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DETERMINATION OF TAX OBJECT ACQUISITION VALUE (NPOP) BY THE REGIONAL REVENUE AGENCY IN THE IMPOSITION OF TAX ON ACQUISITION OF LAND AND BUILDING RIGHTS (BPHTB) FOR SALE AND PURCHASE (STUDY IN MALANG CITY)

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ABSTRACT

The purpose of this study is to analyze and describe the basis used by Bapenda to deviate from the provisions of Article 6, paragraph (2), letter a of Law Number 20 of 2000 concerning BPHTB, in conjunction with the provisions of Article 7, paragraph (2), letter a, in conjunction with Article 10 of Malang City Regional Regulation Number 15 of 2010 concerning BPHTB, in collecting BPHTB in Malang City. It also aims to analyze and describe the indicators used by Bapenda to determine the fair transaction price in the sale and purchase of land in Malang City for the collection of BPHTB. This research is a socio-legal study with a juridical-sociological approach. The research was conducted at the Regional Revenue Agency of Malang City. The analysis results show that the Fees for Acquisition of Rights on Land and Building (BPHTB), as a local tax, are collected by the local government. BPHTB is calculated using the tariff and tax base, after being reduced by NPOPTKP. There is a difference in terminology between NPOP in the BPHTB Law and NJOP in the BPHTB Perda of Malang City. The collection of BPHTB must adhere to the principles of justice, legal certainty, legality, and simplicity. However, there were irregularities in the collection of BPHTB by Bapenda in Malang City in 2022 and 2023, as they violated the provisions by using the tax database and determining the increase in NJOP without a clear basis, undermining the principle of legality and causing conflicts with the BPHTB Law.

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INTRODUCTION.

The organization of a country's governance in a legal system is based on the rule of law (Airlangga, 2019). Referring to Achmad Ali's perspective on law, he sees law manifested in the form of

normative law (*sollen*) and positive law (*sein*). Building on this, it is understood that law in reality cannot be separated from law as a norm (legal norm) (Ali, 2015). The existence of law is used to create a safe and orderly atmosphere in interpersonal relationships and/or in society (Hadi, 2017). A safe condition means the creation of a state free from disturbances, free from danger, and a certain and peaceful condition (KBBI, 2016). Therefore, according to conventional teachings, the purpose of law is to fulfill justice, utility, and certainty (Airlangga, 2019).

Land is a valuable immovable property (Sudiro & Putra, 2021). This can be understood due to the imbalance between human needs for land and the available land. Land can also be seen as a tool to achieve prosperity and well-being. Essentially, land is controlled by the state based on the "state's right of ownership." However, the state can grant land rights to legal subjects, namely individuals and legal entities. These land rights are used as a basis by legal subjects to possess the land.

Land rights are acquired through two causes, namely transfer of rights and grant of rights. Focusing on the cause of transfer of rights, one of the legal acts is sale and purchase. Land sale and purchase transactions are different from other transactions involving immovable property. The legal act of land sale and purchase needs to be declared in an authentic deed made by a Land Deed Official (PPAT). This authentic deed is required by the parties to facilitate the transfer of land rights from the seller to the buyer at the local land office. In addition, the occurrence of land sale and purchase transactions entails the obligation to pay the "Land and Building Acquisition Duty" (BPHTB) tax.

Focusing on the BPHTB that arises from the occurrence of sale and purchase transactions, referring to Article 6 paragraph (2) letter a of Law Number 20 of 2000 regarding Land and Building Acquisition Duty (BPHTB Law), it is known that "the Acquisition Value of the Tax Object as referred to in paragraph (1), in the case of: a. sale and purchase, is the transaction price." In line with this, Regional Regulation of Malang City Number 15 of 2010 concerning Land and Building Acquisition Duty (BPHTB Malang City Regulation) also regulates the same provision in Article 7 paragraph (2) letter a. Therefore, it is known that the provisions of Article 6 paragraph (2) letter a of the BPHTB Law in conjunction with Article 7 paragraph (2) letter a of the BPHTB Malang City Regulation constitute the norm in the collection of BPHTB for sale and purchase transactions, especially in Malang City.

Tax enforcement authorities at the district/city level include the Regional Revenue Agency. Referring to Article 2 paragraph (1) of the Mayor of Malang Regulation Number 79 of 2019 concerning the Position, Organizational Structure, Duties and Functions, and Work Procedures of the Regional Revenue Agency (Mayor of Malang Regulation Number 79 of 2019), it has been regulated regarding the position of the Regional Revenue Agency as follows:

"The Regional Revenue Agency is a Regional Apparatus that carries out supporting functions in the implementation of government affairs in the financial field, particularly in the management of local tax revenues and other supporting tasks, and is under the authority of the Mayor."

Referring to Article 4 of Law Number 1 of 2022 concerning the Financial Relations between the Central Government and Regional Governments, it has been regulated that BPHTB is one of the taxes collected by the district/city government. Based on the position of the Regional Revenue Agency (Bapenda), as the tax enforcement authority at the regional level, Bapenda is obligated to comply with and apply the applicable laws in the collection of BPHTB.

According to the applicable laws, the payment of BPHTB tax is 5 (five) percent of the transaction price after deducting the Non-Taxable Tax Object Acquisition Value (NPOPTKP). In the field, there is often a common occurrence of tax evasion in BPHTB payments, where a lower transaction price is declared to minimize the BPHTB tax obligation (Afriyandi, 2018). In response to this, the Malang City Government, through Regional Regulation Number 15 of 2010 concerning Land and Building Acquisition Duty, imposes an obligation on the Head of the Region or appointed officials to inspect the Regional Tax Payment Letter (SSPD) from taxpayers. Through this obligation, authorized officials will conduct a simple examination if the tax amount in the SSPD is deemed insufficient and/or not in accordance with the database of the Regional Revenue Agency (Bapenda).

