



ANALIS LAW FAIRNESS VALUE TRANSFER OF LAND AND / OR BUILDING OR CHANGES IN AGREEMENT BONDING SALE OF LAND AND / OR BUILDING

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Abstract

The basic principle of taxation diantaranya equality principle, namely the principle of balance and fairness mengedapankan. Balance and fairness in tax collection starts from the set, calculate, pay and tax reporting. Income tax on income on acquisition of land and buildings in determining the income of the taxpayer rated big unilaterally by the Tax Office Pratama. Rating the value of the transfer by the Tax Office Pratama bersarkanDGT Regulation No. Per - 18 / Pj / 2017 Concerning Procedures Evidence Research Compliance Obligations Payment of Income Tax on Income from Transfer of Land and / or buildings, where the outcome assessors pengalihak land rights carried by appraisal approach.

Keywords: *Income Tax, fishing rights to land.*



A. Introduction

The contribution of the people in national development is expected by the state in ensuring the sustainability of government. The contribution of the people can be reflected in the tax collection by the State to the People. Peranan contribution of the people in the form of taxes in the state budget by 80%, So that the potential of the tax levied on the people is very dominant towards achievement of national income.

The philosophical foundation of the state's right to collect taxes does not necessarily make the taxpayers are willing to voluntarily pay taxes to the Government. Facts on the ground indicate that in practice, many factors and constraints faced by the government in collecting taxes, diantaranya: not all taxpayers have no awareness, compliance-compliance. But briefly because in general people do not like to pay taxes

State of Indonesia in its development has resulted in a very rapid development in national life that needs to be continued with the support of government and the full potential of the society, therefore the state put the tax as one embodiment of state obligations is a means of participation in financing the state and national development.

Aside from being a source of funds for financing the state and national development that takes place continuously and sustainably, the tax is also used as a source of monetary and investment policies that have an impact on economic growth so that the welfare of the Indonesian people, the better. Taxes are the contributions of the people in the state treasury under the law (enforceable) with no lead gets services (contra) directly demonstrated and used to pay for general expenses that benefit the wider community.

The sources of taxation by the government in fact the ruling made by the central government institutions and local government, both central and local government. Grouping tax levied Local and Central Government Taxes regulated in the Law of the Republic of Indonesia Number 28 Year 2007 concerning Third Amendment Act No. 6 of 1983 About General Provisions and Tax Procedures. Similarly, the grouping of tax resources (objects) collected. One of the objects between income tax collected is the right to land and buildings.

Judging from the Institute Pemungutnya, taxes can be divided into two, namely the Tax Center (also called State Tax) and Local Tax (which is divided into Provincial Tax and Tax District / City). Central Tax is a tax set by the central government through legislation, which authorized the collection is on the Central Government and the results are used to finance the central government and development expenses, which happen to be implemented by the Ministry of Finance of the Republic of Indonesia.

Land has a social function and economic function for the people. While the state serves to protect the interests of citizens of the rights over the land. The



timbalbalik relationship is a reasonable for the State to levy charges on the entire interests of citizens against legal acts on the ground. Including in terms of legal action against people who earn a living on the transfer of land and bangunan.

State revenues derived from levies income tax on the transfer of rights over land and bangunan is tax revenue to the central government. Thus all aspects of planning, policy formulation, formulation of the legal basis and the establishment of all regulations governing the calculation, payment and reporting of income tax on the transfer of katas ha of land and buildings as a whole is run by the central government through the devices.

Law of the Republic of Indonesia Number 28 Year 2007 concerning Third Amendment Act No. 6 of 1983 About General Provisions and Tax Procedures, generally associated with the overall umbrella perpajak in Indonesia. Earnings on acquisition of land and buildings related to the rights on land regulated in Law Number 5 of 1960 on Basic Regulation of Agrarian (BAL).

The transfer of rights for their sale and purchase of land or buildings by private persons or entities may provide entry form pajakpajak in relatively large quantities for the country, because the purchase is a legal act which may give rise to tax liabilities, the Income Tax (VAT) as tax center charged to the seller and Customs Acquisition Ha of Land and Building (BPHTB) as a local tax charged to the purchaser.

Changes in the system of government that occurred in Indonesia from the centralized system leads to disentralisai autonomous system that is placed on regional autonomy almost throughout the county participated impact sectors including taxes. At the time of the centralization of all sectors related tax on acquisition of land and buildings is a central government authority, including the type of land and building tax. But after the reform with a change in the system of government then sebahagiaan the central government handed over to the central government such as land and building tax (PBB), Customs Acquisition Ha of Land and Building (BPHTB) while the income tax of Assignment katas land and building remains a central authority ,

Regulatory policy and tax collection is very easy because the community perceived the rules and institutions that regulate and levy the same institution. For example, in determining the value of the Object Acquisition Tax (NPOP), the government is guided by the NPOP / taxable value (NJOP) of the UN SVTO, to determine the minimum limit of the transaction price or minimum limit of the market price.

