

**LEGAL HARMONIZATION ARRANGEMENT OF ACQUISITION
DUTY
LAND AND BUILDING RIGHTS (BPHTB) IN
FRAMEWORK OF LAND REGISTRATION ACTIVITIES
COMPLETE SYSTEMATIC (PTSL)**

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Abstract

This research is a normative juridical research so that what is studied is legal principles and legal principles that are still valid so that what is studied is data originating from the literature and phenomena that occur in society.

It can be seen that there is disharmony in legal regulations regarding fees for acquiring land and building rights (bphtb) based on Law Number 1 of 2022 concerning Financial Relations between the Central and Regional Governments, it is stated that the fee for acquiring land and building rights is the authority of the regional government, but in carrying out registration activities complete systematic land as referred to in Article 33 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 6 of 2018 concerning Complete Systematic Land Registration by providing concessions to people who have not been able to pay the fees for acquiring land and building rights (BPHTB) by making debt statement and pay it if the transfer of rights is carried out and take legal actions such as collateralizing it to the bank. For this reason, in order to provide legal certainty to participants in the complete systematic land registration (PTSL), the government should make efforts to harmonize regulations regarding fees for acquiring land and building rights (BPHTB) and encourage local governments to immediately issue policies that make it easier for the community in terms of legal certainty over land and building rights. the land they own, in this case, issues a policy on the acquisition of land and building rights .

Keywords : *Complete Systematic Land Registration, Fees for Acquisition of Land and Building Rights.*

Background.

Land is a natural resource that has economic value and has an important role in human life. In Article 33 paragraph (3) of the 1945 Constitution (hereinafter referred to as the 1945 Constitution), it is stated that everything contained in the land such as earth, water and natural resources is controlled by the state and used for the prosperity of the people. ¹Article 33 paragraph (3) of the 45th Constitution constitutionally regulates explicitly which is the basis for the state to have the right to control natural resources found in the bowels of the earth.

¹Achmad rubaie, *Land Acquisition Law for Public Interest* , Bayumedia Publishing, Malang, 2007, page 1.
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Etymologically, mastering is how a process, method, act of controlling or exploiting it,²so that in the context of relations with state tenure rights it means that the state holds power which is limited only to control. This means that the state as an organization that is empowered by all Indonesian people has the right to control the state over all natural resource wealth in order to achieve the prosperity and welfare of the Indonesian people without exception.

The Indonesian government always strives to improve welfare and service to the community through land registration and certification as an embodiment of Article 19 of the UUPA, to provide legal certainty regarding land rights, the UUPA mandates the Government to carry out land registration. Land registration has the aim of providing legal certainty including certainty of the status of the rights registered, certainty of the subject of rights and certainty in terms of the object of rights.³This land registration produces a certificate as proof of his rights.⁴ With the implementation of land registration, it is hoped that the community will easily know the status or legal position of their land rights so that land disputes do not occur.⁵

One of the concrete steps taken by the Government of Indonesia through the Ministry of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (hereinafter referred to as the Ministry of Agrarian Affairs/BPN), in the context of acceleration and reconstruction related to land registration, is evidenced by a Complete Systematic Land Registration (hereinafter referred to as PTSL). This PTSL policy was initially regulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 12 of 2017 concerning the Acceleration of Complete Systematic Land Registration (hereinafter referred to as P ermen ATR/BPN RI Number 12 of 2017) and was updated with Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 6 of 2018 concerning Complete Systematic Land Registration (hereinafter referred to as Permen ATR/BPN Number 6 of 2018) ⁶and then issued Presidential Instruction Number 2 of 2018 concerning Acceleration of Complete Systematic Land Registration (hereinafter referred to as INPRES PTSL) throughout the territory of the Republic of Indonesia.

