

An Analysis of Juridical Determination of Market Value Fees for Acquisition of Inheritance Type Land and Building Rights by Regional Revenue Agency of Malang City

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ABSTRACT

The state has the power to collect taxes from its citizens. Article 23 A of the 1945 Constitution of the Republic of Indonesia is the constitutional basis for tax collection by the government, namely the "Central Government" and "Local Government". This study aims to (1) analyze and find out how the mechanism for determining the market value in the collection of BPHTB Inheritance by Bapenda in Malang City, (2) analyze and find out the legal certainty regarding the market value in collecting BPHTB Inheritance by Bapenda in Malang City. This research is normative juridical research. The results show that the collection of Inheritance BPHTB by Bapenda Malang City does not yet reflect the value of legal certainty because the legal rules regarding market value that are used as guidelines by Bapenda also do not have legal certainty.

INTRODUCTION

In Indonesia, the constitutional basis for collecting taxes is contained in the provisions of Article 23 A "1945 Constitution of the Republic of Indonesia" (1945 Constitution of the Republic of Indonesia). Diani Putri Pracasya's previous research, stated as follows:

"It is necessary to understand that the law referred to in Article 23A of the 1945 Constitution of the Republic of Indonesia is not merely a statutory regulation formed by the People's Representative Council with the approval of the President, but the law in question is a statutory regulation that is in line with the provisions stated in Article 4 of Law 12/2011."

Based on the results of this research, the provisions of Article 23 A of the 1945 Constitution of the Republic of Indonesia become the constitutional basis for tax collection by the government, namely the "Central Government" and "Local Government". The legitimacy of tax collection by the Regional Government is stated in the form of Regional Regulations. Based on the authority to collect taxes, there are classifications of regional taxes and central taxes. Referring to the provisions of Article 46 paragraph (2) letter b of Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments, it is determined that the Acquisition Value of Tax Objects (NPOP) at BPHTB Inheritance is the market value. Focusing on BPHTB Inheritance there is a separate legal regulation, namely in Law Number 20 of 2000 concerning Amendments to Law Number 21 of 1997 concerning Fees for Acquisition of Land and Building Rights. The implementing regulations for the quo BPHTB law are contained in Government Regulation Number 111 of 2000 concerning the Imposition of Fees for the Acquisition of Land and Building Rights due to Inheritance and Wills.

Given that the collection of BPHTB is carried out by the district/city regional government, referring to the City of Malang, the arrangements are contained in the Regional Regulation of the City of Malang Number 15 of 2010 concerning Fees for the Acquisition of Land and Building Rights. In the provisions of Article 9 of the quo regional regulation, it is known that the BPHTB tariff in Malang City is 5% (five percent). Based on these rates, the calculation of the imposition of BPHTB tax according to the provisions of Article 10 of the quo regional regulation is as follows: $(NJOP - NPOPTKP) \times 5\%$

However, based on the practice that the researchers encountered, in 2022 it is known that Bapenda has implemented a policy of adding 10% to determine the market value so that it complies with the provisions of Article 7 paragraph (2) of Regional Regulation No. 15 of 2010 so that the calculation of BPHTB tax imposition becomes as follows: $[(NJOP + 10\% \text{ of } NJOP) - NPOPTKP] \times 5\%$. This becomes a legal issue because an additional fee of 10% as market value cannot be found as a legal basis in the laws and regulations in the field of taxation. Referring to Malang City Regional Regulation Number 4 of 2018 concerning Amendments to Regional Regulation Number 15 of 2010 concerning Fees for the Acquisition of Land and Building Rights, there is also no legal provision that accommodates an additional fee of 10% to the market value. Such a

situation indicates that there is a gap between the rule of law (swollen) and the law in reality (sein). Whereas when referring to Achmad Ali's view, the law in reality (sein) must still be based on legal principles (swollen).

Based on the illustration of the BPHTB calculation as described above, it can be seen that the Regional Revenue Agency (Bapenda) of Malang City determines the market value as the basis for imposing BPHTB is the Selling Value of the Tax Object plus 10% (ten percent) of the Selling Value of the Tax Object. The use of market value as the basis for imposing BPHTB tends to create uncertainty.

Normatively, the law has anticipated the uncertainty over the market value in the provisions of Article 46 paragraph (3) of Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments. The determination of market value by Bapenda Malang City needs to be studied further whether it is contrary to laws and regulations in the field of taxation and whether it can be categorized as an act committed outside of its authority. Referring back to the Law on Financial Relations between the Central Government and Regional Governments, it is not found that there has been any granting of authority to regional governments to be able to determine market value.

The occurrence of BPHTB Inheritance collection in Malang City which was not carried out by statutory regulations indicates that there are problems with legal norms in the legal arrangements for BPHTB collection. The researcher highlighted the provisions of Article 7 paragraph (2) letter e of Malang City Regional Regulation Number 15 of 2010 concerning BPHTB, which states that "NPOP, as referred to in paragraph (1), in terms of e. inheritance is the market value;" is an obscure norm. This is because the quo regional regulation of Malang City does not further regulate the market value itself. There is no regulation regarding the definition of market value, who has the authority to determine market value and how the mechanism is determined. However, when referring to Malang Mayor Regulation Number 21 of 2021 concerning Procedures for Payment, Deposits and Places for Payment of Fees for Acquisition of Land and Building Rights, there is a regulation on the definition of market value in the provisions of Article 1 point 10 which is stated as follows:

"Market Value is an estimate of the amount of money on the valuation date, which can be obtained from a sale and purchase transaction or the result of exchanging an asset, between a buyer who is interested in buying and a seller who is interested in selling, in a bond-free transaction, the offer is properly made, and both parties each one knows acts carefully and without coercion"

Based on this definition, it can be seen that the determination of estimated market value is carried out by parties other than buyers and sellers. However, from this definition, it cannot be interpreted that the authority to determine market value is the Regional Revenue Agency. Focusing on BPHTB collection in Malang City, it is known that in 2023 there will be a very rapid increase in NJOP, namely 3 (three) times. This is to achieve the tax absorption

target of IDR 1 trillion. Remaining at the same source, it is also known that according to the Head of Bapenda Malang City, the increase in NJOP is adjusted to market prices. Continuing from this, it is necessary to regulate a comprehensive market value which is an urgent matter so that the collection of BPHTB is realized by fulfilling the value of certainty and justice and the Regional Government can maximize the absorption of its regional taxes.

