



Determination of acquisition duties on land and buildings by local government in buying and selling in aceh besar regency

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Abstract

Based on Article 13 paragraph (1) of Qanun Number 3 of 2023 concerning County Taxes and County Levies, the basis for imposing BPHTB (Land and Building Acquisition Tax) is the Value of the Acquisition of Tax Objects. The calculation of BPHTB in Aceh Besar Regency still lacks legal certainty regarding the amount of BPHTB that must be paid by taxpayers. This is not based on existing regulations but is still awaiting the results of field verification conducted by the Aceh Besar Regional Financial Management Agency, and the final provisions will be based on the calculation results from the location of the property.

This research discusses the determination of the land and building acquisition duty (BPHTB) by the Government of Aceh Besar Regency regarding land and building sale transactions. Additionally, the study examines the benchmarks used to determine the amount of Land and Building Acquisition Duty in Aceh Besar Regency.

The research method used is juridical-empirical, with a qualitative approach. Primary data is obtained through interviews with officials from the Aceh Besar District Financial Management Agency, while secondary data is sourced from legislation, literature, and related documents. Data analysis is conducted descriptively and analytically to provide a comprehensive overview of the studied issues.

The research findings indicate a discrepancy in the collection of the Land and Building Acquisition Duty (BPHTB) in Aceh Besar. When a sale occurs with a transaction value below the market price, the transaction value is determined based on the market price by the BPKD officials. However, according to Law No. 28 of 2009 and Aceh Besar Qanun No. 3 of 2023, it should refer to the Selling Value of Tax Objects (NJOP) and the benchmark for the Land and Building Acquisition Duty (BPHTB) in Aceh Besar as stipulated in Qanun No. 3 of 2023, sets the BPHTB at 5% of the transaction value for the acquisition of land and buildings through sales.

To enhance legal certainty and public trust, it is recommended that the verification of tax object data, open complaint channels, and regular evaluations be strengthened, which are essential for the transparency and accountability of BPHTB implementation. Intensive socialization regarding BPHTB regulations, rates, and reduction mechanisms for low-income communities is also necessary. An online system should facilitate registration and access to tax-related information.

Keywords: Determination of BPHTB, local government, land sale and purchase

Introduction

The granting of regional autonomy to Aceh provides greater authority to the local Government in managing and regulating various public affairs, including the taxation sector. Through this autonomy, Aceh can establish tax policies that align with local needs and characteristics, thereby increasing regional revenue. Taxes play an important role as a source of financing for development and public services, creating infrastructure, and meeting the needs of the community. To achieve these goals, a substantial amount of funds is required. The sources of state financing generally come from natural resources and human capital in the form of taxes. Natural resources will gradually diminish over time. Therefore, tax collection is the primary choice. (Ayza, 2018) ^[1].

In the implementation of tax acceleration for regencies or cities as regulated in Article 180 of Law No. 11 of 2006 concerning the Government of Aceh, it is stated that the Original Regional Revenue (PAD) of Aceh and the PAD of regencies/cities as referred to in Article 179 paragraph (2) letter a consists of:

- a. Regional tax;
- b. regional levies;

- c. the results of regional wealth management separated into Aceh/city/regency ownership and the results of Aceh/city/regency capital participation;
- d. zakat;
- e. other legitimate original revenues of Aceh and legitimate original revenues of regencies/cities.

One type of regional tax collected by the local Government is BPHTB, the basis for consideration being the area of land within a region as the object of the BPHTB tax, the sale and purchase of land as the object of the tax, and the transfer of rights over land and buildings as the object of the BPHTB tax. And all forms of land transfers are conducted in the region, namely in the Regency or City. The thinking related to the delegation of authority from the central Government to the regional Government in terms of tax collection is to provide good service to the communities in the region.

This is regulated in Article 4 Paragraph 2 of Law No. 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments. In this article, regions are granted the authority to establish and collect BPHTB, stating that the taxes collected by the district/city governments consist of:

- a. PBB-P2;

- b. BPHTB;
- c. PBJT;
- d. Advertising Tax;
- e. PAT;
- f. MBLB Tax;
- g. Swiftlet Nest Tax;
- h. Opsen PKB; and
- i. Opsen BBNKB.

