

Tax on Land and Building Acquisition (BPHTB) Imposition Following Binding Sale and Purchase Agreements Under Law No. 1 of 2022

Original Article

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Abstract

Local taxes are a crucial instrument for achieving regional independence by optimizing local revenue, notably through the Tax on Acquisition of Land and Building Rights (BPHTB). BPHTB is imposed on every acquisition of such rights and must be regulated by law as mandated by Article 23A of the 1945 Constitution. Recent tax reform through fiscal decentralization has altered the regulation of when BPHTB is payable. Specifically, Article 49 letter a of Law Number 1 of 2022 stipulates that BPHTB is payable on the date of signing the Sale and Purchase Agreement (PPJB). This provision is reinforced by Government Regulation Number 35 of 2023 and was recently constitutionally tested; the Constitutional Court Decision Number 117/PUU-XXI/2023 rejected the judicial review request concerning this norm. This study analyzes the legal implications of designating the PPJB as the basis for determining BPHTB liability and the legal protection available for buyers. The research method used is normative legal with a legislative and conceptual approach. The findings indicate that determining the PPJB as the basis for imposing BPHTB potentially creates legal uncertainty and disadvantages for buyers. This is because, legally, the acquisition of rights to land and/or buildings only occurs after the signing of the Deed of Sale and Purchase (AJB) before a Land Deed Official (PPAT) and its subsequent registration, in accordance with prevailing laws and regulations. Consequently, harmonization of norms is necessary to ensure legal certainty and fairness for taxpayers.

Keywords: Decentralization, Fiscal Law, Land Rights, Notary, Tax Liability.

1. Introduction

In order to realize an independent region, each region regulates how to manage its area properly. One key aspect of this is independently regulating tax collection, which is managed by each region. Tax revenue from taxpayers will be returned to the taxpayers themselves in the form of regional development funds. However, tax payments are not directly felt by the payers themselves but by the wider community who ultimately benefit from public services and infrastructure funded by tax collection. According to Rahmat Soemitro, the collection of taxes paid to the state by taxpayers for the benefit of the state itself is an obligation arising from the law. This obligation requires citizens to contribute a portion of their income to the state (Soemitro & Sugiharti, 2010). Taxes collected must be based on legislation to ensure legal certainty for both taxpayers and the government. This principle is enshrined in Article 23A of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), which mandates that “Taxes and other compulsory levies for state purposes shall be regulated by law.”



A key component of state revenue is the Tax on the Transfer of Rights to Land and Buildings (hereinafter "BPHTB"). This levy is exacted from taxpayers executing transactions that transfer such rights. The legal consequence of this transfer is the creation of reciprocal rights and obligations, binding equally upon the transferor and the recipient (Kusumawati, 2005). Consequently, the government has stipulated that every individual or entity acquiring rights to land and buildings is required to pay BPHTB.

Fiscal decentralization policies, intended to bolster local government revenue, have prompted legislative amendments aimed at curtailing prior tax avoidance strategies. A pivotal reform concerns the determination of the chargeable event for the BPHTB in property transactions. Under the newly enacted provisions of Law Number 1 of 2022, specifically Article 49 letter a, the liability for the tax is triggered upon the date the sale and purchase agreement is made and signed. This statutory language represents a deliberate departure from antecedent legal frameworks, most notably by anchoring the taxable moment to the execution of the Binding Sale and Purchase Agreement (PPJB), thereby closing a previous loophole.

Government Regulation Number 35 of 2023 concerning General Provisions on Regional Taxes and Levies (hereinafter "Government Regulation 35/2023") provides operational clarity regarding the application of this rule. It establishes that for transactions lacking a binding preliminary agreement, the liability for BPHTB arises at the moment the final sale and purchase deed is executed. Thus, the determinative event for the accrual of the tax is, in the first instance, the execution of the PPJB; should that instrument be absent, the execution of the AJB serves as the triggering mechanism.

Subsequent to its enactment, Law Number 1 of 2022 became the subject of constitutional scrutiny in Decision Number 117/PUU-XXI/2023. Among the principal grounds for the petition was a direct challenge to the wording of Article 49 letter a. The petitioners specifically contested the clause 'on the date of the creation and signing of the sale and purchase agreement for the sale and purchase,' arguing for its incompatibility with higher legal norms. The Constitutional Court rejected all petitions related to this material review. The legal considerations, stated in Point 3.15, broadly concluded that the provision aims to close the loophole for tax avoidance by conducting multiple sales and purchase or transfer transactions and help reduce land and/or building sales and purchase transactions that often harm buyers.

Despite the Court's reasoning, the provisions in Article 49 letter a of Law Number 1 of 2022 risk causing losses, particularly to buyers. This is because BPHTB should logically be levied only when the acquisition of rights has actually taken place. Using the PPJB as the basis for imposing BPHTB has become a subject of debate among many parties, given the fundamentally different legal consequences compared to the AJB. The statutory framework, specifically Article 37 paragraph (1) of the land registration regulations, prescribes that the transfer of title to land must be evidenced by a Deed of Sale and Purchase (AJB) authenticated before a Land Deed Official (PPAT). This deed serves as the indispensable prerequisite for the registration of the transfer and the eventual issuance of a certificate of title. In contradistinction, a Binding Sale and Purchase Agreement (PPJB) is merely an executory contract and does not, in itself, operate to transfer ownership. The legal position of a buyer under a PPJB is therefore fundamentally distinct from, and not commensurate with, that of a buyer who has secured an AJB from a PPAT.

