



Research Article



Regulation Model for Collecting State Revenue in Registration of Sale and Purchase Land

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Abstract: Taxes serve as the primary source of income for the nation to finance its diverse requirements. Land sales and purchase taxes are a specialized sort of tax revenue. Nevertheless, the current taxing arrangements for land transactions enforced by the state remain unjust and need more legal certainty. This study evaluates the significance of state taxation regulations in land acquisitions, aiming to establish legal certainty and justice for the community. It proposes that state taxes on land sales should be determined based on the Tax Object Proceeds Value (NJOP). It advocates for implementing a self-assessment system to ensure equitable taxation and legal certainty in Indonesia. This study employs a doctrinal legal research methodology, conceptual approach, and statutory regulations. The sources utilized encompass primary and secondary legal texts, subsequently synthesized through deductive syllogism. The results indicate that the current rules for determining state tax deductions for land sales in Indonesia are invalid and unfair. This is because they need a self-assessment system, which leads to a lack of clarity and transparency. To address this issue, it is necessary to implement the Tax Deal System as the primary method for collecting sales and purchase taxes on land. This system would allow taxpayers to communicate with tax authorities to determine the land's fair value before conducting transactions to ensure that the transaction value and tax amount are based on the actual value of the land.

Keywords: Land Sale; Tax; Regulation;



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INTRODUCTION

Rules in the Law on the process of acquisition of land rights existing in Indonesia that are acquired due to acts or legal events resulting in the transfer of the right to land which is the object of taxation where there are 2 (two) types of Land Tax such as Income Tax on Land (*PPh*) and Tax (*Bea*) Acquisition of Land and Building Rights (*BPHTB*). The tax is deducted with different calculations.¹ The *PPH* on land in the process of land transfer is charged to the seller. *PPH* is a type of final tax in which the payment is made by the taxpayer by attaching the Tax Secretary Letter (*SSP*). *BPHTB* is the type of tax charged to the buyer for the acquisition of a right on a land whose payment arises on its own due to the provisions of the Law deposited in the local government in this case the local income party. The process of transfer of land rights requires both of the above-mentioned types of taxes, which must be deposited before

¹ Try Widiyono and Md Zubair Kasem Khan, 'Legal Certainty in Land Rights Acquisition in Indonesia's National Land Law', *Law Reform: Jurnal Pembaharuan Hukum*, 19.1 (2023), 128–47 <https://doi.org/10.14710/lr.v19i1.48393>



the land transfer act is signed by the parties.² This problem arises at the time of the tax validation process in which the tax officer (Fiscus) establishes the amount of tax on the transfer of land substantially higher than the price of the transaction based on the standard of the Value of Sale of Tax Objects (*NJOP*) which is not in accordance with the value of transaction contained in the Sale Act.

The above problems are still occurring in some areas, for example in Sukoharjo district there are transactions value of sale and purchase of land with land area of about 601 M2. The price of the rill transaction amounted to Rp. 75,000,000, (seventy-five million rupees), the value of the sale of tax objects (*NJOP*) Rp. 78,000,000 (seventy-eight million rupias), the setting of the Land Value Zone (ZNT) of the land body of Sukoharjo district Rp. 100,000,000, after the file was entered into the office of the Regional Financial Agency (*BKD*) of Sukoharjo District, the validation was refused, and the Financial Agency of the district (*BKD*) determined the price of such a piece of land at a much higher price, that is, at a price of Rp. 150,000,000. Thus the determination of the size of the land tax transfer right is much higher than the price of the transaction resulting in the occurrence of underpayment.³

Additional issues have arisen in the Bandung district, where numerous communities engaged in land sales fail to disclose the actual price. This is due to the tax collection process, which requires the transaction price to align with the inflated market value. Hence, sellers and purchasers often omit the actual transaction price in the sales agreement in order to minimize the expenses incurred by both parties. Hence, the *Dispenda/Pasedahan* Agung district of Bandung is implementing measures to reduce the occurrence of uncollected taxes through the implementation of verification or field investigations. If a disparity arises between the transaction price and the fair market price during field verification, the *Dispendahan/Pasadahan* district will immediately repair it.⁴

The utilization of transactions as a basis for the calculation of *BPHTB* frequently presents challenges in practice, as it is not uncommon for the Fiscus to deem the transaction value provided by the taxpayer as unsuitable. Consequently, during the verification/validation process, tax officers often request that the value be amended and aligned with the assessment of the tax official.⁵ The transaction value, based on

² Putu Eka Wima Setyadi, Gusti Bagus Suryawan, and A. A. Istri Agung, *Analysis of the Imposition of Final Income Tax (Final Income Tax) and Duty for the Acquisition of Land and/or Building Rights (BPHTB Tax) in the Transition of Property Rights to Land in Gianyar Regency, Proceedings of the 3rd International Conference on Business Law and Local Wisdom in Tourism (ICBLT 2022)*, 2023 <https://doi.org/10.2991/978-2-494069-93-0>

³ Setyani Sri Haryanti, Febrian Fernanda Siwi Tatok, and Irwan Christanto Edy, 'The Effect of Efficiency Ratio, Effectiveness Ratio, Contribution Ratio of Land and Building Tax on Local Own Source Revenue in the Sukoharjo Regency 2016-2018 (Empirical Study in the Regional Agency of the Sukoharjo Regency)', *International Journal of Economics, Business and Accounting Research (IJEBA)*, 4.02 (2020), 11–22 <https://doi.org/10.29040/ijebar.v4i02.967>

⁴ Kiki Rahayu Prasasti, Rahayu Subekti, and Sapto Hermawan, 'Legal Certainty on Tax Determination on Acquisition Charges for Land and Building Rights (Bphtb) and Transfer Registration of Land Rights', *International Journal of Business, Economics, and Law*, 26.1 (2022), 219–23.

⁵ Silvia Hendrayanti and Cahyani Tunggal Sari, Potential Of Land and Building Transfer Tax (BPHTB), *International Journal of Economics, Business and Accounting Research (IJEBA)*, 7.4 (2023), 1365–1375 <https://doi.org/https://doi.org/10.29040/ijebar.v7i4.10703>



market price, is typically significantly greater than the Value of Sale of Objects of Tax Land and Buildings (*NJOP PBB*). As a result, tax officers must gather data, facts, and information from numerous sources in order to accurately determine the actual transaction value on behalf of the Fiscus. This contradicts the legal principles and undermines the element of legal certainty, which is problematic due to the uncertainty around the value of the transaction.

