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Abstract

The Acquisition Duty of Right on Land and Building, commonly known as BPHTB, is a tax levied upon the acquisition of land and/or building rights. This study scrutinizes the circumstances under which BPHTB becomes payable in sale and purchase transactions regulated by the HKPD Law and investigates their misalignment with the practical realities of the property market. Employing the constructivism paradigm method and a qualitative approach, the research reveals that the criteria stipulated in the HKPD Law for paying BPHTB need to harmonize with the actual dynamics observed in property transactions. Notably, the study underscores that the timing outlined in the HKPD Law for BPHTB payment needs to align with the foundational philosophy of BPHTB as a tax designed to facilitate the transfer of asset ownership. The incongruities identified prompt critical reflections on the current regulatory framework. The study contends that the misalignment between the HKPD Law and the essence of BPHTB necessitates reevaluating the legislation to ensure its responsiveness to the real-time intricacies of property acquisitions. The findings advocate for a more coherent and aligned approach to the stipulations of BPHTB payment, emphasizing the need for adjustments that better encapsulate the intended purpose of this tax, which is the seamless transfer of asset ownership in property transactions.

Keywords: BPHTB, Buy Sell, When Owed

1. Introduction

According to Law No. 32 of 2004 concerning Regional Government, Article 1 paragraph (5) states that regional autonomy is the right, authority and obligation of autonomous regions to regulate and manage government affairs and the interests of local communities by statutory regulations. Regional autonomy cannot be separated from the region's financial capabilities. As a result, regions are required to be able to explore existing resources in their area. Law No. 33 of 2004 concerning Financial Balancing between the Central Government and Regional Governments in Article 5 paragraph (2) regulates regional income sourced from (1) Original Regional Income, (2) Balancing Funds, and (3) Others Income in the same law, Article 6 paragraph (1) states that the components of Regional Original Income (PAD) come from (1) Regional Taxes, (2) Regional Levies, (3) Separated Regional Wealth Management Results and (4) others. - other legitimate PAD (Irawan, 2007). Of the many sources of financing in the context of implementing regional autonomy, PAD is the benchmark for regional financial capacity in implementing regional autonomy. One component of PAD is local taxes

According to law Article 2 paragraph (2) states that there are 11 taxes collected by Regencies/Cities, namely: Hotel Tax, Restaurant Tax, Entertainment Tax, Advertisement Tax, Street Lighting Tax, Non-Metal Mineral and Rock Tax, Parking Tax, Ground Water Tax, Swallow's Nest Tax, Rural and Urban Land and Building Tax and Land and Building Rights Acquisition Fee (BPHTB) (Republic of Indonesia Law Number 28 of 2009). According to Law No. 28 of 2009 concerning Regional Taxes and Regional Levies, Article 1 paragraph (41) states that the Fee for Acquisition of Land and Building Rights is a tax on the acquisition of rights to land and/or buildings. Since the enactment of Law No. 28 of 2009 concerning

Regional Taxes and Regional Levies, the management of regional taxes, one of which is BPHTB, has been delegated to the Regional Government. This is stated in Law No. 28 of 2009 concerning Regional Taxes and Regional Levies in Article 2 paragraph (2) letter "k", Article 180 number 6, and Article 182 number 2. Based on this, starting from January 1 In 2011 BPHTB officially became a regional tax. On the other hand, BPHTB collection can only be carried out if the Regional Government concerned has a Regional Regulation that regulates BPHTB, including for the DKI Jakarta provincial government. The DKI Jakarta Provincial Government currently has a Regional Regulation that regulates BPHTB, namely Regional Regulation Number 18 of 2010 concerning Fees for Acquisition of Land and Building Rights.

Land and Building Rights Acquisition Fee (BPHTB) is 1 (one) of the 3 (three) largest tax revenues of DKI Jakarta, apart from Rural and Urban Land and Building Tax (PBB P-2) and Motor Vehicle Tax (PKB) (statistics. jakarta.go.id). This is shown in Figure 1.1. Regarding the realization of DKI Jakarta regional taxes according to tax type.

Figure 1

Realization of DKI Jakarta Regional Taxes According to Tax Type



Source: statistic.jakarta.go.id

Based on revenue realization by tax type, BPHTB is one of the largest sources of tax revenue for DKI Jakarta. As of mid-2022, the DKI Jakarta Regional Revenue Agency (Bapenda) has recorded DKI Jakarta tax revenue reaching IDR 15.83 trillion or the equivalent of 34.65% of the 2022 DKI Jakarta tax revenue target or IDR 45.7 trillion, which includes 13 types of taxes. Among the 13 types of taxes, BPHTB realization has reached more than IDR 1 trillion, namely IDR 2.32 trillion for BPHTB (Tambunan, 2023). BPHTB is related to the characteristics of tax objects wmanagement transferhich can be seen from the ownership of wealth (property) in the form of a residence, where BPHTB is imposed on the acquisition of rights to land, buildings, or houses.

