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"Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe"



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POTENTIAL CORRUPTION IN THE VALIDATION POLICIES ON ACQUISITION TAX OF LAND AND OR BUILDING

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A. Background

The Unitary Republic of Indonesia is a constitutional state based on Pancasila and the Constitution of the Republic of Indonesia in 1945 which aims to realize the livelihood of a nation that is safe, orderly, prosperous, and equitable. In the development of law in Indonesia underwent major changes, fast, and complex. The shift of power centralized to decentralized cause behavioral changes bureaucracy policies both at the central and regional changes from the old paradigm to the new paradigm, sometimes causing the rule of law drowned because of power, which can lead to policies that do not favor of the people. Each power always contains the potential for misuse or arbitrarily implemented, or implemented by exceeding authority. This can happen because of the power contains rights and authority, and the right and authority that makes a higher position.¹

One of the power shift caused by a change in the law is the enactment of Law No. 32 of 2004, as amended by Act No. 12 of 2008, the latest by Law Number 23 Year 2014 on Regional Government and Law No. 33 Year 2004 on Financial Balance between the Central Government and Local Government. Under the provisions of the law, the regional administration is done by giving broad authority, accompanied by the provision of the rights and obligations held regional autonomy in the unity of the state government administration system.

Granting greater authority to local governance, public service, and development course consequence an increase in operating costs and required a larger fund. To finance these activities one source of income is derived from the tax sector. The dependence of a very large area of the balancing funds from the center in many ways reflects less local accountability, for in order to increase accountability of local autonomy, local governments were given greater authority in taxation.

In order to adjust the regional autonomy policy, setting local tax which was originally stipulated in Law No. 18 of 1997, as amended by Act No. 34 of 2000 on Regional Taxes and Levies, revoked and declared invalid, later replaced by Law of Number 28 Year 2009 on Regional Taxes and Levies. In this Act by the expansion of

¹ Rashid Noor, 2009, *Corruption and eradication in Indonesia*, Varia Justice, Jakarta, IKAHI, p. 46

local government taxation authority to expand the local tax base and tariffs. For broadening the tax base, there are two types of additional taxes to the district / city, the land and building tax (PBB) and fees for acquisition of land, buildings (BPHTB) was previously a central tax, while the determination of the tax rate in order to avoid tariff high taxes that can add to the burden of the public, local governments are given the authority to set tax rates within the maximum limits set by local regulations.

In practice that occurs in almost all parts of Indonesia, even though voting system and payment BPHTB is self-assessment, but in reality the taxpayer who has paid and paid tax BPHTB must be approved in the form of validation of agencies income financial management and regional assets (DPPKAD). Problems will arise when the statements of the parties (eg seller and the buyer in the sale and purchase of land) concerning the amount of the price (transaction value) is rejected / not recognized truth by DPPKAD.

B. Problem Formulation

1. How is the procedure of payment fees for acquisition of land, buildings, according to Law Number 28 Year 2009 on Regional Taxes and Levies?
2. How validation liability for payment of fees for acquisition of land and or building in practice?
3. Why does the validation policy on the payment of fees for acquisition of land, buildings can pose a potential corruption?

C. Objectives

1. To know the procedure for payment of fees for acquisition of land, buildings, according to Law Number 28 Year 2009 on Regional Taxes and Levies.
2. To know the acquisition of validation procedures for the payment of fees for acquisition of land and or building in practice.
3. To know that the validation policy on the payment of fees for acquisition of land, buildings can pose a potential corruption.

D. Discussion

1. The procedure for payment of fees for acquisition of land, buildings, according to Law Number 28 Year 2009 on Regional Taxes and Levies.

Under the provisions of the Law on Regional Tax and Retribution, the procedure of collection of local taxes (including fees for acquisition of land, buildings / BPHTB) is set as follows:

- a. Article 96: Every taxpayer must pay outstanding tax, the way to pay taxes using a tax return area (SPTPD) to report the calculation and payment, in terms of paying BPHTB taxes is deposit letter of local tax fees for acquisition of land or buildings (SSPD - BPHTB), which is a proof of payment / tax payment to the local treasury through a designated payment. As the tax system adopted in BPHTB is tax self assessment system, the tax payable must be paid immediately without waiting for the tax assessments (SKPD);
- b. Article 97 paragraph (1) letter a: If the results of the examination or other information, the tax payable is paid less, so within five (5) years after the time the tax, the regional head may issue an assessment of local tax underpayment (SKPDKB) , namely to determine the amount of the principal amount of tax, the amount of underpayment of tax principal, the amount of administrative sanctions, and the amount of tax to be paid;
- c. Article 97 paragraph (1) letter b: If found new data and / or data that previously has not been revealed which increased the amount of tax payable, then within five (5) years after the time the tax, the regional head can issue tax assessments area for less pay extra (SKPDKBT), which determines the amount of tax an additional predetermined;
- d. Article 100 paragraph (1): If tax in the current year is underpaid, or of the results of SPTPD research there is a shortage of payment (due to mistyped or miscount), head of the region could issue a tax bill regions (STPD), namely a letter to the tax bill , administrative penalties, interest, and penalties;
- e. Section 101 subsection (2): Payment and billing on SKPDKB, SKPDKBT, STPD which causes an increased amount of tax basis for tax collection and must be repaid within a maximum period of 1 (one) month;
- f. Article 102 paragraph (1): If within this period no / less paid, can be charged again forced letter. Tax Billing forced letter carried by the legislation, namely Law No. 19 of 1997 as amended by Act No. 19 of 2000 on tax Billing forced letter;
- g. Article 103 paragraph (1): Taxpayers can appeal only to the head of regional / appointed official on tax returns due (SPPT), tax assessments (SKPD), an

assessment of local tax underpayment (SKPDKB), tax assessments area for less pay extra (SKPDKBT);

h. Article 105 paragraph (1): The taxpayer can appeal only to the Tax Court (Act No. 14 of 2002) which is the first and last instance court. So that the only legal efforts for judicial review to the Supreme Court.

2. Procedure for the acquisition of validation for the payment of fees for acquisition of land and or building in practice.

As the tax system adopted in BPHTB is tax self assessment system, the tax payable must be paid immediately without waiting for the tax assessments (SKPD). Every taxpayer must pay outstanding tax, the way to pay taxes using a tax return area (SPTPD) to report the calculation and payment, in terms of paying BPHTB taxes deposit letter of local tax fees for acquisition of land, buildings (SSPD - BPHTB), which is a proof of payment / tax payment to the local treasury through a designated payment.

In practice that occurs in almost all parts of Indonesia, even though voting system and BPHTB payment is self-assessment, but in reality the taxpayer who has paid and paid tax BPHTB must be approved in the form of validation of agencies income financial management and regional assets (DPPKAD).

Problems will arise when the statements of the parties (eg seller and the buyer in the sale and purchase of land) concerning the amount of the price (transaction value) is rejected / not recognized truth by DPPKAD. On the other hand, the seller and the buyer adhering to the provisions of Law No. 28 of 2009 that the taxable value (NJOP) determined by the head of the region can be used as a benchmark by the public, because the transaction value (price) set by the government.

According to the formulation of article 1 paragraph 40 of Law No. 28 of 2009, which reads "NJOP is the average price obtained from the sale and purchase transactions that occur naturally, and when there are no sale and purchase transactions, NJOPdetermined through a price comparison with other objects similar, the cost of new or replacement NJOP ". So it is clear that NJOP is the average price obtained from a data collection and purchase transactions are occurring naturally and NJOP established for each tax object (each plot), therefore NJOP set by the head of the area contained in the notice of tax payable property tax (SPPT-PBB) is a state administrative decision, because it is concrete, individual and final.

On the other hand, the price of the transaction is an agreement between the seller and the buyer, the deal (the price) could be higher than NJOP, NJOP can be equal to, or even lower than NJOP. According to the formulation of article 87 of Law No. 28 of 2009 which reads as follows:

- "Basic imposition of fees for acquisition of land and buildings is the acquisition value of the tax object (NPOP);
- The value of the acquisition to tax (NPOP) in terms of buying and selling is the price of the transaction;
- If the acquisition value of the tax object (NPOP) is not known to or lower than the taxable value (NJOP) used in land and building tax (PBB) in the year of acquisition, bases used is NJOP-PBB ".

From these provisions, is very clear that if the transaction price, namely the agreement price between sellers and buyers alike with NJOP, or even lower than NJOP, the tax base is NJOP-PBB BPHTB.

