

Determination of the Value of Acquisition of Tax Objects by the Agency of Revenue, Financial Management, and Regional Assets in Gresik Regency through E-BPHTB in Buying Transactions

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Abstract

The results of this thesis research indicate that as stated in the legislation, specifically Article 87 Paragraph (2) of Law Number 28 of 2009 concerning Regional Taxes and Regional Levies that the Acquired Value of Tax Objects (NPOP) for buying and selling is based on the price transaction. In addition to the law, Article 84 Paragraph (2) of the Gresik Regency Regional Regulation Number 2 of 2011 concerning Regional Taxes also confirms that NPOP for buying and selling is based on the transaction price. The Minister of Finance of the Republic of Indonesia also explains in Article 1 Number 3 Regulation of the Minister of Finance (PMK) No.186/PMK.03/2019 concerning Classification of Tax Objects and Procedures for Determining the Sale Value of Land and Building Tax Objects that the determination of the Sales Value of Tax Objects (NJOP) based on the fair sale and purchase transaction price. Based on the above laws and regulations, the Gresik Regency BPPKAD in determining the Tax Object Acquisition Value (NPOP) for buying and selling BPHTB that does not match the transaction price and even exceeds the transaction price or PBB is not the authority of the Gresik Regency BPPKAD even though the process is already using the online system, namely through e-BPHTB because there is no legal regulation until now and the Gresik Regency BPPKAD itself said that the determination of NPOP for BPHTB payments due to buying and selling uses the Self Assessment System, where the taxpayer himself calculates the amount of tax to be paid. Based on the above laws and regulations, the Gresik Regency BPPKAD in determining the Tax Object Acquisition Value (NPOP) for buying and selling BPHTB that does not match the transaction price and even exceeds the transaction price or PBB is not the authority of the Gresik Regency BPPKAD even though the process has used the online system, namely through e-BPHTB because there is no legal regulation until now and also the Gresik Regency BPPKAD itself said that the determination of NPOP for BPHTB payments due to buying and selling uses the Self Assessment System, where the taxpayer himself calculates the amount of tax to be paid.

Keywords

determination of tax object
 acquisition value; E-BPHTB;
 sales and purchase tax



I. Introduction

Tax is a very important element in the ongoing life of a country, this is because taxes are the main source of income for a country to achieve prosperity. Tax is a compulsory levy paid by the people to the state and will be used for the benefit of the government and the general public (Siregar, 2019). Without tax collection, it is certain that state finances will be paralyzed, even more so for developing countries such as Indonesia (Ali, 1993). Many

countries, including Indonesia, rely on tax revenues as the main source of state revenue. Income Tax is a type of subjective tax whose tax obligations are attached to the relevant Tax Subject (Hendayana, 2021). Tax is a requirement that has been established by the state as a civic duty (Marpaung, 2020).

The Indonesian state has changed the tax system in the reform era. The change in the tax system is the existence of a tax system levied by the regions, which was previously centralized. So in this system, the central government only receives a few percentages of all tax revenues earned by a region, or better known as regional autonomy. Tax collection that is currently managed by the regions is the Land and Building Tax (PBB) and the Land and Building Rights Acquisition Fee (BPHTB). This certainly has an impact on the implications of the central financial sector because both taxes have been turned into local taxes. Tax Incentives for Taxpayers Affected by the Covid-19 Pandemic provides several tax incentives (Kusyeni, 2021).

To realize a decentralized system, based on Law Number 23 of 2014 concerning Regional Government, it is stated that the Central Government gives the freedom to regulate and manage the household of a Regional Government for the sake of creating community welfare. One of the objectives of decentralization is to give authority to a region to regulate finances by prioritizing the principles of participation, transparency, and accountability. Gresik Regency is one of the autonomous regions authorized to collect BPHTB taxes. The legal basis for collecting BPHTB is regulated in Articles 81 to 91 of Gresik Regency Regulation Number 2 of 2011 concerning Regional Taxes and Gresik Regent Regulation Number 15 of 2011 concerning Systems and Procedures for Collection of Duties for Acquisition of Land and Building Rights in Gresik Regency.

