

Reconstruction of Land and Building Tax Regulations from the Central Government to Regional Governments in the Perspective of Regional Autonomy Based on Justice Values

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Abstract

The purpose of this study is to analyze the factors that influence the implementation of land and building tax payments in the perspective of regional autonomy. And to formulate regulations on Land and Building Tax in the perspective of regional autonomy in realizing public welfare. The research method used is juridical empirical. This research is a qualitative research, the type of data used is primary and secondary data. The technique of collecting data is through literature study and field focus group discussions, interviews and questionnaires). The data collected were analyzed through descriptive analysis. The legal theory used is Justice Theory, Legal System Theory, and Progressive Legal Theory. The results of the study found that the factors that influence the implementation of land and building tax payments in the perspective of regional autonomy, due to rapid changes in regulations and overlapping authorities, sectoral ego and "*ngemplang*" legal culture. Reconstruction of land and building tax regulations in the perspective of regional autonomy based on the value of justice, namely by realizing community welfare, by prioritizing the principles of transparency and accountability, regulation of land and building taxes in an integrated system and improving the legal welfare of the community.

Keywords: Land and Building Tax, Regional Autonomy, Welfare

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A. INTRODUCTION

Indonesia is a country of laws. The consequence of a rule of law state is to guarantee the constitutional rights of citizens¹, including the regulation of land and building taxes.

Land and Building Tax (Indonesian abbreviation as PBB) is a type of tax that is difficult to administer and has low collection efficiency due to the large number of tax objects. However, it is no coincidence that the discourse to make the Land and Building Tax (PBB) a regional tax came to the fore as part of fiscal decentralization in conjunction with the Law of the Republic of Indonesia Number 23 of 2014 concerning Regional Government and Law of the Republic of Indonesia Number 1 of 2022 Regarding the Financial Relations between the Central Government and Local Governments Observing the efforts to make the Land and Building Tax (PBB) a Regional Tax, there are several things that need to be questioned. Have these efforts been objective and supported by research or are the results of an in-depth study? Are these efforts really a demand from the community, so that they reflect bottom-up policies or are they only partial thoughts from a group of interests? From the questions mentioned above, of course, if the Land and Building Tax (PBB) is transferred from the Central Government to the Regional Government, it is possible that there will be a legal vacuum.

In the field of Taxation itself, the Land and Building Tax (PBB) is related to several other taxes. NJOP (Tax Object Sales Value) which is one of the products of the Land and Building Tax (PBB) has been used for various purposes. NJOP as the basis for imposing Land and Building Tax (PBB) is also the basis for calculating Final PPh on Property Sales, as well as Customs on Acquisition of Land and Building Rights (BPHTB) on rights that have been received by the buyer. In fact, certain communities and institutions also use NJOP as a basis for

¹ See too Chairussuriyati, Responsibilities Of Businesses In Achieve Fair Consumer Protection, International Journal of Business, Economics and Law, Vol. 28, Issue 1 (Dec). 2022

calculating banking credit, pawning, exchange transactions (Ruislag), compensation, valuation of government and private assets, and other activities. Tax was originally a tribute (free gift) but its nature is an obligation that can be forced and must be carried out by the people to a king or ruler. The people gave their tribute to the King at that time in the form of natura such as livestock, rice or other crops such as bananas, coconuts and others.¹ The gifts made by the people at that time were used for the purposes or interests of the King or local ruler. While the rewards or achievements that are returned to the people do not exist because they are only for unilateral interests and it seems as if there is psychological pressure because the position of the King is higher in social status than the people. In its development, the nature of the tribute given by the people was no longer only for the benefit of the king. However, it has led to the interests of the people themselves. This means that gifts made by the people to the king or ruler are used for public purposes such as to maintain the security of the people, maintain roads, irrigate rice fields, build other social facilities such as parks, and other public interests.

Land and Building Tax (PBB) itself is a tax that came into force on January 1, 1986 based on the Law of the Republic of Indonesia Number 12 of 1985. Then this Law was amended by the Law of the Republic of Indonesia Number 12 of 1994 and came into force as of 1 January 1995. Land and Building Tax (PBB) is central tax revenue which most of the proceeds are handed over to the regions, because Land and Building Tax (PBB) is a type of tax whose receipts are distributed to the regions as revenue sharing. The distribution of land and building tax revenue (PBB) is regulated in the Law of the Republic of Indonesia Number 12 of 1994 concerning Land and Building Tax Article 18 as well as through the Government Regulation (PP) of the Republic of Indonesia Number 16 of 2000 dated March 10, 2000 and the Decree of the Minister of Finance of the Republic of Indonesia. Indonesia Number: 82/KMK.0412000 dated March 21, 2000 concerning the distribution of Land and Building Tax Revenue between the Central and Regional Governments, namely for the Central Government 10% (percent) which is returned to the Regions and 90% (percent) for the Regions. In the Regional Revenue and Expenditure Budget (APBD), the Land and Building Tax Revenue (PBB) is included in the Tax Revenue Sharing Revenue Group.²

In the future the Land and Building Tax (PBB) will not only focus on increasing revenue, but has many other functions (multipurpose). Utilization of comprehensive information technology-based Land and Building Tax (PBB) data which is integrated starting from the SISMIOP (Tax Object Management Information System) which is then developed towards the National Data Bank through the PBB GIS program (United Nations Geographic Information System), namely by digitally mapping all PBB tax objects and then linking all PBB data which includes ± 84 million tax objects and ± 75 million taxpayers in the SIN (Single Identification Number) program, which is a program to fill out the map with data from tax subjects relating to all identity numbers from tax subjects such as KTP, SIM, STNK, NPWP, Water, Electricity, and Telephone Bills and so on, even up to the Bank Account Number of the tax subject, so that later it will allow all related agencies such as the Tax Service Office, National Land Agency, Banking, Service Population, Immigration, and even the Police can use and access it through the data bank UN SIN. Such is the importance of the existence of Land and Building Tax (PBB) as a source of regional revenue, but also strategic and significant influence on various aspects of activities and people's lives. As is known, almost all human activities take place on earth and are related to the issue of the earth and buildings

Normatively, regional autonomy is the authority of an autonomous region to regulate and manage the interests of the local community according to its own initiative based on the aspirations of the community in accordance with the applicable laws and regulations.