According to article 90, article 91, and article 93 of Law No. 28 Year 2009 on Regional Taxes and Levies, as follows:

- a. BPHTB time tax for the purchase is made since the date of signing the deed of sale. Taxes owed must be paid at the time of the acquisition of rights.
- b. PPAT can only sign the deed of sale and purchase after the taxpayer submit proof of payment of taxes (here, there is no requirement to be validated by DPPKAD). PPAT who violates this provision subject to administrative sanctions such as fines of Rp. 7,500,000 for each violation.
- c. The head office of the land sector can only register transitional land rights after the taxpayer submit proof of payment of taxes (here, there is no requirement to be validated by DPPKAD). The head of the land office who violates this provision be penalized in accordance with the legislation.

From these provisions can be seen that a requirement to be able to carry out the sale and purchase of land and or building then the buyer should have to pay taxes in the form of fees for acquisition of land, buildings (BPHTB), which in practice should receive validation from service revenue financial management and regional assets (DPPKAD). This is where the potential for corruption in which the tax authorities (fiscus) would validate if certain conditions beyond the legal provisions in force, for example bribes (gratuities) provided by the prospective buyer.

3. The validation policy for the payment of fees for acquisition of land, buildings can pose a potential corruption

The problem of corruption in Indonesia is complex, has entered almost all aspects of life and society, including the legislative, executive, and judiciary, as well as often happens in the region in line with the era of regional autonomy that gives authority to local governments. The movement to eradicate corruption should include at least six (6) major aspects of the political, structural, cultural, procedural, the appreciation of the country, and moral.² In the Corruption law contains a provision that his greatest passion is restoring the rights of the socio-economic material inside, in addition to the criminal penalty provisions included heavier.³

Lord Acton declared "power tends to corrupt and absolute power corrupt absolutely". This can happen because of any power always contains the potential for misuse (*misbruik van recht*) or implemented haphazardly (*arbitraty, willekeur*) or carried by exceeding authority (*detournement de pavoir*). Given the power to contain the right and authority (*recht en bevoegheid*), the right and the authority to make the position of the apparatus of higher social status than the people who need.

As specified in Law No. 31 of 1999 amendments to Act No. 20 of 2001 on the Eradication of No Corruption, that corruption as a crime eradicated done extraordinary (extraordinary crime), so it can be reversed burden of proof, to the perpetrator who serves as the organizer of the state law enforcement process does not need permission from the president, confiscation of property of perpetrators of corruption does not need court permission. In the perspective of proving their losses to the state will be based on things that are relevant juridical legally appear at the hearing include audit results of investigation of the competent authorities.⁴ In Act No. 31 of 1999 in conjunction with Law No. 20 of 2001 on the provisions concerning classified evidence within three (3) system, namely the reversal of the burden of proof, semi inverted and conventional verification.⁵

² Irfanudin 2008, *Sues Commitment Half Heart In KPK*, Varia Justice, Jakarta, IKAHI, p. 43

³ Edi Wibowo, 2009, *The Role of the Judge in the Prevention and Eradication of Corruption*, Justice Varia, Jakarta, IKAHI, p. 48-49

⁴ Artidjo Alkostar, 2008, *the State Finance Losses in Perspective Corruption*, Justice Varia, Jakarta, IKAHI, p. 37

⁵ Lilik Mulyadi, 2007, *Principle Reversal of the Burden of Proof Against Corruption Criminal Justice System In Indonesia*, Varia Justice, Jakarta, IKAHI, p. 37-38

It can almost be determined that any corruption cases regardless of the value loss would be subject to Article 2, paragraph (1) as the primary charges and article 3 as its subsidiary indictment.⁶

According to article 2, paragraph (1) of Law No. 31 of 1999, Any person who acts unlawfully enrich themselves or another person or a corporation that can be detrimental to the state finance or economy of the state, shall be punished with imprisonment for life or sentenced to imprisonment minimum 4 (four) years, and a maximum of 20 (twenty) years and a fine of at least Rp 200,000,000 (two hundred million rupiah) and at most Rp 1,000,000,000 (one billion rupiah).

According to Article 3 of Law No. 31 of 1999, each person with the intention of enriching himself or another person or a corporation abusing authority, opportunity or means available to him because of the position or positions that could harm the state finance or economy of the state, shall be punished shall be sentenced to life imprisonment or imprisonment of at least one (1) year, and a maximum of 20 (twenty) years and or a fine of Rp 50,000,000 (fifty million rupiah) and at most Rp 1,000,000,000 (one billion rupiah).