The Sales Value of the Tax Object (hereinafter also referred to as NJOP) is used as one of the references to determine the Acquired Value of the Tax Object (hereinafter also referred to as NPOP). The NJOP is very important and decisive for the collection of the PBB owed and the BPHTB to be paid. The BPHTB to be paid by the taxpayer is issued in the form of a Regional Tax Payment Letter (also called SSPD) or commonly called SSPD BPHTB. The SSPD BPHTB is issued by the Regency/City Regional Revenue Service, in this case, the Gresik Regency BPPKAD. Based on some of the problems mentioned above, the implementation that occurs creates a gap between regulations and practice, even in regional regulations and regent regulations it is not explained that the determination of the BPHTB value is validated based on a separate assessment by BPPKAD, only explains that the BPHTB value is validated based on the transaction price or based on NJOP PBB of the land object. For this reason, I, as the author, researched the juridical analysis of determining the Sales Value of Tax Objects (NJOP) for the determination of Customs Duty on Land and Building Rights (BPHTB) which was not following the wishes of the parties.

Problem Formula

1. What is the authority of the Gresik Regency BPPKAD in determining the NPOP for BPHTB payments that do not match/exceed the PBB NJOP?
2. What are the legal implications arising from the determination of the NPOP for BPHTB payments that do not match/exceed the PBB NJOP?

II. Review of Literature

Tax Law Theory

a. Tax Definition

According to Rochmat Soemitro and Dewi Kania Sugiharti, without a community, there can be no tax. This statement is based on the idea that every human being has rights and obligations that are brought into society. Vice versa, society also has rights and obligations towards each individual. So there is a reciprocal process between individuals and society. One of the obligations of individuals to society in a country is to pay taxes. Tax payments paid by individuals to the state will be allocated for the welfare of the people of the country (Undang-Undang Nomor 28 Tahun 2007).

In addition to according to experts, the legislation that is more precise, namely Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures, states that:

"Compulsory contribution tax to the state that is owed by an individual or entity that is coercive in nature based on the law, without getting a direct reward and is used for the needs of the state for the greatest prosperity of the people."

b. Tax Law Position

The highest tax legal basis is Article 23A of the 1945 Constitution of the Republic of Indonesia which states that:

"Taxes and other levies that are coercive for the state are regulated by law"

Tax law itself is divided into material tax law and formal tax law. Material tax law contains norms that explain the circumstances, actions, and legal events that must be taxed, who should be taxed, and how much the tax is. Formal tax law contains provisions on how to make material tax law a reality.

c. Tax Collection Principles

- a. Tax Principles is a principle that is used as a basis, as a framework for thinking in a tax collection and its problems. The collection of basic taxes that are often used by a country as the basis for taxation are:
- b. The principle of domicile, namely the principle that a country has the right to impose taxes on people (in this case taxpayers) who live in their country.
- c. The source principle, namely the state has the authority to impose taxes originating from the taxpayer's income, where the income is obtained from the country regardless of the taxpayer's domicile.
- d. The principle of nationality, namely the principle where the imposition is only limited to nationality, for example, a foreign national tax which is only imposed by foreign citizens but residing in Indonesia.

d. Tax Function

Taxes have an important role in the life of the state, especially in the implementation of development because taxes are a source of state revenue to finance all expenditures, including development expenditures. Starting from the definitions given by tax experts which give the impression that the government collects taxes solely to obtain funds to finance government expenditures. The tax functions are as follows:

- a. Budget function (Budgeter), is a function located in the public sector, which is a function to collect as much tax money as possible following applicable laws and regulations to finance state expenditures, for example, routine state financing such as personnel expenditure, goods expenditure, maintenance, and so on. These efforts are

pursued by extensification and intensification of tax collection through improving regulations on various types of taxes such as Income Tax (PPh), Value Added Tax (PPN), and Sales Tax on Luxury Goods (PPnBM), Land and Building Tax, and others.

