

# **THE ROLE OF LAND TITLES REGISTRAR IN THE IMPOSITION OF TAXES ON ACQUISITION OF RIGHTS ON INHERITED LAND AND BUILDINGS ACCORDING TO ISLAMIC LAW**

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## **Abstract**

Tax on Acquisition of Land and Building Rights (*Pajak Perolehan Hak atas Tanah dan Bangunan*/BPHTB) is a tax that is imposed or must be paid by the taxpayer in connection with the transfer of Land and Building Rights. In Islam, the existence of heirs and heirs is regulated in the Qur'an contained in Sura al-Nisa. Inherited assets in the form of land and buildings, which are the right of heirs, can be owned by one of the heirs by buying or paying the other heirs. It is stated in the Deed of Sharing of Joint Rights (*Akta Pembagian Hak Bersama*/APHB) made by the Land Deed Making Official (*Pejabat Pembuat Akta Tanah*/PPAT). The results showed: 1) According to Islamic law, the calculation of the amount of BPHTB tax is not the same as the amount of tax calculated based on Law No. 20 of 2000 concerning Customs for Acquisition of Rights on Land and Buildings; this is related to the determination of the amount of inheritance received, where the amount depends on the number of inheritance rights holders and their gender and *nasab* and religious relationships. 2) The process of determining the number of taxpayers in the Customs Tax on Land and Building Rights, which is associated with tax validation, often creates uncertainty, both the transaction value can change, and the calculation and the amount of tax that must be paid by the taxpayer this is because the Regional Revenue Agency (*Badan Pendapatan Daerah*/BAPENDA) local does not have a fixed reference. PPAT's role is to help calculate the amount of the BPHTB tax and pay it to the tax office.

**Keywords:** *Land Deed Making Official, Inheritance, Islamic Law, Acquisition of Land and Building Rights*

## **Abstrak**

*Pajak Perolehan Hak atas Tanah dan Bangunan (BPHTB) adalah pajak yang dikenakan atau harus dibayar oleh Wajib Pajak sehubungan dengan peralihan Hak atas Tanah dan Bangunan. Dalam Islam, keberadaan ahli waris dan ahli waris diatur dalam Alquran yang tertuang dalam Surah alNisa. Harta warisan berupa tanah dan bangunan yang menjadi hak ahli waris dapat dimiliki oleh salah satu ahli waris dengan cara membeli atau membayar kepada ahli waris lainnya, hal ini dituangkan dalam Akta Pembagian Hak Bersama (APHB) yang dibuat oleh Pejabat Pembuat Akta Tanah (PPAT). Pembahasan: 1) Menurut hukum Islam perhitungan besarnya pajak BPHTB tidak sama dengan besarnya pajak yang dihitung berdasarkan Undang-Undang Nomor 20 Tahun 2000 tentang Kepabeanaan Perolehan Hak atas Tanah dan Bangunan, hal ini terkait dengan penentuan besarnya harta warisan yang diterima, dimana besarnya tergantung dari banyaknya pemegang hak waris dan jenis kelamin serta hubungan nasab dan agamanya. 2) Proses penetapan jumlah wajib*

*pajak dalam Bea Cukai Hak atas Tanah dan Bangunan yang dikaitkan dengan pengesahan pajak seringkali menimbulkan ketidakpastian, baik nilai transaksi dapat berubah, penghitungan maupun besarnya pajak yang harus dibayar oleh wajib pajak hal ini karena Badan Pendapatan Daerah (BAPENDA) setempat tidak memiliki acuan tetap. Peran PPAT adalah membantu menghitung besaran pajak BPHTB dan menyetorkannya ke kantor pajak.*

**Kata kunci: Pejabat Pembuat Akta Tanah, Warisan, Hukum Islam, Perolehan Hak atas Tanah dan Bangunan**

## **A. Introduction**

Taxes and inheritance are two things that are not related at all, but in terms of the interests of the state and taxpayers, the two things have interrelated interests. Inherited assets relating to land and buildings on it can be taxed and become one of the largest sources of state revenue to realize people's welfare.<sup>1</sup> The tax imposed on land and buildings is the Customs for the Acquisition of Rights to Land and Buildings (hereinafter referred to as *BPHTB*), which is currently submitted to the regional government to be managed for the benefit of the region. The legal basis for collecting *BPHTB* is Law No. 28 of 2009 concerning Regional Taxes and Regional Levies, which is a substitute for Law No. 20 of 2000 concerning Amendments to Law No. 21 of 1997.