However, this situation can cause confusion for both the seller and the buyer when they have no intention to deceive the BPHTB payment amount. Parties who have submitted the SSPD based on the actual transaction price will be confused when asked to adjust it to the price stated in Bapenda's database. Such adjustments may result in an increase in BPHTB tax costs exceeding the tax that should be paid by the parties based on the transaction price (NJOP). This situation tends to cause losses for both the buyer and the seller as it can affect existing agreements. Additionally, there is a lack of

transparency regarding the prices stated in Bapenda's database, so the seller and the buyer are unaware of the prices adopted by Bapenda.

Through Regional Regulation Number 15 of 2010 concerning Land and Building Acquisition Duty (BPHTB Malang City Regulation), it stipulates the obligation of the Head of the Region or appointed officials to "inspect the Regional Tax Payment Letter (SSPD) from taxpayers." Through this obligation, authorized officials will conduct a simple examination if the tax amount in the SSPD is deemed insufficient and/or not in accordance with the database of the Regional Revenue Agency (Bapenda). In such cases, it creates uncertainty and loss for taxpayers because the imposition of BPHTB for sale and purchase transactions based on Bapenda's NPOP tends to result in a higher BPHTB amount. Parties who have submitted the SSPD based on the actual transaction price will be confused when asked to adjust it to the price stated in Bapenda's database. This situation tends to cause losses for both the buyer and the seller as a new price emerges outside the agreement. Additionally, there is a lack of transparency regarding the prices stated in Bapenda's database, so the seller and the buyer are unaware of the prices adopted or determined by Bapenda. Furthermore, referring to previous research, it is known that the Regional Government actually does not have the authority to determine the selling price in land sale and purchase transactions (Afriyandi, 2018).

The uncertainty regarding the basis for imposing the BPHTB for sale and purchase transactions also poses challenges in the field of Notary/PPAT services. Referring to Article 24 paragraph (1) of the BPHTB Law, it is stipulated as follows:

"The Land Deed Official/Notary can only sign the deed of transfer of land and or building rights when the taxpayer submits proof of tax payment in the form of a Tax Payment Slip for Acquisition of Land and Building Rights."

Based on the aforementioned provisions, notaries are required to provide legal advice regarding BPHTB payments as regulated in the BPHTB Law, in conjunction with the BPHTB Regional Regulation of Malang City. The inconsistency in the application of Article 6 paragraph (2) letter a of Law Number 20 of 2000 concerning BPHTB, in conjunction with Article 7 paragraph (2) letter a and Article 7 paragraph (3) of Malang City Regional Regulation Number 15 of 2010 concerning BPHTB by Bapenda, creates legal uncertainty. This discrepancy arises from the differing legal information received by taxpayers from the Notary/PPAT and the Malang City Regional Revenue Agency.

The public has the right to know the value determined by the government for tax collection purposes. This is in line with the Indonesian constitution, which stipulates that taxes must be regulated by law. The constitution represents a social contract, signifying an agreement between the community and the state or government that governs them (Sinaga, 2015). On the other hand, tax matters are part of government administration affairs that should also adhere to the "General Principles of Good Governance (AUPB)". Referring to the Government Administration Law (Law Number 30 of 2014), specifically Article 1 number 17, it states that the "General Principles of Good Government, hereinafter referred to as AUPB, are principles used as a reference for the exercise of authority by government officials in making decisions and/or taking actions in government administration." These principles also apply to tax collection since a tax assessment letter is a decision issued by a state official within the scope of the Tax Office. Regarding the issue of determining the value of the tax object in BPHTB tax collection in Malang City, it is argued that it violates the AUPB, particularly the principle of transparency, defined in the Government Administration Law as "the principle that enables the public to access and obtain accurate, honest, and non-discriminatory information in government administration while still respecting the protection of personal rights, groups, and state secrets."

Based on the background description provided, further investigation will focus on the basis used by Bapenda to deviate from the provisions of Article 6 paragraph (2) letter a of Law Number 20 of 2000 concerning BPHTB, in conjunction with Article 7 paragraph (2) letter a and Article 7 paragraph (3) of Malang City Regional Regulation Number 15 of 2010 concerning BPHTB. Additionally, it is necessary to examine the indicators employed by Bapenda in determining the transaction price of land per square meter. This research aims to establish legal certainty in the collection of BPHTB Jual-Beli. Hence, the researcher has compiled a thesis research proposal titled "Determination of Tax Object Acquisition Value (NPOP) by the Regional Revenue Agency in the Imposition of BPHTB Jual-Beli (Study in Malang City)".

Considering the aforementioned background, the objective of this research is to analyze and describe the basis used by Bapenda to deviate from the provisions of Article 6 paragraph (2) letter a of

Law Number 20 of 2000 concerning BPHTB, in conjunction with Article 7 paragraph (2) letter a and Article 10 of Malang City Regional Regulation Number 15 of 2010 concerning BPHTB, in the collection of BPHTB in Malang City. Furthermore, the research aims to analyze and describe the indicators utilized by Bapenda in determining the fair transaction price for the sale and purchase of land in Malang City, as applied in the collection of BPHTB.

LITERATURE REVIEW.

Legal Certainty Theory.

Legal certainty is a guarantee of justice within the law. Norms that promote justice must effectively function as rules that are followed. Gustav Radbruch argues that justice and legal certainty are integral parts of the law. He asserts that legal certainty must be upheld to ensure the security and order of a country. Additionally, positive law must always be obeyed. The theory of legal certainty emphasizes the value of justice and happiness (Ali, 2015). To achieve legal certainty, efforts are required to regulate the law through legislation by authorized and authoritative parties. This ensures that the rules possess juridical aspects that guarantee their functionality as rules that must be obeyed.