The provisions of Article 2 and Article 3 above, can be used to catch the perpetrators of corruption committed by the taxation with potential buyers of land or buildings by stating that the sale and purchase transaction is lower than that actually occurred (lowering the selling price). Law No. 31 of 1999 provides for clear regulations that the problem of corruption is not merely to be settled through the criminal justice process, but it can also use the civil lines, if there is one element that there is not enough evidence.⁷ In the investigation of corruption, the accountant should give consideration to the prosecutor to determine the elements against the law, why accountants know the organizational structure, duties and authority of all people working in the institutions, including financial management.⁸

Article 11 of Law No. 20 of 2001 on Amendments to the Law No. 31 of 1999 on Corruption Eradication, Punishable by imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years and / or sentenced a fine of bit Rp 50,000,000 (fifty million rupiah) and at most Rp 250,000,000 (two hundred and fifty million), civil servants or state officials who accept gifts or promise when known, or suspected, that

⁶ Amin Sutikno, 2007, the Indictment and Evidence In Case of Corruption, Justice Varia, Jakarta, IKAHI, p. 62

⁷ Guse Prayudi, 2006, *Civil Lawsuit In Corruption Case*, Varia Justice, Jakarta, IKAHI, p. 32-33

⁸ Soejatna Soenoesoebrata 2006, *What is Accountant Role In Uncovering Corruption*, Justice Varia, Jakarta, IKAHI, p. 50

the promise or gift is given because of power or authorities relating to his position, or according to the person giving the gift or promise anything to do with the position.

Article 12 B of paragraph (1) of Law No. 20 of 2001, Every gratuity to an official or state officials considered bribery, as they relate to his or contrary to an obligation or duty, to the following provisions:

- a. Its value is Rp 10,000,000 (ten million) or more, proving that the gratuity is not a bribe done by gratification receiver;
- b. Its value is less than Rp 10,000,000 (ten million) proving that such gratification bribery, conducted by the public prosecutor.
- c. Criminal for civil servants or state officials referred to in paragraph (1) is life imprisonment or imprisonment of at least 4 (four) years and a maximum of 20 (twenty years), and the punishment shall be a minimum fine of Rp 200,000,000 (two hundred million rupiah) and at most Rp 1,000,000,000 (one billion rupiah).

According to the explanation of Article 12 B of Law No. 20 of 2001 on Amendments to the Law No. 31 of 1999 on Corruption Eradication, gratification is the provision in a broad sense the acts that can be the form of money, goods, rebate (discount), commissions, interest-free loans, travel tickets, lodging, tours, free medical treatment, and other amenities.

The provisions of Article 11 and Article 12 B of paragraph (1) above, can be used to catch the perpetrators of corruption committed by the taxation if willing (willing) to give consent (validation) on fees for acquisition of land or buildings if the condition given something by a prospective buyer in the form of gratuities (bribery).

In the context of everyday gratification is often juxtaposed with the terms of corruption, bribery, and when state officials are nominally gratuities included in the group categorized as corruption.⁹ Law No. 31 of 1999 has progressed very fundamental nature of the teachings of unlawful material, which is a good deed that meets all of the elements in the formulation of the offense, also acts should not be committed because it was considered disgraceful by the community.¹⁰

⁹ Dudu Duswara 2009, *the Authority The judicial institution Gratuities In Assessing Based on Law and Policy*, Varia Justice, Jakarta, IKAHI, p. 44

¹⁰ Jon Efendi, 2007, *the Positive Function of Unlawful Material In Corruption*, Justice Varia, Jakarta, IKAHI, p. 40-41

F. Conclusions

1. BPHTB payment procedures according to Law Number 28 Year 2009 on Regional Taxes and Levies, is the local tax deposit letter fees for acquisition of land, buildings (SSPD - BPHTB) through a designated payment.
2. Procedure for the acquisition of validation for the payment of fees for acquisition of land and buildings or in practice, by the way after a prospective buyer to pay taxes continued application to the revenue department, management, finances and local assets (DPPKAD) for obtaining a approval.
3. The validation policy for the payment of fees for acquisition of land, buildings can pose a potential corruption, which could be in the form stating the transaction price is lower than the actual price, and make the event gratuities (bribery) to the tax authorities (fiscus) in order to obtain validation.

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