The basis for collecting taxes is the provisions of Article 23A of the Third Amendment of the 1945 Constitution, which reads: "Taxes and other levies that are coercive for the purposes of the State are regulated by law".

The collection of *BPHTB* is carried out based on the principle of self-assessment system. Self-assessment system is a tax collection system in which the initiative to fulfill tax obligations lies with the taxpayer.

Transfer of rights is an act of legal action whose purpose is to transfer rights from one person to another. This transfer of rights indicates a legal act that is intentionally carried out by a person to transfer his property rights to another person, and the transfer of property

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rights is known or desired by the party making the agreement on the transfer of land rights.<sup>2</sup>

There are 2 (two) ways to transfer land rights, namely by legal transfer and transfer due to legal actions. Switching indicates the transfer of land rights without any legal event carried out by the owner (automatically), for example through inheritance, while transfer refers to the transfer of land rights through the owner's legal actions to make a legal transfer of his property, for example through buying and selling, grants, endowments, and Auctions.<sup>3</sup>

Inheritance in general, means the transfer of property from a deceased party to another person who is the heir. Inheritance law occupies a very important place in Islamic law. The Qur'an Surah An-Nisa verse 12 regulates inheritance laws clearly and in detail.

Law No. 50 of 2009 concerning the second amendment to Law No. 7 of 1989 concerning the Religious Courts, confirms that Islamic inheritance law is a positive law in Indonesia, especially for Muslims. Islamic

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<sup>2</sup> Effendi Perangin. *Hukum Agraria Di Indonesia*. Jakarta: PT.Raja Grafindo Persada, 1994; Rifkha Faikhotul Himmah, Anwar Made, and Eris Dianawati. "Efektifitas Pemungutan Pajak Bumi dan Bangunan dan Kontribusi Peningkatan Pendapatan Asli

Daerah." *Jurnal Riset Mahasiswa Akuntansi* 4, no. 2

<sup>3</sup> Dennise RH Paputungan. "Wakaf Tanah Milik Sebagai Bentuk Peralihan Hak." *Lex Privatum* 3, no. 4 (2015); Azhwil Yuliyana Kayadoe. "Peralihan Hak Atas Tanah Menurut Undang-undang Nomor 4 Tahun 1996 Tentang Hak Tanggungan Beserta Benda-benda Yang Berkaitan Dengan Tanah." *Lex Privatum* 4, no. 6 (2016).

inheritance law as positive law is manifested in written form in the form of the Compilation of Islamic Law (hereinafter referred to as KHI Presidential Instruction No. 1 of 1991 contains three books, and Islamic inheritance law is included in the Second Book (Articles 171 to 193) which is in line with the rule of law. Islam.

Referring to the KHI, based on Presidential Instruction No. 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law (Inpres 1/1991),

(2016); Maria S.W. Sumardjono. *Kebijakan Pertanahan Antara Regulasi & Implementasi*. Semarang: PT. Kompas Media Nusantara, 2002.

an heir is a person who at the time of death has a blood relationship or marital relationship with the heir, is Muslim and is not prevented by law from becoming heir. In the division of Islamic inheritance law, it is emphasized that a girl, if there is no sibling, she will get half the share, if two or more, there is a calculation for each. This inheritance occurs both in the form of land and not land.<sup>4</sup>

The distribution of land will affect the payment of taxes in the process of transferring land rights, but this will be different if the distribution is based on applicable tax law, where tax law does not recognize division as regulated by inheritance law in Islam. The distribution of assets is based on the Deed of Sharing Joint Rights (DSJR/APHB).