Theory of Legal Effectiveness.

Drawing on the ideas of Bronislaw Malinowski, the effectiveness of law in society is analyzed, highlighting the distinction between modern and primitive societies. In modern society, laws are created and determined by authorized officials and enforced by law enforcement authorities. This sets modern society apart from primitive society, which does not recognize similar instruments of power (Salim & Nurbani, 2017). According to Antony Allot, the effectiveness of legal implementation can be viewed from several dimensions:

1. The non-dissemination of normative legal norms leads to difficulties in the final transmission of legal norms. Consequently, the law cannot be understood by legal subjects as instructional messages.
2. Conflict may arise between the intentions and objectives of legislators and the sociological habits of society (i.e., traditional society), creating a gap between modern society and indigenous peoples.
3. Failures in law implementation can occur due to inadequate availability of norms, orders, institutions, or processes related to the law (Allott, 1981).

Tax.

According to Rochmat Soemitro, tax is defined as the contribution of individuals to the state treasury, mandated by law, without reciprocal services that can be directly observed or utilized to cover public expenses (Rochmat, 2011). The term "enforceable" signifies that if there is an unpaid tax debt, it can be collected through the use of force, such as issuing forceful letters, confiscation, and even hostage-taking. Although tax payment does not entail specific reciprocal services, this differs from retribution, where the payer can directly perceive or identify the reciprocal service (Zuraida & Advianto, 2011). In addition, in line with Soemarso's viewpoint, tax is regarded as a manifestation of both the state's obligations and the community's participation in meeting the financial needs of the state and achieving social justice and equitable material and spiritual prosperity through national development (Soemarso, 2007).

Based on the aforementioned definition of tax, several characteristics can be identified:

- a. Tax collection is based on the law and its implementing regulations.
- b. Tax payments do not result in direct rewards.
- c. Taxes are collected by both the central and local governments.
- d. Tax revenues are utilized to finance government expenditures, encompassing both routine and developmental expenses. Any surplus is allocated towards public investments.

BPHTB.

Referring to Article 1, point 1 of Law Number 20 of 2000, which amends Law Number 21 of 1997 on Fees for Acquisition of Land and Building Rights (BPHTB Law), Fees for Acquisition of Land and Building Rights are defined as taxes imposed on the acquisition of rights to land and/or buildings, hereinafter referred to as taxes.

Article 6, paragraph (3) of the BPHTB Law stipulates that if the Tax Object Acquisition Value is unknown or lower than the Tax Object Sale Value (NJOP), the tax imposition base used is the PBB Tax Object Sale Value. The PBB NJOP is indicated in the Notice of Tax Payable for Land and Building Tax (SPPT PBB) issued by the regional Land and Building Tax Service office where the property is located. If the PBB NJOP mentioned in Article 6, paragraph 3 has not been determined, the Minister of Finance can be requested to establish it. The amount of tax payable is calculated by multiplying the rate of 5% (five percent) by the Taxable Tax Object Acquisition Value (NPOPKP). The formula for calculating the amount of BPHTB is as follows:

$$\text{BPHTB} = (\text{NPOP} - \text{NPOPTKP}) \times 5\%$$

According to Article 2 of Government Regulation Number 111 of 2000 regarding the Imposition of Fees on Acquisition of Land and Building Rights due to inheritance and bequests, the BPHTB payable on the acquisition of rights due to inheritance and bequests received by individuals who are still in a blood family relationship in a straight line of descent from one degree up or one degree down with the bequest recipient, including husband and wife, is 50% (fifty percent) of the BPHTB that should be payable. Upon taxpayer request, a reduction in BPHTB can be granted, regulated by the decision of the Minister of Finance of the Republic of Indonesia Number 518/KMK.04/2000 regarding the Granting of BPHTB Reduction. This is further detailed by the Director General of Taxes in the decision Number KEP-531/PJ/2000 concerning Procedures for granting BPHTB reduction. The reduction can be granted based on conditions related to the tax object and specific causes.

Simple Field Inspection.

Referring to Article 1, point 29 of Malang City Regional Regulation Number 15 of 2010 on Fees for Acquisition of Land and Building Rights, inspection is defined as a series of activities conducted objectively and professionally to collect and process data, information, and/or evidence. These activities are based on an inspection standard and aim to test compliance with the fulfillment of regional tax obligations and/or other purposes in the context of implementing regional taxation laws and regulations.

According to Article 32, paragraph (1), the Regional Head or an authorized official is granted the authority to conduct an inspection to ensure compliance with regional tax obligations in accordance with regional tax laws and regulations. Based on the inspection, taxpayers are required to present documents related to the tax object and provide necessary information, as stipulated in Article 32, paragraph (2).

Following the inspection described in paragraph (2), the Regional Government issues the following certificates based on a comparison between the taxpayer's report and the database owned by the Regional Government: SKPDKB (Regional Tax Certificate of Underpayment), SKPDLB (Regional Tax Certificate of Overpayment), and SKPDN (Regional Tax Certificate of Nil).

Simple field inspection activities are initiated as outlined in Article 32, paragraph (4), which states that "If there is a significant difference in the tax object between what is reported and the tax database owned by the Local Government, a simple field inspection is conducted."

Regional Revenue Agency.

Referring to Article 2, paragraph (1) of the Regulation of the Mayor of Malang City Number 79 of 2019 concerning the Position, Organizational Structure, Duties and Functions, and Work Procedures of the Regional Revenue Agency, it is stipulated that the Regional Revenue Agency is a Regional Apparatus that carries out supporting functions for the implementation of government affairs in the financial sector, particularly in the management of Regional Tax revenue and other related tasks. It operates under the authority of the Mayor.