With regional autonomy, it means that most of the authority that was previously in the Central Government has been handed over to the Autonomous Regional Government, so that the Autonomous Regional Government can respond more quickly to the demands of the local community according to their capabilities. The importance of the existence of Land and Building Tax (PBB) as a source of regional revenue, but also strategic and significant influence on various aspects of activities and people's lives. As is known, almost all human activities take place on earth and are related to the issue of earth and buildings. Therefore, with the existence of regional autonomy which can increase the acceleration of development that is more focused on the region and with quality, in this study it is very relevant to raise this problem in a study on how to regulate land and building taxes from the central government to local governments in the perspective of regional autonomy. based on the value of justice.

B. RESEARCH METHOD

In this study the paradigm used is the Constructivism Paradigm, which views the reality of social life not as a natural reality, but is formed from the results of construction. Thus, the Constructivism Paradigm depends on the events or reality that is formed. The type of research used in writing this dissertation is normative juridical,

¹ Wirawan B. Ilyas dan Richard Burton, 2007, *Hukum Pajak Edisi 3*, Jakarta: Salemba Empat, p. 1.

² Darwin, *Pajak Bumu dan Bangunan*. Jakarta: Mitra Wacana Media, Jakarta, 2010, p. 24

which is to approach the problem based on legal rules or norms that are the object of discussion, but are supported by socio-legal research as a complement, in the form of empirical data as auxiliary data. The approach in this study is to use a socio-legal approach. To quote Wheeler and Thomas, socio-legal studies are an alternative approach that examines the doctrinal study of law. In principle, socio-legal studies are legal studies, which use a social science methodological approach in a broad sense. The type of research used in this study is the State Approach to find a legal vacuum or legal ambiguity regarding the applicable legal rules relating to the issues raised. In connection with the problems in this research, the Inventory Phase of norms is carried out on regulations that are always related to the role of Regional Autonomy in the delivery of Land and Building Tax (PBB) from the Central Government to the Regional Government. Techniques for collecting data, through literature and field studies.¹ Data collection through field studies is through observation and interviews. Observation is research that is conducted directly on the object under study by conducting interviews with research resource persons. The data analysis used is qualitatively inductive, which is defined as an activity to analyze data comprehensively, namely secondary data from various literatures and literature in the form of books, laws and regulations, journals, research reports or other scientific works.² Data analysis was carried out after the examination, grouping, processing and evaluation were first carried out so that the reliability of the data was known, and then analyzed qualitatively.³

C. RESULT AND DISCUSSION

From the Classical Justice Theory, which is always a reference is Aristotle's theory of justice. In this perspective, justice is understood in terms of equality.⁴ Aristotle makes an important distinction between numerical equality and proportional equality. Numerical equality equates every human being as a unit. This is what is now commonly understood about equality and what is meant when it is stated that all citizens are equal before the law. Proportional equality gives each person what he is entitled to according to his abilities, achievements, and so on. This is justice which of course is also relative. Gustav Radbruch⁵, a Legal Philosopher and a Legal Scholar from Germany who teaches the concept of 3 (three) basic elements of law. These three basic concepts were put forward in the era of World War II. The legal goals that he put forward by various experts are also identified as legal goals. The 3 (three) objectives of the law as stated are Justice, Certainty, and Benefit.

The principle of justice determines the ability of a large person to pay a larger tax.⁶ This provision is often considered insufficient. The higher tax payments must be viewed not only from the absolute side, but also from the relative side. In this regard, there is a progressive tax imposition. The tax imposed progressively will feel fairer than the imposition of a proportional one. Moreover, taxes are imposed regressively. Progressivity, proportionality and regressivity of taxes with regard to the tax burden that must be borne is associated with the ability to pay. These three things can be related to tariffs and tax bases. The obligation of debt and tax collection arises because of a law that gives the State the right to collect taxes.

The 1945 Constitution clearly states that taxation is one of the embodiments of the state, through a process of collection to the community that is coercive and must be regulated in the form of a regulating law, as the basis for imposition. The government has issued several regulations in the form of laws, as well as other implementing regulations related to taxation and levies. Legislation and implementing regulations are the legal umbrella that must exist when the collection process is carried out to the community. Without regulations governing collection, it means that the government has carried out illegal collections, in the name of taxes and levies.

The purpose of development is to realize national goals, namely to protect the entire nation and the entire homeland of Indonesia, promote public welfare, educate the nation's life, and participate in implementing world order and peace. In essence, national development is intended to realize the welfare of the people.

In terms of the process, development activities are a series of efforts or activities that take place continuously (sustainable), by increasing the level of community welfare from generation to generation. This means that development is a series of efforts to improve people's welfare.

Land and Building Tax is a widely designated tax imposed on both the ownership and utilization of land and

¹ Anis Mashdurohatun, Danialsyah, Reconstruction of Mediation in Environmental Disputes Settlement Based on Pancasila Justice, Volume.24 Issue 3. Journal Of Law And Political Sciences, 2020.pp. 123-138.

² Anis Mashdurohatun, Gunarto & Adhi Budi Susilo, The Transfer Of Intellectual Property Rights As Object Of Fiduciary Guarantee, Jurnal Akta. Volume 9 No. 3, September 2022.