In implementing the law, the regency/municipality also includes the Aceh Besar Regency Qanun Number 3 of 2023 on Regency Taxes and Regency Retributions, in which Article 4 states that the types of taxes consist of:

- a. PBB-P2;
- b. BPHTB;
- c. PBJT;
- d. Advertising Tax;
- e. PAT;
- f. MBLB Tax;
- g. Swiftlet Nest Tax;
- h. Opsen PKB;
- i. Opsen BBNKB.

In accordance with Article 1 point 21 of Law Number 01 of 2022 concerning financial relations between the central Government and regional governments, what is meant by Regional Tax is a mandatory contribution to the region owed by individuals or entities that is coercive based on the law, without receiving direct compensation and used for regional needs for the greatest prosperity of the people. Meanwhile, regional retribution, according to Article 1 point 22 of Law Number 01 of 2022 concerning financial relations between the central Government and regional governments, is a regional levy as payment for services or the granting of certain permits specifically provided and/or given by the Regional Government for the benefit of individuals or entities.

One of the potential sources of tax that should be explored in accordance with the current economic situation and the development of the nation is the tax on the Acquisition of Land and Building Rights (BPHTB). The purpose of BPHTB is: "The necessity of imposing a tax on the Acquisition of Land and Building Rights, as has been previously implemented and carried out as an effort for national independence to meet government expenditures related to its duties in administering general governance and development." (Siahaan, 2003) ^[4].

The existence of fiscal decentralization allows each region to determine its own sources of revenue according to its respective potential. The regional authority in budgetary matters is realized by the area by collecting one of the potential regional revenues, which comes from regional taxes as regulated in Law Number 28 of 2009 concerning Regional Taxes and Regional Levies. BPHTB is a tax that is owed and must be paid by the party who acquires a right to land and buildings so that the auction deed or the decision letter granting the right can be made and signed by the authorized official. (Tjip, 2005) ^[5].

In Aceh Besar Regency, related to the collection of BPHTB tax, the Government issued Regional Regulation or Qanun Number 3 of 2023 concerning County Taxes and County Retributions, which primarily regulates the imposition of taxes resulting in the transfer of land/building rights. Article 2 (1) and (3) stipulate that every transaction involving the

transfer of land/building rights must pay BPHTB tax, calculated from the final rate that has been established multiplied by the transaction value, which serves as the basis for the tax rate imposition. The calculation of BPHTB in Aceh Besar Regency still lacks legal certainty regarding the amount of BPHTB that must be paid by taxpayers. This is not based on existing regulations but is still awaiting the results of field verification conducted by the Aceh Besar Regional Financial Management Agency first, and the final determination will be based on the calculation results from the location.

In practice, it is often found that the transaction prices for the sale and purchase of land and buildings in the transfer of rights or the granting of new rights do not match the actual transaction prices and are even far below the actual market prices used as the basis for the Tax Object Acquisition Value in the calculation of BPHTB. If this is done intentionally, the action can be categorized as tax evasion. However, there are also BPHTB tax calculations conducted by taxpayers with prices far below the market value caused by transactions that indeed occur far below the market price. For example, a seller who sells an object due to urgent needs is forced to sell the object at a relatively low transaction price. On the other hand, taxpayers often use the NJOP as the basis for calculating BPHTB, which also creates legal uncertainty in calculating BPHTB in buying and selling transactions.

In a sale and purchase transaction, PPh must be paid according to the regulations, and BPHTB must be paid according to the actual transfer price of land and buildings. If not addressed, this constitutes tax evasion and tax fraud, which can be subject to penalties according to tax regulations. In this regard, the importance of BPHTB validation is carried out not only to ascertain the truth and existence of tax objects and the completeness of data on land and building acquisition rights but also to avoid tax evasion that can be committed by taxpayers. Based on that background, I am interested in conducting research, which will be presented in a thesis titled "Determination of Land and Building Acquisition Duty by the Regional Government in Sales and Purchases in Aceh Besar Regency."

Materials and Methods

Based on this research it is an empirical legal research method (juridical empirical), which is a study that examines or investigates the law or applicable legal provisions as its research object. In this case, law is not viewed merely as a discipline that is perspective and applied but also as an empirical or legal reality. In empirical research, the approaches that can be taken consist of qualitative and quantitative approaches. However, this research uses a qualitative approach, which is research based on field data. The source can be individuals (personal) who are the subjects of the research, as sources that exist in society, either as independent individuals or as part of certain communities. Thus, since this research is an empirical study based on field data, the approach used in this research is qualitative. (Imran, Penelitian Komunikasi Pendekatan Kualitatif Berbasis Teks, 2015).