Tax Object Acquisition Value.

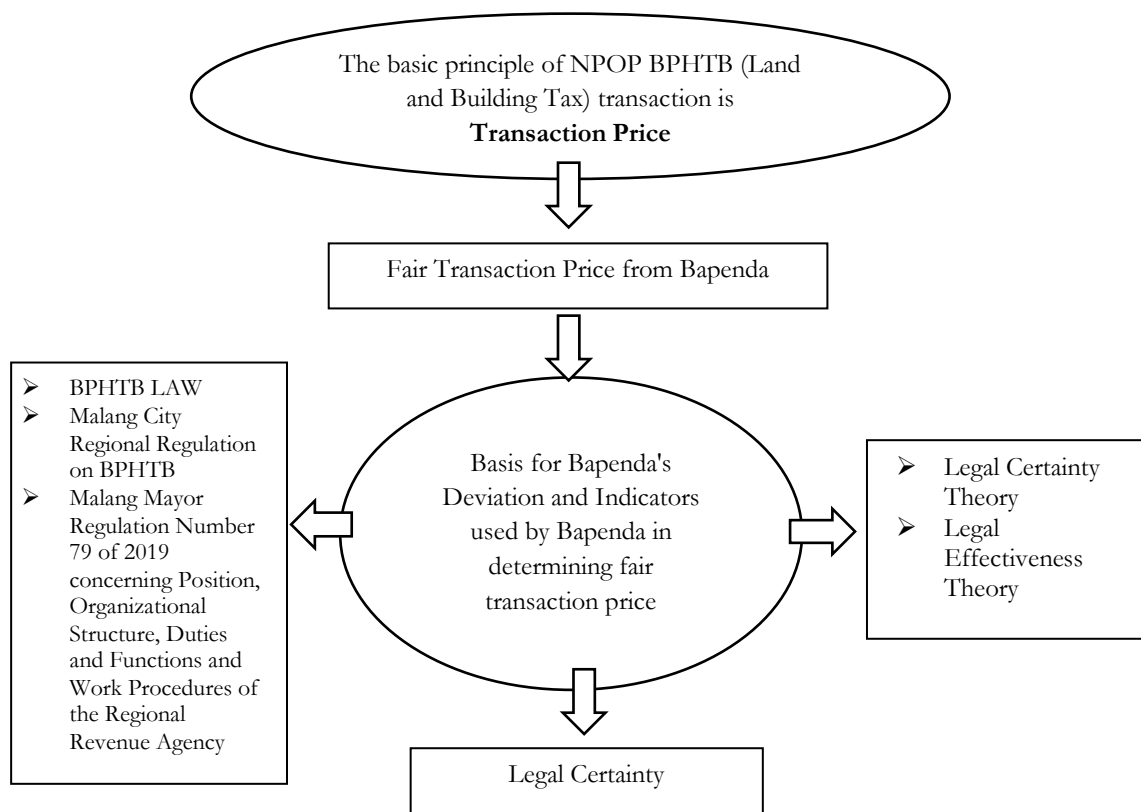
The Tax Object Acquisition Value, hereinafter referred to as NPOP, is the value or price of the tax object used as the basis for tax imposition.

According to Article 6, paragraph (1) of the BPHTB Law, it is determined that "The basis for tax imposition is the Tax Object Acquisition Value." The Tax Object Acquisition Value varies depending on the circumstances:

- a) In the case of sale and purchase, it is the transaction price.
- b) In the case of exchange, it is the market value.
- c) In the case of grant, it is the market value.
- d) In the case of bequest, it is the market value.
- e) In the case of inheritance, it is the market value.
- f) In the case of inclusion in a company or other legal entity, it is the market value.
- g) In the case of separation of rights resulting in a transfer, it is the market value.
- h) In the case of transfer of rights due to the implementation of a judge's decision that has permanent legal force, it is the market value.
- i) In the case of granting new rights over land as a continuation of the release of rights, it is the market value.
- j) In the case of granting new rights over land outside the release of rights, it is the market value.
- k) In the case of merger of businesses, it is the market value.
- l) In the case of business consolidation, it is the market value.
- m) In the case of business expansion, it is the market value.
- n) In the case of gift, it is the market value.
- o) In the case of the appointment of a buyer in an auction, it is the transaction price stated in the Minutes of Auction.

Research Design.

Based on the problem formulation described above, the research design is as follows:



Description:

The tax collection activities of BPHTB in Malang City are regulated by Malang City Regional Regulation Number 15 of 2010 concerning BPHTB, which is also based on Law Number 20 of 2000 concerning BPHTB. Both laws mutually stipulate that the basis for tax imposition (NPOP) of BPHTB

in sale and purchase transactions is the "Transaction Price." However, it has been observed that Bapenda, the BPHTB collector in Malang City, deviates from this tax imposition basis.

The Constitution mandates that tax collection in Indonesia must be based on law, ensuring legal certainty. Therefore, it is necessary to conduct further research to understand the reasons behind Bapenda's deviation from the provisions stated in Article 6, paragraph (2), letter a of the BPHTB Law, in conjunction with the provisions of Article 7, paragraph (2), letter a, and Article 7, paragraph (3), of the BPHTB Regional Regulation. Additionally, the research will investigate the indicators used by Bapenda in determining the fair transaction price in land sales.

Research Methods.