The focus of this study is to examine how the distribution of inheritance is determined according to Islamic law, and how the imposition of Customs on Acquisition of Land and Building Rights (BPHTB) on inheritance determined according to Islamic law.

Furthermore, the paper will describe the role of PPAT in the implementation of the imposition of BPHTB inheritance tax in Indonesia.

## **B. Discussion**

### ***1. Distribution of Inheritance Determined According to Islamic Law***

Inheritance law that applies in Indonesia, in principle there are three namely western civil inheritance law, Islamic inheritance law and customary inheritance law. In various developments and uses, this inheritance law is the choice of each family to use it. Families who are Muslim can also use customary inheritance law and ex-western inheritance law, so that it is optional.<sup>5</sup>

Customary inheritance law is strongly influenced by the customs of the community, some are parental, patrilineal and also

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matrilineal, or also in accordance with family agreements when inheritance law falls. All inheritance laws fall within the scope of family law, including Islamic inheritance law.

As an inheritance law system that is included in the scope of family law, Islamic inheritance law is strongly influenced by patrilineal nature (fatherly line), namely based on male lineage. The family system in Islam is based on lineage, based on male lineage, where this is contained in the Qur'an in Surah AnNisa, namely Verses 22 and 23, while regarding the Law of Inheritance it is found in Verses 11, 12, and 176.<sup>6</sup>

According to Basyir, there are three classifications of heirs, namely: the heirs of dzawil furudl, ashabah, and dzawil arham. Dzawil furudl for the group of heirs whose share of rights is certain, namely 2/3, 1/3, 1/6 and 1/8. Ashabah for heirs whose share of

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<sup>4</sup> Zainuddin Ali. *Pelaksanaan Hukum Waris di Indonesia*. Jakarta: Perguruan Tinggi Ilmu Kepolisian, 2008; Muhammad Thaha Abul Ela Khalifah. *Hukum Waris*. Solo: Tiga Serangkai, 2007; Yusuf Qardlawi. *Hukum Zakat*. Jakarta: Pustaka Litera InterNusa, 1997; Muhammad Bushar. *Pokok-Pokok Hukum Adat*. Jakarta: Pradnya Paramita, 2002.

<sup>5</sup> Zainuddin Ali. *Op Cit.*,

<sup>6</sup> Akhmad Khisni. *Hukum Waris Islam*. Semarang: Perpustakaan Nasional Katalog Dalam Terbitan (KDT), 2017.

rights is not certain, and can receive the entire inheritance if there are no heirs of *dzawil furudl*. The heirs of *dzawil furudl* exist, then *asabah* is only entitled to the remaining property to get his share if any. *Dzawil arham* is a group of heirs whose rights to inheritance are caused by kinship with the heir.<sup>7</sup>

Another division is the group of *nasabiyah* heirs, which is based on blood relations and *sababiyah* heirs, namely heirs whose inheritance relationship is based on a cause such as marriage, religion or agreement.<sup>8</sup>

## 2. Imposition of BPHTB on Inheritance

**Assigned According to Islamic Law** There are two groups of heirs, namely:

1. According to blood relationship:
  - a. The male group consists of father, son, brother, uncle, and grandfather.
  - b. Women, namely mothers, daughters, sisters and grandmothers.

2. According to the marital relationship consists of a widower or widow.

Article 181 and Article 182 of the KHI regulate a situation, where you are entitled to inherit property, because you do not leave your child or father.