The impact of the aforementioned issue will undoubtedly hinder the process of transferring land rights and certainly disadvantage the parties involved as taxpayers, as the field validation process conducted by the tax authorities to determine a fair land price based on subjectivity requires a very long time, even up to several months. Field officers tend to seek opportunities to benefit themselves by searching for buildings that do not comply with the Property Tax Payment Letter (*SPPT PBB*) or buildings that do not match the assessed value (*NJOP*) stated in the *SPPT PBB*.⁶ Consequently, field officers do not hesitate to collude with taxpayers to receive a certain amount of money in order to bypass verification and ensure a smooth validation of the Land and Building Transfer Fee (*BPHTB*).

This violates Law Number 28 of 2009 concerning the amendment to Law Number 21 of 1997 concerning Regional Taxes and Regional Retribution, Article 87 paragraph (1), which explains that the basis for the imposition of Fees on the Acquisition of Rights on Land and Buildings is the Tax Object Acquisition Value. The acquisition value of the non-taxable tax object, as in the case of a sale and purchase, is the transaction price. According to Article 1 paragraph (1) of Government Regulation No. 34 of 2016 concerning Income Tax on Income from the Transfer of Rights to Land and/or Buildings, it states that, "(1) On income received or obtained by individuals or entities from: the transfer of rights to land and/or buildings and agreements for the sale and purchase of land and/or buildings and their amendments."

In addition to the issue of tax imposition based on transaction value, there are other problems related to the taxation system in Indonesia. Taxation in Indonesia is implemented through the self assessment system, in which taxpayers calculate, evaluate, pay, and report their own tax liabilities. In this case, the applicable legal basis is Article 12 of Law No. 28 of 2007, which is the Third Amendment to Law No. 6 of 1983 concerning General Provisions and Tax Procedures, Article 1 paragraph (1) of Government Regulation No. 34 of 2016 concerning Income Tax on Income from Transfer of Rights on Land and Building and Article 10 paragraph 1 of Law No. 20 of 2000 concerning Land and Building Tax.

The above rules indicate that *BPHTB* and *PPH* taxes must be collected based on the self assessment system. The previously mentioned regulations of the self assessment system, when applied to the fiscal authority's rejection of the valid calculation of incurred taxes that is not based on the taxpayer's own assessment, result in the transformation of the system into the Official Assessment System, where the government determines the amount of taxes owed by the taxpayer. Therefore, in the author's opinion, there is an inconsistency on the part of the Local Government in

⁶ Thao Le thi, 'Fighting Corruption Through Tax Administration Reform: Vietnam Case Study', *Legal Brief*, 12.1 (2023), 148–57 <https://doi.org/10.35335/legal.v12i1.772>



collecting taxes in terms of the tax collection system that should be calculated by the Taxpayer themselves (self assessment system), especially for BPHTB taxes.

On the other hand, the issue regarding the taxation of land transactions is also rooted in the low honesty of taxpayers in fulfilling their tax obligations. The dishonesty of society is also one of the factors that leads the Fiscus to intervene in determining the agreed upon transaction value and payment made by taxpayers, disregarding the self assessment system in taxation.⁷ Based on the aforementioned issue, in order to establish legal certainty and fairness in the taxation of land transactions, a construction that prioritizes the harmonization between the interests of the state, represented by the tax authorities in collecting taxes on land, and the interests of the community as taxpayers to fulfill their welfare needs to be created, thus creating a mutual understanding of interest.

I Made Sudira pointed out that the price determination used as the basis for the NJOP still feels very high and does not correspond to the reality of actual land prices, which results in losses to the community so that the Tax Object Value needs to be done based on balance and harmony of market prices so that the community does not feel disadvantaged. Investment in the property sector is going well.⁸ Based on this, the researcher intends to show that implementing regulations regarding determining state tax deductions for land sales is not valid and fair because it does not follow the self assessment system. There is no clarity or openness regarding this matter in determining the fair value of land as the state's fiscal basis for determining value. Sales tax on land. This research aims to outline state taxation regulations in land purchases to realize legal certainty and justice for the community, starting with determining the value of legal security and justice to develop a regulatory model for state taxation regulations.

METHOD

This study employs doctrinal legal research methods, which are grounded in the notion of law as the fundamental basis for universal truth and justice. It focuses on the philosophy of law and the examination of positive norms within the framework of the national legal system. Additionally, it provides guidance for the instruction of pure law. The study employs conceptual techniques and approaches to legislative control. The idea methods are based on established principles and emerging perspectives in the field of legal science, while the approach to legislation involves a comprehensive analysis of all relevant laws and regulations pertaining to the specific legal matters at hand. Given that this study relies on library resources, the legal material collected consists of both primary and secondary sources. Primary legal sources encompass authoritative legal regulations organized in a hierarchical manner, starting from the Pancasila and the 1945 Basic Law, and extending to subordinate

⁷ Retnaningtyas Widuri and others, Preventing Tax Evasion: The Moral Strength of Taxpayers and The Power of Tax Authorities', *Jurnal Akuntansi Dan Keuangan*, 25.2 (2023), 91–100 <https://doi.org/10.9744/jak.25.2.91-100>

⁸ I Made Sudira, 'Penerapan Nilai Objek Pajak (Njop) Terhadap Pembayaran Pajak Penghasilan (Pph) Dan Bea Perolehan Hak Atas Tanah Dan Bangunan (Pbhtb) Dalam Transaksi Jual Beli Tanah Di Kabupaten Badung', *YUSTHIMA: Jurnal Hukum Agraria & Tata Ruang*, 2.1 (2022), 59–70 <https://doi.org/https://doi.org/10.36733/yusthima.v2i01.2982>



laws. Secondary legal resources, which are closely associated with primary legal resources, serve to elucidate and scrutinize the original legislative material acquired from diverse sources such as books, journals, and articles. The acquired data is subsequently examined through the application of a deduction syllogism, which is a style of reasoning that relies on a main premise (a broad assertion), followed by a small premise, from which a conclusion is derived.

RESULT AND DISCUSSION

Implementation and Regulations for the Determination of State Tax Collection in Fair and Legal Land Purchasing

Historically, the presence of a land tax constituted a kind of taxation that encompassed a well-established category of taxes. The tax reduction serve as the primary means of financing the general interest. Historically, land taxes in Western nations were referred to as property taxes. The Romans and Greeks in ancient times were familiar with the concepts of "tax" and "census". To generate direct revenue for his community, he implemented a system of royal taxes. One of the forms of taxation that pertains to the possession of land. Since the enactment of Law Number 5 of 1960 concerning the Basic Principles of Agrarian Law (*UUPA*), the state has mandated that land registration be carried out. This is intended to ensure legal certainty for all land areas under control. The assurance of legal certainty is realized by the implementation of a land registration program as regulated in Government Regulation Number 24 of 1997 concerning Land Registration. Simultaneously, during the land registration process, the government mandates the imposition of taxes. In order to facilitate the implementation of land registration, the government levies taxes through the issuance of Law Number 21 of 1997, which was amended by Law Number 20 of 2000 about Land and Building Acquisition Fees. This law might be considered as a replacement for Ordinance 291 of 1924 on the Transfer Duty on Immovable Property.⁹

