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Imposition of Land and Building Acquisition Duty on Legally Certain Transaction Agreements: Study of The Indonesian Constitutional Court Decision Number 117/Puu-Xxi/2023

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Abstract: The title of this research is the “Imposition of Land and Building Acquisition Duty on Legally Certain Transaction Agreements: Study of the Indonesian Constitutional Court Decision Number 117/PUU-XXI/2023”. The object of this research is the Indonesian Constitutional Court Decision Number 117/PUU-XXI/2023. The objective of this research is to discover whether or not the imposition of Land and Building Acquisition Fee on Sale and Purchase Binding Agreement in the Decision of the Constitutional Court of the Republic of Indonesia Number 117/PUU-XXI/2023 provide legal certainty for the community. The method of this research was the normative or doctrinal legal research which employed the statute approach, conceptual approach, and case approach. This research employed primary and secondary legal materials. Results showed that Land and Building Acquisition Tax is a tax imposed on the acquisition of land and/or building rights. Market value reflects the amount of money the seller, as the owner of the land and building, should receive and the buyer, as the party receiving the rights to the land and building being traded. The results of this study are expected to provide information and solutions for parties who study the legal implications and legal certainty for the community regarding the imposition of Land and Building Acquisition Duty on Transaction Agreements in the Decision of the Constitutional Court of the Republic of Indonesia Number 117/PUU-XXI/2023.

Keyword: Land and Building Acquisition Duty, Transaction Agreement, Constitutional Court Decision, Indonesia

INTRODUCTION

Land and Building Acquisition Fee is a tax imposed on every acquisition of land and building rights in Indonesia, whether from the transfer of rights from an individual or legal entity to another individual or legal entity or the granting of new rights by the government or state to an individual or legal entity. According to Law Number 35 of 2023 concerning General Provisions for Regional Taxes and Regional Levies, Land and Building Acquisition Fee is, "Tax on the acquisition of rights to land and/or buildings". In addition, land rights can be transferred and assigned from one rights holder to another, which is often referred to as the

transfer of land rights. Transfer of land rights is the transfer or shifting of control of land that originally belonged to an individual or group of people to another community.

The financial relationship between the central and regional governments has undergone changes with the enactment of Law Number 1 of 2022 on Financial Relations between the Central Government and Regional Governments. The Financial Relations between the Central Government and Regional Government Law is a revision of Law Number 33 of 2004 concerning Financial Balance between the Central Government and Regional Governments Law. Increasing regional original income (PAD) is one of the main pillars in the Financial Relations between the Central Government and Regional Government Law. Regional original income consists of regional taxes and regional levies (Hariri, 2011). Based on Article 1 number 21 of the Financial Relations between the Central Government and Regional Government Law, what is meant by Regional Taxes hereinafter referred to as taxes are mandatory contributions to regions owed by individuals or bodies that are coercive based on the law, without receiving direct compensation and used for regional needs for the greatest prosperity of the people and Regional Levies based on Article 1 Number 22 of the Financial Relations between the Central Government and Regional Government Law, what is meant by Regional Levies hereinafter referred to as levies are regional levies as payment for services or granting certain permits specifically provided and/or granted by the regional government for the benefit of individuals or bodies (Syahmin, 2006).

Notaries and Land Deed Officials are two professions with specific authority to create authentic deeds that have legal force. Although both are responsible for creating deeds, there are fundamental differences in their respective duties and functions that affect the process of creating a sale and purchase deed. Land Deed Officials are authorized to create authentic deeds related to changes in rights based on Article 1 of Government Regulation of the Republic of Indonesia Number 24 of 2016 on Amendments to Government Regulation Number 37 of 1998 concerning Regulations on the Position of Land Deed Makers, such as Deed of Sales and Purchase, a deed that shows the formation of a change in rights from buyer to seller. The basis of land and building transactions is tangible and cash, where both parties agree and the agreement is explained in the authentic deed prepared by the Land Deed Officials and the payment has been made in full. If the payment for the land sale transaction has not been completed, the as Deed of Sales and Purchase cannot be registered with the local land office. Therefore, the Land Deed Officials' obligation when preparing a deed is to first ensure that the Land Property Tax has been paid in full by showing proof of Land Property Tax payment. In contrast, a notary is authorized to make authentic deeds regarding all actions, agreements and provisions required by statutory regulations and/or which are desired by the interested party to be stated in an authentic deed, guarantee the certainty of the date of making the deed, store the deed, provide a grosse, copy and extract of the deed, all of which as long as the making of the deeds is not also assigned or excluded to another official or other person determined by law, such as the making of a Sale and Purchase Binding Agreement (Suparmono & Damayanti, 2010).