Whereas, to determine the ratings SVTO / UN NPOP land per M2 decided by the central government, local and village governments. In the NOP assessment conducted by the government based on the value of land designated zones simultaneously. NPOP government established the basis for determining the UN NOP. Example: link BPHTB, to determine the amount payable is NPOP



BPHTB - Rp. 60,000,000 = x 5% = BPHTB payable. NPOP transaction based on the price or the market price, while the transaction price and the market price should not be lower than the UN SVTO.

With the division of the tax affairs then there is a difference in determining NPOP of both the value of income tax proceeds on acquisition of land and buildings and BPHTB. Dalam object-based tax rate determination DGT Regulation No. Per - 18 / Pj / 2017 on the Procedures for Research Evidence Compliance Obligations Payment of Income Tax on Income From the Transfer of Land and / or Buildings, And Agreements Sale and Purchase of Land and / or Buildings Along Amendment To The Determination of Value Porelah Tax Object Appraisal is conducted by the Institute who function Assessing A Fairness, of assets. Withdrawal or tax collection is one of the main functions of the state. Philosophical basis of taxation is based on a value approach, The philosophical foundation of the state's right to collect taxes does not necessarily make the taxpayers are willing to voluntarily pay taxes to the Government. Facts on the ground indicate that in practice, many factors and constraints faced by the government in collecting taxes, diantaranya: not all taxpayers have no awareness, compliance. But briefly because in general people do not like to pay taxes

In order to realize autonomous regions, each region set on how to manage the region well, one of them set up with independent tax collection managed by the respective regions, tax revenues from the taxpayer will be refunded to the taxpayer itself in framework as a regional development fund. Itui tax payments indirectly felt by the taxpayer itself, but by many people who feel it from taxation. According to Grace Soemitro that the withdrawal of the tax that is paid to the state of the taxpayer for the sake of the country itself, which is an engagement arising from laws that cause the obligation of citizens to deposit as of the producer.

Dictated by Rahmat Soemitro that the tax be collected should be under the Act to ensure the Legal Certainty for both taxpayers and recipients of tax in this case the government, it is mentioned in the Constitution of the Republic of Indonesia 1945 section 23A which reads: "Tax and other coercive levy for the purposes of the state governed by law. "Based on the principle of the division and the principle of interest, taxation is done balanced with the ability that is balanced in terms of income what is generated by each taxpayer. In principle equalityini not allowed to discriminate between a state taxpayer. In the same circumstances, the taxpayer should be taxed the same.

Tax collection system is an approach of the subjective side of the party who is authorized by law to perform the task of tax collection. Tax collection system is divided into three parts, namely: a. Self-Assessment System, which is a tax collection system that gives credence to the taxpayer to compute / calculate, pay, and report the amount of tax payable on himself by tax legislation. b. Withholding Tax System, a tax collection system that gives credence to the



taxpayer to calculate, pay, and report the amount of tax payable on a third party who opposed the transactions under the tax legislation. c. Official Assessment System.

B. Method

This research is analytical descriptive type which describe, describe, and explain analytically examine issues raised. The research was conducted by the research literature. Material Research obtained through normative juridical approach namely legal approach by looking at the regulations, both primary law and secondary law or approach to the problem by looking at the terms of the legislation in force, literature, scientific work and the opinions of experts and others. Soerjono Soekanto (1995: 13) says that the normative legal research is conducted legal research to examine the material library or a mere secondary data. Normative legal research includes studies on the systematics of law,

C. Discussion

The taxation of buyers and sellers tax would arise with the birth of the purchase which is one of the Properties, where there are basically two ways: 1. Transition; 2. In accordance with Article 22 of the BAL. The first way to transition, which includes switched and routed along the way according to the provisions of the BAL. The occurrence of switchover means property because there are those who lose (ie the original owner) and the other parties who obtain a Property. Land and buildings can be switched and transferred by the owner to others who want it. The transition of ownership of land and buildings is closely related to the legal requirement to grant certain rights to the person who acquired the land and buildings, while the switch in question is a transfer of rights that occur because of a landowner and building dies so that the ownership of land and building will itself turn into belonging to the heirs.

So that the "transfer of rights" that happen unintentionally by a legal act, but "because of the law" (because of their legal events, namely the death of the owner of the land and buildings), while the opposite, namely ownership transferred is a transition of ownership of land and buildings that do deliberately so that ownership of the land and the building in spite of the original holder and belongs to the other party. So that the transfer of ownership occurs through a "legal act", for example the sale, exchange, donation, grant probate, and gifts.