The initial purpose of the issuance of Law Number 21 of 1997, which was amended by Law Number 20 of 2000 concerning Land and Building Acquisition Fees, was to increase the state's revenue from taxes on the transfer of land and buildings, specifically to finance the administrative process of land transfer in the Land Agency. Consequently, any transfer of land rights carried out by the community as a result of a legal act will incur the payment of taxes on land and buildings acquisition. Meanwhile,¹⁰ the existence of land as a tax levy on the transfer of land rights is currently reflected in Article 33, paragraph (3) of the 1945 Constitution, which states that all natural resources are controlled by the state and used to the greatest extent for the prosperity of the people. The function of land, as stated in the opening of the Agrarian Law, is to create prosperity for the people. Based on the state's right to control land, as mentioned in Article 4 paragraph (1) of the Land Law, it is determined that there are several types of land ownership rights that can be granted to individuals to ensure legal certainty and security. The purpose of implementing the *UUPA* is to serve as the foundation for the development of agrarian laws that would

⁹ Yogi Firmanda, Dyah Othorina Susanti, and Aan Efendi, 'Legal Strength of Certificate of Property Rights to Land Which Is Enforced Duty for Acquisition of Land Rights Obtained', *International Journal of Social Science and Education Research Studies*, 03.07 (2023), 1277–84 <https://doi.org/10.55677/ijssers/v03i7y2023-16>

¹⁰ *Ibid.*



be instrumental in achieving prosperity and justice for the nation and its people. Therefore, the UUPA establishes the foundations for providing legal certainty about land ownership rights for all citizens,¹¹ as stipulated in Article 19 of the UUPA.

The government guarantees legal certainty by implementing land registration, regulated by Government Regulation No. 24/1997 on Land Registration. The definition of land registration is further explained in Article 1, paragraph (1) of Government Regulation 24 of 1997. This provision is intended for the government to register land throughout Indonesia. Regulations regarding the legal certainty of land registration are closely related to the ownership or control of land obtained by a person. Land rights can be acquired through transfers, inheritance, bequests, business combinations, revocation of rights, and auctions. The above statement can be interpreted that the transfer can be in the form of buying and selling, granting, exchanging, releasing rights, transferring rights, giving rights agreements, and waqf. In moving land rights, the state can collect land and building taxes, which are used to finance the public interest. The regulation on the legal certainty of land registration is closely related to the ownership or control of land acquired by an individual. The acquisition of land rights can occur by transfer, inheritance, legacy inheritance, merger of estates, revocation of rights, and auction. The above statement can be interpreted as the transfer in the context of purchase, donation, exchange, relinquishment of rights, transfer of rights, agreement of rights transfer, and endowment. During the process of transferring land rights, the state has the right to levy land taxes, the proceeds of which are used to finance public interests.

The transfer of land rights is a crucial taxable object, requiring individuals who acquire land rights to bear the burden of paying taxes on the economic value they obtain to the state. The buying and selling activity is considered a taxable object as explained in Article 85 paragraph (1) and (2) of Law number 28 of 2009 concerning Local Taxes and Regional Levies in conjunction with Article 2 paragraph (1) and (2) of Law number 20 of 2000 concerning Acquisition Duty on Land and Buildings, which states that the taxable object (Acquisition Duty) for Land and Buildings (BPHTB) is the acquisition of rights over land and/or buildings. The acquisition of rights to land and buildings, as referred to in paragraph (1), is the Transaction Value in the transfer of rights through sale and purchase. Therefore, every transfer of land ownership through buying and selling is subject to taxation. Every transaction of buying and selling is always related to price issues, so the tax determination is based on the value of the selling and buying price of the transfer of land rights. Thus, the basis for the taxation of the transfer of land rights is determined by the value of the price agreed upon by the parties in carrying out the legal act of sale of land called the Transaction Value or Purchase Value (NPOP) of the land rights. In article 87 paragraph (1) of the Law No. 28 of 2009 on Regional Tax and Regional Retributions (PDRD Act), the PDRD Act

¹¹ Zainuddin Zainuddin, 'Right to Own Land by the State in the Frame of Constitutional Law', *Randwick International of Social Science Journal*, 2.2 (2021), 46–57 <https://doi.org/10.47175/rissj.v2i2.214>



provides that the basis for the application of Customs Procurement of Rights on Land and/or Buildings (BPHTB) is the Value of Objects of Tax (*NPOP*).¹²

The determination of the Taxable Object Acquisition Value (*NPOP*) depends on the agreed transaction value between the parties involved in the land sale, which is also documented in the deed of sale. The above regulation becomes the basis that is implemented by every region that collects Fees on Acquisition of Land and Building Rights (BPHTB), as explained in several Regional Regulations in Indonesia, such as Article 5 of the Regional Regulation of the Special Capital Region of Jakarta Province Number 18 of 2010 concerning Fees on Acquisition of Land and Building Rights, Article 70 in conjunction with Article 3 of Tangerang Regency Regional Regulation Number 2 of 2021 concerning Regional Taxes, Article 79 of Surakarta City Regional Regulation Number 13 of 2010 concerning Fees on Acquisition of Land and Building Rights, Tangerang City Regional Regulation Number 4 of 2018 in conjunction with Article 5 of Tangerang Mayor Regulation Number 11 of 2011 concerning Procedures for the Management of Fees on Acquisition of Land and Building Rights, Article 56 of Makassar City Regional Regulation Number 2 of 2018 concerning Regional Taxes and Article 77 of Bandar Lampung City Regional Regulation Number 1 of 2011 concerning Regional Taxes.

Based on the author's observations in this study, the implementation of the tax burden system has resulted in the emergence of problems in several regions, including DKI Jakarta Province (South Jakarta), South Sulawesi Province (Makassar City), Banten Province (Tangerang City and Tangerang Regency), Central Java Province (Surakarta City), and Lampung Province (Bandar Lampung). Based on research conducted in several regions, the author has discovered several practices in implementing the imposition of land transfer taxes, namely payment of taxes after the deed has been signed and payment of taxes before the deed has been signed. Firstly, tax payment is due when the deed is signed, as stipulated in Article 90 paragraph (1) of Law Number 28 of 2009 concerning local taxes and regional levies, which provides detailed regulations for the timing of tax liabilities for the transfer of rights over land and buildings, namely: In the context of the sale, the signing of the act refers to the date of making the act of transfer of rights before the Office of the Registrar of Land / Notary.¹³

Several regions have implemented this system based on research findings. In DKI Jakarta Province, there was a land transfer transaction with a Tax Object Acquisition Value (*NPOP*) / transaction value of Rp. 850,000,000, the estimated value of the Land and Building Tax tax object is 783,450. 000, BPHTB tax payment of Rp. 38,500,000,- calculated by the formula BPHTB Tax = (*NPOP* - *NPOPTKP*) × 5%, The estimated land value by the tax authority is Rp. 4,000,000,000, and the amount of BPHTB tax deficiency must be paid is Rp. 160,650,000. After the transfer of land ownership rights, the value increased with a nominal Tax Object Acquisition Value

¹² Abioso Seno Aji, Joko Setiono, and Budi Santoso, 'Juridical Review of the Principles and Systems of Collecting Local Taxes in National Development', *International Journal of Law and Politics Studies*, 4.2 (2022), 51–58 <https://doi.org/10.32996/ijlps.2022.4.2.7>

¹³ Pieter Latumenten, 'Normative Review of Legal Liability for Notaries or Officials of Land Deed Makers in Falsification of Land Rights Transfer (Case Study of Land Transfer Rights Belonging to the Actress Nirina Zubir Family)', *Legal Brief*, 11.2 (2022), 956–63.