This research employed a socio-legal research approach, which was a hybrid methodology combining normative law and the societal perspective (Bedner et al., 2012). Referring to Wheeler and Thomas, socio-legal studies were defined as an alternative approach that tested doctrinal studies of law (Bedner et al., 2012). The selection of socio-legal research was based on the legal issues addressed in this study, specifically the inconsistency between "das sollen" and "das sein," exemplified by deviations from the provisions by Bapenda in the collection of BPHTB Jual-Beli in Malang City. Thus, resolving these legal issues required an examination not only from a normative standpoint but also from the perspective of law in practice.

The study was conducted at the Regional Revenue Agency of Malang City, as it served as the enforcer of tax laws pertaining to BPHTB at the local level. To comprehend and address the legal issues in this research, a juridical-sociological approach was employed. This approach enabled an empirical understanding and identification of the law concerning the collection of BPHTB Jual-Beli by the Malang City Regional Revenue Agency.

The research data consisted of primary and secondary data. Primary data encompassed knowledge, understanding, attitudes, actions, perceptions, experiences, and other information obtained directly from the research subjects (Asikin, 2004). Primary data was collected through direct interviews with the following individuals:

- a. Head of BPHTB Division
- b. BPHTB Field Verification Members
- c. Notary/PPAT
- d. Taxpayers

Secondary data sources included legal documents, books, previous research, expert opinions, and relevant laws and regulations, including:

- a) Law Number 20 of 2010 concerning BPHTB
- b) Malang City Regional Regulation Number 15 of 2010 concerning BPHTB
- c) Malang Mayor Regulation Number 79 of 2019 concerning the Position, Organizational Structure, Duties and Functions, and Work Procedures of the Regional Revenue Agency.

Additionally, tertiary data from the "Black Law Dictionary" and "Big Indonesian Dictionary" were utilized as supplementary resources to support the primary and secondary data.

The data retrieval and collection techniques employed in this research included interviews and literature studies or documentation studies. The research population comprised the Regional Revenue Agency of Malang City and Notary/PPAT in Malang City. Purposive sampling technique was utilized, which involved deliberately selecting respondents based on predetermined characteristics determined by the researcher to meet the research objectives (Dr, 2017). Based on this purposive sampling technique, the samples in this study were as follows:

From all employees at the Malang City Regional Revenue Agency office, the researcher selected the following samples:

- (1) Head of BPHTB Division
- (2) BPHTB Field Verification Member

From all Notaries/PPATs in Malang City, the researcher selected the following sample:

- (1) 1 Notary/PPAT based in Malang City with a tenure of more than 5 years.

From the general population in Malang City, the researcher selected the following samples:

- (2) 3 taxpayers

The data analysis technique employed in this research was descriptive qualitative analysis. It involved depicting and interpreting the collected data to obtain a comprehensive and overall understanding of the actual situation (Lexy, 2006).

RESULT AND DISCUSSION.

Obligation of Land and Building Acquisition Tax Arising from Buying and Selling.

Referring to Article 1 number 1 of Law Number 20 of 2000 on Amendments to Law Number 21 of 1997 concerning Land and Building Acquisition Tax (BPHTB Law), Land and Building Acquisition Tax is defined as a tax imposed on the acquisition of rights to land and/or buildings. There are 2 (two) reasons why someone acquires rights to land and buildings, namely due to transfer or transfer of rights or due to granting of rights. In this study, the focus is on the land and building acquisition tax caused by the transfer of rights through buying and selling.

In the realm of the Basic Agrarian Law (UUPA), buying and selling is a process that serves as evidence of the transfer of rights from the seller to the buyer. In this legal act, the fundamental principle is clarity and immediacy. It means that the buying and selling transaction is conducted in the presence of authorized public officials (Land Deed Official) and is paid in cash. Therefore, if the price paid is not paid in full, the buying and selling process cannot be carried out. The legal act of buying and selling is a legal act in the private domain, so its legal regulation can be found in the Civil Code.

Turning to the realm of the Civil Code, Article 1456 regulates the agreement of buying and selling, which is an agreement formed because one party has committed to transfer ownership rights and the other party is willing to pay the agreed price. Furthermore, the legal regulation of buying and selling in the Civil Code is obligatory, which means that ownership rights to the sold goods will not be transferred to the buyer until a juridical delivery (levering) is made. Such regulation can be found in Article 1459 of the Civil Code, which states that "Ownership rights to the sold goods do not transfer to the buyer until the goods are delivered according to Articles 612, 613, and 616." Therefore, the buying and selling adhered to in civil law is buying and selling that has not transferred ownership rights (Suarti, 2019).

Based on the concept of obligatory sale and purchase, in relation to the sale and purchase of land, it is necessary to transfer the name or register the transfer of rights with the local National Land Agency so that ownership of the land rights passes from the seller to the buyer. This process is referred to as juridical transfer (juridisch levering). Referring to Article 37, paragraph (1) of Government Regulation No. 24/1997 on Land Registration, it is stipulated as follows:

"The transfer of land rights and ownership rights over apartment units through sale and purchase, exchange, grants, inclusion in companies, and other legal acts of transfer of rights, except for the transfer of rights through auctions, can only be registered if proven by a deed made by an authorized PPAT according to the provisions of the applicable laws and regulations."

According to this provision, it is understood that the juridical transfer in the sale and purchase of land requires the preparation of a deed by a Land Deed Official (PPAT) as a valid sale and purchase agreement. At this stage, the role and responsibility of the PPAT as the executor of land registration come into play. The PPAT deed must be drafted in a manner that serves as a solid basis for the registration of the transfer of rights and any encumbrances on the rights involved. Therefore, it is the responsibility of the PPAT to verify the legal conditions of the transaction, which includes cross-referencing the data on the certificate with the existing records at the Land Office.

