ACCELERATION OF LAND CERTIFICATES THROUGH THE SETTLEMENT OF ITA AND BPHTB TAXES IN THE PTSL PROGRAM IN CENTRAL MALUKU

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ABTRACT

Indtroduction : The complete systematic land registration program (PTSL) in the Central Maluku district which is in the process of registering rights derived from the transfer of rights is subject to taxes, namely Income Tax and BPHTB.

Purposes of the Research : The purpose of this study is to review the obstacles in data collection and payment of PPh and BPHTB taxes in the complete systematic land registration (PTSL) program and the settlement of PPh and BPHTB taxes in accelerating land certificates through the settlement of PPh and BPHTB taxes.

Methods of rearch : empirical juridical method with a legal qualitative approach

Result of rearch : The government program is a complete systematic land registration in the Central Maluku district land office regarding what obstacles are faced, namely the absence of clear and consistent rules related to income tax and BPHTB payments in the Central Maluku region, there is no coordination between the Central Maluku District Land Office and the Central Maluku District Government, there is no clear socialization related to taxes to the community. Therefore, the authors or it can be said that this research also provides a solution for the optimization of land certificates in terms of settlement related to income tax and BPHTB with a rare initial team formed in recording both data on applicants for rights that are still owed and conducting socialization and coordination with other agencies such as the authorities in collecting income tax and BPHTB owed in order to make efforts to jointly seek solutions in optimizing the complete systematic land registration program (PTSL)

Keywords: Income Tax (PPh), Fees on acquisition of land and building rights (BPHTB)

INTRODUCTION

Land rights are proven admnistarasi, namely proof of ownership of land rights and regarding the regulation of land rights regulated in the Basic Agrarian Law Number 5 of 1960. Basic Agrarian Law Number 5 of 1960 which in article 9 paragraph 2 expressly regulates that every Indonesian citizen, both men and women, has the same rights to obtain a right to land and its benefits and results, both for themselves and their families where the physical form referred to here is in the form of a land rights certificate. In this case, land needs to be held land registration where there are many multi-dimensional interpretations of the meaning of land which organizes land affairs to be complex and is a cross-sectoral problem, and from the point of view of individual rights, land ownership is a component of human rights. (Adrian Sutedi, 2012)

Regulations on land registration are regulated in government regulations, namely Permen Agrarian / Head of BPN No. 7 of 2019 concerning the Second Amendment to the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration, which has made the third amendment to the regulation of the Minister of agrarian affairs / head of the national land agency number 3 of 1997 concerning the provisions for the implementation of government regulation number 24 of 1997 concerning land registration issued by the Minister of agrarian affairs and spatial planning / head of the national land agency of the republic number 16 of 2021.

Land registration in Indonesia is carried out at the Ministry of Agrarian Affairs and Spatial Planning / Head of the National Land Agency and is authorized by Law number 10 of 2006 and we see in article 4 of the regulation of the President of the Republic Number 47 of 2020 concerning the Ministry of Agrarian Affairs and Spatial Planning, the Ministry of Agrarian Affairs and Spatial Planning (ATR) which has duties in the field of Agrarian Affairs / Land and Spatial Planning to assist the President in organizing the government of the State. The definition of land registration itself is a series of activities carried out by the government on a regular basis to collect, process, book, present, and maintain physical and juridical data about land parcels and housing units. The purpose of land registration is to refer to Article 19 of Agrarian Law Number 5 of 1960 concerning Basic Agrarian Principles, namely to ensure legal certainty.

There are two stages of land registration in Indonesia, namely the first registration and the maintenance of land registration data. (Urip Santoso, 2011),Land registration for the first time can be done systematically or sporadically for one or several land registration objects in the area of a village individually or in bulk. Article 45A of the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 16 of 2021 on the Third Amendment to the Regulation of the Minister of Agaria/Head of the National Land Agency Number 3 of 1997 on the Provisions for the Implementation of Government Regulation Number 24 of 1997 on Land Registration.