Article 181

*"If a person dies without leaving a child and father, then the brothers and sisters of the same mother get one-sixth each. If they are two or more people then they together get a third of the share."*

Article 182

*"If a person dies without leaving children and father, while he has one biological sister or the same father, then he gets half of the share. If the*

*sister is together with two or more biological sisters or fathers, then they jointly get two-thirds of the share.*

*If the sister is together with a brother or sister, then the share of the brother is two to one with the sister."*

The father of the heir is the heir of *dzul faraid*, whose share is certain, namely getting 1/6 of the inheritance if he inherits with the heir's child. His children are the heirs of *asabah*, and get the remainder of the inheritance after the heirs of *dzul faraid*, with a ratio of 2:1 for boys and girls.<sup>9</sup>

The following is an example of a case in an heir's family where there are 4 heirs, consisting of: 3 children (1 girl and 2 boys) and 1 maternal grandfather (mother's father).

**Inheritance** = (inherited property + share of joint property) – (needs of the testator during illness until death + funeral management fee + debt payment + gifts to relatives)

1. Father's share, is entitled to one-sixth of the inheritance.
2. Children's share, the amount of the inheritance must be calculated first

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after deducting the share of the heirs of *dzul faraid*, the formula is:

From this formula, the calculation of the remaining inheritance =  $6/6 - 1/6 = 5/6$ . The remaining inheritance divided among the three heirs is 5/6 of the inheritance.

The parts are: A = 1, B = 2, and C = 2, then the amount of the part is added up as the denominator, and each child gets a share, namely:

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<sup>7</sup> Ahmad Azhar Basyir. *Hukum Waris Islam*. Yogyakarta: Fakultas Ekonomi, Universitas Islam Indonesia, 1995.

<sup>8</sup> Titik Triwulan Tutik. *Pengantar Hukum Perdata Di Indonesia*. Jakarta: Prestasi Pustaka Publisher, 2006.

<sup>9</sup> Ahmad Azhar Basyir. *Op Cit.*; Habib Ismail, Hasyim Asy'ari, and Agus Setiawan. "Hak Waris Anak LakiLaki Tertua Dalam Hukum Adat Lampung Pepadun Perspektif Gender (Studi Di Tegineneng Kabupaten

$$A = \frac{\text{bagian A}}{\text{bagian A+B+C}} = \frac{1}{1+2+2} = \frac{1}{5}$$

$$B = \frac{\text{bagian B}}{\text{bagian A+B+C}} = \frac{2}{1+2+2} = \frac{2}{5}$$

$$C = \frac{\text{bagian C}}{\text{bagian A+B+C}} = \frac{2}{1+2+2} = \frac{2}{5}$$

From this count, multiply each share by the rest of the inheritance, and the result is:

$$A = \frac{1}{5} \times \frac{5}{6} = \frac{1}{6}$$

$$B = \frac{2}{5} \times \frac{5}{6} = \frac{2}{6} \text{ atau } \frac{1}{3}$$

$$C = \frac{2}{5} \times \frac{5}{6} = \frac{2}{6} \text{ atau } \frac{1}{3}$$

The share of each heir in this example case is:

1. Father (grandfather): 1/6 part;
2. Girls: 1/6 share;
3. Boys (1): 2/6 parts;
4. Boys (2): 2/6 parts;

If the inheritance left in the above case is Rp. 300,000,000,- then the calculation of the

Pesawaran)." *Al Hurriyah: Jurnal Hukum Islam* 4, no. 1 (2019): 56-67; Sayid Sabiq. *Fikih Sunah, Jilid I, "Faraid (Waris)*. Bandung: Terj. Mahyuddin Syaf, AlMa'arif, 1988.

imposition of BPHTB if using the distribution according to Islamic Inheritance Law is as follows:

1. For fathers (grandfathers) and daughters each gets a share of 1/6 of the share. The calculation of the imposition of BPHTB is:

$$\begin{aligned} & 5/6 \times \text{Rp. } 300.000.000,- = \text{Rp. } \\ & 250.000.000,- \\ & \text{Rp. } 250.000.000,- - \text{Rp. } 60.000.000,- \\ & (\text{NPOPTKP}) = \text{Rp. } 190.000.000,- \text{ Rp. } \\ & 190.000.000,- \times 5\% (\text{BPHTB rate}) \\ & = \text{Rp. } 9.500.000,- \end{aligned}$$