Taxes are payments to the state (implementation can be forced) by taxpayers whose payments are according to applicable regulations without receiving compensation, can be appointed directly, which has the benefit of financing related to state duties.⁷One of the potential state revenues from taxes is a type of Income Tax (hereinafter referred to as PPh) and Fees for Acquisition of Land and Building Rights (hereinafter referred to as BPHTB).⁸

In practice , the obstacles encountered in the implementation of PTSL are related to PPh and BPHTB. Based on Article 33 paragraph (6) of Ministerial Regulation

²Benhard limbong, *land acquisition for development* , Jakarta, Margaretha Pustaka, 2015, page 102.

³ Santoso, U, *Agrarian Law* , Kencana Prenada Media Group, Jakarta, 2012, page 75.

⁴Dian Aries Mujiburohman, 2018, *Potential Problems with Complete Systematic Land Registration (PTSL)* , National Land College, accessed from DOI: dx.doi.org/10.31292/jb.v4i1.217, p. 89.

⁵Effendi Perjuanganin, *Indonesian Agrarian Law* , Jakarta, CV. Eagle. 1991, p. 95.

⁶ Putri Mindya Rahmani, Notaire e-journal UNAIR Vol. 3 No.2, June 2020, p 202.

⁷ Djamaudin Gede and Muhammad, *Tax Law* , Faculty of Economics, University of Indonesia, Jakarta, 2004, page 7.

⁸ Marihot Palamama Siahaan, *Fees for Acquisition of Land and Building Rights Theory and Practice* , edition 1, printing 1, PT Raja Grafindo Persada, Jakarta, 2003, p. 6.

ATR/BPN RI Number 6 of 2018, the head of the land office is required to submit a list of outstanding BPHTB and/or PPh payable periodically within 3 months to the local Regent/Mayor. To the local Pratama Tax Office for PPh.

Based on the explanation in Article 33 paragraph (6) P ermen ATR/BPN RI Number 6 of 2018 further arrangements are still needed, regarding the billing mechanism and payment period, because the laws and regulations governing PTSL have not yet regulated the income tax and BPHTB payable regarding land tax. Not all regions provide convenience in terms of BPHTB being owed. BPHTB is an authority owned by districts / cities as stipulated in Law Number 1 of 2022 concerning Financial Relations between the Central and Regional Governments (hereinafter referred to as the HKPD Law) .

It can be seen from the explanation above that there is disharmony in regulations related to BPHTB where BPHTB issues should be regulated in regional regulations in accordance with the HKPD Law where BPHTB is the authority of the Regional Government.

Research methods

A research is the main foundation for developing science which aims to reveal the truth systematically, methodologically and consistently,⁹ while the legal research method is a way of working of scientists, one of which is characterized by the use of the method. The method is a well-thought-out and orderly way to achieve a goal (in science).¹⁰ Science is from *sui generis*, which means the science of law is also a certain science which has distinctive, normative and natural characteristics. Natural and social research methods and procedures basically cannot be applied in research in the field of legal studies. A legal research is a process to find legal rules, legal principles, and legal doctrines in order to answer the legal issues at hand.¹¹

Based on the problem posed, the author in writing this law uses a type of normative juridical research, where this research is by examining and examining the laws that apply and are applied to certain problems.¹²

The approaches used in the research include:

The statutory approach, according to Jhonny Ibrahim, normative research uses a statutory regulation approach , because the focus of this research object is various related legal rules.¹³ Approach through all the rules laws and regulations related to the legal issues under study .

conceptual approach is an approach through a legal research that examines problem solving from the point of view of the legal concept that underlies it or even from the values contained in the normalization of a regulation in relation to the concept used . The case approach is through approach by constructing law from the point of view of the phenomena of cases in society that directly have a strong connection with actual legal cases or events in the field .

The analytical approach is an approach through analyzing legal material to find out the meaning contained by the terms used in laws and regulations conceptually .

Legal Certainty on the Imposition of Debt BPHTB Since Obtaining Land Rights .

⁹ Zainuddin Ali. *Legal Research Methods* , Jakarta: Sinar Graphic, 2016, p. 17.

¹⁰ Jhon Surjadi Hartanto, *Indonesian Dictionary* 1998, Indah Surabaya, Surabaya, 1998, p. 221.