The imposition of BPHTB upon the execution and signing of the PPJB, as a result of Law Number 1 of 2022 and its implementing regulations, has created legal uncertainty and normative controversy. Legally, the PPJB is a preliminary agreement that has not yet resulted in a formal transfer of rights. This raises fundamental questions about the appropriateness of basing BPHTB liability on an instrument that does not signify the acquisition of rights under

Indonesian land and agrarian law. Consequently, many researchers argue that using the PPJB as the basis for BPHTB is inappropriate. They contend it may potentially trigger double taxation and is contrary to the principles of fairness and legal certainty inherent in both the taxation system and the legal framework for transferring land and building rights (Aminuddin et al., 2025).

The shift in the BPHTB payment deadline from the AJB to the PPJB based on PP 35/2023 allows taxpayers to be taxed even though the AJB which is the valid proof of transfer has not been made. This creates an inconsistency with the fundamental principle of rights transfer (Prayantama et al., 2025). Karelina et al. (2025) assesses that although PPJB is often positioned as the basis for taxation in the regions, this still raises issues of legal certainty because PPJB has not replaced the function of AJB as the basis for acquiring rights (Kurniasari & Badriyah, 2022). Utami (2024) stating that the application of BPHTB at the PPJB stage can cause significant economic burdens and perceptions of unfairness among taxpayers in various regions. Hertanto et al. (2025) also emphasize that, conceptually, the PPJB is not an official instrument evidencing the transfer of rights. Therefore, they argue that BPHTB should be applied when the AJB is drawn up, not when the PPJB is signed. This scholarly disagreement highlights the need for further study regarding the harmonization of norms between the HKPD Law, PP 35/2023, and the basic principles of agrarian law. These are critical issues in the ongoing effort to ensure legal certainty and fiscal justice.

Based on this background, it is clear that the imposition of BPHTB on the PPJB continues to raise significant legal issues, especially after the enactment of Law Number 1 of 2022. The lack of clarity regarding the time of tax liability, compliance with fundamental tax collection principles, and the determination of the precise moment of land rights transfer has led to differing interpretations. These ambiguities have serious implications for legal certainty and justice for the parties involved. Therefore, this study critically examines whether the imposition of BPHTB at the PPJB stage aligns with principles of tax collection and land rights transfer in Indonesian law.

2. Literature Review

2.1. The Concept and Legal Basis of BPHTB

The Land and Building Acquisition Tax (BPHTB) is a tax levied on the acquisition of rights to land and/or buildings. In the Regional Revenue Law (UU HKPD), BPHTB is explicitly defined as a type of local tax collected on the basis of the acquisition of rights to land or buildings by individuals or entities acquiring such rights. BPHTB covers various forms of acquisition, such as sale and purchase, exchange, gift, testamentary gift, inheritance, transfer to a legal entity, and others as stipulated in Article 44 of Law No. 1 of 2022 on Financial Relations Between the Central Government and Regional Governments.

Within the framework of tax collection, BPHTB is an important fiscal instrument because its object is clear and has economic value, namely the acquisition value of the taxable object (NPOP), which in the case of sale and purchase is based on the transaction price (Article 46). The basis of assessment, the taxable persons, and the rates of BPHTB are regulated to create legal certainty and ensure that local government revenue is proportional to the value of property transactions.

2.2. Law No. 1 of 2022 on Financial Relations between the Central Government and Local Governments

Law No. 1 of 2022 governs the financial relations between the central government and local governments, including provisions regarding the BPHTB, with the aim of providing legal certainty, harmonising fiscal policies, and ensuring the equitable distribution of local government revenue. This Law clarifies the objects, subjects, basis of assessment, rates, and the time at which the BPHTB becomes payable.

- 1) The scope of BPHTB covers the acquisition of rights to land and/or buildings through sale and purchase, exchange, gift, inheritance, auction, a court decision having the force of law, the merger of legal entities, and other forms of acquisition in accordance with Article 44 of Law No. 1 of 2022.
- 2) The subject of BPHTB is an individual or legal entity acquiring rights to land or buildings (Article 45).
- 3) The basis for assessment is the acquisition value of the taxable object (NPOP), with a maximum rate of 5% of the NPOP after deduction of the NPOPTKP in accordance with Regional Regulations (Articles 46–47).

One of the significant changes in the HKPD Law is the provision regarding when BPHTB becomes due. Article 49 stipulates that for sale and purchase transactions, BPHTB becomes due on the date the Sale and Purchase Agreement (PPJB) is drawn up and signed, rather than waiting for the formal sale and purchase deed to be drawn up at the Public Notary (PPAT). This provision applies the principle of economic substance, so that transactions which actually give rise to the rights and obligations of the parties form the basis for tax collection. This aims to prevent tax avoidance resulting from delays in the execution of formal deeds and to enhance administrative certainty and local government revenue. Consequently, Law No. 1 of 2022 provides legal certainty regarding the regulation of BPHTB on binding sale agreements, ensuring that the point at which the tax becomes due is clearer and aligns with the economic reality of the transaction.

3. Methods

This research employs a doctrinal legal approach, examining the relevant legal norms in the applicable statutes (Marzuki, 2017). The study focuses on two core issues which are the legal position of the Binding Sale and Purchase Agreement (PPJB) as a basis for the imposition of the Land and Building Acquisition Tax (BPHTB) in land and building rights transfers, and the legal protection available to taxpayers against losses from the cancellation of such agreements.

