



# A JURIDICAL REVIEW OF THE PARTIES' OBLIGATION TO PAY INCOME TAX ON A DEED OF SALE AND PURCHASE OF LAND WITH A TRANSACTION BELOW THE TAX OBJECT SALES VALUE

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## Abstract

**Background.** Land holds a vital significance in human life, as a substantial part of our existence depends on the presence and ownership of land rights. Land functions not only as a place of residence but, more importantly, is a gift from the Creator and a form of national wealth. For this reason, it must be preserved for the present and future generations.

**Objectives.** This study aims to conduct a juridical review of the obligations of the parties involved in paying income tax (PPh) on a deed of sale and purchase of land where the transaction price is below the Tax Object Sales Value (NJOP), as regulated in Article 87(3) of the Law on Regional Taxes and Regional Retribution.

**Methods.** This research employs a normative juridical method, utilizing a statutory and case-based approach. The analysis of the legislation shows that if the transaction price is lower than the NJOP, the calculation used for PPh payments must be based on the NJOP.

**Results.** A Deed of Sale and Purchase (Akta Jual Beli) is required for the transfer of land rights and is executed by a Notary/Land Deed Official (PPAT). During this process, the seller has an obligation to pay PPh. A frequent violation occurs when the parties involved request to lower the transaction price in the deed to a value below the NJOP, with the aim of paying a lower tax than what is legally required.

**Conclusion.** The research found that parties engaged in the transfer of land rights often set the transaction price below the NJOP. Although this lower price is recorded in the Deed of Sale and Purchase, this practice is detected as an indication of fraud or tax value reduction when a tax validation request is submitted. This offense is subject to sanctions, including fines and a minimum prison sentence of six (6) months.

**Keywords:** Tax Object Sales Value (NJOP), Income Tax (PPh), Deed of Sale and Purchase



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## INTRODUCTION

Humans are social beings (*zoon politicon*), as, fundamentally, no individual can live in isolation, thus requiring the assistance of others to fulfill their needs (Hermanto, 2021). Every person exists within an environment where they are interconnected. Such relationships give rise to various rights and responsibilities among them. An example of a reciprocal relationship between individuals is the execution of a sale and purchase agreement.

The Civil Code defines a sale and purchase as a mutual agreement where one party, the seller, commits to surrendering an object (*zaak*), while the other, the buyer, commits to paying the agreed-upon price. This transaction is a primary method for acquiring land rights. Such matters are governed by key legislation, including Law Number 5 of 1960 (the Basic Agrarian Law or UUPA) and Government Regulation Number 24 of 1997 on Land Registration. A critical provision in this regulation mandates that any land sale must be formalized in a deed prepared by a Land Deed Official (PPAT). As the regulation's explanation clarifies (Subekti, 2013), the official registration of land rights transfers from various legal actions, including sales, exchanges, grants, or auctions, is contingent upon being proven by a deed from an authorized PPAT under prevailing laws.

A major contributor to national revenue for funding state expenditures is the tax imposed on land transactions. To regulate this, the government has implemented Government Regulation Number 34 of 2016, which specifically governs the Income Tax on earnings from the transfer of rights over land and/or buildings, including those from binding sale agreements. The sale and purchase of property is a principal form of the rights transfers covered by this regulation (Iswara et al., 2019).

For transactions involving the sale of land and/or buildings, both the seller and buyer have tax obligations. The seller bears the responsibility for paying the income tax, as they are the recipient of the sale's proceeds. The signing of the sale and purchase deed is contingent upon the prior settlement of these tax obligations by both parties. A tax payment is officially considered settled only after the Tax Service Office (KPP) has performed a comprehensive formal and substantive review. During this review, the amount of tax owed is calculated based on the actual value the seller received or the value they should have reasonably received.

A significant portion of Regional Original Revenue (PAD) comes from Regional Taxes and Levies, which are generated by sales transactions. The calculation of these taxes is based on the tax object sales value (NJOP). According to Law Number 28 of 2009 on Regional Taxes and Regional Levies, the NJOP is primarily defined as the average price from fair market transactions. In cases where no recent transaction data is available, the NJOP is established through alternative methods, such as comparing the property to similar objects, using its new acquisition cost, or applying a substitute NJOP (Sudira, 2022).