Complete systematic land registration is a land registration activity carried out simultaneously for all land registration objects throughout Indonesia in one village / kelurahan area or other names that are equivalent to that, which includes collecting and mapping the truth of physical data and juridical data regarding one or more registration objects. Meanwhile, sporadic land registration, which is the will of the land owner to obtain a land title certificate. The complete systematic land registration program itself is a government program to provide legal certainty and legal protection of people's land rights in a fair and equitable manner and encourage the economic growth of the people, especially the government requires the acceleration of complete land registration throughout Indonesia as mandated in article 19 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles. then to support that the government issued Regulation of the Minister of Agararia and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 12 of 2017 concerning Acceleration of Complete Systematic Land Registration.

Complete Systematic Land Registration is carried out for all land registration objects throughout the territory of the Republic of Indonesia, including in the Central Maluku region. The final result of systematic land registration is proof of ownership expressed in a land title certificate. A land certificate is an official document issued by the government that legally states who owns the land rights. The legal certainty obtained after the community has a certificate of land rights has added value, namely the increase in economic value and also has a high selling value, this can also be one of the reasons for the community to register land rights. Article 1 point 1 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency Number 35 of 2016 concerning the Acceleration of the Implementation of Complete Systematic Land Registration states that Complete Systematic Land Registration is a land registration activity for the first time which is carried out simultaneously covering all objects of land registration that have not been registered in one village / kelurahan area or other names at the same level.(Adrian Sutedi, 2012)

Certificates of land rights through the complete systematic land registration program are free of charge or can be said to cost zero. However, regarding matters related to certificates that cause costs borne by participants in the land rights holder. The costs that are borne by participants in complete systematic land registration involve taxes arising from land certification, namely income tax and BPHTB tax (Bea Perolehan Hak Atas Tanah dan Bangunan). (Based on article 16 paragraph (2) letter j of Permen ATR / Head of BPN Number 2018 states that costs and / or taxes will be borne by participants in complete systematic land registration. In complete systematic land registration, payment of income tax and BPHTB tax is often a problem,

Provisions regarding Income Tax (PPh) and Fees for Acquisition of Land and Building Rights (BPHTB) Payable are clearly regulated in Article 33 of the Regulation of the Minister of ATR/BPN No. 6 of 2018 concerning Complete Systematic Land Registration, as follows:1) In the event that the recipient of the Land Rights Certificate is not or has not been able to pay BPHTB and/or there are still arrears of income tax payments by other parties on the land concerned, a Land Rights Certificate can still be issued. 2) In the event that a PTSL participant is not or has not been able to pay BPHTB, the person concerned must make a statement letter of BPHTB Payable. 3) Provisions in the Land Parcel in the event that the land parcel originates from the sale and purchase in the past and the current buyer does not have proof of income tax payment from the seller in the past, then the person concerned must make a statement of Income Tax Payable. The existence of a statement of BPHTB Payable and a statement of Income Tax Payable shall be included in the Decision on the Granting of Land Rights and subsequently recorded in the Land Book and Certificate as BPHTB Payable from the land owner concerned or Income Tax payable by the seller of the land or concerned. The Head of the Land Office shall submit a list of BPHTB Payable and/or Income Tax Payable periodically within 3 (three) months to the local Regent/Mayor for BPHTB. The transfer of rights or changes to the Land Book and Land Rights Certificate can only be made after the person concerned can prove that the Payable BPHTB and/or Payable Income Tax have been paid by each taxpayer. parties involved.In addition, BPHTB is also an important factor that needs to be considered in the land certification process. BPHTB is a tax that arises from the imposition of a right applicant on the acquisition of rights to land and buildings, whether through purchase, grant, inheritance, or other means. However, in practice, the determination of the value of BPHTB is often the subject of disputes between landowners and authorities. This article also examines the problem of what obstacles are faced by the parties responsible for the settlement of income tax (PPH) and on the applicant for land rights, namely the building acquisition fee (BPHTB) in the complete systematic land registration program (PTSL) and analyzes how to optimize the settlement of PPh and BPHTB to make maximum use of the land certificates made.

METHODS OF THE RESEARCH

This research where the approach is empirical juridical and analytical descriptive study. This legal research approach uses a legal qualitative approach.