This study adopts a descriptive-analytical approach. In its descriptive capacity, the research seeks to present a methodical and meticulous portrayal of the juridical facts and administrative practices surrounding the application of BPHTB to PPJB transactions (Rahayu, 2010). The analytical method was used to examine the applicable legal provisions and then relate them to the issues under review in order to obtain a comprehensive and argumentative understanding.

The research utilized secondary data obtained via documentary and library-based research methods. This data consists of legislative texts, legal commentaries, academic articles, judicial rulings, and official records relevant to the taxation of land and building rights transfers and binding sale agreements. The legal sources are categorized into primary and secondary legal materials. Primary legal materials include foundational instruments such as

the *Burgerlijk Wetboek voor Indonesië* (BW) and the 1945 Constitution, alongside specific statutes including Law No. 5 of 1960 on Agrarian Principles, Law No. 20 of 2000 amending the BPHTB Law, and Law No. 1 of 2022 on Central-Regional Financial Relations. Implementing regulations examined include Government Regulation No. 24 of 1997 on Land Registration as amended by Government Regulation No. 18 of 2021, and Government Regulation No. 35 of 2023 on Regional Tax Provisions. Secondary legal materials comprise treatises and academic literature on land law, BPHTB, and PPJB, as well as pertinent articles and journals that contribute to the analytical depth of the study.

Data and legal materials were collected through literature studies by searching various sources in libraries, scientific journals, e-books, and relevant internet media. The data obtained was then analyzed qualitatively using a descriptive analytical approach, namely by interpreting and reviewing the applicable legal norms to gain an in-depth understanding of the application of land law, particularly in relation to BPHTB and PPJB. Conclusions were drawn using the deductive method, which starts from the general provisions in the legislation and then applies them to specific issues regarding the imposition of BPHTB on PPJB after the enactment of Regional Regulation No. 7 of 2023.

It is essential to include comprehensive details to enable the replication of the work. When a reagent is utilized in the study, it is important to specify the supplier's information when applicable. Any methods that have been previously published should be cited appropriately, with only pertinent modifications being outlined. In the context of epidemiological studies, it is crucial to provide information regarding the setting, timing, and location of the research.

4. Results and Discussion

4.1. Imposition of Land and Building Acquisition Duty on Sale and Purchase Agreements Based on the Principle of Tax Collection

The Tax on the Acquisition of Land and Building Rights (BPHTB) is a levy on the juridical act or event that results in an individual or entity obtaining title to land and/or buildings. It is classified as an objective tax, meaning the obligation to pay is predicated upon the identification of the taxable object; the taxable subject is determined subsequently, after the object's taxability has been established (Siahaan, 2003).

The legal basis for BPHTB collection is codified in a series of legislative and regulatory instruments. The primary legal materials consist of: (i) Law Number 20 of 2000 amending Law Number 21 of 1997 concerning Tax on Acquisition of Land and Building Rights (hereinafter "the BPHTB Law"); (ii) Law Number 28 of 2009 concerning Regional Taxes and Regional Levies; and (iii) Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments. The implementing regulations include: (a) Government Regulation Number 111 of 2000 on BPHTB Imposition for Inheritance and Bequests; (b) Government Regulation Number 112 of 2000 on BPHTB Imposition for the Granting of Management Rights; (c) Government Regulation Number 113 of 2000 on the Determination of the Non-Taxable Threshold Value for BPHTB Objects; and (d) Government Regulation Number 35 of 2023 on General Provisions for Regional Taxes and Levies.

Article 2 paragraph (2) of the BPHTB Law establishes that the object of the tax is the acquisition of rights to land and/or buildings. A detailed exposition of what constitutes "acquisition" is found in Article 44 paragraph (2), which divides such acquisitions into two broad categories. The first category comprises acquisitions effectuated through the transfer of existing rights. This includes a range of juridical acts and events, such as sale and purchase,

exchange, gift, bequest, inheritance, contributions to corporate entities, the separation of rights leading to a transfer, the designation of a buyer in an auction, the execution of a final and binding court decision, as well as business mergers, consolidations, and expansions. The second category concerns the granting of new rights, which may arise either as a consequence of a waiver of rights or through other circumstances not involving such a waiver.

The category of rights to land and/or buildings subject to BPHTB comprises ownership rights, cultivation rights, building rights, usage rights, ownership rights to apartment units, and management rights. The taxable subject, who bears the legal obligation to pay the tax and is thereby constituted as a taxpayer under the BPHTB Law, is the individual or entity acquiring such rights. The provisions governing the timing of payment have been amended on two occasions. In their original formulation, Article 9 paragraph (1) of the BPHTB Law and Article 90 paragraph (1) letter a of the Regional Tax and Retribution Law stipulated specific dates upon which the tax liability would crystallize, with such dates varying according to the particular type of acquisition.

The temporal point at which the obligation to pay BPHTB arises varies according to the nature of the acquisition transaction. In the case of sale and purchase, exchange, gift, bequest, contributions to entities, separations of rights, and corporate reorganizations such as mergers, consolidations, and expansions, the liability is triggered upon the formal execution of the deed. For inheritances, the effective date is deferred until the heir registers the title transfer with the land administration office. Where acquisition occurs through a judicial ruling, the liability commences from the moment the decision attains final and binding force. The grant of new rights over land, whether predicated upon a release of prior rights or not, gives rise to liability on the date the granting decision is formally issued. Finally, in auction proceedings, the liability is effective as of the announcement designating the successful bidder.