Referring to previous research, according to Maghfira Syalendri Alqadri, "The handover of financial affairs from the Central Government is known as a tax assignment or regional tax authority." Referring to the Results of the Alignment of Academic Papers of the Draft Law on Tax Provisions and Facilities for Strengthening the Economy, it is known that tax assignments within the scope of fiscal autonomy include determining the tax base, determining tariffs and tax administration. There are limitations in carrying out tax assignments within the scope of setting tax rates, namely not exceeding the highest rates set by the central government in-laws. Therefore, whether the existence of a maximum tariff limit by the central government contained in the law can be used as a justification for local governments to have the authority to determine the market value in collecting BPHTB Inheritance.

Legal issues regarding the collection of BPHTB Inheritance in Malang City need to be investigated further to ensure legal certainty for BPHTB collection in Malang City. Therefore the researcher is interested in conducting a thesis research with the title "Determination of Market Value in Collection of Fees for Acquisition of Inherited Land and Building Types by the Regional Revenue Agency of Malang City". Through this research, the authors hope to be able to contribute to the drafters of laws and regulations in formulating laws and regulations regarding Regional Taxes, especially Land and Building Rights Acquisition Fees, the Regional Revenue Agency as the agency authorized to collect regional taxes, Notaries as tax law extensionists and for taxpayers as regional taxpayers.

THEORETICAL REVIEW

A. Legal Certainty Theory

The law essentially must be certain and fair. Certainly, as a guideline for conduct and fairness because the code of conduct must support an order that is considered reasonable. Only because it is fair and implemented with certainty the law can carry out its function. Legal certainty is a question that can only be answered normatively, not sociologically. According to S. J. Fockema Andreae in his dictionary, the word *Rechtszekerheid* has the meaning as a guarantee for community members that they must be treated well by the State based on existing legal rules and may not be arbitrary. Peter Mahmud Marzuki concluded about legal certainty, namely:

"The existence of general rules makes individuals aware of what actions may or may not be carried out, then in the form of legal security for individuals from government arbitrariness because of general rules, individuals can know what the state may impose or do on individuals. "

So the conclusion from the explanation above can be seen that certainty means there must be clarity, "does not cause multiple interpretations, does not

become a source of doubt, can be implemented, and applies firmly to society to be able to guarantee the rights and obligations of every citizen by the existing culture of society ". The theory of legal certainty is used as one of the analyzes to answer the problems studied so that the regulation regarding the determination of market value in inherited BPHTB can provide legal certainty for parties related to the activity of registering the e-BPHTB form.

B. Theory of Justice

According to Hans Kelsen's theory, justice is of course used in law, in terms of compatibility with the law. He considers something fair only to express the value of relative compatibility with a fair norm which is just another word for right. This theory is a little similar to Restorative Justice, which emphasizes restoration to its original state. Because basically, everything related to the law must be by the eyes of justice, this also includes matters relating to the implementation of tax collection which must be fair. Fair legislation, including imposing taxes in general and evenly and adjusted to the ability of each, cannot be found in any literature because the basis for such determination is based on the authority determined by the Bapenda of Malang City.

C. Authority Theory

The term authority or authority is equated with authority in English and Bevoegheid in Dutch. Authority in Bla'k's Law Dictionary is defined as Legal Power; a right to command or to act; the right and power of public officers to require obedience to their orders legally issued within the scope of their public duties. (authority or authority is the power of law, the right to govern or act; the right or power of a public official to comply with the rule of law within the scope of carrying out public obligations).

Based on this description, the writer can conclude that an idea based on that law is essentially for humans and juridically the meaning of authority here is the ability granted by statutory regulations which will give rise to legal consequences. The Regional Revenue Agency in practice has the function of administering tax collection in the BPHTB sector. In this study, the theory of authority is used as an effort to formulate the basis for determining the market value for BPHTB Inherited Types by the Regional Revenue Agency of Malang City.

D. Definition of Tax

There are several views regarding the definition of tax according to experts, as follows:

- a) According to Prof. Dr. H. Rochmat Soemitro, S.H. In his book entitled Tax and Development, 1974 this Indonesian legal expert said that taxes are people's contributions to the state treasury (transfer of wealth from the private sector to the government sector) by not receiving lead services (tegen prostate) which can be directly appointed and used to finance general expenses.

- b) According to Dr. Soeparman Soemohamijaya. In his dissertation entitled *Taxes Based on the Principles of Mutual Cooperation*, Padjadjaran University, Bandung in 1964, taxes are mandatory contributions in the form of money or goods collected by the authorities based on legal norms to cover the costs of producing collective goods and services in achieving general welfare.

E. Tax Function

It is known that there are three tax functions within the state, namely the budgetary function, the regular end function, and the social function.