Results and Discussion

The Aceh Besar Regency Regulation Number 3 of 2023 concerning Regency Taxes and Regency Levies states that the delegation of authority for the management of the Land

and Building Acquisition Tax (BPHTB) is fully entrusted to the regional Government. The purpose of this transfer of management is to grant greater authority to the local Government in taxation matters by expanding the local tax base and setting tax rates. Furthermore, the tax collection mechanism is fully entrusted to the regional government to be regulated through their respective regional regulations.

There are 3 (three) elements contained in the acquisition duty on land and buildings (BPHTB), namely duty (tax), acquisition, and land and building rights, whose meanings are a unity, namely:

1. Acquisition Duty Land and Building Rights Tax is a tax imposed on the acquisition of land and/or building rights, hereinafter referred to as a tax.
2. Acquisition of land and/or building rights: is an act or legal event that results in the acquisition of rights to land and/or buildings by individuals or entities.
3. Land rights: are land rights as referred to in Law Number 5 of 1960 concerning the Basic Agrarian Law and applicable legislation.
4. A building is a right that is attached to the right to land. (Horota, 2017) ^[2].

The Tax Object Acquisition Value or transaction price can be higher or lower than the Tax Object Sale Value (NJOP), depending on the agreement between the seller and buyer conducting the land or building sale transaction. However, sometimes, the transaction price can also be the same as the Tax Object Sale Value (NJOP). If the transaction price is lower than the Tax Object Selling Value (NJOP), then the basis for determining the Acquisition Value of the Tax Object is the Tax Object Selling Value (NJOP). Conversely, if the transaction price is higher than the Tax Object Sale Value (NJOP), the determination of the Tax Object Acquisition Value is based on the transaction price. So, between the Value of Tax Object Acquisition and the Selling Value of Tax Object (NJOP), the highest value is used as the basis for determining the Land and Building Acquisition Duty (BPHTB).

Based on an interview with Syahidul Haq, the Implementing Officer and Inspector of the Regional Financial Management Agency in Aceh Besar Regency, it was stated that the implementation of BPHTB collection on legal acts of land and/or building rights transfer by the Aceh Besar Regency Regional Financial Management Agency as the tax collector is carried out based on Aceh Besar Regency Qanun Number 3 of 2023 concerning Regency Taxes and Levies.

Here is an explanation regarding matters related to BPHTB regulated in the Aceh Besar Regency Regulation Number 3 of 2023 concerning Regional Taxes and Levies:

1. Definition of Land and Building Acquisition Duty The Acquisition Duty on Land and/or Buildings (BPHTB) is clearly stated in the general provisions of Article 11 of the Aceh Besar Regency Qanun Number 3 of 2023 concerning Regional Taxes and Levies, formulated as follows: "The Tax Object of BPHTB is the Acquisition of Land and/or Building Rights"
2. Subject and Object of BPHTB The subject of BPHTB, like the subject of PPh, is an individual or entity that acquires rights to land and/or buildings, as stipulated in Article 12 of the Qanun of Aceh Besar Regency Number 3 of 2023 concerning Regional Taxes and Levies.

Article 11 paragraph (4) of the Aceh Besar Regency Regulation Number 3 of 2023 concerning County Taxes and Levies stipulates that exempted from the BPHTB object are the acquisition of land and building rights for government offices, regional Government, state organizers, and other state institutions recorded as state property or regional property, by the state for the administration of Government and/or for the implementation of development for the public interest.

- a. For bodies or representatives of international organizations on the condition that they do not engage in business or other activities outside the functions and duties of the body or representative of the organization by the provisions of the legislation;
- b. For diplomatic and consular representatives based on the principle of reciprocity;
- c. By individuals or entities due to the conversion of rights or other legal acts without any change of name;
- d. By individuals or entities due to waqf;
- e. By individuals or entities used for religious purposes and
- f. For low-income communities by the provisions of the legislation.

The recipient of the sale and purchase of land and/or buildings conducted between parties that do not have related business, employment, ownership, or control relationships is still subject to the Land and Building Acquisition Tax (BPHTB). BPHTB is a tax imposed on every acquisition of rights to land and/or buildings in Indonesia, whether due to the transfer of rights between individuals or entities to other individuals or entities or due to the granting of new rights by the Government or state to individuals or entities. In this case, the acquisition of land and/or building rights through a sale and purchase transaction constitutes a legal act that results in the transfer of rights, which must be subject to BPHTB by the applicable regulations.