The phrase "the date of the deed's creation and signing" in Article 90 paragraph (1) letter a of the Regional Tax and Retribution Law is correctly understood as denoting the AJB executed by a PPAT. In furtherance of local governmental objectives to maximize BPHTB collections, this norm was identified as susceptible to manipulation, potentially affording taxpayers a means to reduce their fiscal obligation. Consequently, the legislature amended the provision, as now reflected in Article 49 of Law Number 1 of 2022, thereby eliminating the ambiguity and closing the loophole that had enabled such avoidance strategies.

The temporal point at which the obligation to remit BPHTB payment arises varies according to the juridical nature of the acquisition. In sale and purchase transactions, the payment obligation crystallizes upon the execution of the agreement. Similarly, for other transfers effectuated by deed such as exchange, grant, testamentary grant, corporate contributions, separation of rights, business combinations, and gifts the due date coincides with the formal execution of the respective instrument. For inheritances, payment is deferred until the heir registers the title transfer with the land administration authority. Where acquisition occurs through a judicial pronouncement, the obligation attaches once the decision has acquired final and binding effect. The grant of new rights over land gives rise to a payment obligation on the date the administrative decree is formally issued. Finally, in auction proceedings, payment is due upon the official appointment of the successful bidder.

The imposition of BPHTB should ideally be carried out at the time of acquisition of rights, that is, when the rights to land or buildings are transferred or acquired in real terms (Mulkan & Aprita, 2023). However, a PPJB is not a transfer of rights, but rather a preliminary agreement that only creates rights and obligations to conduct a sale and purchase at a later date. Therefore, the imposition of BPHTB at the time of signing the PPJB is not in line with the principles of tax collection, which will be explained as follows.

- 1) **Financial Principle:** This principle means that taxation is imposed when the taxable object has generated the ability to pay. In this case, the PPJB does not generate rights that yield economic benefits, so taxpayers in this case have not yet obtained legal ownership and therefore do not yet have economic capacity over the taxable object.
- 2) **Legal Principle:** This principle indicates that tax collection must be carried out on a clear legal basis, with the aim of providing legal certainty. With regard to the imposition of BPHTB at the time of PPJB, there is a discrepancy between Law Number 1 of 2022 and Law Number 5 of 1960 concerning Basic Agrarian Principles in conjunction with Government Regulation Number 35 of 2023.
- 3) **Economic Principle:** This principle means that tax collection should not disrupt the economy and/or hamper economic activity. In this case, the imposition of BPHTB at the time of PPJB burdens the community, thereby hampering the property market and creating economic inefficiency due to the collection of taxes on events that have not yet generated economic benefits.
- 4) **General and Equitable Principle:** This principle indicates that tax collection must be carried out fairly. In this case, there is a difference in treatment where buyers based on PPJB cannot immediately register the transfer of ownership of the rights obtained from the sale and purchase, while buyers based on AJB can immediately register the transfer of ownership of the rights obtained from the sale and purchase.
- 5) **Principle of Domicile:** This principle means that tax collection is based on the taxpayer's place of residence. In the case of BPHTB imposition on PPJB, the essence of the tax shifts from the object to the subject, considering that PPJB does not yet result in ownership of land/buildings by the taxpayer.
- 6) **Source Principle:** Tax collection is imposed based on the source of income. In this case, the PPJB does not yet give rise to ownership of land/buildings for the taxpayer, which means that there is no source of wealth that has actually been obtained by the taxpayer. In other words, there is no actual acquisition, so there is no taxable event.
- 7) **Principle of Nationality:** PPJB is a private agreement, not a transfer of land rights which are the object of state sovereignty through land registration at the Land Office, because PPJB does not transfer rights.
- 8) **Time Principle:** Tax collection must be carried out at the right time, namely when the taxable event actually occurs. PPJB is at the pre-acquisition stage, so the imposition of BPHTB at the time of PPJB is too early. Tax collection should be imposed at the time of signing the AJB in the presence of a PPAT.
- 9) **Principle of Profitability:** Tax collection must be carried out efficiently and the results must be greater than the administrative costs. The imposition of BPHTB at the time of PPJB increases the administrative burden, including verification, correction, and potential restitution if the PPJB is cancelled. Profitability is low because the costs of supervision and potential disputes are higher.
- 10) **Principle of Reciprocity:** This principle emphasizes the balance of rights and obligations between the state and its citizens. In this case, the taxpayer has not yet received the benefit of acquiring land rights, but is already required to pay BPHTB.
- 11) **The Four Maxims**
 - a. **Equity and equality:** the imposition of BPHTB on PPJB is inappropriate, because PPJB does not provide economic benefits that can generate the ability to pay, PPJB does not result in the acquisition of rights but is treated the same as AJB.
 - b. **Certainty:** legal certainty in the imposition of BPHTB tax in PPJB in the concept of transfer raises problems in the context of vague norms. The concept of transfer,

- which forms the basis for the imposition of BPHTB tax in the sale and purchase process, is translated into the concept of income acceptance in the field of taxation. This concept is shifted and modified in accordance with the wishes of the government or authorities for the purpose of optimising state revenue.
- c. Convenience of payment: the principle of imposing BPHTB on PPJB cannot be equated with the imposition of Income Tax (PPh) in PPJB. This is because BPHTB is only imposed when the acquisition occurs, while PPh is imposed when there is income. Therefore, it is inappropriate to equate the collection of BPHTB with PPh. Such imposition cannot be carried out because the basic principle of taxation (time of liability) is different.
 - d. Efficiency/economics of collection: the imposition of BPHTB on PPJB is an inefficient policy, as it can increase the state's administrative costs due to the verification of transactions that are not yet final, add a disproportionate burden to taxpayers, cause distortions in the property market, reduce the effectiveness of fiscal policy, and result in double handling and redundant administrative processes.

