap, *Civil Procedure Law*, Sinar Grafika, Jakarta, 2014, p. 591.

⁹Sjaifurrachman, *Aspects of Notary Responsibility in Making Deeds*, Mandar Maju, Bandung, 2011, p. 122

be known the conditions for the validity of an agreement according to Article 1320 of the Civil Code, there are four conditions for a valid agreement consisting of subjective conditions and objective conditions. Subjective conditions are the agreement of those who bind themselves and are competent to make an agreement while objective conditions are regarding a certain matter and a lawful cause.

If objective conditions are not met, the agreement is null and void, meaning that from the outset, the agreement is deemed never to have been created and that no obligation ever existed. Therefore, there is no basis for suing each other before a judge (null and void). On the other hand, if subjective conditions are not met, the agreement can be canceled by requesting it by one of the parties bound by the agreement. According to Subekti, the party who can request cancellation is the incompetent party or the party who gave the agreement not freely. Such an agreement is called voidable / *vernietigbaar*.¹⁰

If a certificate has been issued from a deed of sale, then the certificate will be problematic. The emergence of problematic certificates indicates structural and/or substantive weaknesses caused by various factors, and can be identified as originating from: first, human factors; second, land registration system factors; and third, strategic environmental factors.¹¹

The position of an authentic deed has perfect evidentiary value in civil law. So, in making a deed, a PPAT must fulfill the requirements stipulated in the law. In the event that one of the conditions is not fulfilled, so that there is a defect in the deed that is made, it can result in the deed losing its authenticity, causing the deed to become a private deed.

To answer this question, it can actually be revoked or declared invalid, but not unilaterally. There are several paths:

a. Null and void

1) If the conditions for a valid agreement (Article 1320 of the Civil Code) are not met, for example:

- a) The parties are not legally competent.
- b) The land object does not belong to the seller.
- c) Agreements made due to coercion, fraud, or error.

2) In this condition the deed can be considered as never having existed.

¹⁰Subekti, *Contract Law*, PT Intermasa, Jakarta, 2018, p. 20

¹¹Azmi Fendi and Yussy A. Mannas, *Legal Certainty of Ownership Certificate Holders Reviewed from the Existence of the Rechtsverwerking Institution (Study of Several Ownership Disputes in Padang City)*, Vol. 6 No. 2, July-December 2020, p. 160.

b. Can Be Cancelled Through Court Decision

- 1) The party who feels aggrieved can file a lawsuit in court to request the cancellation of the deed.
- 2) The court will assess whether the deed is legally flawed or not.

3.2. The terms and conditions for the return of taxes already paid (restitution) if the deed is cancelled due to default.

If a breach of contract results in the failure to fulfill the valid conditions of the agreement as stipulated in Article 1320 of the Civil Code, the deed of sale and purchase can be declared null and void. In the context of taxation, the nullity of this deed means that no transfer of rights occurred, so any taxes already paid are no longer payable.¹²

The obligation to pay BPHTB is regulated in Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments (HKPD Law), specifically Articles 44–49. This tax is payable upon acquisition of land and/or building rights, which is marked by the signing of a deed of sale before a Land Deed Official (PPAT).

In the context of Indonesian tax law, restitution is regulated by various regulations, ranging from the General Provisions and Tax Procedures Law (UU KUP) to technical regulations such as the Minister of Finance Regulation (PMK). These regulations are intended to ensure legal certainty for taxpayers in the event of overpayments or undue tax payments.

The mechanism for returning excess tax payments or restitution is regulated in Article 17B of the General Provisions and Tax Procedures Law (UU KUP) and the Minister of Finance Regulation (PMK) Number 51/PMK.07/2016 concerning the Settlement of Refunds for Excess Payments of Land and Building Acquisition Taxes and the Settlement of Applications for Rural and Urban Land and Building Tax Services. Similar regulations are also adopted in regional policies through Regional Regulations on BPHTB and Regional Head Regulations. Restitution is intended to restore taxpayers' rights if there has been a tax payment that should not have been owed or paid in excess of the provisions.

To be able to apply for a refund for taxes paid due to a cancelled deed, the taxpayer must fulfill formal and material requirements.

Formal requirements include submitting a written application to the Regional Head (for BPHTB) or the Directorate General of Taxes (for PPh), accompanied by supporting documents such as:¹³

¹²Mariam Darus, *Civil Code Book III on Contracts*, Bandung: Alumni, 2017, p. 102

¹³Directorate General of Taxes, *Tax Restitution Implementation Guidelines*, Jakarta, 2020, p. 33

- 1) A copy of the deed of sale and purchase which is declared void or cancelled by a court decision;
- 2) Proof of tax payment (SSPD BPHTB or SSP PPh);
- 3) A certificate from the PPAT or notary stating that the transfer of rights never occurred.