This can create the impression that taxpayers are compelled by the Regional Government to sell land at a price equal to or even higher than the Tax Object Sales Value (NJOP). However, it should be noted that the NJOP in prime areas has a very high value. For instance, the NJOP established in the Kedawung sub-district is higher than in other areas, set at IDR 1,020,000 per square meter. Consequently, selling property at a price equivalent to or above the NJOP becomes challenging, particularly if the property is located in such an elite area.

The determination of the Tax Object Sales Value (NJOP) for land is an aspect with a significant economic impact because taxes are imposed during the sale and purchase process between the seller and the buyer. The amount of tax levied depends on the transaction price of the object being traded. Therefore, the establishment of this price is critical.

The NJOP is an estimated value of the land and building, calculated based on the area of the land and the building. This value is significant as it is used to calculate the Land and Building Tax payable in a property transaction. Furthermore, the NJOP also sets the minimum price for the object.

Numerous problems arise when land is sold below the Tax Object Sales Value (NJOP). The value of the rights transfer, which is the price stated in the Deed of Sale and Purchase, is the most dominant price compared to the NJOP of the respective land. If the land is sold at a price below the NJOP, the Income Tax (PPH) and the Land and Building Rights Acquisition Fee (BPHTB) will be calculated based on the NJOP, not on the actual transaction value.

It is hoped that a government policy update regarding the sale of land below the NJOP can prevent inequities in the collection of the Land and Building Rights

Acquisition Fee (BPHTB) and Income Tax (PPh) for such transactions. The objective of this new policy is to facilitate the public in the process of transacting land as an asset.

Such a new policy could be implemented by drafting new legislation or by amending the BPHTB Law to include a new article that specifically regulates land sales below the NJOP. This revision could be accompanied by a revision of Government Regulation Number 34 of 2016 as its implementing regulation.

While a Deed of Sale and Purchase (AJB) records the actual transaction price for a property, tax calculations follow a specific rule. If the transaction price is lower than the official Land and Building Tax Object Sales Value (NJOP PBB), the higher NJOP PBB value is used as the basis for taxation. This principle is mandated by Law Number 28 of 2009 concerning Regional Taxes and Regional Levies, which specifies that the NJOP is the basis for income tax (PPh) imposition if the transaction price is either unknown or lower. However, a discrepancy exists in practice, as many Regional Governments set their own market prices, a move that can be legally challenged by taxpayers.

The issue concerning the determination of the sale and purchase price of land and buildings as the basis for PPh imposition typically arises when the buyer submits a validation application (formal review) of the Regional Tax Payment Form (SSPD) to the Regional Office for Revenue, Financial and Asset Management (DPPKAD), and when the seller submits a validation application (formal review) of the Income Tax Payment Form (SSP-PPh) to the Tax Service Office. For the determination of PPh, the basis for its imposition is the transfer value, which is the transaction price evidenced by a sales receipt.

Law consists of both written and unwritten rules that are intended to be followed by all members of a society (Nessa et al., 2021). Consequently, this analysis is grounded in the Theory of Legal Certainty. At its core, certainty means predictability and clarity. Law is inherently required to be both certain and just. The concept of legal certainty is normative, meaning it is assessed based on the clear, precise, and logical formulation of regulations, rather than through a sociological lens. As a primary objective of law, legal certainty is a crucial means of achieving justice. It manifests practically through the impartial enforcement of laws, allowing every individual to anticipate the legal consequences of their actions. This predictability is an essential characteristic of law,

especially written norms, because a law that lacks certainty loses its purpose as a guide for societal behavior.

Gustav Radbruch identified four foundational principles that define legal certainty. First, law must be positive, meaning it is expressed through formal legislation. Second, it must be based on facts, grounding it in reality. Third, these facts need to be formulated with clarity to prevent misinterpretation and facilitate easy implementation. Finally, positive law should demonstrate stability and not be easily altered.

Radbruch's perspective is that legal certainty is an inherent quality of the law itself, specifically stemming from legislation. He argued that to maintain this certainty, the positive law governing a society must be followed, even when it might be considered unjust. Alongside the formal components of legal substance and structure, the prevailing legal culture is also essential, serving as the dynamic force that drives justice when legal norms are applied in society (Endang Sutrisno, 2020).