- b. Regulating function, the regulating function means that taxes are used as a tool for the government to achieve certain goals, both in the economic, monetary, socio-cultural, and political fields (Hartati, 20155). Taxes are used as a tool to achieve certain goals, as can be seen from the following examples: 1) Providing tax incentives (eg tax holidays, accelerated depreciation) to increase investment, both domestic and foreign investment; 2) Imposition of export tax for certain products, to meet domestic needs; 3) Imposition of import duty and sales tax on luxury goods for certain imported products to protect domestic products.

In addition, taxes also have several functions as follows:

- stability function
This function can control the inflation of a country because the government has the funds to implement policies related to price stability. This is done by regulating the circulation of money circulating in the community, tax collection, and the effective and efficient use of taxes.
- Revenue Redistribution Function
Taxes that have been collected by the state are allocated to finance all public interests, including to finance development. With the increasing development, there are also many job opportunities for the community, thus increasing people's income.
- Functions of Democracy
The tax that has been collected by the state is a form of cooperation system. This function is associated with the level of government services to the taxpayer community (Sari, 2013).

III. Discussion

3.1 Authority of the Regional Financial Revenue and Asset Management Agency of Gresik Regency in determining the Acquired Value of Tax Objects for payment of Customs on Acquired Rights on Land and Buildings that do not match / exceed the Sale Value of Land and Building Tax Objects

Based on Law Number 28 of 2009 concerning Regional Taxes and Regional Levies, Article 1 paragraph (10) states that Regional Taxes, hereinafter referred to as taxes, are mandatory contributions to the Regions owed by individuals or entities that are coercive under the Act, by not receiving direct compensation and being used for regional purposes for the greatest prosperity of the people. The special allocation fund aims to help finance the special needs of the region. In addition, to deal with urgent situations such as natural disasters, emergency funds can be allocated to regions. This law in addition to providing a basis for regulating the distribution of finance between the Central and Regional Governments also provides a basis for financial balance between regions.

Taxes under the authority of the Regional Revenue Service or BPPKAD are regional taxes that support regional operations, namely:

1. Province Tax

Among other things are Motor Vehicle Tax, Motor Vehicle Transfer Fee, Motor Vehicle Fuel Tax, Surface Water Tax, Cigarette Tax.

2. Regency/city Tax

These include Hotel Tax, Restaurant Tax, Entertainment Tax, Advertising Tax, Street Lighting Tax, Non-Metal Mineral Tax and Assistance, Parking Tax, Groundwater Tax, Swallow's Nest Tax, Land and Building Tax, Land and Building Rights Acquisition Fee

Fee for the Acquisition of Land and Building Rights or BPHTB based on Article 2 Paragraph (3) of Law no. 20 of 2000 concerning Customs for Acquisition of Land and Building Rights, namely, Ownership Rights, Cultivation Rights, Building Use Rights, Use Rights, Ownership Rights of Flat Units, Management Rights. The amount of tax payable is calculated by multiplying the 5% (five percent) rate with the Acquired Value of the Taxable Tax Object (NPOPKP). The formula for calculating the amount of BPHTB is:

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

According to Law Number 28 of 2009 concerning Regional Taxes and Regional Levies, the Acquired Value of Non-Taxable Tax Objects (NPOPTKP) is a certain amount of NPOP that is not taxed. The provisions for NPOPTKP are contained in Article 87 paragraphs (4) and (5) of Law Number 28 of 2009 concerning Regional Taxes and Regional Levies. The amount of NPOPTKP is determined with the following conditions:

- a. The amount of the Acquired Value of Non-Taxable Tax Objects is determined to be a minimum of Rp.60,000,000.00 (sixty million rupiahs) for each taxpayer.
- b. In the case of acquisition of rights due to inheritance or testamentary grants received by individuals who are still in a blood family relationship in a straight lineage of one degree up or equal to the lower level with the grantor of the will, including husband/wife, the Acquired Value of the Non-Taxable Tax Object shall be determined at the latest. Rp.300,000,000.00 (three hundred million rupiahs).