How Secondly, the occurrence of property rights in accordance with Article 22 of the BAL, namely 1. Occurrence Properties under customary law is regulated by the government; with Article 3 BAL see that "In view of the provisions of Articles 1 and 2 of the implementation of customary rights and the rights and the like of masyarakatmasyarakat customary law, so far as reality. still exist, must be such that in accordance with the national interests and the state, which is based



on the unity of the nation and must not conflict with the Act and other regulations that higher ". The provision stems from the recognition of their customary rights in land law so that the calls of customary rights in the BAL, which essentially means it is also recognition of the right, then basically the customary rights will go unnoticed, all these rights in reality is still in the legal community concerned. Interest law communities should be subject to the national interest and the State so that the implementation of customary rights must be in accordance with national and State interests.

In addition to the manner as referred to in point 1, Proprietary occurs because the determination of the government, according to the procedure and conditions applied by government regulation; can be found in Article 8 of Regulation Menteri State Agrarian / Head of National Land Agency No. 9 of 1999 on Procedures for Granting and Cancellation of State and Land Rights Management Rights. Provisions of the law in the form of conversion of land rights in the BAL Section I to Section IV.

Seeing some of the ways the property of the above it can be seen that the property has a characteristic that can be switched and routed. Transition Properties held with the following provisions: 1. Transition Properties happened since: the sale, exchange, donation, giving with a will, according to the customs administration, and other actions that are intended to move the Property. 2. Transition Properties and surveillance regulated by government regulation. 3. Each transition Ownership or acts that are intended for direct or indirect transfer Properties to strangers or people with foreign nationality Indonesia duplicate or legal entity that is not assigned as a legal entity may have Hak is automatically canceled according to law; land falls on the state, which is not refundable, membebaninnya rights of other parties continue.

Transition Properties due to a sale of land of course there are those who get caught in it, namely Party (candidate) Sellers as the parties who have land to be diperjualkan to others are referred to as (potential) buyers who wish to have / have certain lands in accordance with his desire. Typically the sale of the land contained in the Sale and Purchase Deed made the authorities as a sign that land transition. Special transitional land rights and building done and Purchase Deed (AJB), then the authority of the Land Deed Maker Official (PPAT). It can be seen in Article 2 of the Indonesian Government Regulation No. 24 Year 2016 on Amendment of Government Regulation No. 37 Year 1998 on the Regulation of Land Deed Official Position.

Fairness value on acquisition of land and / or buildings or changes in the binding sale and purchase agreement of land and / or buildings that declared by the taxpayer as provided in Director of Tax Regulation GENERAL PAJAKNOMOR PER - 18 / PJ / 2017 tentang tata how research evidence on fulfillment of obligations penyeteran pajak income penghasil and aripengalihan



atastanah rights and / or buildings, danperjanjian binding beliatas sale of land and / or buildings and amendments.

Article 6, paragraph (1) Director of Tax Regulation GENERAL PAJAKNOMOR PER - 18 / PJ / 2017, stated that to ensure the correctness of the amount of tax payable, the tax office do research material after the Certificate of Compliance Obligations Research Formal Proof of Payment of Income Tax as referred to in Article 4 paragraph (2) was published.

Sedangangkan in paragraph (2) provides that:Material research carried out by:

1. Tax Office as referred to in Article 2 paragraph (2), in which case the tax office whose jurisdiction covers the location of the land and / or buildings equal to the tax office where the taxpayer is registered as referred to in Article 2 paragraph (3) letter a or office Tax services Personal residence referred to in Article 2 paragraph (3) b.
2. Tax Office as referred to in Article 2 paragraph (3), in which case the tax office whose jurisdiction covers the location of the land and / or building is not equal to the tax office where the taxpayer is registered as referred to in Article 2 paragraph (3) letter a or Tax office whose jurisdiction covers the residence Personal as referred to in Article 2 paragraph (3) b.

To ensure the material conditions, the Tax Office do research material in the manner set out in Article 7, which reads:

1. ensure the location and area of land and / or buildings that are listed in the affidavit Taxpayer referred to in Article 3 (2) b are in accordance with the actual situation;
2. investigate the validity of a value on acquisition of land and / or building or change agreement binding sale and purchase of land and / or buildings that are in the bill of sale / proof of transfer / receipt of money, in terms of transfer of land and / or buildings in the form of buying and selling are not affected special relationship; and
3. determining the reasonableness of a value on acquisition of land and / or building or change agreement binding sale and purchase of land and / or buildings that declared by the taxpayer at the market price based approach to the appraisal (appraisal), in the case of transfer of land and / or buildings in the form of sale and purchase influenced special relationship or through exchange, relinquishment of rights, transfer of rights, grant, inheritance, or other means agreed between the parties.