³ Agus Irawan Yustisianto, Sri endah Wahyuningsih, & Anis mashdurohatun, Reconstruction of Legal Protection Regulations against Victims of Crime of Household Violence Based on Justice Value, Sch Int J Law Crime Justice, Dec, 2022; 5(12): 513-519

⁴ Justice always has the main place in the study of legal philosophy. For the Indonesian edition see for example: Soetiksna. 1970. Philosophy of Law II. Jakarta: Pradnya Paramita. page. 80 and so on, especially on the philosophy of justice by the Greek philosophers.

⁵ Gustav Radbruch, (1878 – 1949), a German jurist and legal philosopher. Previously served as Germany's minister of justice. His works on the philosophy of law, including his main work "Rechtsphilosophie" (Philosophy of Law, 1932), have been translated into various languages. Next to Hans Kelsen and H.L.A. Hart Radbruch is considered one of the most influential legal philosophers of the twentieth century. He is known to describe the purpose of law in his time, and is used as a reference until now.

⁶ Wulandari, S., & Budiaji, A. (2017). Pengaruh Persepsi Keadilan Pajak dalam Peraturan Pemerintah Republik Indonesia Nomor 46 Tahun 2013 terhadap Kepatuhan dalam Memenuhi Kewajiban Perpajakan. Jurnal Ekonomi Islam, 8(239–268).

or buildings. Therefore, every ownership or utilization of land and or buildings in Indonesia will be subject to tax. The imposition of Land and Building Tax is not related at all to proof of ownership of land and or buildings.¹

PBB is a material state tax. In general, material taxes do not pay attention to the condition of the taxpayer in determining the amount the tax is payable but based on the tax object according to the provisions of the tax law, it must be taxed. The tax object, both large and small, will be taxed according to the circumstances of the tax object. At PBB, the amount of tax payable is entirely based on the condition of the tax object as reflected in the NJOP of land and or buildings.

Land and Building Tax is a tax levied on property not movable, therefore what is important is the object and therefore the condition or status of the person or entity that is made the subject is not important and does not affect the amount of tax payable. This makes PBB also called an objective tax. Although this tax is an objective tax, it is collected with a tax assessment letter which in principle is issued by the tax authorities every tax year. From the side who bears the tax burden, PBB is included in direct tax because the PBB owed must be borne by the taxpayer whose name is listed on the tax assessment letter, namely SPPT and SKP which cannot be delegated to other people.

The difference between one period and another lies, among other things, in the development priorities to be implemented. Example: the period of government of the President of the Republic of Indonesia Joko Widodo (Jokowi) who formulated the Nine Priority Agendas (Nawacita) to be carried out in the implementation of development in the era of his administration, the contents of which are as follows:

1. Bringing back the state to protect the entire nation and provide a sense of security to all citizens.
2. Make the government always present by building clean, effective, democratic, and reliable governance.
3. Developing Indonesia from the periphery by strengthening regions and villages within the framework of a unitary state.
4. Strengthening the state's presence in reforming the system and law enforcement that is free of corruption, with dignity and reliability.
5. Improving the quality of human life and the people of Indonesia.
6. Increase people's productivity and competitiveness in the international market, so that the Indonesian nation can advance and rise with other Asian nations.
7. Realizing economic independence by mobilizing strategic sectors of the domestic economy.
8. To revolutionize the nation's character.
9. Strengthening diversity and strengthening Indonesia's social restoration.

In an effort to fulfill the government's obligations related to its duties in the context of administering government in order to maintain the development process, the government establishes taxes and levies as a source of state revenue. If you look at the development of tax revenues in the APBN, it appears that taxes have become the prima donna that dominates current state revenues. In order to increase state revenue from the tax sector, the government seeks to explore the tax potential as widely as possible. Either by finding and applying the type of tax according to the current conditions of society. Different types of taxes are applied, may be eliminated or abolished at a later time with various considerations, and then levied and re-enacted. One of them that became the talk of the community, namely when the enactment of Law no. 28 of 2009 concerning Regional Taxes and Regional Retribution, in lieu of Law no. 18 of 1997.

The promulgation of Law no. 28 of 2009, a form of appreciation for the implementation of regional autonomy which gives greater authority to regions in the context of administering regional government based on services to the community. This is due to the lack of Regional Original Revenue (PAD), the limited local tax base, the number of problematic regional regulations regarding collection, and the weak supervision of regional levies due to the repressive system of supervision as well as the application of sanctions that have not been maximized.

For this reason, any expansion of the regional tax base must continue to uphold the principles of good taxation, without causing the emergence of a high-cost economy and hindering population mobility, traffic of goods and services and others. Since so far, the region's dependence on the central balancing fund does not reflect the accountability of the region, resulting in regional governments not being encouraged to allocate budgets effectively and efficiently.

UU no. 28 of 2009 is a regulation that contains regional taxes and regional levies, in which there are four new types of taxes that are fully authorized to the regions, namely Rural and Urban Land and Building Taxes (PBB P2), Customs for Acquisition of Rights on Land and Buildings (BPHTB). which previously became the authority of the center, the Swallow's Nest Tax as a Regency/City tax and the Cigarette Tax which is a new tax for the Province. In addition, there are also four new types of levies for the regions, namely Re-calibration Service Fees, Education Fees, Telecommunication Tower Control Fees, and Fisheries Business Permits.

