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LEGISLATIVE RATIO FOR BPHTB PAYMENT ARRANGEMENTS IN THE PROCESS OF BUYING AND SELLING LAND AND/OR BUILDING RIGHTS FROM A LEGAL CERTAINTY PERSPECTIVE

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Abstract:
As a nation governed by the rule of law, Indonesia must ensure that tax regulations, including the BPHTB (Land Acquisition and Land Acquisition) regulations, align with sound and fair legal principles. Therefore, it is necessary to reconstruct the BPHTB payment arrangements to better align with the principles of legal certainty and justice, for example by allowing BPHTB payments after the deed is signed by the Land Deed Official (PPAT). In this way, Indonesia's tax legal system can better reflect the essence of a state governed by the rule of law, as taught in classical legal philosophy and in modern state practices that prioritize public welfare. Legis Ratio of BPHTB Payment Arrangement in Land and/or Building Sale and Purchase Process Legal Certainty Perspective namely Philosophical, Theoretical, Juridical, Sociological basis. Philosophically, the regulation of BPHTB payment after the sale and purchase deed is in accordance with the values of Pancasila, especially the fifth principle on social justice, which emphasizes that taxation policies do not burden without a valid legal basis, theoretically, based on the theory of the rule of law.

Keywords:
Land; Law; Region

1. Introduction

As a nation governed by the rule of law, Indonesia must ensure that tax regulations, including the BPHTB (Land Acquisition and Land Acquisition) regulations, align with sound and fair legal principles. Therefore, it is necessary to reconstruct the BPHTB payment arrangements to better align with the principles of legal certainty and justice, for example by allowing BPHTB payments after the deed is signed by the Land Deed Official (PPAT). In this way, Indonesia's tax legal system can better reflect the essence of a state governed by the rule of law, as taught in classical legal philosophy and in modern state practices that prioritize public welfare.

Land and Building Acquisition Fee (BPHTB) is a tax imposed on the acquisition of rights to land and/or buildings. This tax plays an important role in the regional taxation system, especially since the enactment of Law Number 28 of 2009 concerning Regional Taxes and Regional Levies (PDRD Law) which has been revoked by Article 189 (1) letter b of Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations Between the Central Government and Regional Governments, which transferred the authority to collect it from the central government to regional governments. As an objective tax, BPHTB is imposed on legal events that cause the transfer of rights to land and/or buildings, such as sales and purchases, gifts, inheritance, exchanges, or auctions. BPHTB receipts are one of the sources of Regional Original Income (PAD) that supports infrastructure development and public services, increases the effectiveness of land administration, and supports land redistribution programs.

Despite its significant contribution to the region, the current BPHTB payment arrangements create problems in land and building sales transactions. Article 91 of the PDRD Law requires BPHTB payment as a condition before the signing of the deed by the Land Deed Making Officer (PPAT). This right is reaffirmed in Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations Between the Central Government and Regional Governments in conjunction with Article 18 of Government Regulation of the Republic of Indonesia Number 35 of 2023 concerning General Provisions for Regional Taxes and Regional Levies, which is now regulated in Article 49 of Law 1 of 2022 concerning Financial Relations Between the Central Government and Regional Governments; Article 59 paragraph (8), paragraph (10), and Article 60 (l) of Government Regulation Number 35 of 2023 concerning Provisions for Regional Taxes and Regional Levies. As a result, buyers must pay taxes before the transaction is considered legally valid, thus creating a risk if the transaction is canceled or a dispute occurs. Furthermore, this regulation creates an imbalance between tax obligations and the authenticity of the PPAT deed, which should guarantee that legal acts are valid before giving rise to tax obligations. This situation also hinders property market dynamics, especially for buyers who face financial constraints in paying the Land and Building Tax (BPHTB) before the deed is signed.

The main problem lies in the misalignment between the obligation to pay the Land Deed of Sale and Purchase (BPHTB) and the signing of the deed of sale. Currently, the law requires that the BPHTB payment be made before the deed is signed, which can lead to legal uncertainty and unfairness for the parties involved. This has the potential to create a conflict between the rights and obligations of the parties in a land sale and purchase transaction.

This problem can be linked to the concept of conflict of norms in legal theory. A conflict of norms occurs when two or more legal rules conflict in their application, thus creating legal uncertainty. According to Kelsen (1945), a legal system must have a clear hierarchy of norms to avoid contradictions in their application. In this case, the obligation to pay the BPHTB before the deed is signed by the Land Deed Official (PPAT) conflicts with the principle of deed authenticity, which requires the validity of legal acts before giving rise to tax consequences.