Meanwhile, material requirements include proof that the sale and purchase transaction never had the legal effect of transferring rights and that the buyer or seller did not obtain economic benefits from the transaction.

The tax restitution procedure begins with submitting a written application to the relevant tax authority. For BPHTB (Regional Revenue Agency) applications are submitted to the local district/city Regional Revenue Agency (Bapenda), while for final income tax (PPh), they are submitted to the Tax Service Office (KPP) within the taxpayer's domicile.

The tax official then examines the validity of the application. If it is proven that the deed of sale is void due to default and the tax should not have been owed, a Tax Overpayment Refund Decision Letter (SKPKPP) will be issued.¹⁴

Refunds must be made no later than 12 (twelve) months after receipt of a complete application, as stipulated in Article 17C of the KUP Law. However, because BPHTB is a regional tax, the implementation of restitution is highly dependent on the policies of each regional government. Some regions have regulated this mechanism in technical regulations, while in others, taxpayers must undergo a lengthy administrative process, even through legal channels.

Thus, a court ruling declaring the sale and purchase deed void is a crucial requirement for a restitution request to be accepted. Without such a ruling, tax officials lack a strong legal basis for refunding.¹⁵

4. Conclusion

The consequences for the parties and the sale and purchase deed, the cancellation of the Sale and Purchase Deed (AJB) due to default causes the land and building sale and purchase agreement to be deemed to have never existed (void ab initio) as evidenced by a court decision. Thus, there is no transfer of land and building rights from the seller to the buyer. All rights and obligations arising from the agreement are cancelled, and the parties must be returned to their original state, the cancelled AJB makes the deed lose its evidentiary force and executorial power. The deed no longer has legal value as a basis for the transfer of rights. The requirements for return (tax restitution) are formal requirements, namely

¹⁴Directorate General of Taxes, Tax Restitution Guidelines, 2021, p. 56.

¹⁵Siahaan, Marihot P., Land and Building Acquisition Fees: Theory and Practice, Jakarta: RajaGrafindo Persada, 2020, p. 154.

administrative requirements that must be met by the taxpayer so that the restitution application can be accepted and processed by the local government. These requirements include: Submission of an official restitution application letter addressed to the Head of the Regional Revenue Agency (Bapenda) or an authorized official; Attaching proof of payment of BPHTB (Regional Tax Payment Letter/SSPD); Attaching a photocopy of the cancelled AJB, as well as a cancellation letter from the PPAT or a court decision stating that the agreement is cancelled due to default; Include a photocopy of the taxpayer's identity (KTP and NPWP) and other relevant documents; The application must be submitted within a certain period from the date the deed is cancelled.

5. References

Journals:

Azmi Fendi dan Yussy A. Mannas, 2020 Kepastian Hukum Pemegang Sertifikat Hak Milik Ditinjau dari Keberadaan Lembaga Rechtsverwerking (Studi Beberapa Sengketa Hak Milik di Kota Padang), Vol. 6 No. 2.

Books:

Ahmadi Miru, 2007 Hukum Kontrak dan Perancangan Kontrak Jakarta: Rajawali Pers.

Amiruddin dan Asikin Zainal, H, 2012. Pengantar Metode Penelitian Hukum, PT. Raja Grafindo Persada Jakarta.

Burhan Ashshofa , 2007, Metode Penelitian. Media Press, Semarang.

Direktorat Jenderal Pajak, 2021 Pedoman Restitusi Pajak.

Direktorat Jenderal Pajak, 2020 Petunjuk Pelaksanaan Restitusi Pajak, Jakarta

Febriyanto, Inside Tax Magazine. 2009 Jakarta: Tiga serangkai.

M. Yahya Harahap, 2014, Hukum Acara Perdata, Sinar Grafika, Jakarta,

M.A. Moegni Djojodirjo, 2006, Perbuatan Melawan Hukum, Jakarta: Pradnya Paramita,

Mariam Darus, 2017, KUH Perdata Buku III tentang Perikatan, Bandung: Alumni

Siahaan, Marihot P., 2020, Bea Perolehan Hak atas Tanah dan Bangunan: Teori dan Praktik, Jakarta: RajaGrafindo Persada

Sjaifurrachman, 2011, Aspek Pertanggungjawaban Notaris dalam Pembuatan Akta, Mandar Maju, Bandung.

Subekti, Hukum Perjanjian, 2018, PT Intermasa, Jakarta.

Tohirin, 2012, Metode penelitian Kualitatif dalam Pendidikan dan imbingan Konseling, Jakarta.