Regarding the transfer of authority to collect BPHTB from the Central Government to the Regional Government as mandated by Law no. 28 of 2009. Whereas, the biggest purpose of transferring BPHTB is to

¹ Maribot. Opcit.

increase the local taxing power of regencies and cities, which so far have not run optimally, even though the locality of the object of PBB P2 (Rural and Urban Land Building Tax) and BPHTB are located in regencies and cities. Besides that, almost every country has set Property Tax and Property Transfer as one of the local taxes. This is the main consideration for the transfer of PBB P2 and BPHTB. The transfer of BPHTB from the Center and the Regions is not only limited to collection/billing, but also to data collection, assessment, determination, comprehensive services in addition to administration that must be carried out by the regions.

However, this transfer is not as easy as one might expect, even though preparations have been made by the regions. Through the Joint Regulation of the Minister of Finance and the Minister of Home Affairs No. 186/PMK.07/2010 No. 53 of 2010 concerning the Preparation Stages for the Transfer of Duties on the Acquisition of Land and Building Rights as Regional Taxes. For this reason, each from the Ministry of Finance and the Ministry of Home Affairs jointly formulates and stages the transfer so that it can run smoothly. The Ministry of Finance through the Directorate General of Taxes will compile all problems that arise as reference material by the Regional Government to prepare Regional Regulations (Perda) and Regional Head Regulations, make standard operating procedures (SOPs) related to BPHTB, in addition to monitoring and fostering the implementation of the transfer of collection authority. BPHTB to the Regional Government.

Meanwhile, from the Ministry of Home Affairs, it is more directed to guidance in the form of providing guidance, consultation and training as supervision in the context of transferring the authority to collect the BPHTB.

The toughest task at present is clearly carried out by the Regional Government in order to accept the transfer of authority to collect BPHTB. The Regional Government is tasked and responsible for preparing facilities and infrastructure, organizational structure and work procedures, human resources, Regional Regulations, Regional Head Regulations and SOPs, carrying out cooperation with related parties, including the Tax Service Office, Banking, Land Office, Auction Office, as well as Notary/PPAT, Local Government must also open a BPHTB account at a bank designated to be a perception bank.

For the implementation of these provisions, the Regional Government must immediately make a Regional Regulation (Perda) as a legal umbrella to be able to collect the BPHTB from the community. Perda is something that is very important in addition to the issuance of regulations to the regions as a basis for collection. Because the tax regulation must contain all matters of a technical nature from taxation names, objects and subjects to administrative sanctions, which may not apply retroactively.

Due to Law no. 28 of 2009, promulgated on 15 September 2009 and takes effect one year from the date of promulgation. Which is based on article 185 states, this law comes into force on January 1st. Obviously, the effectiveness of the enactment of Law no. 28 of 2009, concerning the delegation of authority to collect BPHTB to Regional Governments, it was implemented and took effect on January 1, 2011. The limited time has resulted in many Regional Governments not having issued Regional Regulations concerning BPHTB. Therefore, for regional governments that do not yet have a regional regulation, they are not allowed to make collections

BPHTB is indebted to the community in the process of transferring rights to land and buildings. There are some regions that only copy and paste other regional regulations without conducting a thorough study to see what potential exists in the region and what are the obstacles in the region when this law is enacted. For example, in determining the amount of the Non-Taxable Tax Object Acquisition Value (NPOPTKP) for each transfer of land and building rights, the minimum is Rp. 60,000,000, - (sixty million rupiah). In the previous case, through Law no. 20 of 2000 concerning Amendments to Law no. 21

In 1997 concerning BPHTB, the NPOPTKP was determined regionally to a maximum of Rp. 60,000,000, - (sixty million rupiah). Perhaps the imposition of the NPOPTKP on the area of big cities where the selling price of land and buildings increases every year in the interpretation of 20 to 30 percent is not a problem. This will cause problems in areas where the potential for selling price increases is not that great. Due to the imposition of the NPOPTKP amounting to Rp. 60,000,000,- (sixty million rupiah) can only be subject to outstanding BPHTB if the transfer of land and building rights must be above Rp. 60,000,000, - (sixty million rupiah). We know that there are still many people who transfer land and buildings under Rp. 60,000,000,- (sixty million rupiah) even though the transaction value is above that value.

To that end, the enactment of Law no. 28 of 2009 concerning the transfer of BPHTB levies from the Central Government to Regional Governments must still be criticized, whether the enactment of this Law will increase Regional PAD or vice versa. If this is indeed not possible to be a potential for the region, especially for small regions and regions that have just implemented expansion, they can exercise their right to judicial review of this Law. Due to the philosophy of the enactment of this Law, there is no other way to pay attention to the aspect of justice for the community and the conditions of the area concerned.

Tax collection to be carried out so as not to cause legal polemics between taxpayers and tax officials, first it is known and understood about the legal basis why the state wants to collect taxes from its citizens. Collecting taxes by the state without having a valid legal basis means that the state through tax officials confiscates and even constitutes robbery of the wealth of its citizens as taxpayers. Actually, tax collection should not be carried

out by the state before there is a law that regulates it because Indonesia is a state of law.

In tax collection there is a principle that the state authorized to collect taxes should not be delegated to private parties. Only the government including its apparatus as representatives of the state are authorized to collect taxes, while the private sector is not allowed or prohibited from collecting taxes because tax problems involve the people as taxpayers in general to hand over part of their wealth to the state so that there are no applicable legal provisions, which allow private sector to collect taxes. Unless in the future there is a thought to involve the private sector as a tax collector. So, it must be stipulated in advance in the Tax Law with various requirements for it.

In the context of Law Number 28 of 2009 concerning Regional Taxes and Regional Levies, it is not the organizers, for example the relevant agencies or agencies (Cleaning Service, Parking organizers, etc.) whether they are individuals or entities entitled to collect taxes, but individuals or entities as mandatory tax. The one who collects the tax is the district/city government.