- a. Function budget (budgeter). This function is to put as much money into the state treasury as possible for state expenditure purposes. In this case, taxes function more as a tool to attract funds from the public to be included in the state treasury, even for Indonesia, funds originating from taxes are considered to be excellent because more than 80% (eighty percent) of the government budget is obtained from taxes.
- b. Regulated function. The function of regulating means that taxes function as a means of driving society in economic facilities to improve people's welfare. Therefore, this regulatory function uses taxes to encourage and control community activities so that they are in line with the government's plans and wishes, even though sometimes from the revenue side (budgetary function) it is not profitable.
- c. social function. That is, individual property rights that are recognized and their utilization must not conflict with the interests of the community. In other words, the amount of tax collection must be adjusted to one's strength to be able to achieve the highest possible satisfaction after deducting (by absolute terms) for primary needs.

F. Definition of BPHTB

BPHTB is essentially an objective tax or material tax where the tax payable is based first on what is the new tax object, then pays attention to who is the new tax object, then pays attention to who is the tax subject. BPHTB is a type of indirect tax because the fulfillment of BPHTB tax obligations is not based on tax certificates as stipulated in Article 10 paragraph (1) Law Number 21 of 1997 concerning BPHTB as amended by Law Number 20 of 2000 concerning Amendments to the Law -Law No. 21 of 1997.

Taxpayers are subjects who are obliged to pay taxes on what has been determined by law. This is of course because the subject is a person who has the right to land and/or buildings, therefore those who obtain these rights must pay taxes. When the tax subject has a debt as determined by law, the tax subject must be carried out, and obtain a delayed right if the obligation has not been fulfilled.

Based on the provisions of Article 4 paragraph (1) of the BPHTB Law, it states that those who are subject to tax are individuals or entities that obtain rights to land and buildings, this shows that the tax is imposed on those who obtain rights. An entity or legal entity is an organization, association or other association whose establishment is based on an authentic deed and is treated by

law as a person or as a person, where the tax subject is subject to the obligation to pay taxes. While the subject of BPHTB according to Malang City Regional Regulation Number 16 of 2010, is an individual or entity that obtains Land and/or Building Rights.

G. Obligations and Sanctions of Land Deed Officials/Notaries and Agencies in charge of State and Land Auction Services in Fulfillment of Land and Building Rights Acquisition Fees

Land Deed Making Officials (PPAT) and Notaries are officials in charge of land services, it is hoped that as state officials, PPAT and/or Notaries will help achieve tax compliance by the government as a source of state revenue, one of which is BPHTB which is related to the process of transferring land rights, the above is further regulated and confirmed in Article 24 of the BPHTB Law which reads:

- a) The Land Deed Deed Official/Notary can only sign the deed of transfer of rights over land and/or buildings after the Taxpayer submits proof of tax payment.
- b) The head of the agency in charge of state auction services can only sign the minutes of the auction for the acquisition of land and/or building rights after the Taxpayer submits proof of tax payment.
- c) The head of the agency carrying out duties in the land sector can only register land rights or register the transfer of land rights after the taxpayer submits proof of tax payment.

H. Self Assessment System on Fees for Acquisition of Land and Building Rights

The tax collection system can be divided into three systems, apart from the Self Assessment System which is the focus of the description, there are two other systems, namely as follows:

- a) Official Assessment System Is a collection system that gives authority to the government (Diskus) to determine the amount of tax payable by taxpayers; And
- b) With Holding System Is a collection system that authorizes a third party (not the tax authorities and not the Taxpayer concerned) to determine the amount of tax owed by the Taxpayer.

Based on Article 5 of Government Regulation Number 55 of 2016 that the local tax collection system can be self-paid by the Taxpayer (Self-assessment), namely the type of Hotel Tax; Restaurant tax; Entertainment Tax; Parking Tax; Street Lighting Tax; Motor Vehicle Fuel Tax; Land and Building Rights Acquisition Fee and Cigarette Tax. Taxes stipulated by the Regional Head (Official assessment), namely for the type of Motor Vehicle Tax; Transfer Fee of Motorized Vehicles; Groundwater Tax; Advertising Tax and Rural and Urban Land and Building Tax (PBB-P2).

BPHTB is a tax imposed on the acquisition of land and building rights. In the explanatory memory of the BPHTB Law, it is stated that land as part of the earth is a gift from God Almighty and has a social function, as well as a very

profitable investment tool. In addition, the building also provides economic benefits for the owner. Therefore, for those who obtain land and building rights, it is only natural to hand over some of the economic value obtained to the state through taxes, in this case, the BPHTB.

The BPHTB collection system is a self-assessment in which the taxpayer is entrusted with calculating and paying the tax owed by himself using the Deposit Letter of Land and Building Rights Acquisition Fees and reports it without basing it on the issuance of a tax assessment letter. This is explicitly stated in the elucidation of Article 10 paragraph (1) of the BPHTB Law.

The self-assessment system for collecting BPHTB is also found in the mechanism for granting a reduction in BPHTB by Article 3 Paragraph (1) of the Decree of the Minister of Finance of the Republic of Indonesia Number 561/KMK.03/2004 concerning the Granting of Reductions in Fees for Acquisition of Land and Building Rights, namely that taxpayers can calculate the amount of deduction themselves BPHTB before making payments and paying the outstanding BPHTB in the amount calculated after deduction. In this system, the Taxpayer will fill out the SSB form (Letter of Deposit BPHTB) by himself/by proxy and calculate how much tax payable must be paid by the provisions and signed then the payable tax that has been poured in the SSB is paid to the State Treasury through the Post Office or BUMN Bank or place of payment appointed by the Minister of Finance. Reporting that the Taxpayer has made BPHTB payments by submitting the 3rd sheet of SSB to the local PBB Service Office after being validated by the Post Office/Bank where payment is appointed by the Minister of Finance.