This approach emphasizes an in-depth understanding of a problem, not for generalization. In this case, it refers to the title of the article taken in the research conducted in Central Maluku in order to achieve one of the research objectives regarding the achievement of the settlement of income tax problems and acquisition duties on land and buildings. Data collection techniques used in this study are: Interviews, questionnaires and literature studies.

RESULTS AND DISCUSSION

CONSTRAINTS IN THE PROBLEMATICS OF OWNED ITAG and BPHTB TAXES

The complete systematic program (PTSL) which began to be held by the Ministry of agrarian and spatial planning began in 2017, where this government program itself was made to accelerate land registration throughout Indonesia. But on the other hand, the law that was born first was about local taxes and local retribution, which is regulated in the Republic of Indonesia Law Number 28 of 2009 concerning local taxes and local retribution Article 90 explains that when the tax payable for the acquisition of rights to land and or buildings is determined for: sale and purchase, exchange, grants, bequests, inheritance, inclusion in the Company or legal entity, separation, judge's decision, granting new rights to land. The authority to collect taxes itself does not only exist in the Ministry of agrarian and spatial planning related to the payment of income tax and BPHTB is carried out at the Ministry of finance in terms of income tax (PPh) and local governments in terms of fees for acquisition of rights to land and buildings (BPHTB) and PPAT / Notary for making deeds as a condition for making deeds of transfer of land rights. (Direktorat Jendral Pajak, 2021)

 The obstacles faced by officers in this settlement are of course due to the lack of legal certainty which can be said to be

1. Lack of clear and consistent rules

Land and Building Acquisition Duty (BPHTB) is regulated in Article 1 number 43 of Law No. 28/2009 on Regional Taxes and Levies (PDRD). The authority to collect fees on the acquisition of land and building rights was transferred from the government to local governments since January 1, 2011. Meanwhile, the payment of income tax (pph) is based on Director General of Taxes Circular Letter No. SE -04/PJ.33/1996 on the payment of pph on income from the transfer of land and building rights which instructs income tax payments to be deposited at the tax office. This became unclear after the issuance of a presidential regulation that we know the president as the head of government in his instruction number 2 of 2018 issued for the acceleration of the complete systematic land registration (PTSL) program throughout Indonesia which does not include a dictum that exempts or eliminates land rights acquisition fees for landowners who apply for land registration through the PTSL program (complete systematic land registration), This means that the things that are required of the applicant for the right to a complete systematic land registration program must be completed, it also involves taxes such as NPOP, NPOPTKP, levies and / or when paying BPHTB and PPH are required to make payments and the applicant is required to comply and in accordance with the PDRD Law and KUP Law. This is also interpreted by Lex certa and lex scripta, the formulation of the deic must be clear and unambiguous. At this point, the presidential instruction on BPHTB tax is clear-cut (lex certa-lex stricta) that PTSL is still subject to BPHTB tax in accordance with the applicable laws and regulations on BPHTB.(Lika, n.d.)

 According to information from employees at the Central Maluku Land Office, the absence of clear enough PPH and BPHTB regulations to answer these problems requires special regulation of PPH and BPHTB payable in the implementation of PTSL. Which this arrangement must be in accordance with the implementing regulations related to taxation, because in the principle of legislation the principle of lex specialis derogate legi generali can be applied, namely special regulations can override general regulations. In article 33 of the regulation of the Minister of ATR / Head of BPN Number 6 of 2018 which provides space for ease in the implementation of the PTSL program for those who are not or have not been able to pay PPH and BPHTB.

Regulation of the Minister of ATR / KBPN No.6 of 2018 which, when referring to the hierarchy of regulations which is also known as lower regulations (lex inferior) must refer to the regulations that are above it (lex superior) see article 8 paragraph (2) of Law Number 12 of 2011, this can be simplified to say that laws and regulations are recognized and have binding legal force if ordered by laws and regulations are recognized and have binding legal force if ordered by higher laws and regulations or formed based on authority. This is also called illegitimate (illegal) or also known as the absence of rules issued on the principle of the formation of laws and regulations.

