



## LEGAL CERTAINTY OF INHERITANCE BPHTB COLLECTION BY BAPENDA MALANG CITY

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### Abstract

In the provisions of Article 7 paragraph (2) letter e of the Malang City Regional Regulation Number 15 of 2010 concerning BPHTB Malang City, there are no further regulations regarding the definition of market value, who is authorized to determine market value and how the mechanism for determining it. Thus causing the market value in Article 7 paragraph (2) letter e to be interpreted freely (multiple interpretations). The purpose of this study is to analyze and find out how legal certainty determines market value in the collection of BPHTB Inheritance by Bappenda in Malang City. The results of the study show that market value regulation in the Perda BPHTB Malang City does not guarantee legal certainty. This has an impact on the violation of the principles of BPHTB collection which includes the principles of justice, legal certainty, legality, and simplicity. In addition, legal uncertainty regarding market value regulation has led to acts that exceeded the authority in collecting BPHTB conducted by Bapenda Malang City.

**Keywords:** *Fees for Acquisition of Land and Building Rights*

### 1. 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" (UDN NRI 1945), which states that "Taxes and other levies that are coercive for state needs are regulated by law". The provisions of Article 23 A of the 1945 Constitution of the Republic of Indonesia form 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. Regional taxes are defined as people's contributions to the state treasury based on laws so that their implementation can be enforced and from these contributions they do not receive direct contravention. Further details regarding regional taxes are now regulated in Chapter II of Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments (hereinafter referred to as the HKPD Law). Through the a quo law, in the provisions of Article 4 paragraph (2) it has been determined that BPHTB is a regional tax collected by the district/city government. Furthermore, in the provisions of Article 5 paragraph (2) it is determined that BPHTB is a type of regional tax whose collection is based on calculations by the Taxpayer himself. The documents used as the basis for collecting BPHTB are regional tax assessment letters and notification of tax payable.

In Article 46 paragraph (2) letter b of the HKPD Law, it is stipulated that the Tax Object Acquisition Value (NPOP) at BPHTB Inheritance is the market value. BPHTB Waris payable arises from the date the Taxpayer registers the transfer of his rights to the Regency/City Land Office. Given that the collection of BPHTB is carried out by the regency/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 Acquisition of Land and Building Rights

as amended by Regional Regulation of Malang City Number 4 of 2018 regarding changes to the Regional Regulation of Malang City Number 15 of 2010 concerning Fees for Acquisition of Land and Building Rights (hereinafter referred to as the Perda BPHTB Malang City).

In the provisions of Article 9 of the Malang City Regional Regulation Number 15 of 2010 it is known that the BPHTB rate in Malang City is 5% (five percent). However, based on field practice, from 2021 to 2022 it is known that Bappenda will implement a 10% (ten percent) increase policy to determine market value so that it complies with the provisions of article 7 paragraph (2) letter e of Regional Regulation No. 15 of 2010. This is a legal issue because an increase in costs of 10% as market value cannot be found in the legal basis in the laws and regulations in the field of taxation. The increase in the same NJOP will also occur in 2023, which is 3 (three) times to 4 (four) times. According to Bappeda Malang City, the policy to increase the NJOP was carried out as part of the regional government's efforts to achieve the target of tax absorption at Rp. 1 trillion based on market price adjustments. With the NJOP increase, it is certainly very burdensome for people who want to carry out activities or transactions such as buying and selling, exchange, grants and the inheritance process itself is no exception. Because the costs incurred will certainly be more than before. Then, regarding the use of market value as the basis for imposing BPHTB, it tends to create uncertainty. exchange, grants and no exception also for the inheritance process itself. Because the costs incurred will certainly be more than before. Then, regarding the use of market value as the basis for imposing BPHTB, it tends to create uncertainty. exchange, grants and no exception also for the inheritance process itself. Because the costs incurred will certainly be more than before. Then, regarding the use of market value as the basis for imposing BPHTB, it 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 which are stated as follows: "In the event that 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 year of acquisition." 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. when 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. It is known that determining the market value by increasing the NJOP of at least 10% to determine BPHTB Waris is the policy of the Malang City Bappenda office. This can lead to legal problems because the determination of market value is carried out without any orders in statutory regulations, in which such circumstances may tend to violate the constitutional rights of Indonesian citizens regarding the right to legal certainty contained in the provisions of Article 28 D paragraph (1).