In this case, the state (central or local government) in collecting taxes is bound to the jurisdiction of the country or region concerned. Jurisdiction is the scope of the use of authority to collect taxes on its citizens and foreign nationals residing or domiciled in that country so that it does not cause heavy burdens for those who are taxable. Explicitly or implicitly in tax law, it is regulated regarding the grouping of tax collection jurisdictions. The grouping of tax collection jurisdictions aims to avoid double taxation. Hence, the problem of collecting and determining tax rates is included in the case of parking, the Law only regulates the principles to be used as guidelines for local governments, which in turn stipulates local regulations.

The relationship between the government as the tax authority and the people as taxpayers includes the use of the proceeds, which in turn must be accountable to the people. Because the tax is levied from part of the wealth of some members of the community to meet public needs, the use of the tax levy must be felt by the general public. The results of the tax levy must not be misused for personal or certain group interests, because if so, then the intended relationship is not realized.

Regarding the determination of tariffs, the Law regulates to give authority to regions in determining tariffs that can contribute to their regions, but the authority granted by this law is limited, the aim is to avoid setting high tax rates which can increase the burden on the community in an excessive manner. Regions are only given the authority to set tax rates within the maximum limit stipulated in the law.

Speaking of tax rates, this has something to do with the purpose of tax law, namely to make justice in tax collection, justice in principle and in its implementation. Thus, tax collection cannot be separated from justice and tax collection must be fair and equitable all taxpayers will feel the same pressure in payment the tax. Therefore, the applicable tariffs must reflect fairness, the applicable rates in tax collection are as follows:

1. Proportional or Comparable Tax Rates.

A proportional rate is the rate of tax collection using a fixed percentage (unchanged) regardless of the amount used as the basis for taxation, of course the tax paid will always change according to the amount subject to tax. The greater the amount used as the basis for taxation, the greater the amount of tax payable, but this increase is obtained at the same percentage.

2. Decreased Tax Rates (Digressive).

A declining rate is a tax collection rate that uses a smaller percentage with the greater the amount used as a tax base. Although the percentage of collection is getting smaller, it does not mean that the tax payable is also getting smaller, it will even get bigger with the larger the amount that is taxed.

3. Fixed Tax Rate.

A fixed rate is a tax collection rate with the same amount for each amount, so that the amount of tax payable does not depend on an amount (the value of the object) that is taxed.

4. Progressive or Increasing Tax Rates.

The rate of tax collection with the percentage of collection that increases with the greater the amount subject to tax. The progressive tax rate can be further subdivided into :²⁰⁹

- a. Proportional Progressive Rates.

A proportionally progressive tax rate is a tax collection rate with a percentage that increases with the greater the amount used as a tax base, but the percentage increase for any given amount is fixed.

- b. Progressive Degressive Tax Rates.

Tax collection rate with a percentage that increases with the greater the amount that can be used as a tax base, but the percentage increase for each certain amount decreases each time.

- c. Progressive-Progressive Tax Rates.

The rate of tax collection with a percentage that increases with the greater the amount used as the basis for taxation, and the percentage increase for each certain amount each time it increases.

From the description above, it can be emphasized that with the existence of regional autonomy, tax decentralization, especially those related to Land and Building Tax (PBB) is expected to be able to contribute or contribution to regional development in the context of equitable distribution and balance of development to

achieve the prosperity of a democratic society. So that the Land and Building Tax (PBB) is no longer managed by the central government but can be managed by the local government itself which can provide and become a source of Regional Original Income (PAD).

International experience suggests decentralization of the property tax function should be gradual on a capacity basis. Capacity results from appropriate motivation and skilled individuals, can provide the relevant infrastructure (offices, buildings and equipment including computer systems and hardware, repair and installation), which can work effectively. Such capacity pools can rapidly develop valuation capacity, due to the subsequent demand for skilled labor and utilization of the property market.

In Indonesia, demand for capacity assessments is growing, especially outside Jakarta. International experience also suggests that a second cost effective assessment should be developed through improving the skill base such as the development of cadastre fiscal variety and accuracy. The set of capacities can be decentralized quickly, the assessment capacity will take longer. In some cases, there are many reasons to separate the collection function from the assessment (perhaps because there is a conflict of interest) and Local Governments often determine the collection function while the Central/Province determines the assessment function. Reform should start from the joint assessment function of the Center and then be decentralized gradually starting from the Provinces and big cities. Unlike decentralization across all functions, and a split assessment, it will occur across all LGs in a country as large as Indonesia. The asymmetric approach is relevant.

Related to the reconstruction of the Land and Building Tax (PBB) norms as regulated in Law Number 12 of 1985 in conjunction with Law Number 12 of 1994 concerning Rural and Urban Land and Building Taxes and Law Number 1

The year 2022 concerning the Financial Relations of the Central Government and Regional Governments which are considered not based on justice is related to the determination of the imposition of Land and Building Tax which is carried out based on the Sale Value of Tax Objects (NJOP).

Tax Object Sales Value (NJOP) is the average price obtained from sale and purchase transactions that occur fairly, and if there is no sale and purchase transaction, the NJOP is determined through price comparisons with other similar objects, or new acquisition value, or replacement NJOP.

In practice, the amount of Tax Object Selling Value (NJOP) will affect the amount of PBB-P2 or PBB-P3 bills. In its application, the Sales Value of Tax Objects (NJOP) is a value that increases if an area is growing.

Although it is an important benchmark, the calculation of the Tax Object Selling Value (NJOP) has advantages and disadvantages. For its advantages, NJOP is a value that can be a reference price. So, the prices listed have adjusted to the value of each region. Because the value follows a number of factors such as infrastructure and facilities, the better the two, the higher the value. Finally, the determinant of the percentage value is the regional head.