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3.2 Legal implications arising from the determination of the Acquired Value of Tax Objects for the payment of Duties on the Acquisition of Rights on Land and Buildings that do not match/exceed the Sale Value of the Land and Building Tax Objects

In practice in the field, file verification and determination of the NPOP value that will be used as a reference in collecting BPHTB sales and purchases are still carried out by the Gresik Regency BPPKAD. The impact that arises is the absence of legal certainty for the community (taxpayers) because the NPOP is uncertain even though it is based online. The implementation of file verification and determination of NPOP for the collection of BPHTB sale and purchase if it is associated with the process of transferring land rights carried out at the Gresik Regency BPN, not only harms taxpayers, but also Land Deed Making Officials (PPAT), especially PPAT in Gresik Regency. Each process of transfer of land rights is based

on Article 37 Paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration that:

"Transfer of land rights and ownership rights to apartment units" through buying and selling, exchanging, grants, internal companies and other legal acts of transfer of rights, except Transfer of rights through auction can only be registered if: evidenced by a deed made by the authorized PPAT according to the provisions of the applicable laws and regulations."

As mentioned above, before the buying and selling process is registered at the Land Office (BPN), the taxpayer must first pay off the BPHTB and PPh taxes. In practice, many taxpayers are still blind to the law regarding the BPHTB payment process. The difficulties faced by taxpayers also demand the readiness of tax officials to be willing to help taxpayers who find it difficult to pay taxes, for example, difficulties in filling out tax payment forms. Tax forms that are not so easy to understand will make it difficult for them (taxpayers) in paying taxes because the new tax system that implements the self-assessment system requires taxpayers to actively fill out the form. Therefore, the tax officer is expected to reduce the level of difficulty of the taxpayer by helping the taxpayer as well as possible. Thus, the taxpayer's sense of responsibility is maintained in fulfilling his obligations every time he pays taxes. Therefore, many taxpayers use PPAT services to help submit to the Gresik Regency BPPKAD regarding BPHTB payments.

In addition, PPAT should report or notify the acquisition of rights to land and or buildings, based on applicable regulations. In Article 1 Government Regulation No. 34 of 1997 concerning Reporting or Notification of Acquisition of Land and or Building Rights, it is determined that the PPAT/Notary must report the acquisition of land and or building rights every 10th day of the following month. When PPAT cannot provide certainty of the amount of NPOP for BPHTB in the buying and selling process, then the taxpayer has judged PPAT to be unprofessional in carrying out his profession. In addition, taxpayers who submit NPOP for BPHTB payments and have not been approved by the Gresik Regency BPPKAD can indeed file a rebuttal by making a refutation letter signed by the parties. respondents said that it took a long time to wait for an answer from the Gresik Regency BPPKAD whether it was approved or not, and even regular follow-up had to be done.

Based on the results of the interview above and based on the applicable laws and regulations, that the legal implications arising from the stipulation of NPOP by BPPKAD Gresik Regency for the basis for collecting BPHTB of buying and selling that do not match the transaction price or PBB NJOP is the absence of legal certainty because the NPOP issued determined based on a separate assessment by BPPKAD in a non-transparent manner. As a result, many taxpayers feel materially disadvantaged because the tax paid should be according to the transaction price but it can swell beyond the transaction price.

IV. Conclusion

4.1 Conclusion

- a. As already stated in the legislation, specifically Article 87 Paragraph (2) of Law Number 28 of 2009 concerning Regional Taxes and Regional Levies that the Acquired Value of Tax Objects (NPOP) for buying and selling is based on the transaction price. In addition to the law, Article 84 Paragraph (2) of the Gresik Regency Regional Regulation Number 2 of 2011 concerning Regional Taxes also confirms that NPOP for buying and selling is based on the transaction price. The Minister of Finance of the Republic of Indonesia also explains in Article 1 Number 3 of the Regulation of the

Minister of Finance (PMK) No.186/PMK.03/2019 concerning Classification of Tax Objects and Procedures for Determining the Sale Value of Land and Building Tax Objects that the determination of the Sales Value of Tax Objects (NJOP) based on the fair sale and purchase transaction price. Based on the above laws and regulations, the Gresik Regency BPPKAD in determining the Tax Object Acquisition Value (NPOP) for buying and selling BPHTB that does not match the transaction price and even exceeds the transaction price or PBB is not the authority of the Gresik Regency BPPKAD even though the process has used the online system, namely through e-BPHTB because there is no legal regulation until now and also the Gresik Regency BPPKAD itself said that the determination of NPOP for BPHTB payments due to buying and selling uses the Self Assessment System, where the taxpayer himself calculates the amount of tax to be paid.