It is known that the authority to manage BPHTB has been transferred from the central government to regional governments in a devolution scheme through the implementation of Law Number 28 of 2009 concerning Regional Taxes and Regional Levies (UU PDRD). This management transfer is a form of revenue sharing through tax sharing, which aims to strengthen the government's financial posture. BPHTB is a tax commonly levied in various countries to strengthen the government's financial posture.

The PDRD Law was revoked and declared no longer valid since the enactment of Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments (UU HKPD) starting January 5, 2022, where the changes to statutory regulations aim to equalize community welfare with resource allocation. Effective and efficient national power through transparent and accountable financial relations between the central and regional governments, which include regulatory changes with several adjustments as follows (Purwaningtias, 2022):

- a) In order to reduce administration and compliance costs, there is a restructuring of consumption-based regional taxes, such as Hotel Tax, Restaurant Tax, Entertainment Tax, Parking Tax and Street Lighting Tax (PPJ), into Certain Goods and Services Tax (PBJT). Apart from that, there is a rationalization of levies from the original 32 types of services to 18 types of services.
- b) In order to expand the tax base, there are provincial and district/city tax opportunities as a replacement for the profit-sharing scheme and adjustments to authority in the PKB, BBNKB, and MBLB options without additional burden on taxpayers. Then, there is synergy between Central Tax and Regional Tax by expanding tax objects such as valet parking, recreation objects, and rental of sports facilities and infrastructure (game sports objects).
- c) In the context of harmonization with other laws and regulations, there are several adjustments to regulations, such as the Constitutional Court (MK) decision regarding heavy equipment/large equipment regarding heavy equipment tax, the Constitutional Court's decision regarding PPJ regarding Electric Power PBJT, and Law no. 23 of 2014 and Law no. 3 of 2020 regarding the synchronization of authority, so that it is in line with efforts to support ease of doing business (Law of the Republic of Indonesia Number 1 of 2022).

However, in the HKPD Law there are provisions regarding BPHTB which are very basic and have implications for potential loss of regional income from the BPHTB sector. This potential loss is due to the provisions in Article 49 paragraph (1) letter a which states that The time when the BPHTB becomes payable is determined on the date the binding sale and purchase agreement for the sale and purchase is made and signed. This has implications for BPHTB avoidance of sales and purchases carried out in accordance with the provisions of Article 90 paragraph (1) letter a of Law Number 28 of 2009 concerning Regional Taxes and Regional Retributions in conjunction with Article 8 paragraph (1) letter a of Regional Regulation Number 18 of 2010 which applies so far, where the time when the Land and/or Building Rights Acquisition Fee is payable for sale and purchase is from the date the deed is made and signed, so that there will be a potential loss of Regional Tax revenue from BPHTB for the Regional Government.

2. Methods

Research design

The design and flow of this study was carried out by arranging the study sequence in a systematic and structured manner according to the purpose of writing the study. The study process starts from an inventory of existing conditions which includes research approaches, data collection strategies and data analysis, both primary and secondary data. The data obtained is then used to evaluate tax policies and regulations which include PDRD policies in the PDRD Law and HKPD Law.

This study was prepared using a constructivist paradigm and a qualitative approach with the focus of the study being to understand and develop the meaning of a social phenomenon that is occurring so that it can be understood by first collecting participant views from the situation being studied (Creswell, 2013). This research process begins by collecting information about a social phenomenon that is occurring, namely the conditions that were taking place at the time the study was carried out. This information is needed with the aim of making a systematic, factual and accurate explanation of these facts (Roisah, 2016). From these stages a comprehensive conception of PDRD policy will be obtained. This is in line with the definition of qualitative data analysis put forward by Bogdan and Biklen and Seiddel as quoted by Moleong (2008), namely efforts made based on the data collected, then organizing the data and sorting it into manageable units, then synthesizing it, looking for and

finding patterns, finding things that are important and can be learned, analyzing the meaning found, and finding patterns and relationships that are organized into general findings.

Data collection technique

Data collection in writing this academic manuscript is carried out through documentation studies (desk research). Primary data collection in the form of documentation studies is carried out to understand (*verstehen*) the context of changes in tax policies and regulations and their relevance to the current objective conditions. Data collection through documentation studies can be explained as follows:

Written materials and other documents from organizational, clinical, or program records; memoranda and correspondence, official publications and reports; personal diaries, letters, artistic works, photographs, and written responses to open-ended surveys. Data consists of excerpts from documents captured in a way that records and preserves contexts (Taylor & Bogdan, 1984).