(NPOP) / transaction value of Rp. 2,752,170,000, the estimated value of the Land and Building Tax object (NJOP PBB) is Rp. 2,752,170,000, BPHTB tax payment is Rp. 133,608,500 (calculated by the BPHTB Tax formula = $(NPOP - NPOPTKP) \times 5\%$), BPHTB tax assessment value is Rp. 752,170,000, BPHTB tax payment is Rp. 133,608,500 (calculated by the formula BPHTB Tax = $(NPOP - NPOPTKP) \times 5\%$); the estimated value of the land by the tax authority is Rp. 3,700,000,000, and the BPHTB tax deficiency must be paid is Rp. 48,339,330.

Also this can be seen in Banten Province, which consists of Tangerang City and Tangerang Regency. Tangerang City has a land transfer transaction with a Tax Object Acquisition Value (NPOP)/transaction value of Rp. 421,000,000, the estimated value of the property for Land and Building Tax (NJOP) is Rp. 420,537,000, BPHTB tax payment is Rp. 15,342,500 (calculated by the BPHTB tax formula: $(NPOP - NPOPTKP) \times 5\%$), the estimated value of the land by the tax authority is Rp. 457,572,000, and the amount of BPHTB tax deficiency must be paid is Rp. 1,858,000. After the land ownership rights transaction was transferred, the value increased with the nominal Tax Object Acquisition Value (NPOP) / transaction value of Rp. 55,000,000, Tax Object Sale Value (NJOP) is Rp. 41,806. 000 (below the NJOPTKP of Tangerang City, which is Rp. 60,000,000), BPHTB tax payment is Rp. 15,342,500 (calculated by the BPHTB tax formula = $(NPOP - NPOPTKP) \times 5\%$), the estimated value of the land by the tax authority is Rp. 0, and the amount of BPHTB tax deficiency must be paid is Rp. 890,300.

In Tangerang Regency, there is a transfer of land rights transaction with a Tax Object Acquisition Value (NPOP)/transaction value of Rp. 95,000,000, the estimated value of the Land and Building Tax object (NJOP PBB) is Rp. 77,000,000, BPHTB tax payment is Rp. 1,750,000 (calculated by the BPHTB tax formula = $(NPOP - NPOPTKP) \times 5\%$), land valuation by the tax authority / Tax Authority is Rp. 150,000,000, and the value of the BPHTB tax deficiency that must be paid is Rp. 2,250,000, -. After the land ownership rights transaction transfer, the value increases with the nominal Tax Object Acquisition Value (NPOP) / transaction value of Rp. 1,050,000,000, the estimated value of the Land and Building Tax object (NJOP PBB) is Rp. 810,660,000, BPHTB tax payment is Rp. 52,500,000 (calculated by the BPHTB tax formula = $(NPOP - NPOPTKP) \times 5\%$), the estimated value of the land by the tax authority is Rp. 1,770,000,000, and the amount of BPHTB tax deficiency must be paid is Rp. 36,000,000. Secondly, paying taxes before the deed is signed means that the tax payment must be made in advance, even if the transfer of land rights deed has not been signed by the parties involved. The system, as described in Article 91 paragraph (1) of Law number 28 of 2009 concerning Local Taxes and Local Levies,¹⁴ states that "The Land Deed Official/Notary can only sign the deed of transfer of Land Rights and/or Buildings after the Taxpayer submits proof of tax payment."

This system also tends to experience deficiencies in paying the Land Transfer Tax. On this second system, taxpayers are not required to submit a deed signed by the parties and the Land Deed Official (PPAT). However, the only requirement is proof of tax payment in the form of a Regional Tax Payment Slip (SSPD BPHTB), which is inputted based on an online system by entering the transaction value and attaching

¹⁴ Aji, Setiono, and Santoso.



proof of tax payment. For example, in Surakarta City, there has been a transfer transaction of land ownership rights with the Acquisition Value of Non-Taxable Tax Object (AVTO)/transaction value of Rp. 450,000,000, the estimated property value for Land and Building Tax (NJOP) is Rp. 446,174,000, BPHTB tax payment is Rp. 22,500,000 (calculated by the formula $\text{BPHTB Tax} = (\text{NPOP} - \text{NPOPTKP}) \times 5\%$), the estimated value of the land by the tax authority is Rp. 1,500,000,000, and the BPHTB tax deficiency must be paid is Rp. 52,500,000. After the transfer of land ownership rights transaction, the value increases with the nominal acquisition value of non-taxable tax object (AVTO)/transaction value is Rp. 550,000,000, the estimated value of the Land and Building Tax object is Rp. 546,450,000, BPHTB tax payment is Rp. 24,500,000, which is calculated using the formula $\text{BPHTB Tax} = (\text{NPOP} - \text{NPOPTKP}) \times 5\%$, the estimated value of the land by the tax authority is Rp. 700,000,00, and the amount of BPHTB tax deficiency must be paid is Rp. 7,500,000.

Slightly different from the land rights transfer taxation system in Surakarta, the cities of Makassar and Bandar Lampung also require that the land rights transfer deed be signed by the parties involved and the Land Deed Official (PPAT) after the taxes have been paid in advance. The difference lies in the fact that in the city of Surakarta, the transfer of land rights deed has not been signed, but the taxpayer must first pay the obligation of land rights transfer tax. Meanwhile, in the cities of Makassar and Bandar Lampung, the taxpayers have not yet fulfilled their tax obligations. The system is implemented because the technical policy for payment of transfer of land rights tax must first obtain approval from the tax authorities for the amount of tax to be paid in accordance with the fair market value of the land. Therefore, it can be ensured that there is no deficiency in the payment of transfer tax for the cities of Makassar and Bandar Lampung in the land transfer tax payment system.