Despite its significant contribution to regional development, the current arrangement for the payment of Land and Building Acquisition Tax (BPHTB) creates problems in land and building sales transactions. Article 91 of Law Number 28 of 2009 concerning Regional Taxes and Levies (PDRD) requires payment of BPHTB as a condition before the deed is signed by the Land Deed Official (PPAT). This provision is reaffirmed in Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments and Article 18 of Government Regulation Number 35 of 2023 concerning General Provisions for Regional Taxes and Levies. As a result, buyers must pay the tax before the transaction is considered legally valid, creating risks if the transaction is canceled or disputes arise. Furthermore, this regulation creates an imbalance between tax obligations and the authenticity of the PPAT deed, which should guarantee that legal acts are valid before giving rise to tax obligations. This condition also impacts the dynamics of the property market, especially for buyers who experience financial constraints in paying BPHTB before the deed is signed.

This legal phenomenon demonstrates that the concept of regulating BPHTB payments from a justice perspective still faces various fundamental problems rooted in the imbalance between tax regulations and the principle of fairness in land sales transactions. Based on philosophical, legal, and sociological analysis, it can be concluded that the current BPHTB policy does not fully provide legal certainty, justice, and legal protection for the public.

2. Research Method

In this paper, the type of research used is normative legal research.

3. Results And Discussion

3.1. Philosophical Reasons

Philosophically, the regulation of BPHTB payments must reflect the fundamental values embraced by a state based on the rule of law, namely justice, legal certainty, and respect for citizens' civil rights. In this regard, tax collection by the state is assessed not only from a formal legal perspective but also from its moral and ethical legitimacy. The state may not levy taxes on something that has not yet legally occurred or is not yet valid. Therefore, BPHTB payments should be made after the sale and purchase deed is signed, which constitutes a valid and authentic legal event. Forcing tax payments before the deed is signed contradicts the values of substantive justice that underlie a state based on the rule of law.

Pancasila, as the foundation of the state, explicitly includes the fifth principle, which affirms social justice for all Indonesian people (Soekarno, 1945). This principle serves not only as a moral guideline but also as a guiding instrument in policymaking and regulation, including in the agrarian and taxation legal systems. Therefore, policies such as the imposition of BPHTB must be designed to align with this principle.

Legally, Article 33 paragraph (3) of the 1945 Constitution affirms that land, water, and natural resources are controlled by the state and used to the greatest extent possible for the prosperity of the people (1945 Constitution of the Republic of Indonesia). This provision embodies the philosophical value that land rights are not merely individual rights but must be managed for the broader social good. Therefore, land regulations and related taxes must ensure justice and the welfare of the people as a whole.

Forcing BPHTB payments before the sale and purchase deed is signed has the potential to create injustice because the transaction is not yet legally valid (Ali, 2012). Taxes imposed on legal events that have not yet occurred will burden taxpayers without a strong basis, contradicting the principles of legality and legal certainty. This also contradicts the values of substantive justice that should be upheld.

From Rawls' perspective, social institutions, including the tax system, must maintain fairness to gain public trust and provide protection for the vulnerable (Rawls, 1971). Therefore, the ideal sequence for paying BPHTB tax is after the legal sale and purchase deed is signed, so that the tax becomes a logical consequence of the actual legal event.

3.2. Theority Reason

Theoretically, the theory of the rule of law (rechtstaat) places legal certainty (rechtszekerheid) as a central element in the modern legal system. According to this theory, a legal action must be carried out in an orderly, predictable manner, and clearly based on a hierarchical system of norms. Based on this theory, the deed of sale and purchase by the Land Deed Official (PPAT) constitutes a legal event that forms the basis for the transfer of land rights. Therefore, this theory requires that the Land Property Tax (BPHTB) levy can only be levied after the deed has been issued as evidence of a valid legal event. Imposing tax obligations before a legal event occurs clearly contradicts the principle of due process of law in the theory of the rule of law.

As a valid legal event, the deed of sale and purchase by the PPAT serves as the legal basis for the transfer of land and/or building rights (Law No. 24 of 1997). Therefore, the theory of the rule of law asserts that taxes such as the BPHTB should only be levied after the deed has been issued, which legally signifies that a legal event has occurred. This is crucial to ensure that the legal process follows the procedures stipulated in the norms and avoids uncertainty.

Furthermore, the theory of state sovereignty, which is also part of the legal state theoretical framework, asserts that the state has the authority to collect taxes based on clear and legitimate norms (Marzuki, 2017). The misalignment between BPHTB payments and the process of creating a deed of sale creates disharmony within the national legal system, whereby administrative tax norms conflict with formal legal norms regarding the transfer of rights (Kelsen, 1945). This situation illustrates the inconsistency of the legal system, which can create uncertainty and trigger legal conflicts between citizens and the government.

Overall, this theoretical rationale reinforces the argument that BPHTB payments must follow clear and structured legal procedures, namely after the deed of sale is signed and before the registration process at the land office. Thus, this arrangement not only meets the demand for legal certainty but also maintains the integrity of the national legal system and the legitimacy of tax imposition.