The sale and purchase of land and/or buildings is a transfer of rights that requires the obligation to pay BPHTB as one form of contribution to the state. In this case, the application of BPHTB on buying and selling transactions according to the transaction value and market value reflects the principle of justice aimed at ensuring that the tax imposed is not only fair but also proportional to the value of the property obtained. With the implementation of BPHTB, local governments can obtain optimal revenue without burdening the community while ensuring transparency and accountability in every transaction of land and building rights transfer.

The implementation of BPHTB can also be viewed through the theory of responsibility. This theory emphasizes that taxpayers have an obligation to contribute to regional development, including through the payment of BPHTB at the time of the transfer of land and/or building rights. Every sale transaction subject to BPHTB not only serves as a legal transfer of rights but also as an economic contribution that helps finance infrastructure development, public services, and regional government programs. Thus, the payment of BPHTB in buying and selling transactions also reflects the social responsibility of taxpayers to support the sustainability of better and more equitable regional development.

BPHTB (Land and Building Acquisition Duty) has several very important functions in the administration of land and

building management, both from the perspective of regional finance and from the legal aspect. The main function of BPHTB is to be one of the sources of regional original revenue (PAD). The collection of BPHTB on the transfer of land and building rights significantly contributes to regional revenue, which is then used to finance various development programs and public facilities, such as infrastructure development, health, education, and the provision of community services. With the existence of BPHTB, regions can reduce their dependence on central funds and become more independent in financing regional development needs. BPHTB also serves as an instrument for addressing unregistered land practices. Every transfer of rights subject to BPHTB must be recorded in the legitimate land administration, thereby reducing the practice of unregistered land transactions in land institutions. This provides assurance to the public that the transactions they conduct are recorded legally and their rights as legitimate owners of land and buildings are guaranteed against disputes.

Article 2 of the Aceh Besar Regency Regulation Number 3 of 2023 concerning County Taxes and County Retributions states that the purpose of enacting this Regulation is to serve as an important source of original regional revenue to finance the implementation of County Government. Thus, it needs to be regulated as a legal basis for the collection of county taxes and county retributions.

The Aceh Besar Regency Regulation Number 3 of 2023 on County Taxes and County Retribution also serves as the legal basis governing the tax and retribution collection processes in Aceh Besar Regency, ensuring that tax collection activities are carried out in accordance with applicable regulations and that there are no deviations in regional revenue collection. With these provisions, the local Government can be more structured in managing financial resources and minimizing the potential legal issues that may arise due to unclear regulations in the tax and retribution collection process. The Aceh Besar Regency Regulation Number 3 of 2023 on Regency Taxes and Regency Levies not only serves as a legal foundation but also as a tool to ensure that the local Government has sufficient finances to carry out its duties and obligations while also creating a conducive climate for regional economic growth.

The regulations governing the procedure for collecting BPHTB in Aceh Besar Regency are outlined in the Aceh Besar Regency Qanun Number 3 of 2023 concerning Regency Taxes and Regency Levies. This qanun explains in detail the procedures and processes that must be followed to collect BPHTB. In addition, the Aceh Besar Regency Qanun Number 3 of 2023 concerning County Taxes and County Retributions provides additional provisions regarding BPHTB reductions to offer relief to the community, especially in certain situations such as difficult economic conditions or to support housing development for low-income communities.

The applicable BPHTB rate is an average of 5% of the transaction value. However, in practice, there are special provisions that apply if the Acquisition Value of Tax Objects (NPOP) is unknown or if the value is lower than the Sale Value of Tax Objects (NJOP). When this occurs, the tax base will use NJOP as a reference. NJOP itself is the standard value set by the Government for land and buildings as a guideline in tax calculation, aimed at ensuring uniformity in the determination of tax values for land and buildings across the region. The application of NJOP is

important to ensure that the taxes imposed are not distorted by market price fluctuations that sometimes do not reflect the fair value of an object. Thus, even though there is a difference between the actual transaction price and the NJOP, the use of NJOP provides an objective and consistent basis for calculating the amount of tax that must be paid by the taxpayer.