Subsequently, the taxpayer will await the validation results from the tax authorities based on the submission of tax payment, particularly for the Acquisition of Rights Over Land and Buildings Tax (BPHTB). If the tax payment application is approved, the taxpayer will receive a letter of tax payment instruction called the Regional Tax and Acquisition of Rights to Land and Buildings Payment Order Letter (SSPD BPHTB).¹⁵ On the contrary, if the tax payment request is rejected, the taxpayer is required to meet with the tax officer/fiscal authority to provide an explanation about the agreed transaction value. If the taxpayer is unable to provide an explanation or fails to appear before the tax authorities, the validation of the application for payment of the land sales tax cannot proceed to the process of transferring ownership at the National Land Agency (BPN).

Legal Uncertainty & Injustice in the Implementation and Regulation of Sales Tax Collection on Land Purchasing

The implementation and regulation of the collection of Sales and Purchase Tax on Land in Indonesia still demonstrate legal uncertainty. Firstly, the tax collection system for the transfer of land rights is known as three systems or regimes. The system is

¹⁵ Aulia Faza Regista, Muktiono, and Supriyadi, 'Determination Of Tax Object Acquisition Value (Npop) By The Regional Revenue Agency In The Imposition Of Tax On Acquisition Of Land And Building Rights (Bphtb) For Sale And Purchase (Study In Malang City)', *International Journal of Innovative Technologies in Social Science*, 2.38 (2023), 1–13
https://doi.org/https://doi.org/10.31435/rsglobal_ijitss/30062023/8009



differentiated in several ways, including by the timing of tax collection, the basis of tax determination, and the entity responsible for imposing the tax. Based on the collection time, tax collection is generally divided into early-year collection (*voorheffing*) and late-year collection (*naheffing*). Regarding this appeal, it is important to note that if it pertains to the transfer tax on property rights, it cannot be categorized under either of the two mentioned dates. This is because the collection of the land tax is contingent upon the occurrence of a legal sale transaction. According to the Taxation Policy, there are generally three systems that form the basis of taxation: a) The argumentation system, which is the taxation system based on a fiction or assumption; b) The real system, which is the imposition of tax based on the actual object or income obtained by the taxable person; and c) The mixed system, which is the imposition system that combines the real system with the presumption system.

According to the Tax Authority, the general determination of taxes is made by the party responsible for setting the taxes. A tax collection system based on which the tax is established is divided into three (three), i.e. an official assessment system where the *Fiscus* determines the amount of tax to be paid by the taxpayer, a self-assessment system in which the determination of the size of tax owed is entrusted to the Taxpayer, and a holding system where a third party (not *Fiscus* and not the TaxPayer concerned) determines how much tax is owed by the Fiscal. Secondly, the time required for tax collection. There is a discrepancy between the meaning of the legal event of sale and sale with the rules related to the provisions in the payment of taxes in particular the Customs Procurement of Rights on Land and or Building (BPHTB). The Customisation of Rights upon Land and Buildings as tax collected by the local government has its own rules in the payment of tax; that is, the payment is made before the sale of the transfer of rights on land is carried out.

Article 90 paragraph (1) of Law Number 28 of 2009 concerning local taxes and local levies has detailed provisions regarding the timing of tax liabilities for the transfer of rights over land and buildings, namely "For sale and purchase, it is from the signing of the deed," as explained, the signing of the deed refers to the date of the transfer of rights deed made before the Land Deed Official/Notary. The concept of tax liability, as regulated in Article 90 paragraph (1) above, prohibits the Land Deed Officer/Notary, Auction Officer, and authorized officials from signing a deed before the taxpayer submits proof of tax payment. This means that the tax is considered due when the parties have reached an agreement, not at the time of signing the deed in the presence of the Land Deed Officer/Notary.

However, Article 91 paragraph (1) states that: the Land Deed Official/Notary may only sign the deed of transfer of Land and/or Building rights after the Taxpayer submits proof of tax payment. The provision of Article 91 paragraph (1) can be interpreted to mean that the tax liability arises at the moment the deed of sale and purchase of land is signed, which means that until the deed of sale and purchase is made and signed, no tax liability can be incurred. That means the taxpayer does not yet have an obligation to pay their taxes. The existence of a conflict between Article 90 and Article 91 will undoubtedly lead to disorder and confusion in its application regarding which one should be adhered to regarding the relationship between tax



payment and the date of signing the deed.¹⁶ The contradiction between these two articles is inconsistent with the principle of simplicity, which means that regulations should be made simple in order to be clear and easily understood by both the tax authorities and taxpayers.

Thirdly, there is legal uncertainty in determining the value of transactions as the basis for imposing tax levies. The imposition of taxes, both the Land and Building Acquisition Tax (BPHTB) and the Income Tax on Income from the transfer of land rights (PPh), is generally based on the actual value or true value of a legal transaction of buying and selling that has occurred between the Land and Building Acquisition Tax (BPHTB) and the Income Tax on Income from the transfer of land rights (PPh). The basis for imposing the Tax (Bea) Acquisition of Land and Building Rights (BPHTB) tax and the Income tax on income from the transfer of land rights (PPh) is the transaction Tax Object Acquisition Value (NPOP), which represents the actual amount received or acquired by the taxpayer. As stated in Article 6 paragraphs (1) and (2) of Law number 20 of 2000 amendment to Law number 21 of 1997 concerning land and building acquisition tax in conjunction with Law number 28 of 2009 concerning local taxes and regional levies, it is explained that "The basis for imposing the transfer of land tax is the Taxable Object Acquisition Value or transaction price". Unlike the basis for taxation of Income from the transfer of land rights (PPh), which is the actual price received or obtained, as explained in Article 2 paragraph (2) letter d of Government Regulation number 34 of 2016 concerning income tax on income from the transfer of land rights and/or buildings, and the sale and purchase agreement for land and/or buildings and its amendments state "The actual value received or obtained, in the event that the transfer of land rights and/or buildings is carried out through a sale and purchase that is not influenced by special relationships".

Fourthly, the tax validation process is a series of steps that must be carried out in the land rights transfer process. Land transfer refers to the transfer of land rights from the previous holder to a new holder. In order for the ownership of land to transfer from the seller to the buyer, another legal act is required, namely the juridical transfer (change of name). Verification and validation is an assessment on the proof of payment of tax carried out by the fiscal authority which in this case is the local government aimed at assessing the truth of the value used to calculate the Tax (Bea) Acquisition of Land and Building Rights (BPHTB). One issue that tends to arise is the utilization of transaction values, which are used as the basis for calculating BPHTB. The terms of use for transaction values are governed by the Tax (Bea) Acquisition of Land and Building Rights (BPHTB) law. The transaction value is defined as the agreed-upon value between parties involved in a transaction, similar to a purchase agreement between a seller and a buyer. However, tax officials often request that transaction values be adjusted and aligned with the tax acquisition value or market price during the verification/validation process. This is because the calculation basis for BPHTB often causes issues in the field due to discrepancies between the transaction values submitted by taxpayers and the calculations made by tax officials.