In the pursuit of legal certainty, it is a state where there is no public confusion regarding a legal rule, both in its regulation and in its implementation or enforcement. Based on this understanding, the regulation and enforcement of law can create legal uncertainty if:

1. There is a lack of synchronization between one legal rule and another.
2. The regulations or legal decisions made by legal institutions (executive, legislative, or judicial) do not align with the prevailing law (positive law).

Legal certainty is related to the effectiveness of the law. Thus, legal certainty can only be guaranteed if the state possesses adequate means to ensure the enforcement of existing regulations, with the intention of resolving issues such as those that arise when the sale price is below the minimum tax object sales value (NJOP).

In addition to the theory of legal certainty, this discussion also utilizes the theory of justice. The theory of justice is one of the aims of law, as proposed by Gustav Radbruch in his combined ethical and utility theory, where the concept of law is that it aims for justice, utility, and certainty. The application of the principle of justice in the collection of income tax includes the principles of Equality, Certainty, Convenience of Payment, and Low Cost of Collection (Efficiency). The principle most closely related to the justice of tax collection is Certainty, which aims to guarantee the implementation of taxation for every taxpayer. Therefore, the theories of legal certainty and justice are

intrinsically linked in the research and discussion concerning the obligations of parties to pay income tax on transactions valued below the NJOP.

## **METHOD**

The research method employed is normative legal research. Normative legal research is conducted to ascertain coherence truth, which involves examining whether a legal rule conforms to legal norms, whether a norm (manifested as a command or prohibition) aligns with legal principles, and whether an individual's action (*act*) is consistent with legal norms (beyond mere compliance with legal rules) or legal principles.

The normative juridical approach refers to an approach based on primary legal materials, conducted by analyzing theories, concepts, legal principles, legal systematics, the degree of legal synchronization, legal history, comparative law, and the laws and regulations pertinent to this research. This approach is also known as a library research approach, as it entails the study of legislation, books, and documents relevant to the study.

## **DISCUSSION**

### **The Process of Transferring Land Rights with a Transaction Price Below the Tax Object Sales Value (NJOP)**

The process of transferring land rights involves the execution of a Deed of Sale and Purchase (Akta Jual Beli or AJB). The AJB represents a mutual agreement between the transacting parties. The Notary/Land Deed Official (PPAT) merely formalizes this agreement; as long as the seller and buyer are in consensus, the transfer of rights can proceed, reflecting the principle of freedom of contract. A transfer of rights below the NJOP is permissible; however, the tax payment consequence is that the amount must comply with the minimum threshold determined by the government, which cannot be lower than the NJOP. The sale and purchase process itself can occur as long as it results from the parties' agreement, which is binding upon those who make it.

A sale and purchase can be executed if the following conditions are met:

1. The land certificate has been verified.
2. The relevant taxes have been paid.
3. The seller and buyer have signed the deed.

Once these three points are fulfilled, the process of rights transfer, or the execution of

the Deed of Sale and Purchase at the Notary/PPAT office, is effectively complete. The subsequent process of transferring the title to the new owner's name requires the assistance of another institution, namely the National Land Agency (BPN). Normatively, the title transfer process should take two weeks, but in reality, it can extend up to two months.

Meanwhile, for the Income Tax (PPh) validation process at the Tax Service Office (KPP), if conducted online, the next stage is a document review, which, for transactions priced below the NJOP, involves formal and material examination. The material examination is carried out by the supervision division. If an unreasonable value is detected, the case is forwarded to the appraisal division, which will then conduct a field inspection to recalculate the transfer/transaction price. Subsequently, a report is generated regarding the fairness of the transfer/transaction price, adjusted to the market price. This process takes approximately three working days.