¹¹ Peter Mahmoud Marzuki, *Legal Research* , Kencana Prenada Media Group, Jakarta, 2011, p . 35 .

¹² Abd. Kadir Ahmed. *Fundamentals of Qualitative Research Methodology* , (Makassar: Indobisa Media Center, 2003, p. 57.

¹³ Johnny Ibrahim, *Theory and Methodology of Normative Law Research* , Bayumedia Publishing, Malang, 2010, p. 302.

Legal certainty refers to the enforcement of a clear, permanent and consistent law where its implementation cannot be influenced by subjective circumstances.¹⁴

In a legal regulation, there are legal principles that form the basis of its formation. In the opinion of Satjipto Rahardjo, it is stated that the legal principle can be interpreted as the "heart" of legal regulations ¹⁵so that to understand a legal regulation it is necessary to have a legal principle.

In forming the rule of law, the main principle is built in order to create clarity about the rule of law, that principle is legal certainty. The idea of the principle of legal certainty was originally introduced by Gustav Radbruch in his book entitled *eingführung in die rechtswissenschaften* . Radbruch wrote that in law there are 3 (three) basic values, namely:¹⁶

Justice (*Gerechtigkeit*);

Expediency (*Zweckmassigkeit*); And

Legal Certainty (*Rechtssicherheit*).

Justice is the main thing of the three things, but it does not mean that the other two elements can be simply ignored. Good law is law that is able to synergize these three elements for the welfare and prosperity of society.

According to Gustav Radbruch's opinion, it is stated that justice in question is justice in a narrow sense, namely equal rights for all people before the court. Benefit or finality describes the contents of the law because the contents of the law are in accordance with the objectives to be achieved by the law, while legal certainty is interpreted as a condition where the law can function as a rule that must be obeyed.¹⁷

religion).

PTSL is a land registration process for the first time, which is carried out simultaneously for all Land Registration objects throughout the territory of the Republic of Indonesia in one village or sub-district area or other name equivalent to that. Through this program, the government guarantees legal certainty or land rights owned by the community.

One of the land registration activities through PTSL is solely to provide legal certainty regarding community land rights. In accordance with what Gustav Radbruch said, from the three values mentioned, legal certainty and legal certainty for rights issued will obtain justice and also bring benefits to people's lives.

Land registration has the objective of guaranteeing legal certainty in the land sector as stipulated in PP Land Registration *juncto* Article 19 UUPA. Article 19 UUPA, Part II regarding Land Registration, states that:

In order to guarantee legal certainty, the government will conduct land registration throughout the territory of the Republic of Indonesia according to the provisions stipulated in government regulations;

The registration in paragraph (1) of this article includes:

land mapping and bookkeeping measurement;

registration of land rights and the transfer of said rights;

granting letters of proof of rights, which are valid as a strong means of proof;

Land registration is carried out taking into account the condition of the State and society, the need for socio-economic traffic and the possibility of its implementation, according to the considerations of the Minister of Agrarian Affairs.

¹⁴ Raimond Flora Lamandasa, *law enforcement, quoted from Fauzie Kamal Ismail, Thesis entitled Legal Certainty on Notary Deeds Relating to Land* , Faculty of Law, University of Indonesia, Depok, 2011, p. 2

¹⁵ Satjipto Rahardjo, *Law Studies* , Citra Aditya Bakti, Bandung, 2012, page 45.

¹⁶ Satjipto Rahardjo, *Op. City*, p. 19.

¹⁷ Theo Huijbers, *Philosophy of Law in the Trajectory of History* , Jakarta, Kanisius, 1982, p. 162.

The government regulation regulates the costs associated with the registration referred to in paragraph (1) above, with the provision that people who cannot afford are exempt from paying these fees.