Documentation studies are carried out by:

- a) Study documents regarding policies and regulations related to PDRD as regulated in the PDRD Law and HKPD Law.
- b) Analyze documents related to PDRD policies as regulated in the PDRD Law and HKPD Law.
- c) Analyze research and other references that have been carried out by other agencies/institutions/researchers related to PDRD policies as regulated in the PDRD Law and HKPD Law.

Data analysis

To answer research questions, researchers used qualitative data analysis methods. In analyzing data, researchers carry out three processes that occur simultaneously, namely data reduction, data presentation, and drawing conclusions/verification. In general, the qualitative data analysis procedures carried out by researchers are as follows:

- a. Organizing data. This method is done by reading existing data repeatedly so that researchers can find data that is appropriate to the research and discard data that is not appropriate.
- b. Create categories, determine themes and patterns. This second step is carried out by grouping the existing data into categories with their respective themes so that the regular pattern of the data becomes clearer.
- c. Testing hypotheses. Researchers test the possibility of developing a hypothesis and test it using available data.
- d. Looking for explanatory data. The researcher provides a logical explanation of the existing data and explains the data based on the logical relationship of meaning contained in the data.
- e. Write a report. Researchers compose appropriate words, phrases, sentences and definitions intended to describe the data, provide the results of the analysis, and produce conclusions from the results of the research carried out.

3. Research Findings and Discussion

The aim of this study is to provide an overview of the potential loss of BPHTB revenue for the Regional Government and formulate problems that will occur when the HKPD Law is issued. Researchers will present the study findings and be open to confirmation both methodological and technical in nature. It is hoped that this study can provide input for policy makers, in this case the Central Government and DKI Jakarta Provincial Government, to review policies and regulations related to Regional Tax and Regional Levy policies, especially BPHTB in DKI Jakarta Province.

BPHTB Policy Reconstruction

In a theoretical theoretical perspective, BPHTB is a property tax, namely a type of tax on land and/or building ownership (tax on land and building). This tax is a wealth-based tax (tax on wealth) and is also an objective tax where the tax burden is determined based on the conditions of the tax object, not the tax subject.(Pudyatmoko, 2009). In more detail, the conceptual description of BPHTB can be seen in the table below:

Table 1

BPHTB in Theoretical Perspective

Description	BPHTB
Tax Type	Objective Tax
Tax Base	Wealth Tax (Land and/or Buildings)
Grouping	Property Tax is based on the transfer (acquisition) of ownership/use rights
When Due	When fulfilled, obey bestand, without waiting for SKP.

Source: processed research data, 2023

The characteristics of BPHTB as seen above have implications for the design of tax policies/regulations so that they can produce good tax regulations. Objective Tax has the implication that the tax burden is not directly proportional to the taxpayer's ability to pay taxes (ability to pay).(Kurniawan & Purwanto, 2004), so that in practice it creates problems of poor cash tax payers. This problem is a theoretical/conceptual issue as well as in the formulation and implementation of policies that needs to be handled carefully.

Reconstruction of BPHTB Policy in DKI Jakarta Province

BPHTB is an indirect tax that is payable when the tatbestand is fulfilled without waiting for the issuance of a Tax Assessment Letter and does not have a tax imposition period. Thus, when tax is owed, it is very important to ensure that BPHTB obligations fulfill their tax obligations while simultaneously securing regional tax revenues. The regulations regarding when BPHTB is owed in Law No. 28 of 2009 and Law No. 1 of 2022 are as follows:

Table 2

Arrangements when BPHTB is owed

Law No. 28 of 2009	Law No. 1 of 2022	DKI Jakarta Provincial Regulation No. 18 of 2010
Article 90 (1) When tax is payable, the Land and/or Building Rights Acquisition Fee is determined for: a. sale and purchase is from the date the deed is made and signed;	Article 49 When the BPHTB debt is determined: a. on the date the binding sale and purchase agreement for sale and purchase is made and signed;	Article 8 (1) When the Land and/or Building Rights Acquisition Fee is payable, it is determined for: a. sale and purchase is from the date the deed is made and signed;
Explanation Article 49 Quite clear.	Explanation Article 49 Quite clear.	Explanation Article 8 Paragraph (1) Letter a What is meant by the date the deed is made and signed is the date the deed of transfer of rights is made and signed before the Land Deed Notary Official.