The provision in Article 49 letter a of Law Number 1 of 2022 and Article 18 paragraph (2) letter a of Government Regulation Number 35 of 2023, which sets the BPHTB due date at the signing of the PPJB, presents a conceptual problem. It conflicts with the nature of BPHTB as a transfer tax which is a levy imposed on the actual transfer of title or ownership of certificated property. Since the PPJB does not effect a transfer of ownership, its use as the taxable moment is doctrinally inconsistent. Thus, the tax should be imposed when the title to the property is actually transferred, with valid proof of transfer, such as a certificate. If BPHTB is based on the concept of a tax on transfer of ownership, then this tax should be payable when the rights to land or buildings are actually transferred, as evidenced by the signing of the AJB. The signing of an AJB in the presence of a PPAT can be considered a valid legal action that causes a transfer of ownership, while a PPJB is only an agreement related to a sale and purchase transaction, without changing the ownership status.

The designation of the Binding Sale and Purchase Agreement (PPJB) as the chargeable event for BPHTB liability presents a fundamental conceptual inconsistency. This arises because the PPJB does not constitute a juridical basis for ownership; its execution does not guarantee that the transfer of rights to land and/or buildings will ultimately be perfected. Consequently, this statutory construction is misaligned with the underlying philosophy of BPHTB as a tax levied upon the actual conveyance of title to immovable property. In addition to the conceptual error regarding the regulation of the time of BPHTB payment in Law Number 1 of 2022, there is also a difference in the regulation regarding the time of BPHTB payment in PP Number 35 of 2023, which is the implementing regulation of Law Number 1 of 2022, which stipulates that BPHTB is payable when the PPJB is signed, or if there is no PPJB, at the time the AJB is signed. This difference creates legal uncertainty that has the potential to confuse the public, due to differing interpretations regarding when BPHTB is payable.

The levy of Land and Building Acquisition Tax (BPHTB) on Binding Sale and Purchase Agreements (PPJB), as mandated by Article 49 letter a of Law No. 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments, presents conceptual difficulties when scrutinized against the foundational principles of taxation. Doctrinally, BPHTB is a tax on the acquisition of rights (transfer of ownership tax), so philosophically, this tax is only relevant to be collected when there is a real and legal transfer of rights. The character of BPHTB as an objective tax requires a legal event that concretely causes a transfer of rights, as evidenced by an authentic deed and registration at the land office

(Tarigan et al., 2025). In this context, the PPJB does not fulfil the elements of transfer of rights because it is only a preliminary agreement that creates an obligatory relationship, not a property relationship (Khalimi & Prawira, 2022).

From a financial perspective (ability to pay principle), tax collection must take into account the actual economic capacity of taxpayers (Putri, 2017). The ability to pay arises when the right has been transferred and provides economic benefits to the taxpayer (Dewi Mahayanthi & Susilo, 2025; Setiyowati et al., 2019). In a PPJB, the buyer has not yet obtained full legal ownership or economic ownership, so there has not been an actual acquisition that could form the basis for tax obligations. Thus, the collection of BPHTB at the PPJB stage has the potential to conflict with the principle of fiscal justice.

From a legal certainty perspective, tax collection must be based on clear norms that do not give rise to multiple interpretations. According to the Basic Agrarian Law and land practices, the transfer of land rights can only occur through a deed of sale and purchase (AJB) drawn up by a PPAT and registered (Wahyuni et al., 2024). When Law No. 1 of 2022 and Government Regulation No. 35 of 2023 stipulated that the PPJB was the time when BPHTB became payable, there was an expansion of the meaning of 'acquisition' that was not entirely in line with the concept of transfer of rights in agrarian law. This condition created normative tension and had the potential to create legal uncertainty for the community and local government.

Furthermore, based on the principles of economic efficiency and collection efficiency, taxes should not cause market distortions or administrative costs that outweigh the benefits of revenue collection. Local property taxes demonstrate that collecting taxes before the final transaction increases the risk of disputes, transaction cancellations, and refunds, which ultimately reduces tax administration efficiency (Rachmat et al., 2025). Dalam praktik pasar properti, PPJB sering kali batal atau mengalami perubahan nilai transaksi. Apabila BPHTB telah dipungut pada tahap tersebut, maka akan terjadi potensi double handling dan beban administratif tambahan yang bertentangan dengan prinsip rentabilitas.

Viewed from the general principles of equity and equality as stated in Adam Smith's Four Maxims, treating PPJB and AJB equally also raises issues of fairness. PPJB does not grant property rights that can be directly registered and transferred, whereas AJB produces rights that can be officially recorded. Equal treatment must consider the substance of the legal event, not just the formal form of the agreement (Wahyuni, 2025). Therefore, treating PPJB and AJB equally in the context of BPHTB liability has the potential to violate the principle of substantive justice.

