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Calculation and determination of acquisition duty land and building rights

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Abstract. The calculation and determination the land sales tax rate (BPHTB and PPH) for both seller and buyer is deemed unfair, because the calculation is based on market prices and not by sale value of tax objects. In addition, the calculation and determination of market prices doesn't have a legal basis and unclear authority, and gives the impression of arbitrariness. Determination of market prices as basis for calculating BPHTB and PPh, only considers interests of increasing regional original income (PAD), without considering tax burden for sellers and buyers. Likewise, in determining NPOPTKP, it is felt to be unfair, because regardless with selling value, limit for NPOPTKP remains the same, even between regencies/cities the amount not much different.

Keywords. calculation, right, duty land

Introduction

Tax is a mandatory contribution that must be paid by the people to state through state treasury based on law.(Munandar, 2020) Taxes are one of the sources of funds used by government to finance construction of facilities and infrastructure needed by the community. According to Law Number 16 of 2009 concerning the Second Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures, Taxes are formulated as "Taxes are mandatory contributions to state owed by individuals or entities that are coercive under the law without receiving direct reciprocity and being used for purposes in state for greatest prosperity of people." In Article 1 point 1 it is also explained that: "Taxes are mandatory contributions to state owed by individuals or entities that are coercive under law, with no direct compensation and are used for purposes of state for greatest prosperity by the people."

Local taxes are one of the sources of APBD funds in the category of Regional Original Revenue (PAD). One type of local tax is the Land and Building Tax, which is a tax imposed on every owner of land and buildings, both individuals and legal entities, as owners, who control or utilize them. Land and Building Tax is a state tax collected by local governments based on the authority granted by law.

Land and Building Tax is a type of tax imposed on land parcels and or including building units located on relevant land parcels. The amount of Land and Building Tax, is highly dependent on this area of land and the location of land subject to tax. The calculation value of

Land and Building Tax is based on Sales Value by Tax Object, which are average land price obtained from sale and purchase transaction. The Selling Value of the Tax Object is determined by using a price comparison with other similar tax objects or the acquisition value or Selling Value of a substitute Tax Object. The Sales Value Tax Object is average price obtained from sale and purchase transaction.

Research methods

This research is a normative legal research.(Mays Amelia; Tomy Michael, 2022)

Discussion

In general, regional taxes and levies are official collections carried out by taxpayers.(Dilla Zahirani & Witasari, 2018) However, legally, there is a principal difference between two, namely in collecting taxes, taxpayers don't get achievements directly from the government, because taxes are used to finance state expenditures in government administration and development directly from government to benefits provided by government to retribution payer. Taxes are collected due to a situation, event and action that gives a person a certain position.

In Law Number 28 of 2009 concerning Regional Taxes and Regional Levies (PDRD), it is also stated that definition of regional levies is contained in Article 1 number 64, which is formulated as follows: "Regional levies, hereinafter referred to as levies, are levies. Region as payment for services or granting of certain permits specifically provided and/or granted by Regional Government for the benefit of individuals or entities". So, levy is related to provision of certain services or permits that are direct. This means that retribution payers, both individuals and legal entities, receive compensation directly from government.(Michael, 2022)

According to Article 1 point 37 of Law Number 28 of 2009 concerning Regional Taxes and Regional Levies, it is explained that the Rural and Urban Land and Building Tax (PBB) is a tax on land and/or buildings that are owned, controlled, and/or utilized by people individuals or entities, except for areas used for plantation, forestry and mining business activities. PBB is a levy made by government the community on basis force of enactment of laws or regional regulations. Article 2 of Law Number 28 of 2009 concerning Regional Taxes and Regional Levies, is formulated: "Every land and/or building that is owned, controlled, and/or utilized by an individual or entity for urban sector, except the area used for plantation business activities, forestry and mining are taxed under name of Land and Building Tax.

The provisions in article emphasize meaning of Land and Building Tax as a tax imposed on all members community, both individuals and legal entities, who own, control, and utilize land and buildings. The legal basis for collecting Land and Building Tax is Law Number 12 of 1985 concerning Land and Building Tax, as amended by Law Number 12 of 1994 concerning Amendments to Law Number 12 of 1985 concerning Land and Building Tax (hereinafter referred to as Law No. Law on Land and Building Taxes), and can be found in Law Number 28 of 2009 concerning Regional Taxes and Levies.

This law provides a legal basis for Local Governments to collect PBB in regions, in accordance with authority granted by Regional Government Law. The arrangement in form of a law provides a stronger legal basis for government in collecting taxes. This is because product of law is formed by government together with DPR which is nothing but a representation the community. The presence of people's representatives in parliament is based on the reason that tax collection is related to burden people.

For example, the determination by Land and Building Tax City of Surabaya as regulated in Regional Regulation City of Surabaya Number 10 of 2010 concerning Urban Land and Building Tax. In this Regional Regulation, the determination by object of Land and Building Tax is regulated in Article 3 paragraph (1), which is formulated: urban sector, except for areas used for plantation, forestry and mining business activities”.