METHODOLOGY

A. Type of Research

This research is a "normative juridical" type of research. According to Johny Ibrahim, normative research is "a scientific research procedure to find the truth based on the scientific logic of law from its normative side". This research was conducted by studying secondary legal materials or library materials, opinions of legal scholars and legal theory. This research is included in the type of normative juridical research because the legal issues in this research are resolved based on "a study of laws and regulations".

B. Research Approach

To answer the formulation of this research problem, two research approaches are used, namely "the statutory approach (statute approach) and the conceptual approach (conceptual approach)". The statutory approach is used to analyze primary legal materials so that it can be seen how the market value setting and BPHTB collection are contained in statutory regulations. The conceptual approach is used as a way to understand and formulate legal certainty of market value in collecting BPHTB.

C. Types and Sources of Legal Materials

To solve legal issues and provide an understanding of a problem, research sources are needed. In legal research, research sources come from legal

materials, in the form of primary legal materials, secondary legal materials and tertiary legal materials. Primary legal material is legal material obtained from statutory regulations and legal documents that have binding force. The primary legal materials used in this study are as follows:

1. Article 23 A of the 1945 Constitution of the Republic of Indonesia" (State Gazette Number 13 of 2006);
2. Chapter II Law Number 1 of 2022 concerning Financial Relations, (State Gazette of the Republic of Indonesia of 2022 Number 4, Supplement to the State Gazette of the Republic of Indonesia Number 6757);
3. Law Number 20 of 2000 concerning Amendments to Law Number 21 of 1997 concerning Fees for Acquisition of Land and Building Rights, (State Gazette of the Republic of Indonesia of 2000 Number 130);
4. Government Regulation Number 111 of 2000 concerning Imposition of Fees for Acquisition of Land and Building Rights due to Inheritance and Wills, (State Gazette of the Republic of Indonesia of 2000 Number 213);
5. Article 7 paragraph (2) letter e Regional Regulation of Malang City Number 15 of 2010 concerning Fees for Acquisition of Land and Building Rights, (Regional Gazette of Malang City of 2010 Number B Series 1, Supplement to Regional Gazette of Malang City Number 11);
6. Article 8 paragraph (1) and paragraph (5) Joint Regulation of the Minister of Finance and Minister of Home Affairs Number 186/PMK.07/2010 Number 53 of 2010 concerning Stages of Preparation for the Transfer of Land and Building Rights Acquisition Fees as Regional Taxes, (News Republic of Indonesia of 2010 Number 510);
7. Article 1 point 10 Mayor of Malang Regulation Number 21 of 2021 concerning Procedures for Payment, Deposits and Places for Payment of Fees for Acquisition of Land and Building Rights, (Malang City Regional Gazette of 2021, Number 21).

Secondary legal materials in this study include legal materials obtained through literature reviews from books, journals, and expert opinions. The secondary legal materials used in this study were sourced from the Legal Documents Library and interviews with related agencies. Tertiary legal materials are materials obtained from the Big Indonesian Dictionary, and so on as a support and explanation of primary and secondary legal materials.

D. Legal Material Tracing Technique

The technique used in tracing legal materials is carried out using a literature study. The researcher searched for the following way:

1. A search at the Malang City Library, Legal Documentation and Information Center (PDIH) of the Faculty of Law, University of Brawijaya and the Central Library of Brawijaya University was carried out by searching books and references related to the formulation of the problem;
2. Tracing at the Malang City Regional Revenue Agency;

3. Searching for legal materials via the Internet is done by searching for references using keywords that are relevant to the subject matter or problem formulation.

E. Legal Material Analysis Techniques

The techniques used to analyze legal material in this study are as follows:

a) *Grammatical interpretation*

The interpretation of the law is an explanation in terms of language. Grammatical Interpretation is a technique of interpreting words in the law by the rules of language and the rules of grammar law. This grammatical interpretation technique functions to find the meaning, intent, and purpose of words or terms used in a legal norm. The process of discovering the meaning, intent and purpose of these words is carried out by paying attention to whether the words that are the object of interpretation include verbs, nouns, adjectives or situations, pronouns, root words, invented words, repeated words, compound words or words. affixes with prefixes and suffixes, or prepositions and so on.

Through this research, grammatical interpretation techniques are used to understand and analyze legal norms in primary legal materials, namely for the provisions of Article 7 paragraph (2) letter e junto Article 7 paragraph (3) in conjunction with Article 7 paragraph (4) Malang City Regional Regulation Number 10 Year 2015 and the provisions of Article 1 number 10 of Malang Mayor Regulation Number 21 of 2021 concerning Procedures for Payment, Deposits and Places for Payment of Fees for Acquisition of Land and Building Rights.

b) *Systematic Interpretation*

Efforts to interpret the law "may not deviate or leave the statutory system". Systematic interpretation is "interpreting and studying the relationship between one article and another both contained in statutory regulations which are then linked to legal regulations or other laws with the entire existing legal system as a whole and intact to explain the meaning and purpose of of the rules in that article. Through this systematic interpretation, the writer uses it to analyze laws and regulations on primary legal materials.

RESULTS

Determination of Market Value in Collecting BPHTB Inheritance by Bapenda Malang City

Referring to the provisions of Article 2 paragraph (1) Malang Mayor Regulation Number 79 of 2019 Concerning Position, Organizational Structure, Duties and Functions and Work Procedures of the Regional Revenue Agency, it is regulated that the Regional Revenue Agency is a Regional Apparatus that carries out supporting functions for the implementation of government affairs in the field of finance, especially in the management of Regional Tax revenues and other assistance tasks, domiciled under the Mayor. As explained in the sub-

point of the previous discussion, based on the provisions of Article 4 paragraph (2) of Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments, it has been regulated that BPHTB is a regional tax that is collected by district/city governments. Furthermore, in the government of Malang City, the collection of BPHTB is carried out by the Regional Revenue Agency of Malang City (Bapenda Kota Malang).