¹⁶ Angelina Christa Pamelani and R. Djoko Setyo Hartono Widagdo, Drawing Up a Notary Deed on Building Use Rights Land on Freehold Land for Hotel Development, *International Journal of Multicultural and Multireligious Understanding*, 10.5 (2023), 245 <https://doi.org/10.18415/ijmmu.v10i5.4638>



Fifth, the existence of the Land and Building Rights Acquisition Tax (BPHTB) is a result of the transfer of authority from the central government to the regions. The implementation of the Land and Building Acquisition Tax (BPHTB). The Tax (Bea) Acquisition of Land and Building Rights (BPHTB) is also considered as a tax. This is based on Article 1 of Law number 20 of 2000 concerning amendments to Law number 21 of 1997 concerning Land and Building Acquisition Tax, which states "Land and Building Acquisition Tax is a tax imposed on the acquisition of rights to land and/or buildings, hereinafter referred to as tax". In addition to Law number 20 of 2000 mentioned above, article 1 (41) of Law number 28 of 2009 about local taxes and local levies states that "The Tax (Bea) Acquisition of Land and Building Rights is a tax on the acquisition of rights to land and/or buildings".

Upon examining the tax concept itself, it becomes evident that the term "Bea" in the Land and Building Rights Tax (BPHTB) is not accurately classified as a tax. This can be observed from the definition of tax according to N.J. Feldmann, who states that tax is an enforced obligation owed to the ruler (according to the norms established by the ruler), without any corresponding benefit, and solely used to cover general expenditures. In essence, taxes represent an obligation to the government that is based on general norms and may be enforced, without any specific particular consideration; their purpose is to finance government expenditures. In this book, Smeets acknowledges that the tax definition he thinks only emphasizes budgetary functions; only then he adds regulatory functions to the definition.

Furthermore, the implementation and regulation of the Land Sales Tax collection in Indonesia also demonstrate a certain degree of inequity. This injustice is rooted in several issues. Firstly, there is still a frequent occurrence of abuse of authority by the Fiscus. The tax authorities, being part of the state apparatus, tend to prioritize maximizing the government's revenue in collecting land transfer taxes. When referring to the function of taxes, one should not only consider the tax function as a budgetary function but also pay attention to the regular or regulatory tax function. If associated with the action of the government as a fiscal executes the validation of the transfer tax on land rights resulting in the determination of transaction price as the basis for the levying of transfer tax of land rights determined by the Fiscus even with the motive of the interests of the state. This has been regarded as an abuse of authority by excluding the rules relating to the tax system that should be collected on the basis of the self assessment system and not the Official Assessment System.

Secondly, the non-application of tax principles. However, the imposition of tax collection must consider the principles of tax burden. The foundations of law serve as a safeguard against arbitrary decisions by the government. Adam Smith's Four Maxims theory outlines the principles for taxation, which include: 1) The principle of equity or fairness, stating that taxes should adhere to the principle of equality; 2) The principle of certainty, emphasizing the importance of legal certainty; 3) The principle of convenience, suggesting that taxes should be collected at the most appropriate time, such as when receiving a salary; 4) The principle of economy or efficiency, stating that taxes should be collected with minimal costs.

Thirdly, there is the exploitation of vulnerabilities in the self assessment system. Implementing the self assessment system results in the government granting full trust



to taxpayers to pay, calculate, and report their taxes.¹⁷ On the other hand, taxes continue to be a burden for the majority of individuals as taxpayers. Even if there is a possibility to avoiding all taxes. In general, there are two types of tax breaches, namely Tax Avoidance and Tax Evasion. Tax avoidance refers to the legal efforts made to avoid taxes in a manner that is not in violation of applicable regulations. This effort is undertaken by taxpayers to exploit legal loopholes in order to minimize the amount of tax that needs to be paid or to avoid taxes by refraining from engaging in activities that might trigger tax liability.¹⁸ For example, avoiding vehicle taxes by leaving the vehicle in custody. This act is referred to as tax evasion because tax avoidance is not in the sense of violating the law but merely exploiting the weaknesses of an applicable rule. If drawn to the tax deduction on sale of land, then it can be said that the self assessment system that sets the value of the transaction or value of acquisition of the object of tax gives the taxpayer the power to determine the amount of tax to be paid. The freedom given to the taxpayer does not immediately raise the awareness of the taxable law because in every country in general people tend to avoid taxation.

Regulation Model for Collecting State Revenue in Registration of Sale and Purchase Land

Both taxes are taxes on the acquisition of land and/or buildings (BPHTB) and the income from the transfer of land rights (PPH) is the value of the transaction that the taxpayer receives or obtains. The value of the transaction is a value that can be measured on the basis of the ability to pay taxes. However, the use of the value of transaction as a basis for the calculation of the transfer tax on land rights often poses problems in the field, because the value or the real price agreed by the taxpayer as a result of a legal event of sale sometimes does not correspond to the estimated value of a transaction by a tax officer/fiscal officer based on a fair price of the land value, so it is not uncommon for tax officers in the process of verification/validation, to request that the value is changed and adjusted according to the judgment of the tax official/tax officer. The issue above needs to be addressed as it relates to the imposition of land transfer taxes. The value of the land cannot be solely determined based on the transaction value agreed upon by the parties involved, as the land transfer taxes are also influenced by the predetermined land value set by the respective local government. The aforementioned issue has resulted in a disparity in land prices between taxpayers, as the parties involved, and the tax authorities, namely the government as the Fiscus.

Therefore, it is necessary to understand that land objects exist not only in the private domain but also in the public domain (administration). In order to build a tax reconstruction it is necessary to address the question of principle between the relationship of state administrative law and civil law relating to land transfer tax. Firstly, in the realm of Civil Law, the value of a transaction serves as the basis for imposing taxes on the transfer of land rights, which is closely related to the principle

¹⁷ Arlini Hapsari Putri Pramudya, 'Self Assessment In Tax Law', *Devotion Journal of Community Service*, 3.13 (2022), 2417–32 <https://doi.org/10.36418/dev.v3i13.292>

¹⁸ Deden Tarmidi, Pratiwi Nila Sari, and Riaty Handayani, 'Tax Avoidance: Impact of Financial and Non-Financial Factors', *International Journal of Academic Research in Accounting, Finance and Management Sciences*, 10.2 (2020) <https://doi.org/10.6007/ijarafms/v10-i2/7238>



of freedom of contract as explained in Article 1338 paragraph (1) of the Civil Code regarding the principle of freedom of contract, which states that "all agreements made legally shall be binding as law for those who make them". The principle of freedom of contract is one of the fundamental principles of ¹⁹ an agreement, as stated in Article 1320 of the Civil Code. This principle applies universally. Understanding this principle entails the notion that every individual has the freedom to bind themselves to others and is unrestricted in terms of what may be agreed upon and the conditions that can be specified in an agreement. However, contractual freedom is not an absolute requirement as stated in the Supreme Court of the Republic of Indonesia's Jurisprudence Decision Number 3641 K/Pdt/2001, dated September 11, 2001.