The occurrence of BPHTB Inheritance collection in Malang City which was not carried out in accordance with statutory regulations indicates that there are problems with legal norms in the legal arrangements for BPHTB collection. Because of 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 a 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 Land and Building Rights Acquisition Fees, we find a regulation on the definition of market value in the provisions of Article 1 point 10 which: "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, where the offer is made properly, and both parties know each other, act carefully careful 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 it is the authority.

## 2. LITERATURE REVIEWS

### 2.1 Literature Review on Fees for Acquisition of Land and Building Rights (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. According to Erly Suandy BPHTB has 3 meanings, namely:

- a) BPHTB is a tax imposed on the acquisition of land and building rights, hereinafter referred to as tax;
- b) Acquisition of land and building rights is a legal act or event resulting in the acquisition of land or building rights by an individual or legal entity;
- c) Land rights are land rights as referred to in Law Number 5 of 1960.

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) of Law Number 21 of 1997 concerning BPHTB as amended by Law Number 20 of 2000 concerning Amendments to Laws - Law Number 21 of 1997. The object of the BPHTB is the acquisition of land and/or building rights as regulated in Article 2 paragraph (2) of Law Number 20 of 2000.

The basis for imposition of tax is the value of Acquisition of Tax Objects (NPOP), which can be in the form of transaction prices (including transaction prices in the Minutes of Auction) and market values. According to the provisions of Article 46 paragraph (2) of the HKPD Law, the Acquired Value of Tax Objects is grouped into 3 (three) types, namely:

- a) Buying and selling is the price of exchange transactions, grants, wills, inheritance, inclusion of rights in a company or other legal entity.
- b) The designation of the buyer in the auction is the transaction price stated in the Minutes of Auction. According to the Elucidation of Article 6 paragraph (2) letter a, the BPHTB Law, the transaction price is the price that occurs and has been agreed upon by the parties concerned (eg seller and buyer) is the real price. While the Market Value as regulated in the Elucidation of article 6 paragraph (2) letter b, the BPHTB Law is the average price of a fair selling transaction that occurs around the location of the land or building. The transaction price stated in the minutes of auction is the real price determined by the auction official for the highest bid price submitted by the auction participant (Decree of the Minister of Finance Number 304/KMK-01/2002 concerning Guidelines for Auctions).

Furthermore, Article 46 paragraph (2) of the HKPD Law determines which becomes the NPOP as the basis for imposing taxes on each type of acquisition of rights. Whereas Article 46 paragraph (3) of the HKPD Law stipulates that if the Acquisition Value of the Tax Object is unknown or lower than the Sales Value of the Tax Object (NJOP), then the basis for imposition of tax used is the Selling Value of the PBB Tax Object, the NJOP PBB is stated in the Letter Notification of Land and Building Tax Payable Tax (SPPT PBB) issued by the Land and Building Tax Service office in the area where the object is located. The amount of tax payable is calculated by multiplying the 5% (five percent) rate by the Acquisition Value of Taxable Tax Objects (NPOPKP).

## **2.2 Literature Review on Market Value**

Based on the Director General of Taxes Circular Letter Number 54 of 2016 concerning Technical Guidelines for Property Appraisal, Business Valuation, and Intangible Asset Valuation for Tax Purposes, an appraisal is a series of activities to determine the amount of a certain type of value at a certain time which is carried out objectively and professionally based on a standard of assessment in order to implement the provisions of the tax laws and regulations. Whereas market value is the average price of a fair sale and purchase transaction that occurs around the location of the land and or building, as stated in the elucidation of Article 6 paragraph (2) letter b Law Number 21 of 1997 concerning BPHTB (Old BPHTB Law) Market value reflects the amount of money that should have been received by the seller as the owner of the land and building and that should have been handed over by the buyer as the party receiving the rights to the land and building being traded. The market value is usually determined by an independent appraiser who is independent of various interests in the object or property being appraised.

Thus the value generated by an independent appraiser will be able to reflect the true market value of the property. Market Value is the average price of a fair sale and purchase transaction that occurs around the location of the land and buildings. This market value is the basis for the assessment. The concept of market value is tied to the collective perception and behavior of market participants. The concept of market value recognizes the diversity of factors that can affect transactions in the market, and distinguishes it from non-market considerations or other intrinsic considerations that affect value.