Case Number 117/PUU-XXI/2023 Article 49 letter a of the HKPD Law stipulates that Land and Building Acquisition Fee is payable on the date of the Sale and Purchase Binding Agreement for sale and purchase. This becomes a problem in practice for various reasons, including: if Land and Building Acquisition Fee is automatically payable when the Sale and Purchase Binding Agreement deed is made and signed by a notary in a notarial manner which is carried out in stages, should Land and Building Acquisition Fee be paid from the first stage or when it has been fully paid, considering that in the making of Sale and Purchase Binding Agreement deeds there are two types of Sale and Purchase Binding Agreement deeds from the method of payment where the entire price has been paid at the time of signing the deed, but for one reason or another, a sale and purchase deed cannot/has not been made by a PPAT, or the

price must still be paid in stages, in several installments. This becomes a problem in practice, because there is a possibility of cancellation or default in the transaction process (Prasetyo, 2022).

According to the Petitioner of Case Number 117/PUU-XXI/2023, Article 49 letter a of the Financial Balance between the Central Government and Regional Government Law is contrary to legal principles, because the binding sale and purchase agreement has not resulted in a legal transfer of rights. It should be noted that the preparation of a Sale and Purchase Binding Agreement was previously not subject to Land and Building Acquisition Fee, but now the government requires payment of Land and Building Acquisition Fee for the preparation of a Sale and Purchase Binding Agreement, the same as the preparation of a Deed of Sales and Purchase. This was submitted by the applicant, a notary, who felt that the community's rights were harmed regarding the imposition of Land and Building Acquisition Fee when the Sale and Purchase Binding Agreement was considered baseless and violated the principle of legal certainty for the community. The essence of making a Sale and Purchase Binding Agreement deed after the signing and numbering of the deed then the official acceptance of land rights (transfer of rights) occurs when the transaction for full payment is then signed by the sale and purchase deed for the land and building before the authorized Land Deed Officials. Thus, the imposition of Land and Building Acquisition Fee is imposed when the applicant or recipient of rights has officially received the rights to the land in question.

Based on the description above, the author is interested in conducting a more in-depth study of the above case. The problem of this research is: Does the imposition of Land and Building Acquisition Fee on Sale and Purchase Binding Agreement in the Decision of the Constitutional Court of the Republic of Indonesia Number 117/PUU-XXI/2023 provide legal certainty for the community?

METHOD

This type of research will be conducted using normative or doctrinal legal research. According to Peter Mahmud Marzuki, doctrinal research is research that provides a systematic explanation of the rules governing a particular legal category, analyzing the relationships between regulations, explaining areas of difficulty, and possibly predicting future developments (Marzuki, 2022). Normative legal research, also known as doctrinal legal research, is also referred to as library research or document study because this research is conducted or directed only at written regulations or other legal materials.

This research will employ three approaches. First, a statute approach, taking as its starting point the various legal regulations that are the focus and central theme of the research. Second, a conceptual approach will be used, based on the perspectives and doctrines applied in legal science as it develops, ensuring that applicable legal concepts and principles are relevant to the research problem. Third, a case approach will be used in this research, involving ongoing legal cases or legal cases that have been decided by the courts. The case approach in normative legal research is used to obtain support for the legal arguments being debated (Soekanto & Mamudji, 2016).

This research employed primary and secondary legal materials. Primary legal materials consist of legislation, official records or minutes of legislative acts and judicial decisions. Secondary data is data obtained from library research that is already available in the form of books or literature such as textbooks, legal journals, and analysis of court decisions.

The collection technique in this research is using literature study which is a method for collecting, searching, recording, inventorying and studying legal raw materials. Interpretation is a hypothesis based on data generated by an object of interpretation, regarding the meaning of that object of interpretation. In law, the object of interpretation can be the laws and constitutions of a particular legal area, such as criminal law or constitutional law. This research

will also utilize content analysis techniques, a method operationally used to draw conclusions by identifying the specific characteristics contained within a particular message.

RESULTS AND DISCUSSION

Land and Building Acquisition Tax is a tax imposed on the acquisition of land and/or building rights, hereinafter referred to as tax. Therefore, the objects of Land and Building Acquisition tax are land, buildings, and land and buildings (Hartanto, 2015).

Acquisition of land and/or building rights includes the transfer of land and building rights through sale and purchase, exchange, gift, bequest, capital investment from individuals or business entities to limited liability companies or other legal entities in the form of land or buildings, and the transfer of part of joint rights to land and buildings by individuals or entities to fellow joint rights holders. Furthermore, acquisition of land and/or building rights can also result from the appointment of a buyer in an auction, the execution of a legally binding judge's decision, and gifts (Subekti, 2007).

