



The Authority of Financial and Regional Revenue Management Agency (BPKPD) in Order to Setting the Land Selling Price as the Basis of Establishing Duty for The Acquisition of Land and Building Rights (BPHTB) in Pariaman City

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<http://dx.doi.org/10.18415/ijmmu.v9i8.3963>

Abstract

The transfer of rights to land and buildings is closely related to legal certainty and is marked by evidence of the transfer of rights. In order to provide legal strength and certainty for the ownership of land and buildings, any transfer of rights to land and or buildings must be carried out in accordance with the law that governs them. Pariaman City was formed based on Law No. 12 of 2002. It is one of the cities in the province of West Sumatra, like other cities and regencies where local original income (PAD) is received from the Customs for Land and Building Rights Acquisition (BPHTB). The basis for determining the BPHTB at the Regional Revenue and Finance Management Agency (BPKPD) office in Pariaman city as a determinant of the authority of the government agency in determining the selling price of land. The research method used in this research is Sociological Juridical, which is an approach taken to analyze the extent to which a legal regulation is effective. The results of this study are (1). The process of determining the Transfer of Land and Building Rights Transfer Fee (BPHTB) and the Implementation of Authority by the Regional Finance and Revenue Management Agency (BPKPD Kota Pariaman) is the determination of the Land and Building Rights Acquisition Fee (BPHTB) on the sale and purchase of the Regional Finance and Revenue Management Agency (BPHTB). BPKPD Kota Pariaman is based on the Market Price, which is contrary to Law Number 28 of 2009 concerning Regional Taxes and Regional Levies, and Regional Regulation of Kota Pariaman Number 2 of 2011 concerning Fees for Acquisition of Land and Building Rights in Kota Pariaman, where the basis for imposition of duties is Acquisition of Land and Building Rights upon the sale and purchase is the Transaction Price (2) Constraints that arise in the Determination of the Land Selling Price as the Basis for Determining the Receipt of Transfer of Land and Building Rights (BPHTB) In Kota Pariaman, namely the honesty of the parties (Taxpayers); The market price is not in harmony with the transaction price of the parties; lack of public understanding. Efforts are being made to ask the BPKPD to accept and approve the price as stated in the BPHTB blank form by the Taxpayer which has been agreed upon by both parties in the sale and purchase of land and/or buildings, because the parties carry out a sale and purchase transaction of land and/or buildings based on the principle of freedom of contract, where contract law in Indonesia adheres to the principle of freedom in terms of making agreements (*beginsel der contracts vrijheid*).

Keywords: *Regional Finance and Revenue Management Agency; Land Selling Price; Land and Building Rights Acquisition Fee*

Introduction

The transfer of rights to land and buildings is closely related to legal certainty and is marked by evidence of the transfer of rights. To give legal strength and certainty to the ownership of land and buildings, any transfer of rights to land and or buildings must be carried out in accordance with the laws that govern them. The acquisition of rights as a result of the transfer of rights must be carried out in writing with a deed made by the competent authority, and must be registered with the authorized agency, namely the local City Regency land office. Thus, the rights to the land and buildings legally belong to the party who has cleared it and can be defended against all parties. The transfer of rights to land and buildings creates rights and obligations for the parties involved. transferring or the party receiving the transfer of rights. One of the obligations that must be carried out by the parties in the transfer of land rights is the obligation to pay taxes on the acquisition of land rights.

One of the implications of regional autonomy is to provide access to the regions to manage two types of taxes which were previously managed by the central government and are now managed by local governments as regulated in Article 2 letter j. and the letter k. Law No. 28 of 2009 concerning Regional Taxes and Regional Levies (hereinafter in this paper is written Law No. 28 of 2009) and its implementation is delegated to the respective provinces and districts. "Thus, the head office in this case the Directorate General of Taxes (DGT) collects BPHTB until December 31, 2010, while starting from 2011, the Council General of Taxes is not authorized to collect BPHTB anymore". so that implementation in the regions in this case is regulated in regional regulations as a form of legal umbrella for regional authority in collecting taxes that have been transferred to autonomous regions. The tax referred to is the Land and Building Tax (in this paper, hereinafter referred to as PBB) for the rural and urban sectors and the Customs for the Acquisition of Land and Building Rights (BPHTB) as taxes collected by the regions. Local taxes are taxes levied by local governments and are a source of local government revenue.