It is known that the NJOP for Malang City has increased in 2023 after the last time the NJOP adjustment was made in 2015. With this increase in NJOP, it will have an impact on BPHTB collection because according to the provisions of Article 7 paragraph (3) Perda BPHTB Malang City, NJOP is used as NPOP in BPHTB collection if the market value is unknown or lower than the NJOP PBB in the year of acquisition. However, before the NJOP increase in the period 2021 to 2022, the BPHTB collection used an additional 10% (ten percent). Regarding these additions, the Head of the Malang City BPHTB Team stated as follows:

"The basis for a 10% increase in BPHTB collection due to inheritance is because the NJOP at that time, namely in 2021-2022, is far from the market price, while the provisions govern the inheritance of pop at market value."

Based on this statement, it is known that there is a gap between the NJOP and the rapid development of residential areas in Malang City. The discrepancy between the market value and the NJOP has an impact on the small amount of local tax revenue in the form of BPHTB Inheritance because the inclusion of market value in the SSPD is subjective. In connection with the gap between the NJOP and the market value, Bapenda added 10% (ten percent) to adjust the market value or transaction prices that occur in the community which is much higher than the NJOP amount.

Based on an interview with the Head of the BPHTB Bapenda Malang City Team, it is known that the collection of BPHTB from the transfer of rights due to inheritance is based on the NJOP contained in the PBB Geographic Information System (GIS PBB). However, if the NJOP of the tax object is known, the NJOP itself will be used as the basis for the imposition of Inheritance of BPHTB. Such collection of Inherited BPHTB when judging from the laws and regulations regarding BPHTB collection, is in line with the provisions of Article 7 paragraph (3) of the Malang City BPHTB Regional Regulation and thus, the interpretation of the market value by Bapenda is NJOP.

Based on the factual conditions regarding the NJOP in Malang City, it is known that the last adjustment to NJOP was made in 2015. There has been rapid development in the property sector in Malang City resulting in a gap between the NJOP value and market value. To overcome this price gap, Bapenda cooperates with Public Appraisal Services to make adjustments to the NJOP, the adjustments of which are based on 3 (three) things, namely as follows:

- a. Bapenda's transaction data starts from 2021 – 2022, this data is used to find out what percentage of the increase in the fair transaction price is submitted by taxpayers to Bapenda;
- b. Formulation of the value of land parcels belonging to the National Land Agency;
- c. Results of a market value survey conducted by the Public Appraisal Team. Through efforts to adjust the NJOP in Malang City, the goal to be achieved by Bapenda is to have a balance between NJOP and market value. Thus, later the NJOP value listed on the SPPT PBB will also be the market value.

The value determination mechanism used as the basis for tax imposition by Bapenda is carried out through the following matters:

- a. In 2023 the determination of the basis for the imposition of BPHTB will be carried out by Public Appraisal Services;
- b. Before 2023, the basis for imposing BPHTB was based on transaction prices, prices used by property agents and prices obtained from simple checks.

The determination of the market value by Bapenda is based on 4 (four) factors that differentiate the market value of one area from another, as follows:

- a. Location;
- b. Economic value;
- c. Area (Residential);
- d. The dynamics of transactions or acquisition of land rights from a legal event.

The location factor is the condition of the road that crosses the area, whether paved or still macadam. In addition, the location factor is also determined by the vehicles that can access the area, whether it can be passed by 4 (four) wheeled vehicles or only 2 (two) wheeled vehicles. Then judging from the economic value factor is the effect of the distance of the area from the center of education and the center of the economy. The area factor in question is the residential area which has now spread to the suburbs (sub-urban). Meanwhile, the dynamics of transactions are based on areas with high demand, such as areas suitable for coffee shops or restaurants.

Responding to the incompleteness of legal arrangements regarding market value in the Malang City BPHTB Perda and Malang City BPHTB Perwal, as an official Bapenda wants market values to be contained in detail and published as is the case with the NJOP. However, Bapenda understands that from a legal construction point of view, market value cannot be accommodated definitively or in detail at the level of statutory regulations. Market value can be accommodated through a Decree based on the NJOP minus 15% (NJOP-15% of NJOP). Thus, according to Bapenda, this effort can provide guarantees of legal certainty regarding the amount of market value.

Referring to the general explanation of Law Number 20 of 2000 concerning Amendments to Law Number 21 of 1997 concerning Fees for Acquisition of Land Rights (BPHTB Law), it is explained that in the imposition of BPHTB must pay attention to the principles of justice, legal certainty, legality,

and simplicity supported by a tax administration system that makes it easier for taxpayers to fulfill their tax obligations. In addition to paying attention to the legal principles mentioned in the general explanation, when there are problems in legal norms, the solution is to use legal theory. According to Oeripan Notohamidjojo, he stated that legal theory is a general theory regarding positive law using a juristic method. Furthermore, the juristic method is a way of looking at law as a normative determination of responsibility which can be described by a general scheme of the normative relationship between conditions and the consequences of right and wrong behavior. To find out this normative relationship, the researchers used the theory of justice and the theory of authority to study the collection of BPHTB for the transfer of rights due to inheritance in Malang City by Bapenda.