Tax is a contribution from the people to the state treasury based on law (which can be enforced), without receiving a direct and demonstrable counterservice (consideration), and which is used for public expenditure (Soemitro, 1998). In the process of tax imposition resulting from a transfer of rights, the Notary/PPAT inputs the seller's and buyer's data into the system. This system contains the market price (the prevailing price in the market), the system-generated price, and the transaction price (the price agreed upon by the seller and buyer). Consequently, the PPh and Land and Building Rights Acquisition Fee (BPHTB) are automatically calculated based on the system price, which is derived from the NJOP and the transaction price. In a rights transfer transaction in the Cirebon City area with a transaction price below the NJOP, when the parties submitted their validation request to the relevant Regional Revenue Agency (Bapenda) and KPP, the supervision and appraisal process detected a significant discrepancy between the transaction price and the NJOP value. The transaction price was even far below the zonal value. Therefore, for tax imposition purposes, if the price is found to be below the NJOP, the transaction will be rejected by the system or the relevant authorities, in this case, Bapenda and the KPP.

One factual legal case identified by the author at a PPAT office in Cirebon City is as follows: a sale and purchase transaction occurred between party A and party B for a parcel of land in the Cirebon City area, with a land area of approximately 95 M<sup>2</sup> (ninety-five

square meters). The actual transaction price between A and B was Rp. 141,000,000,- (one hundred forty-one million Rupiah). The NJOP was Rp. 154,000,000,- (one hundred fifty-four million Rupiah), and the zonal value was Rp. 160,000,000,- (one hundred sixty million Rupiah). After the documents were submitted to the Cirebon City Bapenda office, the validation was rejected. Bapenda then determined the price of the land parcel to be a much higher value of Rp. 180,000,000,- (one hundred eighty million Rupiah). The imposition of a significantly higher tax on the rights transfer consequently became an obstacle in the transfer process.

Based on this discussion, a conclusion can be drawn that there is no prohibition against sale and purchase transactions with prices below the Tax Object Sales Value (NJOP). This aligns with the principle of consensualism, where a sale and purchase agreement is deemed valid if a price agreement is reached between both parties, and the principle of freedom of contract. Furthermore, when examined in the context of the Law on Regional Taxes and Regional Levies (UU PDRD) and Cirebon City Regional Regulation No. 3 of 2012 concerning Regional Taxes, no prohibition on this matter is found. This is affirmed in Article 14, letters a to f, which, as previously discussed, state that if the Tax Object Acquisition Value (NPOP) or the land transaction value is lower than the NJOP for Land and Building Tax (PBB), the basis for calculation used is the NJOP PBB or the system-generated value that appears during data input. This is also based on the fact that the NJOP value is regularly adjusted every three years by the regional government (or once a year according to Minister of Finance Regulation PMK 139/PMK.03/2014). Therefore, the NJOP PBB is considered a reasonable and fair value because it is determined by the government itself, corresponds to the current value, and is adjusted according to the land prices in the vicinity of the tax object.

The situation described above does not reflect legal certainty. The theory of legal certainty proposed by Gustav Radbruch posits, among its foundational tenets, that facts must be formulated clearly to avoid misinterpretation and to be easily implemented. The "fact" in the context of this research is the determination of the tax amount payable in a sale and purchase of land/buildings below the NJOP. Although there is no prohibition regarding transaction prices below the NJOP, in practice, confusion persists in determining the amount of tax to be paid by both the seller and the buyer. This necessitates a validation process and field checks, which in turn impede the rights transfer process that

is expected to be swift. Due to this uncertainty, the process becomes slow.

Regulations concerning the sale and purchase of land/buildings are stipulated in Law Number 28 of 2009 concerning Regional Taxes and Regional Levies, which are collected by the city/regency government. The technical implementation must first be established through a regional regulation (Perda) to provide a basis for collection. Accordingly, the Cirebon City Regional Government issued Regional Regulation Number 3 of 2012 concerning Regional Taxes. Its main provision regulates that any tax arising from the transfer of land and building rights, based on Article 69 paragraph (1), obligates the payment of BPHTB, calculated by multiplying a predetermined final rate by the transaction value, which serves as the basis for the tax rate imposition.