Furthermore, in accordance with Article 38, paragraph (1), the following regulation is stated:

"The preparation of the deed mentioned in Article 37, paragraph (1) should involve the parties involved in the transaction and must be witnessed by at least 2 (two) qualified witnesses."

However, according to Article 39, paragraph (1), letter g, the PPAT is legally instructed to refuse the preparation of a deed if certain conditions are not met or if there is a violation of the prohibitions specified in the relevant laws and regulations. This provision is related to Article 3, paragraph (1) of Government Regulation of the Republic of Indonesia Number 34 of 2016 concerning Income Tax on Income from the Transfer of Rights on Land and/or Building, and Agreement for Sale and Purchase of Land and/or Building and its Amendments. It requires individuals or entities who receive or obtain income from the transfer of rights on land and/or buildings to deposit the applicable income tax to the designated bank or post office before the deed is signed by the PPAT. The tax obligation applies to the seller, while the buyer is subject to Fees on Acquisition of Rights on Land and/or Building. Referring to

Article 9, paragraph (1), letter a of the BPHTB Law, it states that "the tax becomes due on the acquisition of rights to land and/or buildings for sale and purchase from the date the deed is made and signed."

Focusing on the acquisition of land and building rights (BPHTB), which is classified as a local tax, the authority to collect it lies with the local government. In Malang City, the collection of BPHTB is carried out by the Malang City Regional Revenue Agency (Bapenda). The collection of BPHTB by Bapenda is governed by Malang City Regional Regulation Number 15 of 2010 concerning Fees for Acquisition of Rights on Land and Buildings (Malang City BPHTB Regional Regulation). Referring to Article 10 of the Malang City BPHTB Regional Regulation, it stipulates the following:

"The principal amount of Tax on Acquisition of Land and Building Rights payable is calculated by multiplying the rate referred to in Article 9 with the tax base as mentioned in Article 7, after deducting the Non-Taxable Object of Tax on Acquisition of Land and Building Rights (NPOPTKP) as mentioned in Article 8."

The rate referred to in Article 9 is 5% (five percent). The tax base for BPHTB arising from sale and purchase, as stated in Article 7, is the transaction price. Furthermore, the NPOPTKP specified in Article 8 is set at 60,000,000.00 (sixty million rupiahs) for each taxpayer. Based on the provisions in these articles, the formula for calculating BPHTB is $(NPOP - NPOPTKP) \times 5\%$.

Referring to the explanations in the BPHTB Law, it is known that the imposition of BPHTB must adhere to the principles of justice, legal certainty, legality, and simplicity, supported by a tax administration system that facilitates taxpayers in fulfilling their tax obligations. The realization of these principles can be assessed from the implementation of the BPHTB collection regulations in the BPHTB Law and the Malang City BPHTB Regional Regulation. Through an analysis of these regulations, it is found that there are inconsistent provisions between Article 6, paragraph (3) of the BPHTB Law and Article 7, paragraph (3) of the Malang City BPHTB Regional Regulation. Article 6, paragraph (3) of the BPHTB Law states the following:

"If the Tax Object Acquisition Value, as referred to in paragraph (2), letter a to n, is unknown or lower than the Tax Object Sales Value used for the calculation of Land and Building Tax in the year of acquisition, the tax base to be used is the Tax Object Sales Value for Land and Building Tax."

Meanwhile, the provision in Article 7, paragraph (3) of the Malang City BPHTB Regional Regulation states the following:

"If the NJOP (Tax Object Sales Value) as referred to in paragraph (2), letter a to n, is unknown or lower than the NJOP used for the calculation of Land and Building Tax in the year of acquisition, the tax base to be used is the NJOP for Land and Building Tax."

There is a difference in terminology between NPOP and NJOP. NPOP refers to the value used as the basis for tax imposition. The value used for the calculation of BPHTB is determined based on various types, as regulated in Article 6, paragraph (2) of the BPHTB Law. In Article 6, paragraph (2), it is stated that the determined NPOP includes the transaction price, the transaction price in auction minutes, and the market value. The existence of these three types of NPOP is adjusted according to the cause of the transfer of rights. This arrangement of three types of NPOP is also accommodated in the Malang City BPHTB Regional Regulation, as stated in Article 7, paragraph (2). Therefore, the use of the term NJOP in Article 7, paragraph (3) is inappropriate because it raises the interpretation that the NPOP used is NJOP instead of the transaction price, the transaction price in auction minutes, and the market value.

The existence of unsynchronized legal norms can be resolved by referring to the principle of "lex superior derogate legi inferiori," which means "higher laws (norms/legal rules) negate the validity of lower laws (norms/legal rules)" (Irfani, 2020). Referring to Article 7 and Article 8 of Law Number 12/2011 on the Formation of Legislation, regional regulations are positioned below the law. Based on this, the BPHTB collection that aligns with the intention of the law is the imposition of BPHTB based on the NPOP transaction price for sale and purchase. However, if the transaction price is unknown or lower than the NJOP used as the basis for the imposition of PBB (Land and Building Tax) in the year of acquisition, then the NPOP of BPHTB for sale and purchase is based on the NJOP of PBB in the year of acquisition.

Referring to Article 5, paragraph (4) of Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments, it is stipulated that "the document used as the basis for collecting the type of tax as referred to in paragraph (2), among others, is a regional tax notification letter." Furthermore, Article 5, paragraph (5) of the law states that "The local tax notification

letter document as referred to in paragraph (4) must be filled in correctly and completely and submitted by the taxpayer to the Local Government in accordance with the provisions of laws and regulations." Based on these regulations, it can be observed that BPHTB collection follows the self-assessment tax collection system. This system provides taxpayers with the confidence to fulfill and carry out their own tax obligations and rights (Kurnia, 2017).