Referring to the benefits of the Tax Object Sales Value (NJOP) which is also needed by the community, it turns out that the Tax Object Sales Value (NJOP) for land and buildings also has many problems in the community itself. The problem is that the Sales Value of the Tax Object (NJOP) does not differentiate the location of the building. In addition, the price does not distinguish the different types of buildings around it. Because it follows the nature of development, the percentage value always increases from year to year.

Sales Value of Tax Objects (NJOP) of land and buildings that are not in accordance with market prices, so that there will be a potential loss on local government revenues from taxation, especially land and building taxes (PBB). Sales Value of Tax Objects (NJOP) of land and buildings that are not in accordance with market prices can be found when there is a sale and purchase of land at PPAT, where the real price of the object of sale and purchase is higher than the NJOP. There are several factors that affect the amount of NJOP, namely:

1. Structural Factors/Appraisal Apparatus

Appraiser is an individual who carries out assessment activities in accordance with the expertise and professionalism possessed and is a member of the appraiser professional association recognized by the government and refers to the Indonesian Appraisal Standards (SPI), the Indonesian Appraisal Code of Ethics (KEPI) and other standard of expertise related to assessment activities. With the wide area of a district/city, of course, sufficient apparatus is needed, especially in the case of land and building assessments, who have a background or graduate education of pure appraisers or at least the appraisers have obtained certification from the Minister of Finance or other parties.

2. Substance Factor

Earth valuation in addition to using the sismiop system as used for the assessment of the earth in the classification of mass valuations, there is also an individual assessment. In carrying out individual assessments, the appraiser must directly review the tax object to be assessed. However, in the implementation of this individual assessment, there are no technical instructions and implementation instructions that regulate the implementation of field assessments. A problem regarding substance is often found in the absence of various laws that do not yet have implementing regulations, even though the laws are instructed to do so³⁴. Because this land and building assessment is regulated in a Regional Regulation, at least there is a regulation from the

regional head (Perwal/Perbub) as a technical guide or instructions for implementing land and building assessment activities. The existence of technical instructions and implementation instructions regarding the assessment of land and buildings will have an impact on the results of an objective assessment and have an impact on standards in making an assessment. The absence of standard regulations regarding the amount of market prices, making it difficult to determine the exact market price of the value of land and buildings. Then the market price is obtained from the comparison of the price of the sale and purchase transaction or lease, which is not necessarily the correct price. So that the certainty of the large price is also needed in the implementation of the land and building assessment. Regarding the classification of tax objects, which include the classification of mass assessments and individual assessments, there is also no legal umbrella from the Regional Government. So far, the reference used is the Decree of the Director General of Taxes of the Republic of Indonesia Number: KEP - 533/PJ./2000 concerning Procedures for Implementing Data Collection and Assessment of Land and Building Tax Objects and Subjects. Because the Land and Building Tax has become the absolute authority of the Regional Government, everything regarding PBB issues, especially the assessment of land and buildings, is formulated in a comprehensive Regional Regulation.

3. Socio-Economic Factors

Factors in the community are also taken into consideration to determine the amount of NJOP because it will have an impact on the amount of tax owed to taxpayers. However, a high NJOP affects the amount of PBB tariff, it is feared that there will be social unrest in the community because this PBB is a mass tax. Consideration of the taxpayer's ability to pay taxes was also the basis for consideration when the PBB was still the authority of the Directorate General of Taxes (DGT). Although there is a mechanism for taxpayers to appeal tax objections imposed on themselves, such mechanisms are rarely used by taxpayers. So that the basic capabilities and turmoil in the community are also factors why the assessment of land and buildings against the PBB NJOP is still below the market price.

4. Political Factor

NJOP based on Law No. 28 of 2009 concerning Regional Taxes and Regional Levies is determined by the Regional Head. Between Regional Heads, Regional Original Revenue (PAD), NJOP and the process of land and building assessment are closely related. This means that if the Regional Head wants an increase in Regional Original Revenue (PAD) from the PBB sector, the Regional Revenue Service will automatically reassess or rezoning (rezoning) to increase the PBB NJOP. And vice versa if the Regional Head does not want an increase in Regional Original Income (PAD) from the PBB sector, there will be no reassessment.

In addition, the appraisal aspect is a process of determining the price of land and buildings based on the existing facts by considering various relevant variables. Assessment in PBB is carried out in two approaches, namely mass assessment and individual assessment. Mass appraisal is an approach to tax objects that are many in number and carried out simultaneously in a certain period. Meanwhile, individual assessment is a method of assessing tax objects by considering the characteristics of the land and/or buildings.

The quality of the assessment can be measured in several ways, including the assessment ratio, classification and provisions for the sale value of land and buildings as regulated in the Decree of the Minister of Finance No. 523/KMK.04/1998 date December 18, 1998 which is adjusted every three years with the exception of areas where development is rapidly developing every year.

Determination is the calculation of the amount of PBB owed that must be paid by the taxpayer based on the Tax Return Payable (SPPT) issued by the Directorate General of Taxes of the Ministry of Finance. The formulation of this calculation is clearly regulated in Law Number 12 of 1985 as has been perfected in Law Number 12 of 1994.

The amount of the PBB tariff is 0.5 percent, while the NJKP is set as low as 20 percent and as high as 100 percent of the NJOP. From these elements, the calculation of the PBB payable is based on the formula, as follows:

$$\text{PBB payable} = \text{Tariff} \times \text{NJKP}$$

With the enactment of a new regional tax and levy law, namely Law Number 28 of 2009 concerning Regional Taxes and Regional Levies, there is a slight change in the method of calculating the value of PBB, namely the amount of NJOPTKP is set at a minimum of Rp. 10 million for each taxpayer and the tariff is Rp. Rural and Urban PBB is set at the highest at 0.3 percent.