Determining the fair value on acquisition of land and / or buildings or changes in the binding sale agreement beliatas land and / or buildings that have been declared by the taxpayer pajak with berdsarkan market price valuation approach (apparsial). Approach "is one subktor Appraisal services can play an important role in determining the economic value of assets and the potential



wealth that we have. In Indonesia, appraisal or assessment is not universally known. This is because an appraisal is still in the early stages and are in growth. Perusahaan appraisal services / property valuer is an external agency that lepas from independent financial institutions in assessing a company's property

Regulation Director General Pajak Nomor PER-18 / PJ / 2017 did not clarify exactly what is meant by the approach appraisal in practice the Tax Office an assessment team and the assessment team that determines the value of the transfer of katas ha of land and buildings. So that with the enactment of assessment by the assessor proceeds unilaterally tax collector then it opened the gap even potentially detrimental to the taxpayer the practice of Collusion, Nepotism and Corruption (KKN) in determining the outcome value on acquisition of land and buildings.

In addition to service learning opportunities, pendekan appraisal system is not perfect, resulting in the slow process of the transaction for the parties concerned to make the process of transfer of rights. The slow payment of Income Tax The transfer of rights taken by the time the assessment carried out by the assessment team given the number of employees of the tax office are limited compared to the existing deal community. On the other side of the process of transfer of rights will also terkendalan due to the transfer of rights over land rights shall be made Land Deed Official (PPAT) and registered to Nasional Land Agency. Similarly, the threat of fines for PPAT which transferred rights, before the completion of payment of income tax by the parties.

Unilateral assessment by the Tax Office, rated violates the principles of justice so that should be a review of the regulations governing the income tax assessment system to transfer income katas ha of land and buildings. An assessment of the transfer of rights to land and buildings seyokjanya done by creating an object appraisal of land mass and is applicable to all types of taxes and duties related to the land, whether the tax collected by the central government or local governments. Moreover, the current mapping land parcels are connected to the satellite. Like parties concerned so as to facilitate coordinated and mapping land parcels.

Mapping with the advanced plot of land zones that do prices will help accelerate the process, the determination, calculation, payment and tax reporting. Zoning of land can be melibatakan stakeholders such as the City District Government, the Tax Office, the National Land Agency / Agricultural and and Spatial Planning, district and village governments, jointly devise zone information and mapping on the ground. Determination of soil zones designed course memperhatikan economic value of land. Designing the

determination of economic value, for example can be done by considering the forefront of land access to the public road or the shortest distance or bounded directly with public facilities, for example adjacent to the health center, at school



or sports field, as seen in this picture:

| | | | | | | | | | |
|-----------------------------|----|----|----|----|----|----|----|--------------|----|
| Road Y / Urban Public Roads | | | | | | | | | |
| A | B | C | D | E | F | G | H | I | J |
| K | L | M | N | O | P | Q | R | S | T |
| U | V | W | X | Y | Z | AA | AB | air | AD |
| | | | | | | | | conditioning | |
| AE | AF | AG | AH | AI | AJ | AK | AL | AM | AN |

Description: A-AN = Parcel

Picture: Mapping the land zone in a region

In the picture above, the determination of taxable value (NJOP) is determined based on the economic value of land. The economic value of land can be determined based on the prevailing market price in the community to consider the layout of land with access to public roads and public facilities. AZ Land Land zone will be higher economic value disbandingkan KT because AJ zone directly with the General urban roads than the KL. However, consideration of the land zone adjacent to public facilities such as markets, offices, schools or health centers should certainly be taken into consideration in determining the soil SVTO.

Mapping plot by taking into account the economic value of land as a basis object sale value of land must be taken into consideration for the regulatory legislation in formulating the regulations relating to SVTO. As for assessing the selling price on acquisition of land should be a minimum standard ditententukan prices by the government. Standart minimal value on acquisition of land and buildings may be guided by SVTO specified by the Central Government and Local Government.

D. Conclusion

The principle of fast, easy, transparent and akuntebel in determining the value of the transfer of rights to land and wake should dikedapankan to satisfy the principle of equality (with the ability to balance or fairness). Pengalihak determination of rights to land and buildings to that done unilaterally by the government in this case does not meet the Tax Office Pratama equalitydalam principle of taxation. That the principles of equalitydapat terujud the determination of the value of the acquisition of land as an object of income tax should involve stakeholders such as BPN, the local government, the village authorities and the Tax Office Pratama to be a zone of soil as the basis for a standard room to determine the value Redirect result ha katas ground and SVTO.



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