From the perspective of the timing principle and the source principle, tax must be collected when the taxable event actually occurs and when there is a source of wealth that has been obtained. In transfer of rights tax, the crucial moment is when the legal title is transferred, not at the initial contractual stage (Muljono et al., 2024). The PPJB is in the pre-acquisition stage, so it does not yet fulfil the elements of acquisition of rights as an object of BPHTB. Thus, conceptually, the imposition of BPHTB at the time of the PPJB can be classified as premature taxation.

Overall, the regulation on the liability of BPHTB at the PPJB stage in Law Number 1 of 2022 in conjunction with Government Regulation Number 35 of 2023 shows a paradigm shift from a tax on transfer of ownership to a tax on potential transfer. This shift raises a conceptual problem because it is not entirely in line with the character of BPHTB as a property tax (*zakelijke belasting*) based on the actual and final acquisition of rights. Therefore, from a financial, legal, economic, fairness, timing, and efficiency perspective, the collection of BPHTB

should ideally still be carried out at the time of signing the AJB in the presence of a PPAT as the moment when the transfer of rights is valid and definitive.

4.2. Imposition of Land and Building Acquisition Duty on Sale and Purchase Agreements Based on the Principle of Transfer of Land Rights

The transfer or assignment of rights constitutes a juridical act directed toward the conveyance of entitlements from one party to another. As such, it denotes a deliberate legal transaction wherein one party intentionally relinquishes their land rights in favor of another person. In the context of land rights, such transfer is frequently effectuated through an assignment mechanism, which, in the present context, is realized via a sale and purchase agreement (Wahyuni, 2021).

A sale and purchase are properly understood as a transaction whereby ownership rights over goods or property are conveyed to another party in exchange for a monetary consideration. In economic and commercial contexts, such transactions occupy a position of fundamental importance by virtue of their direct engagement with consumers. From a terminological perspective, sale and purchase constitutes an exchange transaction, distinguished from those involving facilities or enjoyment. It is a cardinal principle, however, that the execution of a sale does not, in itself, effect a change in land rights, even where the purchaser has remitted the full price and taken physical possession. The transfer of rights is contingent upon formal legal delivery by the seller in performance of their legal obligations, which act signifies the conveyance of ownership title (Widjaja & Widjaya, 2003). With regard to the definition of land sale and purchase, the nature of land sale and purchase is (Santoso, 2019):

- 1) Cash: The transfer of rights by the landowner (seller) and the payment of the price by the acquirer (buyer) occur concurrently. This simultaneous execution renders the transfer of rights immediately effective. The cash nature of the transaction is not vitiated by partial payment; any outstanding balance is juridically classified as a debt, creating a creditor-debtor relationship between the parties.
- 2) Real: The parties' expressed intention must be substantiated by concrete actions manifesting the purpose of the sale and purchase. Such real acts include the seller's acceptance of payment and the formalization of the agreement before an authorized official.
- 3) Transparency: The legal act of sale and purchase must be concluded before an authorized official. This requirement serves as public certification that the transaction conforms to applicable legal provisions and does not transgress any regulatory constraints.

Rights to land and buildings are not acquired instantaneously; their transfer is contingent upon compliance with established regulatory and legislative procedures. Article 20 paragraph (1) of the UUPA articulates the legal basis for such conveyance, stipulating that "Ownership rights can be transferred and assigned to other parties" (Santoso, 2019).

The transfer of land rights is divided into two forms. The first is transfer, which occurs when land rights or Freehold Rights to Apartment Units pass from the rights holder to another party due to the death of the rights holder through inheritance (Santoso, 2019). This type of transfer happens by operation of law, meaning that upon the death of the holder of the rights, their heirs automatically acquire the land rights or Freehold Title to the Flat Unit. In this form of transfer, the party acquiring the rights must meet the requirements as the holder of the land rights or Freehold Title to a Flat Unit.

The second form is the transfer or assignment of rights, which occurs when land rights or Freehold Title to a Flat Unit are deliberately passed from the holder to another party through a legal action aimed at enabling that party to obtain those rights (Santoso, 2019). The registration of a transfer of rights arising from the sale and purchase of land or Ownership Rights to Apartment Units is predicated upon the satisfaction of two validity requirements.

1) Material Requirements

The vendor, as the holder of land rights or Ownership Rights to an Apartment Unit, possesses the legal capacity and authority to alienate such rights. Conversely, the purchaser must satisfy the statutory qualifications to serve as the subject of the rights constituting the object of the transaction. The material prerequisites for a valid sale and purchase of land rights or Ownership Rights to Apartment Units may be delineated as follows:

First, for sellers, the seller has the right and authority to sell the rights to the land or the Freehold Title to the Apartment Unit.

- a. The seller must be the person named on the certificate or document.
- b. The seller must be of legal age.
- c. A minor seller must be represented by a guardian.
- d. A seller under guardianship must be represented by a guardian.
- e. An authorized representative must present a notarized power of attorney.
- f. For joint property, spousal consent is required.