According to the Big Indonesian Dictionary, justice is taken from the basic word "fair" which means equal, impartial, impartial, fair, proper, and not arbitrary. Focusing on the words proper and not arbitrary are words that are relevant in tax collection. Referring to the theory of justice according to Hans Kelsen, according to him justice is certainly used in law based on compatibility with the law. Hans Kelsen considers that something that just only expresses the value of relative compatibility with a norm is just another word for right. Judging from the compatibility of actions with what is regulated by the law, the BPHTB collection on the transfer of rights due to inheritance by Bapenda in Malang City has not been able to realize the values of justice. This is based on the researcher's that there is a discrepancy in the application of legal norms by Bapenda to the provisions of Article 7 paragraph (2) letter e. The BPHTB Law in conjunction with PP BPHTB in conjunction with the Malang City BPHTB Regional Regulation stipulates that the basis for imposing inherited BPHTB objects is to use market value. Even though the Malang City BPHTB Regional Regulation junto Malang City BPHTB Perwal does not comprehensively regulate market value, the interpretation of market value must still be based on the provisions of Article 1 point 10 Malang City BPHTB Perwal which stipulates that market value is an estimate of the amount of money on the valuation date. The estimated amount of money is of course different from the sale value of the tax object. Therefore, fairness in collecting BPHTB for the transfer of rights due to inheritance by Bapenda Malang City can be achieved if Bapenda applies the NPOP BPHTB inheritance by the provisions of Article 7 paragraph (2) letter e junto Article 1 number 10 Perwal BPHTB Malang City.

Collection of BPHTB for Transfer of Rights Due to Inheritance by Bapenda

Malang City which is not based on market value can be studied with authority theory. According to Ridwan HR, there are 3 (three) reasons for obtaining authority, one of which is attribution. Authority based on attribution is the granting of authority by the legislators themselves to an organ of government. This means that the authority is attached to the government organ which is aimed at the position and authority given to the government organ. Judging from the provisions of Article 2 paragraph (1) Mayor of Malang

Regulation Number 79 of 2019 Concerning Position, Organizational Structure, Duties and Functions and Work Procedures of the Regional Revenue Agency, it is stated as follows:

"The Regional Revenue Agency is a Regional Apparatus that carries out supporting functions for the implementation of government affairs in the financial sector, especially in managing Regional Tax revenues and other assistance tasks, having a position under the Mayor."

Based on the position of Bapenda as stipulated in the a quo provision, Bapenda has the authority to manage regional tax revenues including the preparation and implementation of verification and processing of BPHTB. The application of the basic tax imposition that is not by the provisions of laws and regulations causes the BPHTB verification action by the Malang City Bapenda to be declared as an action that is not based on normative law. The BPHTB Law in conjunction with PP BPHTB in conjunction with the Malang City BPHTB Regional Regulation has explicitly stipulated that the basis for imposing BPHTB on the transfer of rights is because inheritance uses market value. Therefore, it is appropriate to immediately formulate the amount of market value by Bapenda in collaboration with the Office of Public Appraisal Services, so that the collection of inheritance BPHTB can be carried out by how the laws and regulations regulate it.

Legal Certainty of Inheritance BPHTB Collection by Bapenda Malang City

Certainty is a matter (statement) that is certain, conditions or provisions. The law essentially must be certain and fair. Certainly, as a guideline for conduct and fairness because the code of conduct must support an order that is considered reasonable. Only because it is fair and implemented with certainty the law can carry out its function. Legal certainty is a question that can only be answered normatively, not sociologically.

Associated with the legal issues in this thesis problem, legal uncertainty in the collection of BPHTB by Bapenda in Malang City can be seen in the legal arrangements regarding the basis for the acquisition of tax object values (NPOP). BPHTB collection due to the transfer of rights due to inheritance, according to the provisions of Article 7 paragraph (2) letter e, the NPOP is the market value. Referring to the BPHTB Law in conjunction with the Malang City BPHTB Regional Regulation in conjunction with the Malang City Mayoral Regulation Number 21 of 2021, there is no clear legal provision that regulates market value. Based on the existing legal construction in BPHTB collection, the market value becomes multi-interpreted because it is not known who has the authority to determine the market value, the period for the market value and the mechanism for determining it. As a result, BPHTB taxpayers interpret the market value as the market price of a tax object based on information from the surrounding community. The existence of multiple interpretations causes the magnitude of the market value to be uncertain because the elements used to determine the market value used by the community are different from Bapenda.

In addition, based on the results of interviews it is known that Bapenda interprets market value as the Selling Value of Taxable Objects. Therefore, any inclusion of a market value on the SSPD BPHTB that is not by the NJOP is asked to correct the nominal. However, in 2021-2022 the nominal market value improvement will not be based on the NJOP, but on a special formula made by Bapenda, namely NJOP + 10% of the NJOP.

The existence of legal uncertainty regarding the regulation of market values that are determined as NPOP for the collection of inherited BPHTB violates the principles of BPHTB collection as contained in the elucidation of the BPHTB Law which includes the following:

- a. the principles of justice;
- b. legal certainty;
- c. legality; And
- d. simplicity and supported by a tax administration system that makes it easier for taxpayers to fulfill their tax obligations.

The meaning of justice in this thesis is based on Abdul Ghofur Anshori's understanding of the theory of justice proposed by Hans Kelsen. Even though Hans Kelsen stated that law is something different from justice, justice is still related to law, namely in terms of compatibility with laws. Something fair is to express the value of relative compatibility with a norm, meaning that the word "fair" is considered as another word for "right". Based on this understanding, related to the collection of BPHTB, it appears that the collection of BPHTB must comply with the principle of justice, which means that tax collection must be by the legal norms that govern it. The link between the principle of justice and the collection of BPHTB is also the same as the relationship between the principle of legal certainty and the collection of BPHTB. This means that to achieve justice in collecting BPHTB, legal norms are needed with certainty so that the process of matching the application of the law with how the legal norms are written or promulgated is not constrained by multiple interpretations. The inclusion of the legality principle in the BPHTB collection is also understood by researchers as one of the things that support the achievement of justice. In this case, fair is defined as "proper" and "not arbitrary", so legitimacy is needed for policies, authorities and decisions in collecting these taxes. While the principle of simplicity is understood by researchers as the process and method of paying taxes from the public to the state is not complicated, clear and straightforward. This simplicity is something that taxpayers should get because they have spent their wealth on the state.