In the implementation of land registration, it is known as the land registration system and the system for publishing evidence of land rights in the land registration system focusing on what is registered, the form of storage and presentation of juridical data and forms of proof of rights. However, the publication system focuses on the extent to which people are allowed to believe the truth of the data displayed in a letter of proof of title or a register/list of fields/land book/certificate of land rights that is issued.

According to the BAL, the publication system for land registration in Indonesia uses a negative publication system with positive tendencies. Which means that this land registration system uses a registration system of rights (*registration of titles*). This is because, the physical data and juridical data in the land certificate are not certain to be correct, although they must be accepted by the Court as one of the evidence containing the correct data, as long as there is no evidence of loss of evidence proving otherwise and if a party experiences land rights resulting from the transfer of land rights by other parties.

Physical data is regarding land including location, boundaries, area, and whether there are buildings and/or plants on it. While Juridical Data is related to rights including rights contained on the land, subject to rights holders, and whether or not other parties are present. due to an error in the register, the government does not provide a guarantee of compensation

Land registration through PTSL activities covers all land objects throughout Indonesia. PTSL objects cover all land parcels without exception, both those with certificates and those without land rights in order to improve the quality of land registration.

PTSL objects consist of those that already have boundary markers and those that will be marked with boundaries in the implementation of PTSL activities. And one of the benefits of PTSL is that the certificate can be used as collateral at the bank to obtain business capital loans to improve the community's economy

Legal Harmonization of BPHTB Regulations in the Context of PTSL Activities

Land is a natural resource that has economic value as well as social and political value. With that, policies related to land must be an inseparable part of national development policies, which can be seen in Article 33 paragraph (3) of the 1945 Constitution, which states that the land, water and natural resources contained therein are something that is controlled by the state and used for the maximum extent possible. people's prosperity.

Land also has a very important meaning of life for Indonesian people. This is because the country of Indonesia is an agricultural country, where all the activities of the majority of Indonesian people always require and involve land issues. Some people have the notion that land is something sacred, because it has a symbol of its social status.

The fulfillment of human needs for food, because humans can manage and empower from the land. Can create something of value on land. The ability to manage it turns out that it is not limited to efforts to provide for the food sector, but for broader activities related to the development of life such as land for businesses in terms of industry, land for residences, land for offices, education, places of worship as well as various other needs. .

This very era relationship between land and humans is the basis for the birth of legal relations between humans and land which is then conceptualized as a nation's rights.

Article 1 paragraph (2) of the UUPA states that land, water and natural resources are in the territory of Indonesia. Indonesia is a legal state based on Pancasila and the UUPA, so it is called a Pancasila legal state in accordance with what is contained in Article 1 paragraph (3) of the 1945 Constitution which reads that the state of Indonesia is a legal state, which has the goal of orderly, prosperous and just national life. In realizing such goals, it is certainly not easy, there are many problems that must be faced, especially related to legal issues. The consequence of a rule of law state is that every behavior and action of the people must be based on the law while at the same time preventing arbitrariness of power, both by the people and by the state apparatus.¹⁸

On the basis of the provisions of Article 33 of the 45th Constitution that including the natural wealth contained therein at the highest level is controlled directly by the state, where the state is an organization of all the people in accordance with what is contained in Article 2 paragraph (1). Where the state is given authority that originates from the right to control from the state which is used to achieve the greatest prosperity of the people, in the sense of happiness, prosperity and independence in society and the legal state of Indonesia which is independent, sovereign, just and prosperous.

The control rights contained in the state in its implementation can be delegated to regions and customary law communities, only necessary and not contrary to national interests.

Article 28 H states that every person has the right to own private property and cannot be taken arbitrarily. Also, land ownership is a basic right of every Indonesian citizen. The state guarantees the right of its citizens to own private property, one of which is land. For land ownership it describes a person's right to ownership and must be registered. In the land registration system, the records describe the details of the act of ownership and changes or other transactions.

One of the land registration activities is a very important activity to ensure legal certainty for holders of land rights as mandated in Article 19 paragraph (1) of the UUPA.