Second, the buyer must qualify to hold the rights being acquired. Eligibility depends on the right type:

- a. For Freehold Land transactions, the purchasers are restricted to Indonesian citizens, government banks, religious institutions, and social institutions.
- b. For Leasehold Land transactions, purchasers are limited to Indonesian citizens and Indonesian-domiciled legal entities established under Indonesian law.
- c. For transactions involving Building Use Rights, purchasers are limited to Indonesian citizens and Indonesian-domiciled legal entities established under Indonesian law.
- d. For Right of Use land transactions, purchasers are limited to private Right of Use subjects including Indonesian citizens, foreign citizens domiciled in Indonesia, Indonesian legal entities, and foreign legal entities with representatives in Indonesia.

2) Formal Requirements

Within the framework of registering the transfer of rights, the sale and purchase of land rights or Ownership Rights to Apartment Units must be substantiated by a deed prepared by and in the presence of a PPAT. The legal mandate for such a deed is set forth in Article 37 paragraph (1) of Government Regulation No. 24 of 1997, as amended by Government Regulation No. 18 of 2021 (hereinafter "the Land Registration Regulation"), which states:

“The transfer of land rights and Freehold Rights to Apartment Units through sale and purchase, exchange, grant, incorporation into a company and other legal acts of transfer of rights, except for the transfer of rights through auction, can only be registered if proven by a deed drawn up by an authorized PPAT in accordance with the provisions of the applicable laws and regulations.”

A PPAT deed is not an absolute prerequisite for satisfying the formal requirements in the sale and purchase of land rights or Ownership Rights to Apartment Units. Under certain circumstances, the Head of the District/City Land Office may effectuate the registration of a rights transfer even in the absence of a PPAT deed. This authority is explicitly provided in Article 37 paragraph (2) of the Land Registration Regulation, as follows:

“In certain circumstances as determined by the minister, the Head of the Land Office may register the transfer of rights to Freehold land, carried out between Indonesian citizens, which is evidenced by a deed not drawn up by a PPAT, but which the Head of the Land Office considers to be sufficiently accurate to register the transfer of rights concerned.”

Article 37 of the Land Registration Regulation requires that a sale and purchase of land rights or Freehold Rights to Apartment Units be evidenced by a PPAT deed for registration purposes. However, the Head of the District/City Land Office may register a transfer between Indonesian citizens based on a non-PPAT deed if it is sufficiently accurate. While a PPAT deed effects the transfer of rights between seller and buyer, this transfer is known only to the parties. To give it public effect, registration with the local Land Office is required, as land registration is a public system.

The act of registering a transfer of rights with the District/City Land Office operationalizes the publicity principle underpinning land registration. It renders publicly accessible both the physical attributes of the property (including location, area, and boundaries) and the legal incidents thereof (comprising the subject of the rights, the status of such rights, and any transfers affecting the land or Ownership Rights to Apartment Units). According to Santoso (2019), the sequential steps for registering a transfer of land rights or Ownership Rights to Apartment Units pursuant to a sale and purchase are as follows:

1) Preparation for Deed Creation

The execution of a PPAT deed for the sale and purchase of land rights or Ownership Rights to Apartment Units must be preceded by a mandatory examination. The PPAT must present the original certificate to the local District/City Land Office to verify its conformity with the official lists and records held by that office. Certificate checks are carried out for every deed prepared by the PPAT, with the provision that for the preparation of deeds for the transfer of rights to parts of the parent land in the context of marketing the results of development by real estate companies, industrial estates and similar developments, it is sufficient to check the parent land certificate once, unless the PPAT concerned deems it necessary to re-check the certificate.

2) Execution of Deeds

Attendance at the execution of a PPAT deed must be fulfilled either by the parties themselves (the vendor and purchaser) or, where representation is necessary, by persons holding a written power of attorney issued in accordance with the prevailing legal framework. The power of attorney for the seller must be in the form of a notarial deed, while the power of attorney for the buyer may be in the form of a private deed. The documents submitted by the seller to the PPAT in the preparation of this deed of sale and purchase are photocopies of the Identity Card (KTP), Family Card, Marriage Certificate, and Tax Assessment Notice (SPPT) for Land and Building Tax. As part of the deed preparation process, the purchaser is required to submit to the PPAT copies of their Identity Card (KTP), Family Card, and, if applicable, Marriage Certificate.

The formalization of the PPAT deed necessitates the presence of at least two witnesses, each meeting the statutory criteria for competency. The witnesses serve to confirm several material facts including the attendance of the parties (or their proxies), the production of the requisite documents, and the proper execution of the transaction by the parties involved.

3) Registration of Transfer of Rights

Within seven working days of executing a deed of sale and purchase, the PPAT must submit the deed and accompanying documents to the local District/City Land Office for registration purposes. The submission begins with a formal application for registration, which

must bear the signature of the acquirer or their representative, supported by a power of attorney where necessary. Central to the submission is the Deed of Sale and Purchase itself, prepared by a PPAT with jurisdiction over the property's location who was duly authorized at the time of execution. This is supplemented by identification documents for both parties and the original certificate of title. Depending on the circumstances, further documentation may be required, including any necessary transfer permissions, evidence of BPHTB settlement, and proof of Income Tax payment.

Upon receiving the application for transfer of rights, together with the PPAT deed and accompanying documents, the District/City Land Office is obliged to issue an official receipt to the submitting PPAT. The PPAT must thereafter notify the transferee (purchaser) that the application has been duly lodged with the Land Office and shall deliver the said receipt to the transferee. Subsequent processing of the application may be undertaken by the transferee themselves, by the PPAT, or by another party acting on behalf of the transferee.