So, the BPHTB that must be paid by the father (grandfather) and daughter as heirs who receive the Transfer of Joint Rights (PHB) is Rp. 9.500.000,-

2. Boys (1) and boys (2) each get a share of 2/6 shares. The calculation of the imposition of BPHTB is:

$$\begin{aligned} & 4/6 \times \text{Rp. } 300.000.000,- = \text{Rp. } \\ & 200.000.000,- \\ & \text{Rp. } 200.000.000,- - \text{Rp. } 60.000.000,- \\ & (\text{NPOPTKP}) = \text{Rp. } 140.000.000,- \text{ Rp. } \\ & 140.000.000,- \times 5\% (\text{BPHTB rate}) \\ & = \text{Rp. } 7.000.000,- \end{aligned}$$

So, the BPHTB that must be paid by each son of the heir is Rp. 7,000,000,-

The calculation above will be different from the general calculation, both regarding the determination of heirs and the share of heirs. Because if it is calculated using civil law in general, then there are only 3 heirs, namely: 1 daughter and 2 sons, while grandfather is not included in the heir because grandfather is in the 2nd group (which is automatically blocked (closed) by children as group 1). This of course also affects the imposition of the BPHTB tax because it will be divided equally for each heir. In this case, because there are only 3 heirs, each heir gets an equal share, which is 1/3 part.

If using civil law in general, the calculation of the imposition of BPHTB for the PHB is as follows:

$$\begin{aligned} & 2/3 \times \text{Rp. } 300.000.000,- = \text{Rp. } 200.000.000,- \\ & \text{Rp. } 200.000.000,- - \text{Rp. } 60.000.000,- \\ & (\text{NPOPTKP}) = \text{Rp. } 140.000.000,- \text{ Rp. } \\ & 140.000.000,- \times 5\% (\text{BPHTB rate}) = \text{Rp. } \\ & 7.000.000,- \end{aligned}$$

So, the *BPHTB* that must be paid by the heirs (in this case, 1 daughter and 2 sons) who receive the transfer of PHB is Rp. 7,000,000,-

If there will be a Shared Rights Sharing (PHB) in the example above, for a daughter as an heir if using Islamic inheritance law, she will get 1/6 share and the imposition of *BPHTB* is 5/6 of the total inheritance, whereas if using civil law, the daughter will be subject to *BPHTB* of 2/3 of the total inheritance.

The difference in calculations in the imposition of *BPHTB* between Islamic inheritance law and general civil law is what causes *BPHTB* calculations calculated by Islamic law to be unpopular and rarely used in field practice, because the calculations will change depending on the conditions of each family who has the right inheritance (depending on the number of heirs and gender).

A person who holds inheritance rights will later become a taxpayer where he is obliged to pay his *BPHTB* tax. He has the right to choose which law to use in the implementation of the distribution of his inheritance rights, because in practice the collection of *BPHTB* uses a self-assessment system, where the taxpayer is entrusted with calculating and paying the taxes owed to him by himself.

### ***3. The Role of Land Deed Maker Officials (PPAT) in the Implementation of the Imposition of Taxes on the Acquisition of Land Rights (BPHTB) for Inheritance***

Government Regulation No. 24 of 2016 concerning Amendments to Government Regulation No. 37 of 1998 concerning Position Regulations for Land Deed Maker Officials and its Implementation is set forth in Regulation of the Head of BPN No. 1 of 2006 concerning Provisions for Implementation of Government Regulation No. 37 of 1998 concerning Position Regulations for Land Deed Maker Officials. about *PPAT*, and this is closely related to taxation.

*PPAT*'s responsibility as a government partner is very large, because its products have legal consequences for securing income to the state, namely *PPH* 21 (*SSP*) and *BPHTB* (*SSB*).