Secondly, in the field of Administrative Law, it is understood that state administration refers to the activities of the government in exercising political power, and in a narrower sense, it refers to the activities of the executive branch in carrying out governance. The existence of the government, in a narrow sense, refers to the apparatus of the state entrusted with the task of implementing the laws. In this position, the country only functions as an executive body. On a broader sense, the government refers to all institutions that exercise state authority, including both the executive and legislative branches. According to Djokosutono, Administrative Law is the legal framework that governs the relationships between state officials as well as the relationships between state officials and the public. Thus, Administrative Law is a legal framework that consistently relates to the activities of state administration and the societal needs in their mutual interactions. The state's Administrative Law is of utmost importance in ensuring good governance.

Should it be drawn to the issue of transfer tax on land rights, the relationship between tax policy and ownership of land objects must first be known. According to Article 33, although land is one of the natural resources used for the prosperity of the people, land is still controlled by the state, which has the authority to regulate the allotment and use of land. The control of land as part of resources in Article 2 of Law No. 1 of 1973 concerning the Indonesian Continental Shelf confirms that "Full control and exclusive rights to natural resources on the Indonesian continental shelf, as well as their ownership, belong to the State." Furthermore, the existence of land is based on Article 2, paragraph (2) of the Basic Agrarian Law (UUPA). Based on the previously stated legal basis, it can be inferred that the existence of land as a taxable object is not only considered as a piece of land within the territory of the Republic of Indonesia, but the state must be viewed in terms of full authority and exclusive rights over all natural resources in the continental shelf, and its ownership lies with the state. Based on the state's authority to regulate land allocation, land is considered a taxable object with economic value. The economic value of land is greatly influenced by the spatial planning, which is determined by both the central and regional government. Therefore, it is justifiable for a country to impose taxes on the transfer of land rights based on the inherent economic value of the land. Due to the economic value of land, the government has the right to levy taxes in accordance with the economic benefits

¹⁹ Made Sukereni, Muhammad Noor Ingratubun, and Johannes Ibrahim Kosasih, 'Legal Enforcement Cancellation Clause of the Agreement Made on the Basis Principle of Freedom of Contract', *EPRA International Journal of Research & Development (IJRD)*, 7838.May (2023), 351–56. <https://doi.org/10.36713/epra13389>



obtained. Therefore, it can be concluded that the authority to determine tax burdens is indeed a classification within administrative law.

The fundamental justification of the state in regulating the determination of tax burden on land transfer taxes, based on state intervention in land, is firstly, the determination of the Tax Object Sales Value (NJOP). The government's interpretation of land objects is not without basis, as the government has the authority to determine the Tax Object Sales Value (NJOP). Discussing anything about land must not be exempt from government intervention, the local government, which has interference in land use. The intervention involves the establishment of the Tax Object Sales Value, which falls within the jurisdiction of the local government. According to Mardiasmo, the basis for levying Land and Building Tax is the Tax Object Sales Value (NJOP). The Market Value of Taxable Objects is the average price obtained from fair market transactions. In the absence of such transactions, the Market Value of Taxable Objects is determined by comparing prices with similar objects, or by using the cost of acquisition, or by using the substitute Market Value of Taxable Objects (Article 1, number 3 of the Property Tax Law). Similar to the opinion above, the Basic Concept of Taxation Diana Sari, in her book "Basic Concepts of Taxation," argues that the NJOP is determined per region based on the decision of the Minister of Finance, taking into account the considerations of the Regent/Mayor and considering the average prices obtained from fair market transactions, comparing prices with similar objects located nearby with the same function and known selling prices, new acquisition value, and determining the value of substitute objects.

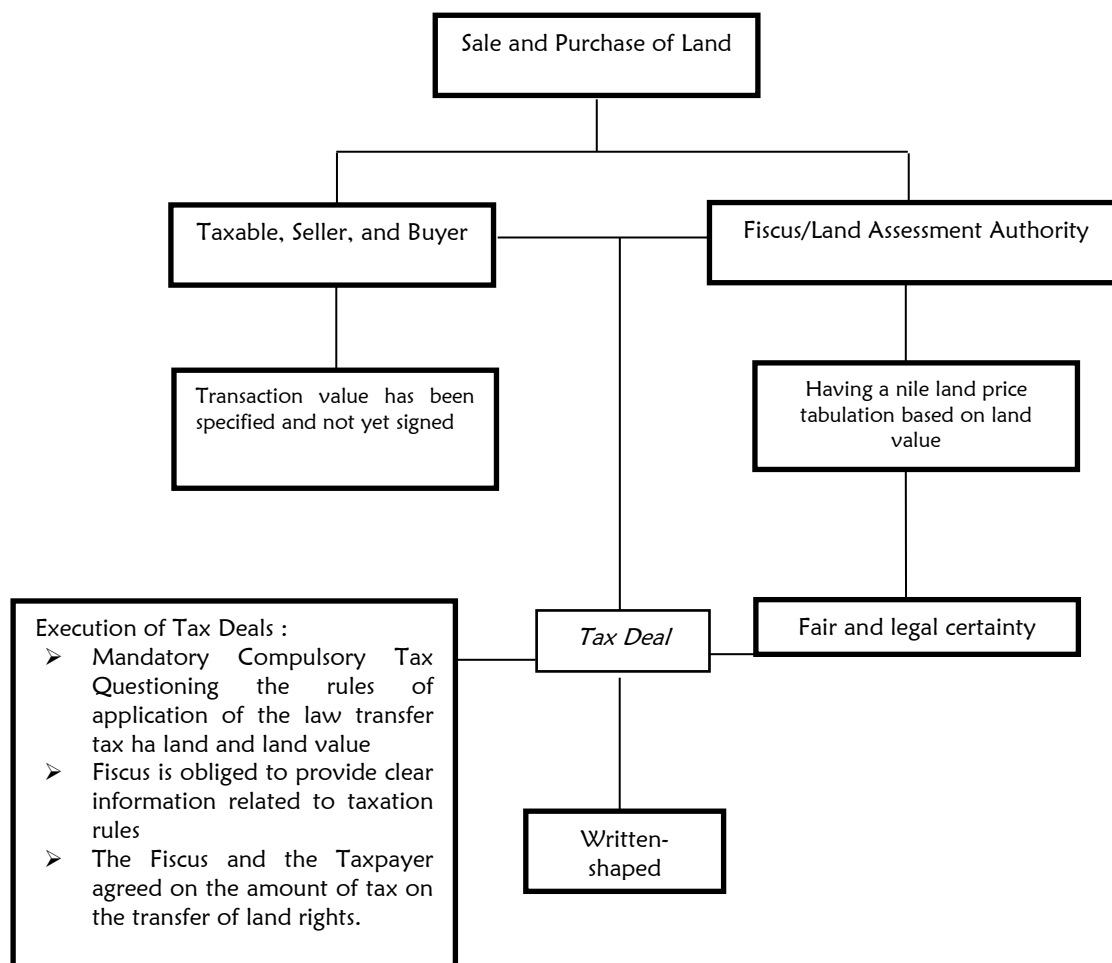
Secondly, the implementation of tax collection is regulated in Article 96 paragraph (2) of Law Number 28 of 2009 concerning Regional Taxes and Regional Levies, which states that "Every Taxpayer is obliged to pay the due tax based on a tax assessment letter or paid by the Taxpayer themselves based on tax legislation." Payments may be made using SPTPD, SKPKDB, and/or SKDPKBT.²⁰ If referring to the system of tax collection Customs Procurement of Land and Building Rights then the tax system adopted on the basis of the system Self Assessment in accordance with article 12 of the Act on the General Taxation Rules which in paragraph (1) stated that "every taxable person is obliged to pay the tax due in conformity with the provisions of the regulations of the taxation laws, without depending on the presence of a tax decree. Self Assessment is a tax collection system that grants full authority to taxpayers to independently calculate, assess, remit, and report their own tax liabilities. Within this system, active taxpayers are required while the tax authorities do not interfere in determining the amount of tax owed by an individual, unless the taxpayer violates the applicable regulations."²¹ Despite this, there is a widespread issue of tax underpayment due to discrepancies between the transaction value based on the subjective interpretation of taxpayers and the subjective interpretation of tax officials through tax validation. Both subjective differences related to the transaction value used as the basis for imposing land transfer tax illustrate that there are two conflicting interests, resulting in a tax system that should be Self Assessment but tends to become Official Assessment, leading to inconsistency in the system.