3.3. Legal Reason

From a legal perspective, the provisions regarding BPHTB are regulated in Law Number 28 of 2009 concerning Regional Taxes and Regional Levies, which states that the object of BPHTB is the acquisition of rights to land and/or buildings. However, the acquisition of legal rights only occurs if it is based on a sale and purchase deed drawn up by a PPAT, as stipulated in Government Regulation Number 24 of 1997 concerning Land Registration. Therefore, collecting BPHTB before the deed is signed creates disharmony between regulations and violates the principle of hierarchy of statutory regulations. BPHTB norms must be interpreted and applied in harmony with the land law system to avoid normative chaos in land administration practices.

Legally, the Land and Building Acquisition Tax (BPHTB) has a clear and strong legal basis, namely Law Number 28 of 2009 concerning Regional Taxes and Regional Levies (PDRD Law). The articles in this law explicitly define the objects, subjects, and obligations for paying BPHTB as part of the regional tax obligations that must be fulfilled by taxpayers. Therefore, this provision serves as the primary foundation for the implementation of BPHTB levies by local governments.

This provision emphasizes the hierarchy and normative relationship between the Regional Tax Law, the Government Regulation on Land Registration, and other related regulations, such as the Mortgage Law (Law No. 4 of 1996) and Government Regulation Number 37 of 1998 concerning the Regulations on the Position of Land Deed Officials (PPAT). This is where regulatory harmonization is crucial to avoid disharmony that could potentially lead to legal uncertainty in the implementation of BPHTB.

If the Land and Building Tax (BPHTB) is collected before the sale and purchase deed is drawn up and signed, this legally violates the principle of the hierarchy of laws and regulations. A lower norm must not contradict a higher norm. Therefore, the tax obligation imposed must be based on a valid legal event officially recognized by the national legal system.

Therefore, the legal basis for regulating BPHTB payments requires the application of integrated and hierarchical legal norms in accordance with the hierarchy of laws and regulations. BPHTB collection should be carried out after the sale and purchase deed is signed to ensure there are no overlaps or inconsistencies in the land and taxation legal systems.

Overall, the harmonization and consistency of legal regulations are an important basis for enforcing legal certainty in BPHTB payments. This ensures that tax obligations are not only formally valid but also align with the principles of justice and the protection of citizens' rights within the context of land law and public administration in Indonesia.

3.4. Sociological Reasons

Sociologically, the practice of paying Land Deeds (BPHTB) before the deed is signed often causes public unrest, complicates the land sale and purchase process, and opens up opportunities for opaque bureaucratic practices. This uncertainty in the procedural sequence creates additional administrative burdens for both the community and the Land Deed Officials (PPAT) and regional officials. In fact, in some cases, transactions are canceled after the BPHTB is paid, complicating the refund process and fostering distrust in the state administration system. Therefore, from the perspective of social needs and the efficiency of public services, placing BPHTB payments after the deed is drawn up and before registration with the National Land Agency (BPN) is a rational step and in accordance with the principles of good governance and the protection of public rights.

Furthermore, this practice has the potential to open up room for abuse of authority by certain bureaucrats. When BPHTB payments are forced before the official deed is drawn up, it allows for extortion and opaque practices that undermine the principles of fairness and transparency in public services (Asshiddiqie, 2011).

This procedural uncertainty also has widespread social impacts, particularly for lower-middle-class citizens who generally have limited legal knowledge. They often feel disadvantaged and marginalized due to the unclear tax rights and obligations they must fulfill, thus increasing social and economic inequality (Rawls, 1971).

Therefore, sociological reasons emphasize that the payment of Land and Building Tax (BPHTB) should be regulated after the deed is drawn up, but before the land registration process at the National Land Agency (BPN). This aims to ensure a more humane, efficient, and equitable procedure, while also strengthening the state's legitimacy as a servant and protector of its citizens' rights (Asshiddiqie, 2011; Rawls, 1971).

4. Conclusion

Legis Ratio of BPHTB Payment Arrangement in Land and/or Building Sale and Purchase Process Legal Certainty Perspective namely Philosophical, Theoretical, Juridical, Sociological basis. Philosophically, the regulation of BPHTB payment after the sale and purchase deed is in accordance with the values of Pancasila, especially the fifth principle on social justice, which emphasizes that taxation policies do not burden without a valid legal basis, theoretically, based on the theory of the rule of law. BPHTB collection must follow clear procedures and the principle of legal certainty, with the sale and purchase deed as the legal basis for the transfer of rights; legally, the obligation to pay BPHTB before the deed is signed is contrary to the principle of hierarchy of laws and regulations and creates disharmony between taxation and land regulations; while sociologically, this increases the administrative burden, creates legal uncertainty, and increases social inequality. Therefore, the regulation of BPHTB payment after the sale and purchase deed can increase transparency, efficiency, and justice and minimize the potential for legal and social conflicts, thereby supporting the creation of a better and fairer legal system.

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