

# Legal Analysis of Property Transfer Tax Regulations in Notarial Transaction Agreements Amidst the Digitalization of Society 5.0

Albert Lodewyk Sentosa Siahaan<sup>1</sup>, Budiman Ginting<sup>2</sup>, Muhammad Yamin<sup>3</sup>, Keizerina Devi<sup>4</sup>  
{albertlodewyksiahaan@gmail.com<sup>1</sup>}

Universitas Sumatera Utara, Indonesia<sup>1, 2, 3, 4</sup>

**Abstract.** This study aims to find alternative ways to use digital technology in answering the problem of implementing the transfer of land and building rights taxes in the sale and purchase deed. In notarial transaction agreements, property transfer tax is mandatory and is collected based on statutory regulations. Property transfer tax consists of income tax, value-added tax, sales tax on luxury goods, and property title transfer fee. It is calculated according to the Regional Tax and Retribution Law which takes the highest value of the Sales Value of the Taxable Object or transaction value. This causes legal uncertainty, as there are many cases where the calculation basis is fabricated to reduce the tax that must be paid prior to the signing of the agreement. This causes a large potential loss for the state if the calculation is based on the Regional Tax and Retribution Law. This is normative juridical research, which utilizes materials from books, laws, articles, and other legal materials. The results indicate that the basis for calculating property transfer tax in notarial transaction agreements should not be taken from the highest value between the Sales Value of the Taxable Object or transaction value, but rather from the fair market value. The Regional Tax and Retribution Law should be revised with the support of digitalization so that tax potential can increase.

**Keywords:** Legal Analysis, Property Transfer Tax, Notarial Transaction Agreement, Digitalization

## 1 Introduction

Taxes are the contribution of citizens to the state based on the law (enforceable) without consideration, which can be directly appointed and used to pay for general expenses [1]. This definition emphasizes the functions of tax, namely its budgetary and regulatory functions [2].

Taxes highly contribute to the survival of society and the state. They are considered as political and strategic levies as mandated by Article 33 Paragraph (2) of the 1945 Constitution. They are political in nature as tax collection is considered a constitutional order and are strategic in nature as they are the main foundation for the state in financing government and development activities. For citizens, taxes are a concrete means of contribution towards the state to hopefully improve public and state welfare.

The legal event of a transaction in a notarial transaction agreement involves the buyer and seller being in a transaction agreement that is notarized by a notary or a land titles registrar. When the agreement has been signed, a property transfer tax must be immediately paid. In property transfers, a notary is an integral and efficient role in the tax reporting, paying, and

validating processes and is a necessary part of the process from the start of the transaction up until the land rights/certificate has become the property of the buyer.

The objects in property transfers in notarial transaction agreements are land and the buildings erected on it. Ruwastuti [3] defines land as “an area with economic potential that is able to support communities (forests, rivers, mountains, mineral resources, and agricultural land) and is known as a cultural crossroad of the surrounding communities”. Regarding this definition, land construction is considered the same as an area. The territory is terminologically defined as an area of authority, command, supervision, or the area surrounding a province or district. The definition of land in land construction is closely associated with administrative areas.

The value of a property transfer tax is obtained from the basic calculation value of tax imposition, namely the highest Sales Value of the Taxable Object (SVTO) or transaction value following Article 87 Paragraph (2a) and Paragraph (3) of Law Number 28 of 2009 concerning Regional Tax and Retribution, followed by the types of property transfer tax as regulated in other tax laws. The transaction price is used if it is the highest value, as the SVTO is usually much lower than the market and transaction values.

SVTO that are far below the market and transaction prices can cause problems in implementing this regulation. This is in contrast with the objective of transferring management rights of property title transfer fees and taxes for residential areas to local governments, which is to ensure that regions become more advanced and familiar with potential land value according to the population density and economic development of the area.

## **2 Research Methods**

This is normative research, specifically legal research that uses secondary data sources or data obtained through library materials by examining research on legal principles, sources, and theories taken from books and statutory regulations as well as regulations under laws such as presidential, government, ministerial, and regional regulations related to this research.

## **3 Discussion**

In notarial transaction agreements, the object of a property transfer tax is the land itself. The land has a philosophical value as it has economic, cultural, and historical values. This understanding of land use was strengthened by Dixon [4], where he defined land as “Both the physical assets and the right which the owner or others may enjoy in or over it”.

Land plays a crucial role in the development of human life. Throughout history, land has been used as a medium for humans and since post-Pleistocene times, land has been utilized to farm after previously hunting and gathering food [5]. This period of land cultivation marks the development of human civilization in Indonesia.