## **2.3 Literature Review on Determination of Sales Value of Taxable Objects (NJOP)**

Sales Value of Taxable Objects, hereinafter referred to as NJOP, is the average price obtained from sale and purchase transactions that occur fairly, and if there is no sale and purchase transaction, the NJOP is determined through a price comparison with other similar objects, or a new acquisition value, or NJOP. replacement. NJOP Assessment results are divided into:

- a. NJOP of Land is the result of multiplying the total area of the object of tax imposed with NJOP of Land per square meter, the result of the conversion of NIR per square meter into the classification of NJOP of Land, calculated through Mass Assessment or Individual Assessment.
- b. The NJOP of buildings is the multiplication of the total building area and the NJOP of buildings per square meter. the result of converting the building value per square meter into the NJOP classification is calculated either through a Mass Appraisal or an Individual Appraisal.



- c. NJOP of General Tax Object Buildings, calculated either through Mass Assessment or Individual Assessment.
- d. NJOP of Special Tax Object Building, calculated through Individual Assessment.

Basically the NJOP is determined every 3 (three) years. For certain regions whose development has resulted in a significant increase in the NJOP, the NJOP can be determined once a year.

Using the NJOP as a basis for calculating the value of land acquisition objects has several advantages and disadvantages. In terms of accountability, the determination of the NJOP is the authority of the Regional Head which is stipulated based on the Decree of the Regional Head. It can be said that the use of NJOP as a basis for calculating the value of land acquisition objects can be accounted for for its validity. In terms of changes, the sale value of PBB objects, as a tax base, has never decreased. The nature of the NJOP, which tends to be static, because adjustments are not always made, can provide certainty for agencies that need land in determining the budget needed to provide compensation.

### 3. RESEARCH METHODS

This research is a normative juridical research carried out by examining various applicable laws and regulations and the literature that contains theoretical concepts, which are then linked to the problems that will be discussed in this research. The primary legal material in this study is Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments, Malang City Regional Regulation Number 15 of 2010 concerning Fees for Acquisition of Land and Building Rights and Malang Mayor Regulation Number 21 of 2021 concerning Procedures for Payment, Deposits and Places for Payment of Land and Building Rights Acquisition Fees. Secondary legal materials used include books and scientific articles such as research, dissertations, scientific journals and relevant papers. The perspective technique is used for legal analysis, where the data obtained is analyzed perspectively by prioritizing point of view or way of looking at something resulting from systematic research, so as to provide meaningful explanations and be able to draw conclusions in answering research problems.

### 4. RESULTS AND DISCUSSION

Land and Building Rights Acquisition Fee (BPHTB) is one type of objective tax or property tax. Refer to the provisions of Article 4 paragraph (2) of Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments, it is known that BPHTB is a regional tax collected by district/city governments. In this case, BPHTB collection in the Malang City area is carried out by the Malang City Regional Revenue Agency as the authorized institution. As in the provisions of Article 2 paragraph (1) Malang Mayor Regulation Number 79 of 2019 Regarding 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.

Legal uncertainty in the collection of BPHTB by Bapenda in Malang City can be seen in the legal arrangements regarding the basis for acquiring tax object values (NPOP). BPHTB collection due to transfer of rights due to inheritance, according to the provisions of Article 7 paragraph (2) letter e, the NPOP is the market value. Refer to HKPD Act juncto Malang City BPHTB Regional

Regulation in conjunction with Malang City Mayor Regulation Number 21 of 2021 does not find any legal provisions that clearly regulate 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 of time for the market value and the mechanism for determining it. As a result, BPHTB taxpayers interpret 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 Bappenda.

In Article 7 paragraph (2) letter e of the Malang City BPHTB Regional Regulation, it is known that it also regulates the same thing as the provisions of Article 46 paragraph (2) letter b of the HKPD Law, namely the basis for the imposition of BPHTB Inheritance is market value. Such arrangements are known to cause legal obscurity, because normatively examined there are incomplete arrangements regarding market value in the HKPD Law juncto Malang City BPHTB Regional Regulation juncto Malang City BPHTB Perwal. These three laws and regulations cannot be used as guidelines for understanding market value, particularly regarding who has the authority to determine market value, what is the mechanism for determining market value, and how long is the validity period for estimated market value. Legal obscurity regarding market value is not only caused by the absence of comprehensive regulations regarding market value, but also due to laws and regulations in the field of BPHTB collection which do not clearly distinguish between market value and the sale value of a tax object (NJOP).

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

- 1) the principles of justice;
- 2) legal certainty;
- 3) legality; And
- 4) simplicity and supported by a tax administration system that makes it easier for taxpayers to fulfill their tax obligations.