- b. As already stated in the legislation, specifically Article 87 Paragraph (2) of Law Number 28 of 2009 concerning Regional Taxes and Regional Levies that the Acquired Value of Tax Objects (NPOP) for buying and selling is based on the transaction price. In addition to the law, Article 84 Paragraph (2) of the Gresik Regency Regional Regulation Number 2 of 2011 concerning Regional Taxes also confirms that NPOP for buying and selling is based on the transaction price. The Minister of Finance of the Republic of Indonesia also explains in Article 1 Number 3 of the Regulation of the Minister of Finance (PMK) No.186/PMK.03/2019 concerning Classification of Tax Objects and Procedures for Determining the Sale Value of Land and Building Tax Objects that the determination of the Sales Value of Tax Objects (NJOP) based on the fair sale and purchase transaction price. Based on the above laws and regulations, the Gresik Regency BPPKAD in determining the Tax Object Acquisition Value (NPOP) for buying and selling BPHTB that does not match the(transaction price and even exceeds the transaction price or PBB is not the authority of the Gresik Regency BPPKAD even though the process has used the online system, namely through e-BPHTB because there is no legal regulation until now and also the Gresik Regency BPPKAD itself said that the determination of NPOP for BPHTB payments due to buying and selling uses the Self Assessment System, where the taxpayer himself calculates the amount of tax to be paid.

4.2 Suggestion

- c. For local governments, in this case, BPPKAD, it is better to give the public (taxpayers) the authority and opportunity to determine the amount of NPOP for the basis for collecting BPHTB in the transfer of rights to land and buildings due to buying and selling, plus currently the BPHTB payment process uses an online system, namely e-BPHTB. This will increase the convenience for taxpayers and speed up the transition process to the Gresik Regency Land Office. However, of course, BPPKAD Gresik Regency is expected to continue to assess whether the NPOP is based on a reasonable transaction price, if it is not following a reasonable price then the Gresik Regency BPPKAD can take action by setting the NPOP according to the PBB NJOP of the object following the applicable laws and regulations. To make it even easier for the community, it is hoped that the Gresik Regency BPPKAD will provide intensive counseling regarding the collection of BPHTB with an online system because currently there are still many technologically savvy taxpayers, making it difficult for taxpayers to make BPHTB payments. In addition, by conducting intensive counseling, taxpayers can be more active in making timely BPHTB payments and can stabilize the regional economy as well.

- c. Legal uncertainty and the absence of legal protection are legal implications that arise as a result of the Gresik Regency BPPKAD which stipulates NPOP for BPHTB payments for the transfer of land and building rights due to buying and selling with a verification process that is not transparent and there is no definite basis of reference. So, if the Regional Government, in this case, the Gresik Regency BPPKAD will still determine the NPOP for BPHTB payments due to the sale and purchase of each taxpayer who submits it, it is hoped that the Gresik Regency Regional Government together with the Gresik Regency DPRD to create a regional regulation that gives authority to BPPKAD to determine NPOP as the basis for payment of BPHTB due to sale and purchase, the following is also described the basic value of NPOP which will be approved by BPPKAD Gresik Regency which is updated regularly. So that taxpayers can find out the amount of NPOP in a certain area approved by the Gresik Regency BPPKAD if they will transfer land and building rights due to buying and selling. In addition to taxpayers, this can also provide legal certainty and protection for PPAT as an official who also conducts legal counseling for clients so that they can accurately explain the NPOP approved by the Gresik Regency BPPKAD as the basis for collecting BPHTB due to buying and selling, considering that currently there are not a few clients who requested PPAT assistance to apply for an NPOP for BPHTB to be approved by the Gresik Regency BPPKAD.

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