In addition to transfers, acquisition of land and building rights can also result from the granting of leasehold rights. Land and building rights include ownership rights, cultivation rights, building rights, use rights, ownership rights to apartment units, or management rights. Acquisition of land and building rights that are exempt from Land and Building Acquisition Tax is the acquisition of land and building rights by diplomatic representatives, consulates based on the principle of reciprocal treatment, the state for the administration of government and/or for the implementation of development for the public interest, bodies or representatives of international organizations determined by the Minister, as well as individuals or bodies due to conversion of rights and other legal acts without any change of name due to waqf, inheritance, and for use for religious purposes (Brierly, 1999).

Market value reflects the amount of money the seller, as the owner of the land and building, should receive and the buyer, as the party receiving the rights to the land and building being traded. Market value is typically determined by an independent appraiser who is independent of any interests in the object or property being appraised. Therefore, the value generated by the independent appraiser will reflect the property's true market value (Pratama & Silviana, 2024). To determine the amount of Land and Building Tax payable, the regional government sets the non-taxable acquisition value of the taxable object as a reduction in the Land and Building tax base. The non-taxable acquisition value of the taxable object is set at a minimum of IDR 80,000,000.00 (eighty million rupiah) for the first acquisition of the Taxpayer's rights in the region where the Land and Building Tax is owed. For the acquisition of rights due to a gift, will, or inheritance, as received by an individual who is related by blood in a direct line of descent one degree up or one degree down with the grantor of the will or inheritance, including a spouse, the non-taxable acquisition value of the object is set at a minimum of IDR 300,000,000.00 (three hundred million rupiah) (Suparmono & Damayanti, 2010).

This is different from the transaction price stated in the auction minutes, which is the actual price determined by the auction official based on the highest bid submitted by the auction participant (in accordance with Article 1 number 21 of the Minister of Finance Regulation Number: 150/PMK.06/2007 concerning Amendments to the Minister of Finance Regulation Number: 40/PMK.07/2006 concerning Auction Implementation Guidelines) (Meliala, 2010).

An agreement or *Verbintenis* is a legal relationship of wealth/property between two or more people, which gives the power of the right to one party to obtain achievements and at the same time obliges the other party to fulfill the achievements. An agreement is a legal relationship (*rechtsbetrekking*) relating to property law between two or more people, which gives rights to one party and obligations to the other party regarding an achievement. A legal

relationship in which the law itself has regulated and legalized the way of the relationship. Therefore, the legal relationship in the agreement is not a relationship that can arise by itself.

An agreement is an event where a person promises and binds himself to another person, or where two or more people promise each other to carry out something. The definition of agreement is regulated in Article 1313 of the Civil Code which states that "an agreement is an act by which one or more people bind themselves to one or more people".

According to Prof. Subekti, an agreement is an event where one person promises to another person or where two people promise each other to carry out something. This relationship is called an agreement, the agreement that is made creates an agreement between the two people who make it. In its form, an agreement is a series of words containing promises or commitments that are spoken or written. Meanwhile, Yahya Harahap defines an agreement as a legal relationship between two or more people, which gives one party the right to obtain a performance and requires the other party to carry out the performance (Harahap, 1982).

Obligations are regulated in Article 1235 of the Civil Code, which states, "Every obligation to provide something includes the obligation of the debtor to hand over the object in question and to care for it as a good housewife, until the delivery occurs. Based on this article, it can be concluded that the debtor has certain obligations before the delivery occurs." This means that an obligation to provide something is an obligation to hand over (*leveren*) and care for the object (*prestasi*) until the delivery occurs. Therefore, the debtor has an obligation to hand over something, which is a primary obligation, and to care for the object until the delivery occurs. Obligations are divided into two types: obligations arising from agreements and obligations arising from law (Subekti, 1987):

- 1) Obligations arising from agreements. Obligations arising from agreements are emphasized in Article 1233 of the Civil Code, which states that every obligation arises either by agreement (contract) or by law. Agreements are the most important source of obligations.
- 2) Obligations derived from law. Law as a source of obligations is divided into two: law alone and law in relation to human actions.

An obligation derived from law alone is an obligation whose obligations are directly mandated by law. An obligation derived from law due to human actions is an obligation that arises from an individual's actions, and the law then establishes the rights and obligations arising from those actions. These actions are divided into two types: legal actions (*rechtmatige daad*) and unlawful actions (*onrechtmatige daad*) (Salim, 2010). An obligation arising from law, for example, due to a legal action, is a person making what is called a debt-free payment (*onverschuldigde betaling*), as defined in Article 1359 of the Civil Code (Subekti, 1995).