According to interviews in the field, the practice in the field in land registration in the PTSL project, especially in the Central Maluku land office for the first time land object in terms of registration or the first time applicant for rights which is not derived from the transfer of land rights, is not subject to BPHTB and PPH, this means that it can be said that the tax is NIL. However, applicants for land rights originating from the transfer of rights in the field in Central Maluku Regency, the Head of the Land Office complies with the two Ministerial Regulations, the implementation of which in the land title certificate still states “BPHTB OBLIGATED” which is stamped red on the land title certificate.

The imposition of BPHTB payable which is the authority given by the district / city government to impose or not impose a type of district / city tax which is mandatory for the taxpayer in the case of issuing a notification addressed to the district / city government to impose or not impose a type of district / city tax because it is collected in a region, district government.(Nafri & Harun, 2017)

1. Improved coordination between the Central Maluku District Land Office and the Central Maluku District Government

Complete systematic land registration (PTSL) in Central Maluku district, where this program itself is expected to build new land parcel data and at the same time maintain the quality of existing registered land parcel data so that all registered land parcels are complete and accurate which provides assurance of certainty and legal protection of land and assurance of the location and boundaries of land parcels, especially in the Central Maluku district.

Complete systematic land registration, which is hereinafter abbreviated as PTSL, can be defined as a series of activities for the first time carried out simultaneously in a unitary area, which can be one lurah, one village, or even one sub-district, where this activity can be said to be a series, starting from collecting data that wants to apply for the right to the final stage of issuing a land title certificate. (Merry.E.R.M, 2021)

The applicant for rights in this program is one of the requirements in the management of this complete systematic land registration itself, where the tax arising from the complete systematic land registration program (PTSL) is the acquisition fee for land and building rights (BPHTB), which BPHTB arises on the basis of due to the sale and purchase of land as well as due to other taxes, namely ppH (income tax for sellers, VAT (if needed).

Based on the instructions of the Joint Regulation of the Minister of Finance and the Minister of Home Affairs Number 186/PMK.07/2010 Number 53 of 2010 concerning Preparation Stages for the Transfer of Land and Building Rights Acquisition Fees as Regional Taxes which for the authority to collect or pay BPHTB are instructed and included in regional tax income . Likewise in the case of collecting income tax, referring to the provisions in Law No. 36 of 2008 concerning income tax, where taxable income (PKP) is the taxpayer's income which is used as the basis for calculating income tax, the payment of which is made at the tax office.

Field observations were carried out in our research in Central Maluku district by conducting interviews with Central Maluku district land office employees and regional district government employees which concluded that there was no decision or regulation that exempted Land and Building Rights Acquisition Fees (BPHTB) from being NIL or given a policy deductions written down in writing.

Field observations also found the regulations of the Regent of Central Maluku, Maluku Province, Regional Regulation of Central Maluku Regency Number 1 of 2024 concerning regional taxes and regional levies. Article 14 states that the BPHTB rate is 5%. We can read in article 13 paragraph (3) which states that in the case of the acquisition value of the tax object as intended in paragraph (2) is unknown or not lower than the NJOP used, namely the NJOP value used in the imposition of land and building tax in the year of acquisition.

Point 5 paragraph 12 states that the amount of acquisition value of the tax object is not why it is set at Rp. 80,000,000.00 (eighty million rupiah) for the acquisition of the Taxpayer's first right in the area where the BPHTB is owed. When BPHTB is owed, it is determined at the time the land and/or building is acquired with the provisions:

1. The signing of the sale and purchase deed by the parties carrying out the legal act of sale and purchase can now be called a sale and purchase deed;
2. When legal acts of exchange, gifts, wills, income occur in other legal companies, the separation of rights which results transition of business merger, business consolidation, business expansion and/or gifts;
3. There is a grant of inheritance or authorization by the heir who registers the transfer

his right to the land sector office for inheritance;

1. Court decisions that have permanent legal force for decisions the judge in which the content of the decision mentioned taxes;
2. BPHTB can also arise from a Decree granting continuous rights or It can also be called land rights as registration of transfer of rights;
3. Increased clear socialization regarding taxes to the public

The launch of a well-known government program, namely the Complete Systematic Land Registration Program (PTSL), has been widely communicated by word of mouth in society, but not much or it is considered necessary to increase clear socialization regarding taxes to the public. It is necessary to increase the socialization of tax compliance for work unit treasurers, which is expected to include achieving targets from the state revenue and expenditure budget, especially state revenue from the taxation sector.