The non-fulfillment of the principles of justice, legal certainty and legality in a legal norm triggers the birth of the application of law that is not desired by law. This situation makes it difficult to achieve legal protection for the community because the legal rules are not clear. Referring to S. J. Fockema Andreae's thoughts regarding *Rechtszekerheid* which is also interpreted as legal certainty, he interprets legal certainty as a guarantee for community members. That is, society must be treated well by the state based on existing legal rules and must not be arbitrary. The legitimacy of this authority is important in tax collection. This relates to the purpose of a country being

formed itself. The state was established to protect the rights of the people or citizens, so the collection of taxes by the state must be based on laws, namely legal products determined by the people through legislators. Within the scope of tax collection, legal certainty is related to authority. Referring to Peter Mahmud Marzuki's statement, he stated the following:

"The existence of general rules makes individuals aware of what actions may or may not be carried out, then in the form of legal security for individuals from government arbitrariness because of general rules, individuals can know what the state may impose or do on individuals. "

Based on this thought, the researcher understands that legal certainty is a form of legal protection for the public from arbitrary acts. Arbitrary action is a form of abuse of authority. When narrowed down, the form of abuse of authority is divided into two parts, namely exceeding authority (*detournement de pouvoir*) and arbitrary (*abuse de droit*). Arbitrary acts are the use of authority in the form of rights and powers, exceeding what should be done and resulting in actions and decisions made contrary to predetermined provisions. Based on the legal ambiguity regarding the market value and reviewing how Bapenda applies the law, it is necessary to study further how Bapenda's authority is in determining market value. This is to find out whether Bapenda's actions were included in acts of exceeding authority or were they arbitrary.

The term authority or authority can be equated with authority in English and *bevoegheid* in Dutch. Authority in the Black's Law Dictionary is defined as Legal Power; a right to command or to act; the right and power of public officers to require obedience to their orders legally issued within the scope of their public duties. (authority or authority is the power of law, the right to govern or act; the right or power of a public official to comply with the rule of law within the scope of carrying out public obligations). When referring to KBBI, it is known that the word authority which comes from the word authority is interpreted as a matter of authority and the rights and powers that are possessed to do something. With the enactment of Law Number 1 of 2022 concerning Financial Relations between the Central and Regional Governments, it indicates that there is a tax assignment, namely the transfer of financial affairs from the Central Government to the Regional Governments. Through this law, it is known to regulate several important points which include:

- a. Regional levies are only in the form of regional taxes and regional levies of which the types have been determined in a limited (close list);
- b. If a region is going to collect regional taxes or regional levies, it must first be stated in a regional regulation;
- c. In regulations in the field of regional levies, especially in Article 93 paragraph (3), it is stipulated that a review of levies rates which are subsequently determined is sufficient by pouring them into a Regional Head Regulation.

Based on an analysis of Law Number 1 of 2022 concerning Financial Relations between the Central and Regional Governments (Financial Relations Law) regarding the regulation of BPHTB, it is still regulated in the same way as the BPHTB Law regulates the collection of BPHTB. Regional government

authorities regulated in the Financial Relations Law related to BPHTB can be found in Article 47. Through Article 47 of the Financial Relations Law, it is known that local governments are given the authority to set BPHTB rates through regional regulations with the highest rate limit being 5%. It is further noted that the law does not authorize regional governments to determine or estimate market value. Therefore, based on the Law on Financial Relations, Bapenda does not have the authority to determine market value. The authority to determine market value is also not found in the BPHTB Law, Malang City BPHTB Regional Regulation, or Malang City Mayor Regulation.

Associated with tax assignments within the scope of fiscal autonomy, it is known to include determining the tax base, setting tariffs and tax administration. Understanding more about the tax base, tariffs and tax administration, in the opinion of researchers, the regional government's tax authority is not related to the determination of market value. The market value in the collection of inherited BPHTB is the Tax Object Acquisition Value (NPOP). According to Article 10 of the Malang City BPHTB Regional Regulation, NPOP is the basis for tax imposition. Therefore, when discussing the authority of local governments in determining tax rates it is not related to the determination of market value which is the basis for tax imposition.

Referring to Law Number 12 of 2011 concerning the Formation of Legislations (UU PU), it has been regulated in Article 5 that the formation of laws and regulations must be based on the following principles, namely:

- a. clarity of purpose;
- b. proper forming institutions or officials;
- c. suitability between types, hierarchies, and payload materials;
- d. can be implemented;
- e. usability and effectiveness;
- f. clarity of formulation; And
- g. openness.

There is legal uncertainty regarding market value in the laws and regulations regarding BPHTB, so the formulation of market value does not meet the principle of clarity of formulation. Based on the explanation regarding the clarity of the formulation, it is known that:

"What is meant by the principle of "clarity of formulation" is that each Legislation must meet the technical requirements for the preparation of Legislation, systematics and choice of words or terminology, as well as clear and easy-to-understand legal language, so as not to give rise to various kinds of interpretation in its implementation."

Achieving the clarity of this formulation is not only focused on choosing words or phrases in the contents of the article which are clear and not multi-interpreted. But it also pays attention to the synchronization of the formulation between articles in the law and between related laws. In the case of this thesis, the clarity of the formulation is not achieved because the formulation of norms regarding market value is incomplete regarding who has the authority to determine and the validity period of market value estimates. In addition, the formulation of norms in Article 7 paragraph (3) of the Malang City BPHTB

Regional Regulation which uses the term NJOP (not in sync with the term used in Article 6 paragraph (3) of the BPHTB Law) also causes the formulation of market value in Article 7 paragraph (3) of the Regional Regulation. BPHTB Malang City is not clear.