In addition to legal actions, there are also unlawful actions (*onrechtmatige daad*). If this act is committed by an individual, under the provisions of the law, a contract is created between the perpetrator of the unlawful act and the person harmed by the act, as stipulated in Article 1365 of the Civil Code. In other words, every unlawful act that causes harm to another person creates an obligation for the perpetrator of the act, whose fault caused the loss, to provide compensation (Busro, 2011).

From this definition of a contract, it is clear that there is a difference between an agreement and a contract. An agreement here is understood as one source of a contract. An agreement, or *verbinten*, implies a legal relationship of wealth or property between two or more persons that empowers one party to obtain a performance and simultaneously obligates the other party to fulfill the performance. Meanwhile, contract law is complementary, consensual, and obligatory. Complementary law means that if the parties make their own provisions, each party can override the provisions of the law. Consensual law means that once an agreement has been reached by each party, the contract is binding and can be fulfilled responsibly. Meanwhile, it is obligatory in nature, meaning that every agreement that has been

agreed upon must be fulfilled and ownership rights will be transferred after the handover to each party that has agreed (Hassanah, 2014).

Buying and selling falls under the category of named contracts, meaning that the law has given it a specific name and specifically regulates this type of contract. The provisions of named contracts can be regulated in the Civil Code or the Commercial Code. Buying and selling agreements are regulated in Articles 1457-1540 of the Civil Code (Santoso, 2016).

According to Article 1457 of the Civil Code, a buying and selling agreement is an agreement in which one party, acting as the buyer, promises to deliver an item, and the other party, acting as the seller, promises to pay the price. Based on the definition provided in Article 1457 above, a buying and selling agreement simultaneously imposes two obligations (Sinaga, 2005):

- a. The seller's obligation to deliver the item sold to the buyer;
- b. The buyer's obligation to pay the price of the item purchased to the seller.

According to Salim H.S., S.H., M.S., a buying and selling agreement is an agreement made between a seller and a buyer. In this agreement, the seller is obligated to deliver the item sold to the buyer and is entitled to receive the price, while the buyer is obligated to pay the price and is entitled to receive the item. The elements contained in this definition are:

- a. The existence of legal subjects, namely the seller and the buyer;
- b. An agreement between the seller and the buyer regarding the goods and price;
- c. The rights and obligations arising between the seller and the buyer.

The main elements of a sales and purchase agreement are the goods and the price. There must be an agreement between the seller and the buyer regarding the price and the object of the sale. A valid sales and purchase agreement is formed when both parties agree on the price and the goods. The consensual nature of the sales and purchase agreement is affirmed in Article 1458, which states, "A sale and purchase is deemed to have occurred between the two parties immediately after they reach an agreement regarding the goods and price, even though the goods have not been delivered or the price has not been paid."

A sales and purchase agreement is an agreement related to Book III of the Civil Code concerning Contracts (*van verbintenissen*), which is regulated in Articles 1233 to 1868 of the Civil Code. However, when referring to several existing provisions, Book III itself does not provide a clear definition of what is meant by a contract. Essentially, contract law adheres to the principle of freedom of contract, meaning that every legal subject is free to enter into an agreement according to the wishes of the parties, but it must not conflict with the law, moral values, or public order (Fuady, 1999).

The concept of a contract has been interpreted by many experts, including Subekti, who argues that: "An agreement is an event in which one person promises to another or where two people mutually promise to carry out something, thus creating a relationship between the two people called a contract." Meanwhile, Mariam Darus Badzrulzaman argues that: "A contract is a relationship between two or more persons within a property area where one party has the right to perform and the other party is obligated to fulfill that performance."

A sale and purchase agreement is formed through an agreement, as stipulated in Article 1313 of the Civil Code, which states, "An agreement is an act by which one or more persons bind themselves to one or more persons." This means that a sale and purchase agreement arises from a legal act between the parties. A valid agreement is only considered valid if it meets the four basic requirements for a valid agreement, as stipulated in Article 1320 of the Civil Code: the mandatory agreement of those who bind themselves, the capacity to enter into a contract possessed by the parties, the existence of a specific thing that is the object of the contract, and a lawful cause that does not conflict with law or public order (Dworkin, 1986).