For example, in the sale and purchase of land and buildings, the tax will be calculated based on the actual transaction price agreed upon between the seller and the buyer, if the price is higher than the applicable NJOP. However, if the transaction price is unknown or lower than the NJOP, the tax will be imposed based on the applicable NJOP in the area. Similarly, in barter transactions, the tax assessment will refer to the current market value, which reflects the fair value of the exchanged object. For grants, which involve the free transfer of land and building rights, market value is also used as a reference in determining the value that serves as the basis for tax imposition.

The provision regarding the use of NJOP as the basis for tax imposition is essential to ensure equality and fairness in the collection of BPHTB, especially when the transaction price does not reflect the actual market value. This is also in line with the principles outlined in the Aceh Besar Regency Qanun Number 3 of 2023 concerning Regency Taxes and Levies, which requires the application of fair market value in determining the amount of tax.

Transactions of rights transfer are conducted at prices lower than the market value; the application of NJOP as the basis for tax imposition can ensure that the taxes levied still reflect the prevailing market value, as mandated in the articles related to tax imposition. Thus, local governments can obtain optimal revenue through BPHTB without burdening the community while also maintaining the sustainability of a fair and transparent tax system in accordance with the provisions of the qanun.

In determining BPHTB, the benchmark that refers to the actual transaction value or the applicable NJOP is also closely related to the theory of legal certainty. This theory emphasizes the importance of having clear, firm, and predictable rules in every aspect of law, including taxation. In the context of BPHTB, the use of NJOP as the basis for tax imposition provides legal certainty for taxpayers and local governments. Taxpayers can know precisely how the tax is calculated, whether based on the actual transaction price or NJOP, so they can make more accurate and transparent decisions in the process of transferring land and building rights.

Legal certainty in this case also includes the consistent application of rules in accordance with the provisions regulated in the Aceh Besar Regency Qanun Number 3 of 2023 concerning Regency Taxes and Regency Levies. With clear regulations regarding the basis for tax imposition, taxpayers will not feel confused or disadvantaged because there is an accountable guideline for calculating and paying BPHTB. In addition, legal certainty is also created when the local Government, through Bapenda, conducts verification and validation of transactions with established procedures, ensuring that all taxes owed are calculated fairly and on time. The application of benchmarks such as NJOP in determining BPHTB reflects the implementation of the principle of legal certainty, where both parties, taxpayers and the Government, are involved. This ensures the creation of legal stability, reduces the potential for tax disputes, and maintains transparency in the regional taxation system.

Conclusion

There are still discrepancies with the legislation in implementing the Land and Building Acquisition Duty (BPHTB) collection in Aceh Besar Regency, namely when there is a transfer of land and building rights due to a sale with a transaction value lower than the market price. In this case, the transaction value is determined by BPKD officers based on market prices and surveys of the relevant tax objects. However, the provisions of Article 87 paragraph 2 of Law Number 28 of 2009 and Article 13 of the Aceh Besar Regency Qanun Number 3 of 2023 state that the basis for imposing BPHTB tax on the acquisition of sale and purchase rights with a transaction value lower than the market price is the Selling Value of Tax Objects (NJOP) for Land and Building Tax. Thus, the practice of determining the transaction value based on market price contradicts the existing provisions.

The benchmarks for determining the Land and Building Acquisition Duty (BPHTB) in Aceh Besar Regency, according to Qanun No. 3 of 2023, include several important aspects. BPHTB is imposed on acquiring land and building rights through transactions such as buying and selling, with a general rate of 5% of the transaction value. If the value of the tax object is unknown or lower than the Sale Value of the Tax Object (NJOP), the tax refers to the NJOP. This Regulation also governs the reduction of BPHTB for low-income communities or those in difficult economic situations, provided that the administrative documents are complete. The BPHTB registration process needs to be handled at the time of acquisition of rights to ensure the legality of tax collection.

Suggestion

To improve the implementation of the Land and Building Acquisition Duty (BPHTB) in Aceh Besar Regency, intensive socialization and training for DPPKAD officers regarding applicable legal provisions are necessary, as well as tax enforcement based on the Tax Object Selling Value (NJOP) for transactions valued below the market price. In addition, it is essential to strengthen the mechanism for verifying tax object data, open complaint channels for the public, and conduct regular evaluations to ensure transparency and accountability. The public also needs to be provided with information regarding BPHTB rates and regulations, especially for those with low incomes, and the registration process should be simplified through an online system so they can access information and register directly.

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