

Legal Analysis of Real Estate Transfer Taxation Provisions in Notarial Transaction Agreements in the Context of the Digitalization of Society 5.0

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ABSTRACT

This study aims to find alternative ways to use digital technology to solve the problem of applying land and building taxes in deeds of sale and purchase. Real estate transfer tax is mandatory in notarized transaction contracts and is levied according to the law. The real estate transfer tax is composed of income tax, value added tax, sales tax on luxury goods and the fee for transferring the title deed. The tax is calculated according to the Regional Tax and Equalization Law and is based on the maximum value of the sale or transaction value of the taxable property. This leads to legal uncertainty, as there are many cases where the basis of calculation has been invented to reduce the tax due before the contract is signed. This leads to a great potential loss for the State if the calculation is based on the Regional Tax and Equalization Law. This study is a normative legal research using books, laws, articles and other legal materials. The results indicate that the basis for calculating property transfer tax in notarial transaction agreements should not be taken from the highest value between the Sales Value of the Taxable Object or transaction value, but rather from the fair market value. The Regional Tax and Retribution Law should be revised with the support of digitalization so that tax potential can increase.

Keywords: legal analysis, real estate transfer taxation, notarial transaction agreement, digitalization

1. INTRODUCTION

A tax is a contribution made by citizens to the government by law (enforceable) without reward, which can be directly assigned and used to pay for general expenses (Darwin, 2009). This definition emphasises the functions of taxes, namely their budgetary and regulating functions (Saidi, 2007).

Taxation contributes greatly to the survival of society and the government. They are regarded as political and strategic charges as mandated by Article 33(2) of the 1945 Constitution. They are political in nature as the collection of taxes is considered a constitutional command and strategic in nature as they are the main basis of the state in financing government and developmental activities. For the citizens, taxes are a concrete means of contribution to the state, hopefully to improve the public and national welfare.

The legal event of a transaction in a notarized transaction contract is that the buyer and seller are in a transaction contract that is notarized by a notary public or registrar of land registers.

Once the contract is signed, the real estate transfer tax must be paid immediately. In real property transfers, the notary plays an integral and effective role in the reporting, payment and assessment of real property transfer tax. the

verification process and is an essential part of the process from the beginning of the transactions until the land title/certificate becomes the property of the buyer.

The subject of real property transfer in a notarial transaction agreement is the land and the building built on it. Ruwastuti (Ruwastuti, 1998) defines land as "an area that has economic potential capable of supporting the community (forests, rivers, mountains, mineral resources, and agricultural land) and is known as the cultural intersection of the surrounding community". By this definition, land development is considered the same as territory. Terminologically, a region is defined as an area of jurisdiction, command, control or an area around a province or district. The notion of territory in land development is closely related to administrative areas.

The imposition value of Fees on Acquisition of Rights on Land and Building (BPHTB) is obtained from the value of the tax base, namely the highest Tax Object Sale Value (NJOP) or transaction value in accordance with Article 87 paragraph 2a and paragraph 3 of Law No. 28 of 2009 concerning Regional Taxes and Regional Retribution, and the types of Fees on Acquisition of Rights on Land and Building regulated in other tax regulations. The transaction price used is the highest value, as NJOP is usually much lower than market value and transaction value.

NJOP that are much lower than market and transaction prices may cause issues in the implementation of the Regulation. This is in contrast to the purpose of devolving the management of land transfer fees and taxes on residential land to local governments, which is intended to ensure that areas develop according to the population density and economic development of the area and to better understand the potential value of land.

2. LITERATURE REVIEW

Taxes are levies imposed by the government on citizens or business entities that have income on certain assets. Taxes are used to finance expenditures and development programs and public services such as health, education, infrastructure, and security. (Rudi Gunawan, 223)

Taxes have a very important meaning for the continuity of a country. Taxes are political and strategic levies as mandated by the 1945 Constitution paragraph 2. The government has reorganized the governance that has been reflected in Law Number 22 of 1999 concerning local government. (Irianto, 2009)

BPHTB is a duty imposed on buyers for the purchase of land and buildings. The imposition of BPHTB must pay attention to the principles of justice, legal certainty, legality and simplicity and be supported by a tax administration system that facilitates taxpayers in fulfilling tax obligations (Mulyawan, 2010).