The legal basis for collection of Customs Fees for Land and Building Rights (BPHTB) is Law Number 21 of 1997 concerning Fees for Acquisition of Rights on Land and Buildings (BPHTB) issued on May 29, 1997. This development is also in line with changes that occurred in the the life and economy of the Indonesian nation, then in 2000, improvements were made to Law Number 21 of 1997 concerning Customs for Acquisition of Land and Building Rights (BPHTB) with the issuance of Law Number 20 of 2000 concerning Amendments to Law Number 21 of 1997. The Law on Customs for the Acquisition of Land and Building Rights (BPHTB) is closely related to the enactment of Law Number 32 of 2004 concerning Regional Government where its implementation is related to policies regarding the structure of the central government but BPHTB revenues are mostly local revenues. However, with the enactment of Law Number 28 of 2009 concerning Regional Taxes and Regional Levies, based on the provisions of Article 2 paragraph (2) BPHTB becomes a regional tax. However, in Law Number 28 of 2009 concerning Regional Taxes and Regional Levies, there is no clear definition of BPHTB, it is only stated in Article 1 number 41. The Duty on Acquisition of Rights on Land and Buildings is a tax on the acquisition of rights to land and/or buildings.

Pariaman City was formed based on Law No. 12 of 2002. It is one of the cities in the province of West Sumatra, just like other cities and regencies where local revenue (PAD) is received from the Customs for Land and Building Rights Acquisition (BPHTB). The authority to collect Duties on the Acquisition of Rights on Land and Buildings (BPHTB) in Kota Pariaman rests with the office of the Regional Finance and Revenue Management Agency (BPKPD) which is the regional revenue, financial and asset management office of Kota Pariaman.

Based on the description above, the authors are interested in conducting research on the basis for determining BPHTB at the Office of the Regional Financial and Revenue Management Agency (BPKPD) in Pariaman City as a determinant of the authority of the government agency in determining the selling price of land. This research is entitled "The Authority of the Regional Finance and Revenue Management

Agency (BPKPD) of Pariaman City in Determining the Selling Price of Land as the Basis for Determining the Fee for the Acquisition of Land and Building Rights (BPHTB) in Pariaman City"

Research Methods

The approach method used is the Juridical Empirical approach, the Juridical Empirical Approach is an approach taken to analyze the extent to which a legal regulation is effective so that the scope of research is a positive legal inventory which is a preliminary activity, here the researcher does not only reveal the negative aspects of a problems but also positive aspects so that a solution can be given.

In addition to using a juridical approach, an empirical approach based on primary data analysis obtained from field research through the interview method is also carried out, in order to obtain more in-depth information on matters relating to various driving factors related to the implementation of a regulation. In a juridical approach This research is based on the analysis of primary data obtained from research using the interview method. Especially for BPKPD employees and notaries/officials making land deeds in Kota Pariaman.

To answer the problems that exist in this paper, the approach that the author uses in this research is juridical-sociological, which is a study in addition to looking at the positive legal aspects but also looking at its application or practice in the field. The specification of this research is descriptive analytical research, which is a form of research that is expected to be able to provide a detailed, systematic and comprehensive description of all matters relating to the Authority of the Pariaman City BPKPD in Determining the Selling Price of Land as the Basis for Determining the Transfer of Land and Building Rights. (BPHTB) In Pariaman City.