The socialization referred to is tax socialization, which is an effort by the Director General of Taxes to provide understanding, information and guidance to the public in general and taxpayers to provide understanding, information and guidance to the public in general and taxpayers in particular regarding everything. relating to taxation and tax legislation.(Gunawan Widjaja, 2017)

OPTIMIZATION OF SETTLEMENT OF BPHTB AND PPH OWED TO ACCELERATE LAND CERTIFICATES

The definition of optimization is a process, action or method to make something better, perfect, functional or more effective. In terms of the second problem formulation, the author writes about how to resolve outstanding BPHTB and PPH in order to accelerate land certificates. Of course, this solution cannot be made from just one stage but can be made from several stages as well.

The first stage, the formation of a team to resolve BPHTB and PPH owed and of course this is a rejection of cooperation between the Central Maluku Regency Land Office, the Central Maluku Regency Government, the Masohi State Treasury Service Office and the mutually agreed salary recruitment and financing agreement.

The second stage is that the team that has been formed collects data on applicants or PTSL participants to verify files and clarify BPHTB and PPH owed on the PTSL certificate. This is done to collect data and the number of applicants whose BPHTB and PPH are owed arising from the issuance of PTSL certificates (complete systematic land registration(samosir HH, 2018)

The third stage, Tax collectors or also known as fiscus, which officers issue SPTTD (regional tax notification letter) to people who are also called taxpayers in the applicant for rights in the PTSL program, where the PTSL is recorded in the land certificate. Then a regional tax assessment letter (STPD) is made. Then after that a regional tax assessment letter (SKPD) and a tax bill letter (SPTD). Which two letters can be the basis for tax collectors (fiscus) to force taxpayers to immediately pay off BPHTB and PPh owed.

Fourth Stage, socialization of names with collection or notification to taxpayers against criminal elements or administrative elements for parties who do not heed tax payments. In this case, for taxpayers who do not heed this order to pay off the tax owed.

. The full amount of the underpayment has not been paid for which the issuance of a regional tax assessment letter for underpayment SKPDKB is required if on the other hand for the needs of taxpayers whose payment value has an excess, the tax authorities or tax officials can carry out obligations, namely the issuance of a regional tax assessment letter for overpayment (SKPDLB) and if the tax authorities calculate the value of the tax liability in the taxpayer, it can be said that this falls into the NPOPTKP criteria, called tax officials who determine BPHTB Nil or declared NIL or called 0% and tax officials issue a regional tax assessment letter nil (SKPDN). Taxpayers who do not want to or have not yet paid the PPh and BPHTB taxes owed, then after notification via SPTPD, SKPD, and STPD letters, the tax apparatus will issue a letter of compulsion (SP) which contains a statement ordering the taxpayer to immediately pay the tax debt including collection costs.

CONCLUSION

Acceleration of land certificates through the completion of PPh and BPHTB taxes in the complete land certificate registration (PTSL) in Central Maluku Regency, where it can be studied in advance what obstacles do not make this PTSL program take much longer, one of which is in terms of PPh and BPHTB payments. The results of interviews with officers on duty in the government program, namely complete systematic land registration at the Central Maluku Regency Land Office regarding the obstacles faced, namely a. the absence of clear and consistent regulations regarding PPh and BPHTB payments in the Central Maluku region b. Increasing coordination between the Central Maluku Regency Land Office and the Central Maluku Regency Government c. increasing clear socialization regarding Taxes to the Community. Therefore, the authors or it can be said that this research provides a solution so that there is optimization of land certificates in terms of settlement related to PPh and BPHTB taxes with the initial step of forming a team to conduct data collection for applicants for rights that are still owed and to conduct socialization and coordination with other agencies such as the authorities in collecting PPh and BPHTB taxes owed in order to make efforts to jointly find solutions in optimizing the complete systematic land registration program (PTSL).

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