Real estate is a legal term that encompasses land along with anything that remains on the land, such as buildings, or dwellings. Real estate is often considered synonymous with real property, but contrasted with private property. contrasted with private property, but in technical usage, some people choose to distinguish between real estate, which still choose to distinguish between real estate, which refers to the land and objects on it, and real property, which refers to the land and objects on it. on it, and real property, which refers to the right of ownership of real estate. (Muryani, 2021)

Theory is the result of thinking that pays special attention to the main ideas and basic knowledge about a meaning without conducting an objective research". Legal theory includes legal philosophy, but legal theory is clearly broader than legal philosophy, because legal theory also includes the use of non-legal methods of inquiry, as well as to explain specific issues of law. However, legal theory does not include doctrinal analysis. (Lubis, Filsafat Ilmu dan Penelitian, 1994)

The function of theory in this research is to provide guidance and explain the observed symptoms. There are 3 (three) elements of theory that function to provide direction in research, namely (Sjahderi, 1993):

- a. Explaining the relationship between various elements in a theory.
- b. Adheres to a deductive system, which is something that starts from something general and abstract towards something specific and real.
- c. Provides an explanation for the symptoms it states.

The theoretical framework in this research must be directed specifically to explain the legal implications of the basis for the imposition of land and building acquisition tax on land and building sale and purchase transactions.

The main theory or Grand Theori in this research is the theory of justice. Justice is a key policy in social institutions, as is truth in systems of thought. A concept, no matter how elegant and economical, must be rejected or revised if it is not true; likewise laws and institutions, no matter how efficient and neat, must be reformed or abolished if they are unjust (Faiz Pan Mohammad, 1995)

The concept of justice must be seen as having a standard by which even aspects of the basic structure of society are measured. However, this standard should not be confused with other policy-determining principles, because the basic structure (and social order in general) may be efficient or inefficient, liberal or illiberal and may also be just or unjust.

These principles, then, according to Rawls, are "categorical imperatives" that express the autonomy of "free and equal rational beings". Specifically, John Rawls develops the notion of principles of justice by fully utilizing his invented concepts known as the "original position" and the "veil of ignorance". A doctrine of political economy must include an interpretation of the public good that is based on the concept of justice. (Pan, 2009)

3. RESEARCH METHODS

This is a normative study, especially a legal study, based on secondary data sources or information from library materials by examining studies of legal principles, sources and theories in books and legal regulations, as well as legal regulations related to this study, such as presidential, government, ministry and regional regulations.

In this research, normative legal research and empirical research are very useful, used because they examine legal norms, namely Law Number 28 of 2009 concerning PDRD in determining the basis for tax imposition on the transfer of land and building rights in AJB relating to the rules of Income Tax (seller tax) and BPHTB (buyer tax) and the application of these rules or implementation of the provisions of these regulatory provisions. So that in this study the legal norms that regulate and the process of applying the law to achieve legal objectives. For this reason, this research not only examines normatively but also takes elements in empirical research to perfect the results obtained in this study. The elements added in this research are research data sources and locations in legal research.

4. RESULT AND ANALYSIS

In the case of notarial deeds, the land transfer tax is levied on the land itself. Land has a philosophical value because it has economic, cultural and historical value. This concept of land use was confirmed by Dixon (Dixon, 2002), who defines land as "both the physical property and the right that the owner or others may have in it." Land plays a crucial role in the development of human life. Throughout history, land has been used as a means for human life, and since the post-Pleistocene, land has been used for agriculture after hunting and gathering food (Poesponegoro, 1984). This period of agriculture marks the development of human civilization in Indonesia.

In various scientific studies, such as social sciences, law, culture, and economics, land is a key resource for human life. It has always been associated with the existence of a nation and the center of cultural development (Nasucha, 1995). Wars of various kinds have been fought to conquer land. Land is a natural resource that provides space for other material goods such as housing. 2. land is a social space where people interact. 3. land provides space for infrastructure (roads, water, sewage, (water, sewage, electricity) that benefits the community, 4. the land is an commodity that can be sold, inherited, or used as collateral for loans; and 5. land can increase the income of its owner in many ways, for example, through the construction of businesses or rental housing (Urban Sector Network and Development Works) (Bromley, 1991). These examples show that land is the most important source of people's welfare.

Land plays a crucial role in sustaining human life. Its functions can be divided into several dimensions:

- a. The strategic functions of soil from a cultural and ecological perspective: the interdependence between organisms and the environment; as a component of the environment, soil is dependent on other elements (Winangun,2004)
- b. The strategic function of soil in the socio-political dimension: soil can determine the social status of the owner. This is related to land tenure rights, where the landowner has the power to own and manage the land. The more land a person owns, the greater his or her authority to use the land. This authority also relates to the social functions of the land, which must take into account the public interest. Because it is a limited natural resource, the state must distribute land ownership as equitably as possible by limiting land ownership. This indirectly ensures that an individual cannot take advantage of the public. The behavior of tax officials also determines the effectiveness of a rule. Employee professionalism is largely determined by the level of employee ability that is reflected in their daily behavior in the organization. reflected in his daily behavior in the organization. (Aryanti, 2022)

The strategic function of land from the economic dimension: the land is a means of production that can provide income as well as improve the welfare of the owner. This can be seen from an economic point of view: the land is one of the production factors, the others being labor and capital (Fisher,1958) The land is considered the most durable factor of production as its value tends to increase over time, unlike vehicles, cars, or cellphones which experience economic depreciation. This is in line with its socio-political dimension, where land is also a source of power in addition to being a source of income. It can be said that the larger the land owned by a person or a group, the greater their influence on the government (McCrone,1989). This can be seen in the development of an area; it is determined based on the interests of the owners of the largest amount of land. It is known that in addition to having an impact on the economic sector, the development of an area will indirectly impact the socio-political sector of the surrounding communities.