Research Result

1. Determination of Duty on Acquisition of Land and Building Rights (BPHTB) based on laws and regulations

An individual or legal entity conducts buying and selling transactions before a PPAT/Notary, after there is an agreement from the parties and through calculations according to the transaction price, it turns out that the Acquired Value of the Tax Object (NPOP) is greater or not the same as the NPOPTKP or the result is not nil. after deducting the Acquired Value of a Non-Taxable Tax Object (NPOPTKP) of Rp. 60,000,000.00 (sixty million rupiah), the individual or legal entity shall be subject to BPHTB tax as owed.

In this BPHTB tax collection there are limitations, namely Taxpayers whose Sales Value of Tax Objects is below Rp. 60,000,000.00 (sixty million rupiahs) are not subject to tax, so that justice is reflected in the imposition of this BPHTB tax. BPHTB taxpayers must have paid the tax payable before the sale and purchase deed is issued or signed by the PPAT/Notary. Deed here as evidence that there has been a sale and purchase of land and or buildings.

The transfer of rights due to the sale and purchase of land and or buildings by such individuals or entities can provide income in the form of taxes in relatively large amounts for the state, because buying and selling is a legal act that can result in tax debt, namely Income Tax (PPh).) as a central tax imposed on the seller and BPHTB as a local tax imposed on the buyer. Both types of taxes are widely known in the community as land sales and purchase taxes, in practice in the field in Pariaman city, both taxes are often borne by the buyer.

In Article 87 paragraph (1) of Law Number 28 of 2009 concerning Regional Taxes and Regional Levies (UU PDRD) it is regulated that the basis for imposing Customs on Acquisition of Land and Building Rights (BPHTB) is the Acquired Value of Tax Objects (NPOP). Furthermore, the determination of NPOP for buying and selling transactions is the transaction price, namely the price that occurred and has been agreed upon by the parties concerned. Article 87 paragraph (3) of the PDRD Law stipulates that if the transaction price is unknown or lower than the NJOP used in the imposition of PBB in the year the acquisition occurs, the basis for imposition is the NJOP of PBB. In the City of Pariaman Regional Regulation Number 2 of 2011 concerning Fees for Acquisition of Land Rights, in line with law number 28 of 2009, that in article 4 paragraph (1) the basis for taxation is the Acquisition Value of Tax Objects, paragraph (2) the Acquisition Value of Objects The tax as referred to in paragraph (1) in the case of buying and selling is the transaction price.

Regarding the imposition of BPHTB, which is determined based on the Regional Regulation, it is 5% (five percent) of the tax base, namely the transaction price or the Selling Value of Land and Building Tax Objects (NJOP PBB). The provisions of Article 88 paragraphs (1) and (2) of Law Number 28 of 2009 concerning Regional Taxes and Regional Levies, stipulate that the basis for imposing BPHTB rates is set at a maximum of 5% (five percent) with the amount of the tax rate stipulated by a Regional Regulation.

2. Determination of Fees for Acquisition of Land and Building Rights (BPHTB) by the Regional Financial Management and Opinion Board of Pariaman City

The procedure for collecting Duties on the Acquisition of Land and Building Rights in Kota Pariaman carried out by BPKPD Kota Pariaman refers to the Mayor of Pariaman Regulation Number 13 of 2011 concerning Systems and Procedures for Collection of Duties on Acquisition of Rights on Land and Buildings in the Kota Pariaman Region, in Article 2 point (1) explained, the procedure for collecting BPHTB includes the entire series of processes that must be carried out in receiving, administering, and reporting the receipt of Customs on the Acquisition of Land and Building Rights.

Based on the author's research, in concluding the transaction value listed in the BPHTB, the Pariaman City BPKPD often bases the BPHTB tax base on buying and selling based on market values prevailing at that time, and interprets land and building prices based on estimates, not based on value. transactions that have been agreed upon by the parties, the blank column which should be based on Regional Regulation number 2 of 2011 concerning BPHTB Pariaman City is filled with the value of the sale and purchase transaction that has been agreed upon by the parties instead of being approved by the BPKPD, they demand that it be adjusted to the current market price, BPKPD reasoned that they had the right not to trust the value of the proposed transaction, because the level of trust of tax officials began to decrease to taxpayers because several times before, taxpayers made the value in BPHTB far below the transaction price. Tax officials have not found a solution to all of this. They will not process the BPHTB if it is not adjusted to the price they set, and the file is returned to the taxpayer.