4) Certificate Submission

Once the Head of the local District/City Land Office has effected the change in rights holder by amending the certificate of land rights or Ownership Rights to Apartment Units from the previous holder (the seller) to the new holder (the buyer), the certificate shall be delivered to the applicant for registration. Such delivery is made through the buyer or their duly authorized representative.

Pursuant to Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, as amended by Government Regulation Number 18 of 2021 (hereinafter "the Land Registration Government Regulation"), the registration of transfers of land rights and ownership rights to apartment units is contingent upon the production of a deed executed by a duly authorized PPAT. This requirement applies to transfers arising from sale and purchase, exchange, grant, contribution to a company, and other juridical acts effecting a transfer of rights, with the sole exception of acquisitions through auction. Consequently, any legal act pertaining to land rights that are the subject of transfer must be formalized before a PPAT, and the subsequent registration with the Land Office must be undertaken by the rights holder, namely, the owner.

This is because the legal product issued in the PPJB is a Notarial Deed, which cannot be recorded by the Land Office. This is different from the legal product of the AJB, which is a PPAT Deed. In this context, the Land Office has no connection with legal products in the form of notarial deeds, in case PPJB, but only deals with products issued by PPAT. This is in line with the position of the Land Office as a supervisory agency and the body that appoints PPAT, so that its working relationship is only with PPAT, including with legal products issued by PPAT.

The imposition of BPHTB tax as stipulated in Article 49 letter a of Law Number 1 of 2022 is contradictory to the existing regulation that tax is imposed after the buyer obtains their rights, namely rights to land and buildings. If it is interpreted as a transfer, why is it imposed during the agreement process in a contract that has not yet resulted in the transfer of rights to land and buildings? Thus, the imposition of BPHTB tax in Law Number 1 of 2022 does not provide legal certainty. The substance of the imposition of BPHTB in PPJB has essentially caused uncertainty in its implementation, whereas a regulation should be made and enacted with certainty because it regulates clearly and logically. The regulation, which is supposed to provide guidance in its implementation, has instead lost the meaning of the transfer itself. This has resulted in the imposition of BPHTB not functioning as it should as a regulation that can be implemented to achieve justice.

The imposition of BPHTB in the context of a sale and purchase agreement (PPJB) is a complex issue because it is directly related to the momentum of the transfer of land rights. According to Indonesian land law principles, the transfer of land rights only legally occurs after the Deed of Sale and Purchase (AJB) is drawn up by a PPAT (Notary Public) and registered at the Land Office, which reflects the legal realisation of property rights in the land registry. However, the latest policy in BPHTB regulations has sparked debate because it makes the PPJB the time when BPHTB is payable, even though the PPJB is only a preliminary agreement that does not yet result in a legal transfer of rights (Faadiyah et al., 2024) found that the imposition of BPHTB at the time of the PPJB is potentially contrary to the concept of transfer of rights, which requires the creation of an AJB first as the actual basis for the transfer of rights to land and buildings.

The implementation of BPHTB imposition at the PPJB stage is analysed not only from a legal perspective but also from the economic impact and legal certainty for the parties involved in property transactions, especially buyers who have already borne the tax burden even though their rights have not yet been formally transferred. Legal uncertainty arises because the PPJB does not guarantee the actual and legal transfer of rights, so buyers often bear tax obligations early on before the rights are actually transferred (Salshabila et al., 2025).

In addition, a study of the ratio legis of PPJB as an object of BPHTB highlights the contradiction between the fiscal objectives of local governments in expanding their tax base and the principles of agrarian law, which require the transfer of rights to occur through concrete actions and valid registration, namely AJB. (Faradila et al., 2024) explains that the PPJB is regarded as an initial declaration of a legal event which is then followed by the AJB, rather than as an event that directly transfers rights, thereby making the PPJB subject to BPHTB (Transfer Tax on Land and Building) and potentially conflicting with the principle of legal certainty in land law.

5. Conclusion

The designation of the PPJB execution as the chargeable event for BPHTB, as mandated by Article 49 letter a of Law Number 1 of 2022 and Article 18 paragraph (2) letter a of Government Regulation Number 35 of 2023, raises significant conceptual concerns. Such a provision deviates from the foundational understanding of BPHTB as a tax levied upon the transfer of ownership, which presupposes that liability should crystallize only when rights are effectively conveyed through a valid instrument of transfer. The PPJB, being an executory contract, lacks the legal efficacy to transfer ownership of land or buildings. This inconsistency is further underscored by Article 37 paragraph (1) of Government Regulation Number 24 of 1997, which conditions registration of any land rights transfer upon the production of a PPAT deed. The resultant imposition of tax at the preliminary agreement stage is therefore contradictory and introduces appreciable uncertainty into the implementation of the tax regime.

In formulating norms related to Article 49 letter a of Law Number 1 of 2022, legislators need to harmonize laws and affirm the basic concept of transfer of rights so that the imposition of BPHTB aligns with its nature as a tax on ownership transfer. The PPJB should not be used as the basis for determining BPHTB liability, as it does not result in a transfer of ownership under land and tax law. Additionally, to create a consistent taxation system that does not conflict with land law, the government must harmonize regulations and align administrative procedures. Through these efforts, the dualism of norms between Law Number 1 of 2022 and

the land registration regulations can be eliminated to create legal certainty and efficiency in BPHTB implementation.

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