To ensure taxpayer compliance, specifically in BPHTB collection, there are regulations regarding tax audits that are conducted by the Regional Revenue Agency in Malang City. The audit is defined as "a series of activities to collect and process data, information, and/or evidence carried out objectively and professionally based on an audit standard to test compliance with the fulfillment of regional tax obligations and/or other purposes in the context of implementing the provisions of regional taxation laws and regulations," according to Article 1, number 29 of the BPHTB Regional Regulation of Malang City.

However, the authority of local governments to conduct audits on compliance with tax obligations has led to indications of legal uncertainty and ineffective law in the collection of BPHTB by the Regional Revenue Agency in Malang City, which will be further described in the following points.

Bapenda's Basis for Deviating from the Provisions of BPHTB Collection in Legislation.

Referring to the KBBI Kemdikbud, the term Deviating or "*penyimpangan*" is defined as follows:

1. n. the process, method, or act of deviating or straying
2. n. in law, actions outside the applicable standards (norms)

Referring to J.J.H. Bruggink, as translated by Arief Sidharta, it is stated that the factual or empirical validity of legal norms pertains to whether these norms are complied with by the members of society (effective) or whether they are applied and enforced by legal officials (Bruggink, 1996). According to Sudikno Mertokusumo, legal norms are passive and therefore require stimulation to become active in the form of concrete events known as "das sein" (Sudikno, 2005). Thus, legal norms require concrete events or what can be called "das sollen" to necessitate "das sein." In relation to the topic of this research, the concrete events refer to the collection and payment of BPHTB.

In an effort to describe the deviation of BPHTB provisions by Bapenda Malang City, researchers have divided it into two periods: 2022 and 2023. This periodization is related to the use of NPOP as a benchmark by Bapenda in collecting BPHTB for sale and purchase. Based on interviews with the Head of the BPHTB Team at the Malang City Bapenda Office, the following information was obtained:

1) Period 2022

During this period, Bapenda deviated from the provisions regarding the transaction price in Article 7 paragraph (2) letter a and the provisions regarding the PBB NJOP in Article 7 paragraph (3) of the Malang City BPHTB Regional Regulation. Bapenda justified this deviation based on the PBB NJOP of Malang City, which has not been adjusted to the real conditions in Malang City since 2015. Bapenda considers that there has been rapid development of residential areas in suburban areas (Forsyth, 2012), and therefore the PBB NJOP in 2015 does not reflect the conditions in 2022 if it is used as the NPOP for BPHTB sale and purchase.

The use of the tax database as an indicator to determine the amount of BPHTB payable contradicts Article 7 paragraph (2) letter a, Article 7 paragraph (3), and Article 10 of the BPHTB Perda of Malang City. Article 10 of the BPHTB Perda of Malang City stipulates the calculation of the principal amount of Tax on Acquisition of Land and Building Rights payable by multiplying the rate specified in Article 9 with the tax base mentioned in Article 7, after deducting the NPOPTKP as referred to in Article 8.

The regulation on how to calculate the amount of BPHTB payable is a manifestation of the principle of legality, as explained in the BPHTB Law, which states that the imposition of BPHTB is based on the principles of justice, legal certainty, legality, and simplicity. The principle of legality in tax collection means that the imposition or collection of taxes may only be carried out based on the authority granted by the law. This is important considering that tax collection involves human rights related to their assets (Iskandar, 2017). Referring to Indroharto, he stated that the application of the principle of legality supports the establishment of legal certainty and equal treatment. Based on the principle of legality, the deviations committed by Bapenda undermine the legal certainty provided by the BPHTB Regional Regulation of Malang City.

This is because the BPHTB Law and the BPHTB Perda of Malang City require the calculation of BPHTB payable using NPOP in the form of transaction prices or using NJOP if certain conditions are met. Therefore, in the researcher's opinion, guided by Article 7 paragraph (2) letter a, Article 7 paragraph (3), and Article 10 of the BPHTB Perda of Malang City, the prices contained in the tax database owned by Bapenda should be synchronized with the PBB NJOP data. Thus, when Bapenda exercises its authority to audit the BPHTB SSPD, it is done to verify whether the taxpayer's stated transaction price is known and whether it is lower than the PBB NJOP in the year of acquisition. If the stated transaction price is lower than the PBB NJOP in the year of acquisition, the NPOP used should be the PBB NJOP, and the taxpayer is requested to adjust accordingly. This type of BPHTB collection is in accordance with the intentions of the BPHTB Law and the BPHTB Regional Regulation of Malang City.

2) Period 2023

During the 2023 period, Bapenda collaborated with Consultant Services to conduct an assessment that resulted in an increase in NJOP (Tax Object Sales Value) in Malang City. The formulation of the new NJOP applied in 2023 is based on three elements, as follows:

- a) Transaction value in the Bapenda tax database until 2022;
- b) Land parcel value owned by the National Land Agency;
- c) Results of field surveys conducted by consulting services.

However, the new NJOP that has been enacted is not based on the mayor's decree. Therefore, in the researcher's opinion, the enacted NJOP increase should not be considered valid, and if enacted, it would violate the principle of legality in BPHTB (Land and Building Acquisition Duty) collection.