Regarding such land/building transactions, the government has determined the tax value to be paid. However, in practice, several regional governments verify the transaction price again if it is below the NJOP stated in the PBB. In a land sale agreement, there is a fair price limit for the land/building being transacted, known as the NJOP, which is the basis for PBB imposition. However, the determination of this sales value limit through the NJOP does not necessarily compel the public to adhere to that price. There are situations where a landowner may wish to sell their land quickly. As long as the parties agree on the price, there is no prohibition for them to sell the land at a value below the NJOP. The primary purpose of the NJOP as a value limit pertains more to the taxes related to the land, rather than dictating that the sale and purchase price must align with the land's NJOP (Heryanto, 2023).

In accordance with the UU PDRD regarding the NJOP amount determined by the regional government, it should be noted that, without disregarding the NJOP, no statutory regulation prohibits the public from buying and selling land/buildings below the NJOP. The UU PDRD itself allows for this possibility, as stipulated in Article 87 paragraph (3), which states that if the acquisition value of a tax object as referred to in paragraph (2) letters a to n is unknown or is lower than the NJOP used for PBB imposition in the year of acquisition, the tax base used is the NJOP PBB.

From this article, it can be concluded that it is legitimate for anyone to buy and sell land/buildings below the NJOP stated in the PBB. However, when paying the tax at the local Tax Office, the basis for the tax calculation remains the NJOP PBB. The determination of the NJOP PBB is regulated in Article 79 paragraph (2), which states:

"The amount of the NJOP as referred to in paragraph (1) shall be determined every 3 (three) years, except for certain tax objects which shall be determined annually in accordance with the development of the region."

According to Gustav Radbruch, law must contain three identity values, one of which is the principle of legal certainty (*rechtmatigheid*). This principle is viewed from a juridical perspective. The regulation of NJOP PBB as stipulated in the aforementioned article, with its value being set every three years, can create certainty in the transfer of rights over land/buildings. In line with this, the principle of legal justice is also closely related to this article. The principle of justice is viewed from a philosophical standpoint, where the determination of the NJOP is continuously updated to follow regional and community development (e.g., wage standardization) to create justice. Justice implies equal rights for all people before the law.

When a PPAT handles a transfer of rights, particularly in a sale and purchase transaction, there is uncertainty in determining the amount of BPHTB to be paid by the buyer and the PPh to be paid by the seller. This is because during the validation process, the Regional Revenue Agency (BKD) considers the land price to determine the payable BPHTB and PPh rates, and numerous supporting documents are required. The seller and buyer often assume that the tax amount due is based on the transaction price. However, the approved tax amount for the rights transfer is often higher than the PPAT's calculation and the actual transaction price, and can even exceed the zonal value and the NJOP.

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### **Legal Consequences of Selling Land or Property Assets Below the Tax Object Sales Value (NJOP)**

A legal consequence is the result of an action taken to achieve a desired outcome intended by the actor and regulated by law. This action is termed a legal act. In other words, a legal consequence is the result of a legal act (Soeroso, 2019). Therefore, the legal consequences of selling land or property assets below the NJOP are as follows:

1. Potential Tax Issues: Selling land or property assets below the tax object sales value can lead to tax problems. Tax authorities might view the transaction as a "bargain sale" or an "advantageous transaction" aimed at tax avoidance. They may demand the difference in value between the actual sales price and the property's tax value as determined by the tax authority. This could result in additional tax

liability for the seller.

2. Legal Sanctions: By reducing or being suspected of reducing the tax value on the transfer of rights over land/buildings, taxpayers may be subject to sanctions. Law Number 28 of 2008 concerning General Provisions and Tax Procedures states:

"That any person who intentionally fails to remit taxes that have been withheld or collected, thereby causing losses to state revenue, shall be punished with a minimum imprisonment of 6 (six) months and a maximum of 6 (six) years, and a fine of at least 2 (two) times the amount of tax payable that was not paid or underpaid and at most 4 (four) times the amount of tax payable that was not paid or underpaid."