The position of the agreement on the land price by the Parties in the Land Sale and Purchase Process will be deemed not according to the Market Price if the transaction value is below the Market Price value, so that at the time of validation the BPHTB at BPKPD will not pass validation due to an underpayment of BPHTB, which is BPHTB itself should be calculated based on the Transaction Price that has been agreed upon by the Parties.

From here the author examines based on the Theory of Authority. According to Ateng Syafrudin, he suggests that there is a difference between the notion of authority (authority, gezag) and authority (competence, bevoegheid). Authority is what is called formal power, power that comes from power granted by law, while authority only concerns a certain "onderdeel" (part) of authority. Here it is clear that the authority or power granted by the law to the Pariaman City BPKPD has not been implemented as

it should, the BPKPD still uses its own authority in the implementation of unilaterally determining the sale and purchase BPHTB.

This is also contrary to Law number 28 of 2009 concerning Regional Taxes and Regional Levies, and Pariaman City Regional Regulation Number 2 of 2011 concerning BPHTB, where according to both of them the basis for imposition of duties on the acquisition of land and building rights on sale and purchase is the transaction price, not Market Price.

However, in fact, BPKPD does not have the authority to determine the value of transactions carried out by the parties, because even if an assessment is carried out on the land and buildings that are objects, it can be carried out by APPRAISAL or an Appraisal. APPRAISAL is one of the service sub-sectors that can play an important role in determining the economic value of our assets and potential assets, including land and buildings. Assessment is an estimate of a value or which can be defined as an estimate of a value from an agreement or a predetermined one from the opinion of one person based on expertise, training, accurate data from the object under study. APPRAISAL has the authority, one of which is to determine the sale value of the tax object in relation to the calculation of land and building tax (PBB) and Customs for the Acquisition of Land and Building Rights (BPHTB).

The object of PBB tax is land and buildings while the calculation of PBB is a certain rate multiplied by the taxable selling value. The taxable selling value is calculated based on the sale value of the tax object (NJOP). This means that the size of the PBB depends on the assessment of the tax object. Determination of a NJOP that is too low will result in a small amount of state revenue in the form of PBB, on the other hand, a NJOP that is too high will burden the people because it will be burdened by an improper PBB. In relation to the determination of BPHTB, the basis for the imposition of BPHTB tax on buying and selling is the transaction price. So APPRAISAL has more authority than BPKPD in determining the Sales Value of Tax Objects (NJOP), although basically Kota Pariaman does not apply APPRAISAL Services in determining this.

In the end, in the implementation of the BPHTB process by BPKPD in Pariaman City based on Pariaman City Regional Regulation Number 2 of 2011 concerning Customs for Acquisition of Land and Building Rights, it is not in accordance with the reality on the ground. BPHTB Sale and purchase in the field is carried out based on market value, while in regional regulations it is carried out based on transaction value. So that BPHTB verification is detrimental to taxpayers. There is no legal certainty in determining the value of BPHTB which sometimes uses market value and sometimes uses transaction value. This makes taxpayers confused.

The above has violated the provisions of the Pariaman City Regional Regulation which stipulates that the basis for imposing BPHTB on buying and selling is Transaction Value, it also violates the Civil Code. another to pay the promised price. Regarding the sale and purchase agreement, Article 1458 of the Civil Code, states: the sale and purchase is considered to have taken place between the two parties, immediately after these people reach an agreement on the object and its price. Even though the object has not been submitted, nor has the price been paid, and here it can also be interpreted that the sale and purchase is an agreement of will, between the seller/buyer regarding an item and the price. Because without the goods to be sold and without a price that can be agreed between the two parties, there can be no buying and selling, or buying and selling never existed.

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