²⁰ Aji, Setiono, and Santoso.

²¹ Arlini Hapsari Putri Pramudya, Self Assessment In Tax Law, Devotion Journal of Community Service, 3.13 (2022), 2417–32 <https://doi.org/10.36418/dev.v3i13.292>

In land transfer tax, if referring to the value of transactions carried out by the taxpayer then the system used is a fictitious system. In this case, the tax authorities must consider that the transaction value is the value agreed upon by the taxpayer. This means that the tax burden should be based on the taxpayer's agreement in the form of the transaction value. The application of the fictitious (assumption) method is relevant to the tax system in Indonesia, namely self assessment. However, in reality, the imposition of taxes is sometimes based not on the value of the transaction itself, but on the determined value of the land by the tax authorities. Fiscus can carry out validation as material research or inspection activities, so there is always a difference in the setting of the sale price of land and buildings between potential sellers and potential buyers of land on one side, and the fiscal authorities on the other. In reconstructing a fair and legal certainty land transfer tax, then it is necessary to lay the primary foundation of the collection of sales and purchases tax on land. Therefore, the author recommends a concept that can provide such a balance in the form of a jointly agreed tax determination system, namely the Tax Deal System. The tax deal system is a taxation scheme that allows taxpayers to communicate with the tax authorities regarding the value of land before engaging in a land transaction, in order to determine the transaction value and tax amount based on the fair value of the land. Below is the scheme for implementing the Tax Deal to support the self assessment system in the payment of land transfer taxes.

Chart 1. Tax Deal System Scheme





The fundamental basis of the Tax Deal system's existence refers to the 2007 Law on the third amendment of Law number 6 of 1983 on General Tax Provisions, as regulated in its explanatory notes regarding the direction and objectives of the amendment to the General Tax Provisions Law, and also refers to the 2007 Law on General Tax Provisions. The characteristics of the tax deal system are written and issued by the tax authority, specifically in response to a taxpayer's request for the application of a transaction value that corresponds to the fair market value of a land to be transferred by the taxpayer. This system possesses several advantages, including: 1) The Tax Deal System decision provides legal certainty on the fair value of land, enabling taxpayers to have a clear benchmark for transaction values. 2) The implementation of the Tax Deal System would prevent tax evasion by taxpayers and also prevent abuse of authority by tax authorities/Fiscus; 3) The implementation of the Tax Deal System will ensure that tax validation does not take a long time. Meanwhile, its weaknesses include, the decisions are, thus the Tax Deal System must be complied with, but on the other hand, taxpayers may object to the decisions made by the Tax Deal System, and there must be a period of validity of a decision of the Tax Deal System.

In the implementation of the Tax Deal System, information related to the levying of state taxes on sale and purchase of land is very important to be known by any taxpayer. The Fiscus will provide information primarily regarding fair land prices/market land prices based on the determination of Land Value by local government. In addition, the condition for using the Tax Deal System must be requested by the landowner or authorized representative based on a power of attorney, accompanied by the original certificate. This is intended to prevent the abuse of the landowner's interests. The implementation of the Tax Deal System necessitates that local governments possess a fair market value of land as the basis for tax assessment. Therefore, local governments must have a tabulation of land values as the foundation for equitable tax imposition. The written agreement inside the Tax Deal system should provide a fair value for the society as taxpayers, ensuring legal certainty. To ensure a competent and efficient Tax Deal for state tax collection or land sales, the State must consider the legal certainty and fair worth of the land when determining its value, which should be accessible to the public.

CONCLUSION

Based on this case, existing tax laws and regulations in Indonesia, especially enforcement of state tax collection regulations for land sales, still need legal clarity and justice for the public. This is demonstrated by the provision that state tax on land sales must be calculated based on the transaction value, usually called the Tax Object Acquisition Value (NPOP). NPOP refers to the agreed or actual value obtained by the parties entering into a sale and purchase agreement. The tax system in Indonesia requires significant changes in terms of fiscal policy. Indonesia must implement a self-assessment system to empower the public to accurately estimate and determine tax obligations. There still needs to be more transparency in assessing the value of land by the Fiscus, thus hampering the setting of fair and reasonable prices. Fiscus actions only prioritize aspects related to tax revenues from a budget and focus on the entry of money into the state treasury but ignore the community's economic capacity. To overcome this problem, analyzing the framework for determining state tax levies on



land sales is crucial to ensure justice and legal certainty. An effective strategy to achieve this goal is to adopt the Tax Deal System model as a complementary method to improve the tax system in Indonesia, especially in implementing the self-assessment system. Implementing the Tax Deal System allows the creation of contractual agreements between taxpayers and the Fiscus, thereby forming a structured framework for taxation. The agreement will be formally recorded in written format. This strategy can minimize the possibility of fines or failure to pay when fulfilling tax responsibilities.

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