When associated with the principles above, basically the collection of BPHTB must fulfill the principle of justice, which means that tax collection must be in accordance with 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 in order 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 BPHTB collection is also understood by researchers as one of the things that supports the achievement of justice. In this case fairness is interpreted as "proper" and "not arbitrary", so that legitimacy is needed for policies, authority and decision in the collection of the tax. 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.

By not fulfilling the principles of justice, legal certainty and legality in a legal norm, it triggers the birth of an 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 SJ 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.

In the opinion of Peter Mahmud Marzuki who stated: "the existence of general rules makes individuals know what actions may or may not be carried out, then in the form of legal security for individuals from government arbitrariness because of the existence of general rules that individuals can know what is permissible charged or carried out by the state against individuals. Legal certainty is related to authority. In the opinion of Peter Mahmud Marzuki who stated: "the existence of general rules makes individuals know what actions may or may not be carried out, then in the form of legal security for individuals from government arbitrariness because of the existence of general rules that individuals can know what is permissible charged or carried out by the state against individuals. Legal certainty is related to authority. In the opinion of Peter Mahmud Marzuki who stated: "the existence of general rules makes individuals know what actions may or may not be carried out, then in the form of legal security for individuals from government arbitrariness because of the existence of general rules that individuals can know what is permissible charged or carried out by the state against individuals. Based on this thought, the researcher understands that legal certainty is a form of legal protection for the public from arbitrary acts.

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:

- 1) 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);
- 2) In the event that a region is going to collect regional taxes or regional levies, it must first be stated in a regional regulation;
- 3) 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 the HKPD Law, particularly regarding BPHTB regulations, the regional government authorities that are regulated in relation to BPHTB can be found in Article 47 of the HKPD Law. Through Article 47 a quo it is known that regional governments are given the authority to set BPHTB rates through regional regulations with the highest tariff 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 HKPD Law, Malang City BPHTB Regional Regulation, 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. Understand more about the tax base, tariffs and tax administration. So the local 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 Article 5 letter f of Law Number 12 of 2011 concerning Formation of Legislation as amended by Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning Formation of Legislation, that the principle one of which must be fulfilled is the clarity of the problem formulation. Based on the results of the analysis above, there is legal uncertainty regarding market value in the legislation regarding BPHTB, so the formulation of market value does not meet the principle of clarity of formulation contained in Article 5 letter f of the Law on Formation of Legislation.

For achieving clarity of this formulation is not only focused on the choice of words or phrases on the contents of the article which are clear and not multi-interpreted. Instead, pay attention to the synchronization of the formulation between articles in the law and between related laws. In this case, the clarity of the formulation was not achieved because the formulation of norms regarding market value was not complete regarding who had 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 using the term NJOP (not in sync with the term used in Article 46 paragraph (3)HKPD Act) contributed to the formulation of market value in Article 7 paragraph (3) of the Malang City BPHTB Regional Regulation to become unclear.

So that in order to fulfill the principle of clarity of formulation in Article 5 of the PPPU 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. And there is a needsynchronization, namely conformity or alignment of statutory regulations vertically based on positive law systematization, namely between higher statutes and lower statutory regulations. The change in the formula is synchronized with the formula contained in Article 46 paragraph (3)HKPD Act, so that the formulation in the Perda BPHTB becomes as follows: "In the event that 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 year of acquisition."

Meanwhile, regarding the incomplete formulation of norms regarding market value as the basis for the imposition of BPHTB Waris, efforts to resolve them 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, there are many factors that influence the creation of real prices, such as demand factors and commercial factors. Because the market value tends to change frequently, the total estimated market value cannot be stated in the form of a legal formula in statutory regulations. Therefore, with regard to 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 Accordingly, based on these policy regulations, the market value will better reflect the values of legal certainty. While the form of this policy regulation can be in the form of an announcement followed by a circular letter.





## 5. CONCLUSION

The conclusion results show that the collection of BPHTB Waris by Bappenda Malang City does not yet reflect the value of legal certainty because the legal rules regarding market value that are used as guidelines by Bappenda also do not have legal certainty. Efforts that can be made to overcome uncertainty in the collection of BPHTB Waris 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. So that the recommendations resulting from this research are the need for synchronization between Article 7 paragraph (3) BPTHB Malang City Regulation and Article 46 paragraph (3) HKPD Law and formulation of authority to the Mayor and/or Bappenda to determine market value.

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