Therefore, it is necessary to reconstruct the norm in determining the land tax payable which so far has only been based on the sale value of the tax object (NJOP), with the suggestion that the sale value of the tax object (NJOP) is not absolutely carried out by the mayor or regent in determining the land tax payable.

RECONSTRUCTION
LAW OF THE REPUBLIC OF INDONESIA NUMBER 12 YEAR 1985 Juncto
LAW OF THE REPUBLIC OF INDONESIA NUMBER 12 YEAR 1994
ABOUT
PROPERTY TAX

| No | Chapter | Reason for Reconstruction | Reconstruction (Proposed Changes) |
|----|--|---|---|
| 1 | Article 6 Paragraph (1) : The basis of tax imposition is the Selling Value Tax Object. | The variable of imposition of PBB based on the Sale Value of Tax Objects does not provide justice for poor people whose houses stand on the outskirts of the city center or on the outskirts of elite housing. because NJOP does not discriminate on the location of the building. In addition, the price does not distinguish the different types of buildings around it. | Article 6 Paragraph (1) : The basis of tax imposition is not absolute based on the Sales Value of the Tax Object (NJOP) |
| 2 | <p>Article 15 Paragraph (1) : Taxpayers may file an objection to the Director General of Taxes on: a. Letter of notification Taxes Payable; b. Tax assessments. Article 15 Paragraph (2) : Objections are submitted in writing in the Indonesian language by stating the reasons clearly.</p> <p>Article 15 Paragraph (3) : Objections must be submitted within 3 (three) months from the date of receipt of the letter as referred to in Paragraph (1) by the taxpayer, unless the taxpayer can show that the period of time cannot be fulfilled due to circumstances beyond his power.</p> <p>Article 15 Paragraph (4) : Receipt of the Objection Letter given by the official of the Directorate General of Taxes appointed for that purpose or the receipt of the Objection Letter by registered post as proof of receipt The objection letter is for the benefit of the taxpayer.</p> <p>Article 15 Paragraph (5) : If requested by the taxpayer for filing purposes object, Director The General of Taxes is obliged to provide in writing the things that are the basis for the imposition of taxes.</p> <p>Article 15 Paragraph (6) : Submission of objection does not delay the obligation to pay taxes.</p> | This change is to adjust the transfer of P2 land and building taxes from the central government to local governments. | <p>Article 15 Paragraph (1) : Taxpayers may file an objection to the Head of Dispenda on: a. Letter of notification Taxes Payable; b. Tax assessments Article 15 Paragraph (2) : Objections are submitted in writing in the Indonesian language by stating the reasons clearly.</p> <p>Article 15 Paragraph (3) : Objections must be submitted within 1 (one) month from the date of receipt of the letter as referred to in Paragraph (1) by the mandatory tax, unless the taxpayer can show that the period cannot be fulfilled due to circumstances beyond his control.</p> <p>Article 15 Paragraph (4) : Receipt of the Objection Letter given by the Head of Dispenda appointed for that purpose or a sign of sending the Objection Letter by post registered as proof of receipt of the letter The objection is in the interest of the taxpayer.</p> <p>Article 15 Paragraph (5) : If requested by the taxpayer for the purpose of filing an objection, the Head of the Dispenda is obliged to provide in writing the matters that form the basis for the imposition of tax.</p> <p>Article 15 Paragraph (6) : Filing an objection postpones the obligation to pay taxes.</p> |

| No | Chapter | Reason for Reconstruction | Reconstruction (Proposed Changes) |
|----|--|---|---|
| 3 | <p>Article 16 Paragraph (1) : Director General of Taxes within a maximum period of 12 (twelve) months from the date the Objection Letter is received, must give a decision on the objection filed.</p> <p>Article 16 Paragraph (2) : Before the decision letter is issued, the taxpayer may submit additional reasons or a written explanation.</p> <p>Article 16 Paragraph (3) : The decision of the Director General of Taxes on the objection may be in the form of accepting in whole or in part, refuse or increase the amount of tax payable.</p> <p>Article 16 Paragraph (4) : In the event that the taxpayer files an objection to the determination as referred to in Article 10 Paragraph (2) letter a, the taxpayer concerned must be able to prove the untruth of the tax assessment.</p> <p>Article 16 Paragraph (5) : If the period as referred to in paragraph (1) has elapsed and the Director General of Taxes does not make a decision, then the objection submitted is considered accepted.</p> | <p>This change is to adjust the transfer of P2 land and building taxes from the central government to local governments</p> | <p>Article 16 Paragraph (1) : The Head of Dispenda within a period of no later than 1 (one) month from the date the Objection Letter is received, must give a decision on the objection filed.</p> <p>Article 16 Paragraph (2) : Before the decision letter is issued, the taxpayer may submit additional reasons or a written explanation.</p> <p>Article 16 Paragraph (3) : The decision of the Head of Dispenda on the objection can be in the form of accepting in whole or in part, refusing or adding to the objection the amount of tax payable.</p> <p>Article 16 Paragraph (4) : In the event that the taxpayer files an objection to the determination as referred to in Article 10 Paragraph (2) letter a, mandatory The tax concerned must be able to prove the untruth of the tax assessment.</p> <p>Article 16 Paragraph (5) : If the period as referred to in paragraph (1) has passed and the Head of Dispenda does not give a decision, then the objection raised considered acceptable.</p> |
| 4 | <p>Article 17 Paragraph (1) : Taxpayers may file an appeal to the tax court against the decision made by the Director General of Taxes as referred to in Article 17 4 Paragraph (6) and Article 16 Paragraph (3) within a period of 3 (three) months from the date of tax with attached a copy of the decree.</p> | <p>This change is to adjust the transfer of P2 land and building taxes from the central government to local governments</p> | <p>Article 17 Paragraph (1) : Taxpayers may file an appeal to the tax court against the decision made by the Head of Dispenda as referred to in Article 4 Paragraph (6) and Article 16 Paragraph (3) within a period of 3 (three) months from the date of receipt decision letter by the taxpayer with a copy of the decision letter attached.</p> |
| 5 | <p>Article 18 Paragraph (1) : The result of tax revenue is state revenue which is divided between the Central Government and Regional Government with the distribution balance of at least 90% (ninety percent) for Level II Regional Government and Level I Regional Government as the relevant regional income.</p> <p>Article 18 Paragraph (2) : The share of Regional Government revenue as referred to in Paragraph (1) is mostly given to Level II Regional Governments.</p> <p>Article 18 Paragraph (3) : The balance of the distribution of tax revenue as referred to in Paragraph (1) and Paragraph (2) shall be regulated by a Government Regulation.</p> | <p>This change is to adjust the transfer of P2 land and building taxes from the central government to local governments</p> | <p>Delete</p> |