A sale and purchase agreement is a preliminary agreement before the main agreement is established, which is stipulated in a deed of sale and purchase, with land as the object of the

agreement. The transfer of land rights is stipulated in a deed of agreement. Buying and selling is done for various reasons, including the certificate is still in the possession of another party, either under bank guarantee or in the process of land registration that has not been completed at the land office, payments are made in installments and other clauses that can be agreed upon (Siahaan, 2013). So in principle, the transfer of rights carried out by entering into a sales and purchase agreement is a temporary transfer of rights for reasons specified in the agreement by the seller and buyer. The sales and purchase agreement binds the parties to act in good faith in terms of the sale and purchase transaction even though the sale and purchase deed has not been directly signed. When the seller and buyer agree on the land object and price, at that moment the sale and purchase occurs and is legally binding for both parties. However, provisions related to supporting documents such as the identity of the parties, supporting documents for the land plot, payment of sales and purchase taxes, and the settlement mechanism for the land plot must still be carried out properly (Muhammad, 2000).

The theory of legal certainty, or the theory of legal validity, is an important theory in legal science. It teaches how and under what conditions a legal rule is legitimate and valid, allowing it to be enforced by force, if necessary (Harahap, 1982).

Legal certainty, like justice and the utility of law, is essentially a doctrine. The doctrine of legal certainty teaches every law enforcer and enforcer to utilize the same law for the same case (to ensure public compliance and maintain order in every aspect of life). Legal certainty is a primary legal principle consistently upheld by law enforcers in adjudicating cases. It is a theory of justice that can apply justice among people and preserve national cohesion (Miru, 2007).

According to Hans Kelsen, the requirements for a legal rule to be considered valid are those that are consistent with basic norms and social acceptance. This is when the legal rule has been properly enacted, even though it may not have been well-received by the public at the time of its initial enactment. However, if these legal rules are consistently not accepted by society, they lose their validity and become invalid (lack of legal certainty) (Notohamidjojo, 2011).

The theory of legal certainty is one of the most important principles in a state based on the rule of law. According to Radbruch, law has objectives oriented toward the following:

- a. legal certainty;
- b. justice;
- c. utility or benefit.

Indonesia is a State of Law as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. In line with this, Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that "Judicial Power is an independent power to administer justice to uphold law and justice." This is also reaffirmed in the provisions of Article 1 paragraph (1) of Law of the Republic of Indonesia Number 49 of 2009 concerning Judicial Power which states that "Judicial Power is an independent state power to administer justice to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, for the sake of implementing the Constitution of the Republic of Indonesia." Therefore, as stipulated in Article 3 paragraph (1) of Law of the Republic of Indonesia Number 49 of 2009 concerning Judicial Power, any interference in judicial affairs by parties outside the Judicial Power is prohibited, except in cases as stipulated in the 1945 Constitution of the Republic of Indonesia (Khairandy, 2013).

According to Bagir Manan, based on the prevailing system in the 1945 Constitution, even though it does not adhere to the doctrine of separation of powers, an independent judiciary must still be upheld both as a principle in a state based on law and to enable the judiciary to ensure that government is not carried out arbitrarily and oppressively. The presence of an independent judiciary is no longer determined by the system of separation or distribution of

powers, but rather as a condition sine qua non for the realization of a state based on law, guaranteed freedom, and control over the course of state government.

In exercising this judicial power, particularly in the form of personal independence of judges, judges must be independent or free from the influence of any power, a concept known as judicial independence (Atmosudirjo, 2005). J. Djohansyah defines judicial independence as the freedom or independence of a judge to carry out his duties in administering justice impartially, solely based on facts and law, without restrictions, influence, persuasion, pressure or intervention, directly or indirectly, from any party and/or for any reason for the purpose of justice based on Pancasila.

CONCLUSION

Land and Building Acquisition Tax is a tax imposed on the acquisition of land and/or building rights. Market value reflects the amount of money the seller, as the owner of the land and building, should receive and the buyer, as the party receiving the rights to the land and building being traded. This research is expected to contribute to the development of knowledge for prospective notaries and Land Deed Officials in the field of notarial law regarding law enforcement and legal certainty for the public regarding the imposition of Land and Building Acquisition Tax on Sale and Purchase Binding Agreement in the Decision of the Constitutional Court of the Republic of Indonesia Number 117/PUU-XXI/2023.

It is hoped that the results of this research can be used as a reference for studies and references regarding the legal meaning and legal certainty for the public regarding the imposition of Land and Building Acquisition Tax on PPJB in the Decision of the Constitutional Court of the Republic of Indonesia Number 117/PUU-XXI/2023.

The results of this study are expected to provide information and solutions for parties who study the legal implications and legal certainty for the community regarding the imposition of Land and Building Acquisition Tax on Sale and Purchase Binding Agreement in the Decision of the Constitutional Court of the Republic of Indonesia Number 117/PUU-XXI/2023.

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