Land registration is a prerequisite for organizing and regulating all designation, control, ownership and use of land which has the function of overcoming various problems regarding land. Land registration is intended to provide a certainty of rights and legal protection for the holder of these rights with one of them being proof of a certificate, one of the instruments for structuring land tenure and ownership as well as an instrument for controlling the use and utilization of land. As one of the state guarantees and also an important instrument related to the protection of landowners. Land registration is *rechtkadaster* which includes:

Land measurement, mapping and bookkeeping activities;

Registration of these rights;

Issuance of certificates of land rights that are valid as a means of strong evidence.¹⁹

The government's objectives in carrying out land registration in PP Land Registration include:

Providing legal certainty and protection to owners or holders of land rights over a parcel of land, apartment units and other registered rights so that they can easily prove their status as the holder of the rights in question;

¹⁸ Achmad Sulchan, *General Election Criminal Cases that Value Justice*, SINT Publishing, Semarang, 2016, page

¹⁹ JB Daliyo, *Agrarian Law I*, Print 5, Prehalindo, 2001, page 80.

Providing information to interested parties, including the government, to make it easier to obtain the data needed to carry out legal actions.

In order for the implementation of orderly administration both at the village, sub-district and land office levels.

The provision of legal certainty is carried out by providing certificates of land rights to the holders of the rights concerned. It is contained in Article 3 of the PP on Land Registration, which guarantees legal certainty for the right holder of a plot of land, apartment unit, and other registered rights so that it can be easily proven that he is indeed the holder of the right in question.

Article 19 paragraph (2) letter c of the UUPA states that a certificate of land rights resulting from land registration activities also applies as a strong means of proof. This is also strengthened and reaffirmed in Article 32 paragraph (1) PP Land Registration that a certificate is a letter of proof of rights that applies as a strong means of proof regarding the physical data and juridical data contained therein, as long as the physical data and juridical data are in accordance with the existing data on the measurement certificate and the land book concerned.

The current government through the Ministry of ATR/BPN has the authority to register land and has made every effort to accelerate land registration and various kinds of projects with all their limitations. The newest program at the moment is PTSL which is organized by the Ministry of ATR/BPN which has a target of all land parcels in Indonesia being fully registered and certified by 2025.

Considering the large number of unregistered land parcels, if land registration is only carried out as usual sporadically, it will take approximately 160 (one hundred and sixty) years to register land parcels throughout Indonesia. Meanwhile, if it is done with PTSL land registration, it is expected that in 2025 it will have been achieved.

PTSL's target is not an easy job, many parties think that it is just ambition, imagery and political interest for a moment, because they are of the view that the results of land registration so far have been less than 50 percent of the land that has been registered. Even though it was not felt 57 years ago that the order was obligatory to register their land as mandated by the UUPA.

In the INPRES Number 2 of 2018 which is the basis for the implementation of PTSL throughout Indonesia there is nothing in it that discusses and includes anything related to freeing or eliminating BPHTB for PTSL participants. Where in its implementation in terms of NPOP, NPOTKP, levies, and/or when paying off BPHTB must obey and comply with the PDRD Law and the KUP Law, it is still in the INPRES mentioned in the seventh dictum, where the President instructs the Minister of Finance to provide stamp duty relief and PPh for PTSL participants, but there is no discussion of BPHTB issues. Until here it is clear and firm that PTSL participants are still subject to BPHTB tax in accordance with applicable laws and regulations.

In the process of implementing PTSL must comply with regulations regarding BPHTB in accordance with applicable laws and regulations, the head of the land office cannot issue land certificates in PTSL activities because it can only carry out land registration or registration of transfer of rights after the WP provides proof of deposit having paid BPHTB taxes. Where these provisions are in Article 91 paragraph (3) of the PDRD Law which is almost the same as Article 49 letters e and F in the HKPD Law.