Before BPHTB and PPh are determined based on NJOP, they must first be deducted as basis for calculating and determining BPHTB and PPh, still having to be deducted by Acquired Value of Non-Taxable Tax Objects (NPOPTKP). NPOPTKP is limit value determined as a reduction in tax determination limit for BPHTB, and PPh, or what is also known as land sale and purchase tax, which must be paid by seller and the buyer. NPOPTKP is determined by the Regional Government based on the Regional Regulation (Perda) of each region (Kabupaten.Kota). Based on the results of research conducted, the average amount of NPOPTKP in each region is almost same, or if there is a difference or difference, then difference or difference is not significant. For some areas in East Java amount ranges from IDR 60,000,000 (Sixty Million Rupiah) to IDR 80,000,000 (Eighty Million Rupiah).

The determination of the NPOPTKP limit as regulated in the regional regulations of each region, of course, is burdensome for both the seller and the buyer, because the higher the transaction value, the higher the tax burden that must be borne by the seller and the buyer. It would be fairer if the non-taxable limit was determined proportionally, and if referring to Aristotle's theory of justice, it would be appropriate to use the basis of distributive justice theory. So that the tax burden is determined proportionally based on the calculation of percentage transaction value. For example, every transaction value of IDR 1,000,000,000 is subject to a non-taxable limit of R 80,000,000, for every increase in transactions of IDR 1,000,000,000, the non-taxable limit is increased by 15%, and so on. So higher transaction value of land, the higher value of non-taxable limit.

The calculation and determination of BPHTB and PPh is not only based on NIOP, but is also based on market prices. The market price is a measure of high and low price level that occurs upon the agreement between seller and buyer, or selling value agreed between seller and buyer based on the offer by the seller. The market price is usually referred to as the equilibrium price or equilibrium price.

These price fluctuations and economic laws also seem apply for sale and purchase of land. This means that price of land is almost certain to fluctuate, such as price of basic commodities or others. This is based on reason that land is a permanent need, and its existence tends to decrease, while need for land continues to increase from time to time. This ever-increasing demand for land can of course be used to predict that land prices will never fluctuate. Therefore, if market price is used as basis for determining BPHTB and PPH rates, it is quite relevant and very detrimental to buyers and sellers. The determination of market prices as basis for determining BPHTB and PPh doesn't reflect a sense of justice in society.

It is said to be unfair, because price of land from time to time continues to increase very quickly, especially if land is located in a strategic location, such as a business center, or other vital objects. The selling value of land is sometimes unrealistic, even above people's expectations, not infrequently market price far exceeds the selling value of tax object. Therefore, in fact determination of BPHTB and PPh is very reasonable and unrealistic if it is based on market prices. The problem is that in setting market prices there is no clear basis for calculation.

The juridical problem are market price as basis for determining sales tax is not clearly known, its legal basis, its authority, including the parameters of amount used, is not known by

people who buy and sell land. So far, the public only knows that basis for calculating the sale and purchase tax are Sales Value of Tax Object, which is determined based on the Land and Building Tax Law. People don't know at all if basis for calculating sale and purchase tax is market price.

In addition, public also doesn't know form of legal product (Zeifert & Tobor, 2021) that used as basis or reference for determining the market price. The form of legal product is of course very important, especially in relation right of community to file objections. This is closely related to efforts that must be taken by people who feel disadvantaged as a result of market price fixing, which has an impact on amount of Customs Duty on Land and Building Rights. In taxation, the subject or taxpayer's objection related to tax determination is referred to as a tax dispute.

Sociologically, the fact of determining market prices as basis for calculating BPHTB and PPH can cause its own problems related to the value with sale and purchase tax on land. Because by fixing a market price that is above real buying and selling price carried out by parties, of course it will be very detrimental to parties, especially buyer. This is because the market price will affect amount of land sale and purchase tax that must be borne by buyer, or Customs for Acquisition of Land and Building Rights, and tax borne by seller in this case Income Tax (PPH), beyond what should be expected when compared to calculations based on Tax Object Selling Value.

In determining the amount of BPHTB and PPh, it is not uncommon for a difference in amount tax burden to occur between calculations made by taxpayer and calculations made by tax authorities. These differences ultimately lead to tax disputes. Clarity in determining market prices and form of legal products is felt to be very important as realization of principles in taxation, especially principle of legal certainty and principle of equity or principle of justice.

Another problem is clarity existence by tax dispute settlement institution that is absolutely necessary as a formal legal means to resolve any tax dispute within the scope of competence that has been provided by law. Thus, the agency has a tough task to enforce regulations (in the context of legal certainty) and enforce justice, both for tax authorities as tax collectors and for taxpayers as taxpayers.

Regarding market prices as the basis for determining BPHTB and PPh, it is felt by community, especially land sellers and buyers, they don't provide a sense of justice. This injustice arises because according to Article 79 of the Land and Building Tax Law, it stipulates that the sale value of tax object is basis for calculating the Rural and Urban Land and Building Tax once a year an evaluation is carried out, with the reason to adjust to existing developments to update tax amount. However, in reality, most local governments don't update the data on sale value of tax objects, which are adjusted to latest developments.

Conclusion

The calculation and determination the land sales tax rate (BPHTB and PPH) for both seller and buyer is deemed unfair, because the calculation is based on market prices and not by sale value of tax objects. In addition, the calculation and determination of market prices doesn't have a legal basis and unclear authority, and gives the impression of arbitrariness. Determination of market prices as basis for calculating BPHTB and PPh, only considers interests of increasing regional original income (PAD), without considering tax burden for sellers and buyers. Likewise, in determining NPOPTKP, it is felt to be unfair, because regardless with selling value, limit for NPOPTKP remains the same, even between regencies/cities the amount not much different.

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