In connection with the fulfillment of the principle of clarity of the formulation in Article 5 of the PU Law on the Malang City BPHTB Regional Regulation, it is necessary to change the formulation in Article 7 paragraph (3) of the Malang City BPHTB Regional Regulation. According to Endang Sumiarni, synchronization is by looking at the conformity or alignment of statutory regulations vertically based on positive law systematization, namely between higher statutes and lower statutory regulations. The change in the formulation is synchronized with the formulation contained in Article 6 paragraph (3) of the BPHTB Law so that the formulation in the BPHTB Regional Regulation becomes as follows:

"If the NPOP as referred to in paragraph (2) letter a, through letter n, is unknown or lower than the NJOP used in the imposition of Land and Building Tax in the year the acquisition occurs, the basis for imposition used is the NJOP of Land and Building Tax."

Based on the change in the formulation, it will also be in line with the formulation of Article 46 paragraph (3) of the Financial Relations Law which is stated as follows:

"If the acquisition value of the tax object as referred to in paragraph (2) is unknown or lower than the NJOP used in the imposition of land and building tax in the year the acquisition occurs, the basis for the imposition of BPHTB used is the NJOP used in the imposition of land and building tax in the year of acquisition."

Meanwhile, regarding the incomplete formulation of norms regarding market value as the basis for the imposition of BPHTB Inheritance, the efforts to resolve it are based on the nature of the market value itself. In essence, the market value is dynamic, always following the development of the real price of an asset. In addition, many factors influence the creation of real prices, such as demand factors and commercial factors. Because market values tend to change frequently, the total estimated market value cannot be stated in the form of legal formulations in statutory regulations. Therefore, regarding efforts to complete market value arrangements in the Malang City BPHTB Regional Regulation, the focus is on granting authority to regional heads to determine market value assisted by an Appraisal Team or Appraisal Agency.

With the granting of this authority, market value estimates can be stated as policies and stated in policy regulations. There are key concepts regarding the policy as follows:

- a. Authorized government action, meaning that public policy is an authorized government action because the action is made and implemented by a government agency that has the legal authority to do so.

- b. A reaction to real-world needs and problems, because public policies are made to respond to concrete problems or needs that develop in society and there are no legal rules in laws and regulations.
- c. Actions that are centered on goals, meaning that public policies are made to achieve certain goals in the interests of many people. In this case, the market value as a public policy is directed at increasing local revenue from the BPHTB Inheritance sector.
- d. Justifications made by a person or several actors, meaning that public policy contains a statement or justification for the things that have been formulated. Associated with market value, market value as a public policy is the justification of regional heads for the estimation of real property prices within their territory.

Regarding policies regarding market values, it is necessary to put them in a formal form in the form of policy regulations to guarantee certainty values. In addition, the policy regulations regarding market value carry out the functions of the policy regulations themselves, which include the following:

- a. Regulatory facilities that complement, perfect, and fill in the deficiencies that exist in laws and regulations;
- b. Means of regulation for the vacuum of laws and regulations;
- c. Regulatory facilities for interests that have not been properly, properly and fairly accommodated in statutory regulations;
- d. Means of regulation to overcome the condition of laws and regulations that are out of date;
- e. Function Appropriate and efficient for the smooth implementation of development that is fast changing or requires renewal by the situation and conditions faced.

Thus, based on these policy regulations, the market value will better reflect the values of legal certainty. The form of this policy regulation can be in the form of circulars and/or announcements.

CONCLUSIONS AND RECOMMENDATIONS

Based on a study of the mechanism for determining market value by Bapenda Malang City and the legal certainty of collecting Land and/or Building Rights Acquisition Fees due to Inheritance by Bapenda Malang City, the following conclusions can be drawn:

- 1) The mechanism for determining the market value by Bapenda Malang City regarding the collection of BPHTB due to inheritance is by adjusting the NJOP in Malang City which is based on 3 (three) things which include transaction data belonging to Bapenda starting from 2021-2022, Formulation of the Value of Land Sector belonging to the Agency National Land and Market value survey results conducted by the Public Appraisal Team. The legal rules regarding market value in the Perda BPHTB Malang City do not have legal certainty because there are terms that are not in sync with those used in the BPHTB Law. The use of the term NJOP in Article 7 paragraph (3) of the Malang City BPHTB Regional Regulation has led to a basic interpretation of the imposition of BPHTB because

inheritance is NJOP while the BPHTB Law requires the basis of tax imposition to be market value.

- 2) The collection of BPHTB Inheritance by Bapenda Malang City does not yet reflect the value of legal certainty because the legal rules regarding the market value that are used as guidelines by Bapenda also do not have legal certainty. Efforts that can be made to overcome uncertainty in the collection of Inheritance of BPHTB is to formulate the regional head's authority in the Malang City BPHTB Perda to determine market value assisted by an Appraisal Team and/or Appraisal Agency. Furthermore, the results of estimated market values need to be realized in the form of formal policy regulations (*beleidsregels*) which can be in the form of circulars or announcements to guarantee certain values at market values.

Based on the results of the study of legal issues in this thesis, the advice that can be given to regulators in the Malang City Government is the need for synchronization between Article 7 paragraph (3) BPTHB Regional Regulation Malang City and Article 6 paragraph (3) BPHTB Law the output of the results of this research can be used as a model or a good precedent for local governments in other cities or regencies, especially in the field of collecting land and building rights acquisition fees.

ADVANCED RESEARCH

Theoretical benefits, namely it is hoped that this research will contribute to the development of legal science, especially in the field of notary law and tax law regarding the determination of market value in the collection of BPHTB Inheritance. However, this research still has limitations, it is necessary to carry out further research related to the topic.

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