The role of *PPAT* in implementing the self-assessment system on *BPHTB* tax collection related to the deed made in the Semarang City Region, interviews were held with 5 (five) *PPATs*, and two Officers/Employees of the Semarang Pratama Tax Service Office.

According to *PPAT* respondents (namely: Ms. Nurwulandari, S.H.; Ms. R. Ike Musyafiati, S.H.; Mr. Santoso, S.H.; Ms. Arlini, S.H., and Ms. Dewi Padusi, S.H.), they learned about the provisions of the previous *BPHTB* regulations through socialization coordinated by the *IPPAT* chair. /INI Semarang.

*PPAT* transfers land rights in determining the amount of *BPHTB* to conduct a self-assessment, namely the amount of tax payable is  $5\% \times (\text{Acquisition Value of Taxable Objects} - \text{Acquired Value of Non-Taxable Tax Objects})$ , where the Acquired Value of NonTaxable Tax Objects (*NPOPTKP*) is determined by for each region, for Semarang it is Rp. 60,000,000.00.<sup>10</sup>

From the implementation of selfassessment, there are still many obstacles faced, including the lack of speed of the tax authorities themselves in overcoming problems in the field. The determination of the *PBB NJOP* is one of the problems faced by *PPAT*, thus hampering its performance. This is related to the making of a deed of transfer of rights. The determination of the *NJO* of land for the sale-purchase/transfer of rights, which is stated in the Tax Payment Letter, is often disputed by the Tax Service office. This is not yet harmonious arrangements regarding the determination of *NJOP* in the same tax structure and in line with the development of *BPHTB* regulations, and taxpayers themselves do not know about *BPHTB* arrangements and their

<sup>10</sup> Interview with a notary in Semarang city

developments. In connection with the obstacles that arise in the implementation of the self-assessment system on the collection of

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*BPHTB* by *PPAT* related to the deed it has made, *PPAT* can overcome this by:

1. *PPAT* Provide explanations to taxpayers, if there is a change;
2. Request a *NJOP* Certificate, for the transfer of land rights, but the *SPPT PBB* has not been issued by the local *KPP Pratama*.

Article 87 of Law No. 28 of 2009 concerning Regional Taxes and Regional Levies, stipulates that the basis for imposition of *BPHTB* is the Acquired Value of Tax Objects. The Acquired Value of the Tax Object for the sale and purchase/transfer of rights is the transaction price. Based on the value of this transaction, the basic value used in calculating *BPHTB* depends on the agreement of the parties in conducting the transaction. The certainty of the correctness of the transaction value that is considered to have been approved and is the basis for calculating the *BPHTB* depends on the honesty of the parties.

Validation means research/verification of proof of payment in the form of a Regional Tax Payment Letter (*SSPD*), which is carried out by authorized service officers, among others, to examine the truth of the value used to calculate *BPHTB*.

### C. Conclusion

In principle, the distribution of inheritance falls after the testator dies. People who can inherit are people who have *nasab*, marriage or religious relationships. The process of determining the amount of the Tax on Land and Building Rights Acquisition Tax (*BPHTB*) when viewed from Islamic inheritance law, the calculation will be flexible according to the condition of the family who has inheritance rights (depending on the number of inheritance rights and gender). Determination of *BPHTB* taxes associated with tax validation often creates uncertainty, because the transaction value and tax calculations can change/unfix because *BAPENDA* does not have a fixed/definite reference price. The Land Deed Official (*PPAT*) plays a role in helping to calculate the amount of *BPHTB* tax charged to the taxpayer (heir) and pays it to the tax office.

As suggestions, it is hoped that with an explanation regarding the distribution of inheritance according to Islamic law, this can be used as an alternative choice to be widely applied, especially for people who are muslim. It is hoped that *PPAT* can also help provide a clear and good explanation to its clients about the option to distribute inheritance rights according to Islamic law. In the future, *BAPENDA* should be able to determine the exact amount of the price, so that the calculation when paying taxes related to the *BPHTB* of inheritance does not change.

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