Article 33 Paragraph (3) of the 1945 Constitution states that: "The land, the waters, and the natural riches contained therein shall be controlled by the State and exploited to the greatest benefit of the people". Two elements need to be considered from this statement, namely state control and its philosophical implication. State control over land and buildings does not mean full ownership but rather the authority of the state, as the highest form of authority of Indonesia, to:

- a. Manage and administer the designation, use, supply, and maintenance of the land, water, and skies.
- b. Determine and regulate the rights for ownership over (part of) the land, water, and skies.
- c. Determine and regulate legal relations between individuals and legal actions concerning the land, water, and skies.

The NJOP of land determined by the regional government is often much lower than the market and transaction prices which often results in problems in the process of paying property transfer tax in notarial transaction agreements in Indonesia. For this reason, the transaction price is often used in place of the NJOP.

In its essence, appraisals are estimates or opinions based on rational reasons or analysis. The feasibility of an appraisal is determined by the availability of sufficient data, as well as the Advances in information technology have caused the information to be disseminated very quickly. Anyone can very easily access and disseminate various types of information. One important piece of information is land value, as it is the basis for determining the NJOP which is then used to determine the amount of tax to be paid. Due to land appraisals being required to be carried out in a quick and streamlined manner, a certain form of media is needed to solve this problem. One of them is the Web-Based Geographical Information System or also known as WebGIS(Dj,2016).

Society 5.0 is a society that can solve various challenges and social problems by utilizing various innovations that were born in the era of the industrial revolution 4.0 such as the Internet of Things (internet for everything), Artificial Intelligence (artificial intelligence), Big Data (large amounts of data), and robots to improve the quality of human life. Society 5.0 can also be interpreted as a concept of a human-centered and technology-based society. In order to carry out legal development and implement the rule of law, technology is needed to help the law achieve its legal goals. As the systems handling taxation become more digitalized, several problems can potentially arise. These include technical problems such as both the system itself and the internet are prone to errors and virus attacks and the technological literacy of taxpayers in utilizing digital systems (Jawas,2018)

This is comfortable and able to actualize itself reasonably and well. Adam Smith argued that the principles of tax collection are the principles to achieve the purpose of tax collection. In his book *Wealth of Nations* with the famous teaching "The Four Maxims", the principles of tax collection are as follows Azas Equality (the principle of balance with ability or the principle of justice): This principle is the tax collection carried out by the state must be in accordance with the ability and income of the taxpayer where the tax object in the BPHTB levy must be in accordance with what

is used as the transaction value that will be used as the basis for tax imposition on the determination of the BPHTB value of sale and purchase of land and buildings. The state must not act discriminatively against taxpayers. Azas Certainty (principle of legal certainty): This principle regulates that all tax levies must be based on the law, so that those who violate it will be subject to legal sanctions.

Social justice cannot be contradicted and separated from the aspects of divinity, humanity, unity and integration and plurality and the spirit of deliberation, unity and integration of plurality and the spirit of deliberation and mutual cooperation, meaning that the fifth precept, namely "Social Justice for All Indonesian People, is based on and imbued with the first, second, third and fourth precepts. The precepts contain values that are the purpose of the state as a goal in living together. (Suadi, 2019)

For this reason, the value of justice that is manifested in the common life is justice based on and imbued with the essence of human justice, namely justice together is justice based on and imbued with the essence of human justice, namely human justice with himself, humans with other humans, humans with society, nation and state as well as human relations with God (Tjahyadi, 1991). Justice in taxation expects that every law is imposed equally on every community, if one community is not treated fairly then it will create injustice for other communities. If the tax imposition base is not properly paid to one taxpayer then it will create injustice for all taxpayers who pay taxes in accordance with the tax imposition base that should be. So that good morals are needed from the side of taxpayers and tax authorities as representatives of the government.

5. CONCLUSION

It is time that transfer duties in notarized transaction agreements were no longer calculated on the basis of the highest NJOP value or the value of the transaction under the regional tax law, so that the law can be more properly amended by establishing a single value basis. As the public's needs outweigh its obligation to comply with the law, many have falsified real estate transaction prices. Digitization makes it possible to determine the land transfer tax base not on the basis of the highest NJOP or transaction value, but on the basis of the fair market price, which can always vary according to existing circumstances. The evolution of technology should support the implementation of the law in order to keep pace with Indonesia's rapid economic growth, which leads to delays in the determination of NJOP.

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