The community perceives the increase in NJOP as excessively high, which burdens the payment of BPHTB. This objection was addressed by the Malang City House of Representatives through a Public Hearing Meeting (RDPU) of Commission B of the Malang City DPRD on January 27, 2023. The public hearing resulted in the following points:

- 1) Taxpayers and the general public feel that the adjustment of the NJOP amount is too high and imposes a heavy burden, as the increase is up to four times or even more compared to the NJOP of the previous year.
- 2) There are numerous discrepancies between the NJOP and the actual location of the land, including:
 - a) The NJOP of land located in an alley is equated with the NJOP of land located on the side of the highway.
 - b) The NJOP of land located in a village is equated with the NJOP of land located in a housing estate.
 - c) The NJOP of land that is still a yard/rice field is equalized with the NJOP of land that has been developed into housing.
- 3) The drastic increase in NJOP also affects individuals who inherit property rights, small and medium communities that own houses, as well as those facing issues related to waqf land without a name change.

The increase in NJOP has an effect on the collection of BPHTB payable because any transaction value lower than NJOP requires the tax base to use NJOP.

Based on the results of an interview with Mr. Jendra, a member of the BPHTB Team at Bapenda Malang City, it was stated that the transaction price is the price agreed upon between the seller and the buyer. He further explained that the agreement consists of two elements: a commercial agreement and an agreement due to urgent needs. The presence of these two elements influences the transaction price. Agreements based on commercial elements tend to result in transaction prices above NJOP, while agreements based on urgent needs tend to result in transaction prices lower than NJOP.

The determination of the PBB ("PBB" has been expanded as "Land and Building Tax") NJOP increase in 2023 in Malang City contradicts Article 6, paragraph (4) of the BPHTB Law. The legal provision in Article 6, paragraph (4), is stated as follows:

"If the Sales Value of the Land and Building Tax Object as referred to in paragraph (3) has not been determined, the amount of the Sales Value of the Land and Building Tax Object shall be determined by the Minister."

Meanwhile, in Article 7, paragraph (4) of the BPHTB Regional Regulation of Malang City, it is regulated as follows:

"In the event that the NJOP of Land and Building Tax as referred to in paragraph (3) has not been determined at the time the Fees for Acquisition of Rights on Land and Building are payable, the NJOP of Land and Building Tax can be issued by the relevant agency and is only temporary."

Although, according to Article 7, paragraph (3), the temporary determination of NJOP by the relevant agencies contradicts Article 6, paragraph (3) of the BPHTB Law, which grants authority to the Minister to determine NJOP. Furthermore, Regional Regulations, as stipulated in the provisions of Article 7 of Law Number 12 of 2011 concerning the Formation of Legislation, position Regional Regulations as a subsystem in the hierarchy of legislation in Indonesia. Therefore, the formation of a regional regulation should not conflict with regulations above it and should be in line with national policies.

Based on the above analysis in relation to the theory of legal effectiveness, it can be understood that the implementation of BPHTB collection in Malang City, based on Malang City Regional Regulation Number 15 of 2010 concerning BPHTB, is not effective. Referring to the measure of effectiveness according to Soerjono Soekanto, it is as follows:

- a) The existing regulations regarding certain areas of life are systematic enough.
- b) The existing regulations regarding certain areas of life are sufficiently synchronized, with no hierarchical or horizontal conflicts.
- c) The regulations governing certain areas of life are sufficient in qualitative and quantitative terms.
- d) The issuance of certain regulations adheres to existing juridical requirements (Soekanto, 1983).

Based on this measure of effectiveness, associated with the study of legal issues in this thesis, it is understood that the regulations regarding BPHTB in the BPHTB Regional Regulation of Malang City are not systematically and synchronously regulated with the BPHTB Law. The articles that are not synchronized include Article 7, paragraph (3), and Article 7, paragraph (4), of the BPHTB Perda of Malang City. The formulation of legal norms that are not synchronized with the legal norms in the BPHTB Law results in the implementation of BPHTB collection in Malang City not aligning with the intended purpose of the BPHTB Law.

Based on the results of interviews with the BPHTB Team of Malang City Bapenda, it is known that the basis for Malang City Bapenda to deviate from Article 7, paragraph (2), in conjunction with Article 10 of the BPHTB Local Regulation of Malang City is to bridge the gap between the 2015 PBB NJOP in Malang City and the rapid development of residential areas in the city. The use of the prices contained in the Bapenda tax database is a measure to determine whether the transaction price stated is a fair transaction price. This approach is taken due to the inclusion of transaction prices in the Sale and Purchase Deed and SSPD BPHTB by many taxpayers, which do not match the actual price, aiming to minimize the amount of BPHTB payable.

CONCLUSION.

BPHTB is considered a local tax collected by local governments, including the Malang City Regional Revenue Agency. The main amount of BPHTB is calculated by applying the tax rate to the tax base, after deducting the Non-Taxable Income Value (NPOPTKP) as determined. However, there is a disparity between the Tax Object Acquisition Value (NPOP) used in the BPHTB Law and the Tax Object Sale Value (NJOP) used in the BPHTB Regional Regulation of Malang City. To address this disparity, the principle of "lex superior derogate legi inferiori" must be taken into account, which establishes that higher laws supersede lower-level regulations. BPHTB collection should adhere to the principles of justice, legal certainty, legality, and simplicity. The documents utilized for BPHTB collection include a local tax notification letter, which taxpayers must complete accurately and thoroughly, following the provisions of applicable laws and regulations.

The Malang City Regional Revenue Agency (Bapenda) has been involved in irregularities regarding the imposition of Fees on Acquisition of Land and Building Rights (BPHTB) in 2022 and 2023. In 2022, Bapenda violated the BPHTB provisions by using the tax database as a basis for collecting BPHTB, disregarding the transaction price and the Land and Building Tax Object Sale Value (NJOP PBB), which should have been the benchmark. In 2023, Bapenda collaborated with a consultant to establish the NJOP increase without a clear basis, leading to public protests. This deviation undermines the principle of legality in tax collection and creates a conflict between the BPHTB Regional Regulation of Malang City and the BPHTB Law.

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