Every action intended to transfer ownership rights to land is regulated by Government Regulation. This is mandated by Article 26 of the Basic Agrarian Principles Regulations (UUPA). Provisions for land registration in Indonesia are regulated in UUPA Article 19 in

conjunction with Article 37 paragraph (1) Government Regulation Number 24 of 1997 concerning Land Registration "Transfer of land rights and ownership rights to apartment units through buying and selling, exchange, grants, income in companies and other legal acts of transfer of rights, except for the transfer of rights through auction, can only be registered if proven by a deed made by an authorized Land Deed Making Officer (PPAT) according to the provisions of statutory regulations.

In addition, Government Regulation Number 37 of 1998 concerning Position Regulations for Land Deed Making Officials, states that Land Deed Making Officials (PPAT) are public officials who are given the authority to make authentic deeds regarding certain legal acts regarding land rights or property rights. apartment units. PPAT has the main task of carrying out some land registration activities by making deeds as proof that legal acts have been carried out regarding land rights or ownership rights to apartment units as a basis for registering changes to land registration data. The legal actions referred to above are legal actions that can be carried out by buying and selling, exchanging, giving, entering into the company (inbreng), sharing joint rights, granting Building Use Rights/Use Rights on Land of Ownership, granting Mortgage Rights, granting Power of Attorney to encumber Mortgage right.

This arrangement is in line with the time when BPHTB is owed in Law No. 28 of 2009 and DKI Jakarta Provincial Regulation No. 18 of 2010 which makes the time when the deed is signed as the time when BPHTB is owed. This arrangement is also in line with the BPHTB philosophy as a tax on the transfer of rights to land and/or buildings because it is payable at the time the deed is signed as a document which constitutes a legal act regarding land rights or ownership rights to an apartment unit.

The Sale and Purchase Agreement or PPJB is different from a deed. PPJB is basically an agreement between sellers and buyers which is regulated in PP Number 12/2021 article 1 number 10 which states that PPJB is a series of agreement processes between each person and development actors in marketing activities as outlined in a preliminary sale and purchase agreement or binding sale and purchase agreement. , before signing AJB. PPJB is usually signed before settlement of the transaction and is not a basis for ownership. Overall, the contents of PPJB include 10 important factors, such as:

- a) The party entering into the PPJB agreement;
- b) Obligations for sellers;
- c) Description of the object of the sale and purchase agreement;
- d) Seller guarantee;
- e) PPJB building handover time;
- f) Building maintenance;
- g) Building use;
- h) Transfer of PPJB rights;
- i) Cancellation of binding;
- j) PPJB Dispute Resolution.

PPJB is basically not required as a condition of sale and purchase, but is usually carried out as a form of commitment on the part of the seller and buyer to carry out land and/or building sale and purchase transactions. Thus, a transaction may occur that is not preceded by the signing of the PPJB. The implications of this are that:

- a) The regulation when BPHTB is owed in Law No. 1 of 2022 at the time the PPJB is signed has a loophole to avoid BPHTB which can be done by not signing the PPBJ, but directly by signing the AJBB. If this is done, then there will be no BPHTB debt due.
- b) The arrangement when the BPHTB is owed is when the PPJB is signed also has weaknesses from a conceptual/theoretical perspective. PPJB is not a basis for ownership,

therefore the signing of the PPJB is not the time when rights to land and buildings are transferred so it is not in line with the philosophy of BPHTB as a tax on ownership transfer.

- c) Regional regulations cannot regulate when BPHTB is owed differently from what is regulated in Law No. 1 of 2022 because it violates the principle of not conflicting with higher laws and regulations as regulated in Law No. 11 of 2012 concerning the Sequence of Legislative Regulations. Thus, local governments need to look for strategies outside of tax policy to regulate this.

4. Conclusion

The BPHTB arrangement raises problems related to determining the tax payable. Determining when it is payable when the Sales and Purchase Agreement (PPJB) is signed is a loop hole that allows taxpayers to avoid BPHTB obligations without violating the law. This is because PPJB is basically not a required document that must be made in buying and selling transactions. Apart from that, PPJB is basically not a basis for ownership, so the determination of when it is payable in the HKPD Law is not in accordance with the philosophy of BPHTB as a tax on the transfer of asset ownership. And finally the HKPD Law was bridged with PP no. 35 of 2023 Article 18 paragraph (3) in this case is not a bridging sale and purchase. However, it is stated in the law that the sale and purchase deed should be based on the signed sale and purchase deed, not when the PPJB is signed because the sale and purchase agreement is just an agreement. Based on the studies that have been carried out, the Central Government needs to issue laws and regulations that can bridge the differences in determining when tax is payable at the time the AJB is signed which was previously regulated through the PDRD Law and determining when tax is payable at the time the PPJB is signed which is regulated in the HKPD Law to avoid loops. holes in the HKPD Law which have the potential to reduce BPHTB revenues and are not in line with the aim of formulating the HKPD Law to increase regional financial independence.

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