| No | Chapter | Reason for Reconstruction | Reconstruction (Proposed Changes) |
|----|---------|--|--|
| 6 | | <p>Techniques and conditions for assessing PBB objects, namely assessment Mass and individual assessments need to be regulated in the amendments to the PBB Law so that they become strong and clear guidelines in applying PBB object valuation techniques, so as not to harm taxpayers.</p> | <p>The assessment of land and building tax objects is carried out in 2 (two) ways of assessment, namely: 1) mass assessment, and 2) individual assessment. The technique of assessing the object of land and building tax is in accordance with the object to be assessed, after observations have been made in the field.</p> <p>UN object assessment in an individual way is generally applied to non-standard and special tax objects, or those of high (certain) value, or tax objects which, if assessed by Computer Assisted Valuation (CAV) the results do not reflect the actual value due to the limitations of the application program.</p> <p>Non-standard PBB objects are tax objects that meet one of the criteria for land area > 10,000 m², building area > 1,000 m², and number of floors > 4 floors.</p> <p>Meanwhile, what is meant by sea ports, ports air, toll roads, gas stations and others.</p> <p>Individual assessment of PBB objects is carried out taking into account all the characteristics of the tax object in detail. In individual assessment, data collection is carried out by using the Tax Object Notification Letter (SPOP) and Attachment to the Tax Object Notification Letter (LSPOP) as well as Object Worksheet Special (LKOK) for additional data or additional information.</p> <p>Building valuation for mass valuation classification uses a Computer Assisted Valuation (CAV) system.</p> <p>CAV, which is a program for building appraisal.</p> |

Table 5.2.
Reconstruction
RI Law No. 1 of 2022 About the Financial Relationship between the Central Government and the Regional Government

| No | Chapter | Reason for Reconstruction | Reconstruction (Proposed Changes) |
|----|--|--|--|
| 1 | Article 40 Paragraph (1) : The basis for imposition of PBB-P2 is Selling Value of Tax Object | The variable of imposition of PBB based on the sale value of the tax object does not provide justice for the underprivileged people whose houses stand on the outskirts of the city center, because NJOP does not discriminate on the location of the building. In addition, the price does not distinguish the different types of buildings around it. | Article 40 Paragraph (1) : The basis for the imposition of land and building taxes in rural and urban areas is not absolute based on the Sales Value of Tax Objects (NJOP) |
| 2 | Article 40 Paragraph (4) : In the event that a Taxpayer owns or controls more than one PBB-P2 object in one regency/city area, the NJOP not taxed as anything referred to in paragraph (3) is only given to one object of PBB-P2 for each Fiscal Year. | There are rules that determine taxpayers who own or control more than one PBB-P2 object in one regency/city area, then only one PBB-P2 object must be paid annually. This provision is vague, because it is not clear to what extent the meaning of more than 1 PBB-P2 object is owned and controlled by the taxpayer. In addition, this provision is very beneficial for taxpayers who have a lot of assets to avoid the obligation to pay PBB. | Article 40 Paragraph (4) : In the event that the Taxpayer owns or controls more than one PBB-P2 object in one regency/city area, NJOP not taxable as referred to in paragraph (3) the taxpayer concerned must still have PBB-P2 for every year |
| 3 | Article 47 Paragraph (1) : The Tariff of Duty on the Acquisition of Rights on Land and or Buildings (BPHTB) is set at a maximum of 5% (five percent) | The Tariff for the Acquisition of Rights on Land and or Buildings (BPHTB) is set at a maximum of 5% (five percent) is considered high, it is sufficient to set a maximum of 2.5% (two point five percent) for Non-Subsidized Land and/or Building Rights Acquisition Fees (BPHTB) and 1% (one percent) Land Rights Acquisition Fees and or Subsidized Buildings (BPHTB). | Article 47 Paragraph (1) : The Tariff for the Acquisition of Rights on Land and or Buildings (BPHTB) is set at a maximum of 2.5% (two point five percent) for the Fee for the Acquisition of Rights on Land. Land and or Building (BPHTB) Non-Subsidized and 1% (one percent) Customs Fees Land and or Building (BPHTB) which is subsidized. |

D. CONCLUSION

The reconstruction of the Rural and Urban Land and Building Tax regulation (PBB-P2) based on the value of justice, was initiated by amending the Law of the Republic of Indonesia Number 12 of 1985 in conjunction with Law of the Republic of Indonesia Number 12 of 1994 concerning Land and Building Tax, which was substantially adjusted to the Law of the Republic of Indonesia. Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments, then only changes were made to the Regional Regulations concerning Rural and Urban Land and Building Taxes (PBB-P2).

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