The provisions in Article 91 paragraph (3) of the PRD Law state that the Head of the Land Office can carry out the registration of land rights or the registration of the transfer of land rights after the obligation to pay the BPHTB. In Article 49 of Law 1/2022 it is stated that the BPHTB that is owed is determined:

date made and signed when the binding sale and purchase agreement;

the date the deed of exchange, grant, grant bequest was made and signed, entry into a company or other legal entity, separation of rights resulting in a transfer, business merger, business consolidation, business expansion, and/or gifts;
 date of the beneficiary or authorized by the beneficiary when registering the transfer of his rights to the land office;
 the date of the court decision which has permanent legal force;
 the issuance date of the decree granting new land rights as a continuation of the relinquishment of rights;
 the date of issuance of the decision letter granting rights for the granting of new rights outside of the relinquishment of rights; or
 the date of designation of the auction winner for the auction.

It can be seen from the provisions above that the head of the land office should not issue an SKPH either because of the granting of new rights as a continuation of the release of rights or outside of the release of rights before the recipient of the right submits proof of BPHTB payment. This means that all files are included as one into the warkah contained in the BPN.

It seems different from the process of registering non-PTSL land which is carried out sporadically, that a certificate will not be issued and will not be signed by the head of the land office if the applicant does not include proof of BPHTB payment. ²⁰This provision actually applies to all sporadic and systematic land registrations, including even for nil BPHTB.

It can be seen that there is a legal vacuum regarding the lack of regulation regarding PPh and BPHTB which is quite clear regarding this. It needs to be regulated specifically for PPh and BPHTB payable in the implementation of PTSL in the form of government regulations so that the implementing regulations are related to taxation because based on the principle of laws and regulations the principle of *Lex specialis* can be applied. *derogate legit generali*, that is, where the specific rules override the general rules. Whereas in the ATR/BPN Regulation No. 6 of 2018 regarding the indebted BPHTB contained in Article 33 where when the recipient of the certificate of land rights is not or has not been able to pay the BPHTB and/or there are still arrears related to PPh by other parties on the land in question, a title certificate is still issued. above ground.

If the participant has not been able to pay the BPHTB, they must make a statement letter for the BPHTB owed. In the case of land parcels where the acquisition came from buying and selling in the past and the buyer cannot show proof of PPh payment from the seller, he must make a statement of income tax payable.

Where the statement made must be contained and included in the decision to grant land rights and also recorded in the land book and certificate as the debtor BPHTB.

One of the most important issues in the implementation of PTSL related to legal certainty is the outstanding BPHTB. With a deferred tax in the case of BPHTB, there are parties who must be protected by regulations or laws that regulate legal actions between the two parties.

Looking at the regulations related to BPHTB in the law and also in the Permen ATR BPN, the two regulations are contradictory and there is disharmony in regulations related to BPHTB regulations.

Conclusion

Based on the explanation and description that has been explained above, it can be taken that analysis:

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There is legal uncertainty in PTSL activities, especially in the application of payable BPHTB where the payable BPHTB is regulated in Article 49 Law 1/2022 has been indebted since the legal subject (individual) was determined when the date of issuance of the decision letter granting new rights to land as a continuation of the release of rights and/or Apart from relinquishment of rights, when obtaining land rights including for PTSL and it can be seen that many local governments have not made regulations regarding BPHTB in the PTSL program. For this reason, in order to provide legal certainty to participants in the complete systematic land registration (PTSL) so that local governments immediately issue policies that make it easier for the community in order to provide legal certainty over their land rights through land registration in Indonesia.

It can be seen that there is a disharmony of legal regulations regarding BPHTB payable in the implementation of PTSL, as referred to in INPRES Number 2 of 2018 which forms the basis for implementing PTSL throughout Indonesia there is no regulation discussing and including related to freeing or eliminating BPHTB payable for PTSL participants, as well as in Article 33 of the Ministerial Regulation ATR/BPN Number 6 of 2018 specifically stipulates regarding indebted BPHTB that the public is allowed not to pay BPHTB and make a statement of indebted BPHTB, but in several respective regional regulations that regulate indebted BPHTB, there is disharmony in the arrangement of indebted BPHTB for granting rights to land

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