Legal certainty, as an objective of law, can be considered an effort to realize justice. A tangible form of legal certainty is the implementation and enforcement of the law against an action, regardless of who commits it. With legal certainty, every person can anticipate the consequences of undertaking a legal action. Certainty is essential for achieving justice, especially in the context of this research. The government should provide legal certainty for taxpayers by establishing a standardization of transaction prices for land sales. The goal is to minimize injustice in the tax payment process and to prevent sanctions from being imposed on taxpayers who violate the regulations, in accordance with Law Number 28 of 2008. Thus, the certainty of the transaction value that is approved and used as the basis for tax calculation depends on the honesty of the parties involved. It is possible that the stated transaction value does not reflect the actual amount, deliberately done to lower the tax payable. It is certainly not easy to guarantee that the transaction value used as the basis for tax calculation is the real one, as price reductions can plausibly occur, given that parties generally desire a lighter tax burden. In this case, validation is necessary to conduct careful research and verification of the veracity of the transaction value used as the basis for calculating BPHTB and PPh (Ismaya, 2015).

3. Tax Value Reduction: However, there are also cases where selling land/buildings below the tax object sales value may be a legitimate attempt to reduce the tax liability of the seller. Some jurisdictions allow property owners to file a claim for a reduction in transaction value based on a sale price that is lower than the previously assessed tax value.

Tax is a mandatory contribution paid by individuals or corporations to the state in accordance with the law, without receiving direct compensation, and is used to finance

state expenditures for the welfare of the people.

In the land sector, one type of tax imposed is the BPHTB. Since the enactment of the UUPDRD, regional governments have had autonomy in tax collection, including BPHTB, which is now collected independently by each region. BPHTB is a significant source of state revenue from taxpayers who engage in transactions involving the transfer of rights over land and/or buildings. The acquisition of rights over land and buildings occurs when a legal act results in an individual or legal entity obtaining such rights (Kusumawati, 2005).

A PPAT plays a crucial role in the implementation of BPHTB and PPh payments. The primary duty of a PPAT is to carry out a part of the land registration activities by creating deeds as proof that a legal act concerning land rights has been performed. This means the PPAT is involved in the technical process of BPHTB. However, it should be noted that legal certainty regarding BPHTB payments ought to be based on Article 87 paragraph (3), where the calculation basis is the NJOP PBB.

Regional governments exhibit some uncertainty regarding transactions below the NJOP. Consequently, before the BPHTB is paid by the taxpayer, a validation of the BPHTB Payment Form (SSB) is conducted. This is done because they are not confident about the transaction price stated in the deed of sale. To address this issue, several regions have established their own market values (distinct from the NJOP). The determination of this market value is used as a guideline for setting the transaction price in such cases. This practice often confuses taxpayers, as the Bapenda creates a new price outside the provisions regulated in the UU PDRD. The determination of the transaction price by the regional government after the BPHTB validation process occurs when the transaction price is deemed unreasonable, even though the parties had agreed on a price based on the prevailing NJOP PBB. Ultimately, this affects the agreement between the seller and the buyer regarding the mutually agreed-upon value. This contradicts Article 1320 of the Civil Code and the principle of consensualism contained within it, making sales below the NJOP a frequent problem during the tax validation process.

Similar to BPHTB, PPh also undergoes a re-validation process if an unreasonable price is found. As tax officers, we then conduct an appraisal using the market data method to determine the fairness of the transfer value. In 2023, the price adjustments for PPh imposition have been much better compared to previous years, as the regulations from the

government have been implemented quite well by taxpayers (Interview with Arini, 2023).

## **CONCLUSION**

1. In the process of transferring land rights with a transaction price below the NJOP, the creation of a Deed of Sale and Purchase (AJB) is permissible. However, the tax payment must adhere to the amount determined by the government, as there is a minimum payment threshold that cannot be lower than the NJOP. If the transaction price is lower than the Land and Building Tax Object Sales Value (NJOP PBB), the basis used for the calculation is the NJOP PBB or the system-generated value that appears during data input. This is supported by the fact that the NJOP value is adjusted every three years by the regional government, in accordance with Article 87 paragraph (3) of the Law on Regional Taxes and Regional Levies (UU PDRD) and Article 66 paragraph (3) of Cirebon City Regional Regulation No. 3 of 2012.
2. The legal consequence of a price discrepancy between the transaction value and the NJOP, should a taxpayer fail to comply with the results of a validation report, is the imposition of sanctions. These include administrative legal sanctions in the form of a fine of at least two (2) times and at most four (4) times the amount of the underpaid or unpaid tax, as well as criminal law sanctions of a minimum imprisonment of six (6) months.

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