In various scientific studies such as social, legal, cultural, and economic science, the land is a key asset in human lives. It has always been associated with the existence of a nation and the center of culture emergence [6]. Various wars have been declared to conquer the land. The importance of land in human lives is due to its many benefits, namely: 1. The land is a natural asset that provides space for other physical assets, such as housing; 2. The land is a social space where people interact; 3. Land provides space for infrastructure (roads, water, sanitation,

electricity) that is beneficial for the community; 4. The land is an economic asset that can be sold, inherited, or used as collateral for loans; and 5. Land can increase the income of its owner in many ways, for example by erecting businesses or rental accommodations (Urban Sector Network and Development Works) [7]. These examples show that land is the main source of welfare for humans.

Land plays a crucial role in maintaining human lives. Its functions are divided into several dimensions:

- a. The strategic function of land from cultural and ecological dimensions: the interdependence between organisms and the environment; as a component of the environment, the land is dependent on other elements [8].
- b. The strategic function of land from the socio-political dimension: land can determine the social status of the owner. This relates to land ownership rights, in which the landowner has the authority to own and manage the land. The more land a person owns, the greater the authority regarding land utilization. This authority also relates to the social functions of land which must consider the public interest. As a limited natural resource, land ownership must be distributed as equitably as possible by the state through limiting land ownership. This will indirectly ensure that an individual will not be able to disrupt public peace through irresponsible land use. In land management, the stance and attitude of the government are important factors in supporting actions that are in line with public interests.
- c. The strategic function of land from the economic dimension: the land is a means of production that can provide income as well as improve the welfare of the owner. This can be seen from an economic point of view: the land is one of the production factors, the others being labor and capital [9]. The land is considered the most durable factor of production as its value tends to increase over time, unlike vehicles, cars, or cellphones which experience economic depreciation. This is in line with its socio-political dimension, where land is also a source of power in addition to being a source of income. It can be said that the larger the land owned by a person or a group, the greater their influence on the government [10]. This can be seen in the development of an area; it is determined based on the interests of the owners of the largest amount of land. It is known that in addition to having an impact on the economic sector, the development of an area will indirectly impact the socio-political sector of the surrounding communities.

Article 33 Paragraph (3) of the 1945 Constitution states that: "The land, the waters, and the natural riches contained therein shall be controlled by the State and exploited to the greatest benefit of the people". Two elements need to be considered from this statement, namely state control and its philosophical implication. State control over land and buildings does not mean full ownership but rather the authority of the state, as the highest form of authority of Indonesia, to:

- a. Manage and administer the designation, use, supply, and maintenance of the land, water, and skies.
- b. Determine and regulate the rights for ownership over (part of) the land, water, and skies.
- c. Determine and regulate legal relations between individuals and legal actions concerning the land, water, and skies.

The SVTO of land determined by the regional government is often much lower than the market and transaction prices which often results in problems in the process of paying property transfer tax in notarial transaction agreements in Indonesia. For this reason, the transaction price is often used in place of the SVTO.

In its essence, appraisals are estimates or opinions based on rational reasons or analysis. The feasibility of an appraisal is determined by the availability of sufficient data, as well as the

ability and objectivity of the appraiser. According to Hidayati and Harjanto [11], land appraisal is a process to provide estimates and analyses on a property (land and buildings) based on acceptable facts obtained from field research.

According to Kurdinanto in Luky [12] the value of land is determined by two types of factors that have a strong relationship, influence, and attraction to said land, namely:

- a. Measurable factors, which can be processed scientifically using academic logic. These factors are planned and their physical form can be observed in the field, for example, accessibility (distance and transportation) and infrastructure networks (city facilities and infrastructure such as roads, electricity, offices, and housing).
- b. Unmeasurable factors, which appear independently and are uncontrollable. Wilcox in Luky [12] states that these factors can be further classified into three types, namely: 1) Customary factors and institutional influences. 2) Aesthetic, enjoyment, and pleasure factors such as the type of neighbors and entertainment available. 3) Speculative factors, such as anticipated changes in land use and consideration of monetary changes.

Advances in information technology have caused the information to be disseminated very quickly. Anyone can very easily access and disseminate various types of information. One important piece of information is land value, as it is the basis for determining the SVTO which is then used to determine the amount of tax to be paid. Due to land appraisals being required to be carried out in a quick and streamlined manner, a certain form of media is needed to solve this problem. One of them is the Web-Based Geographical Information System or also known as WebGIS [13].

Society 5.0 is a society that can solve various challenges and social problems by utilizing various innovations that were born in the era of the industrial revolution 4.0 such as the Internet on Things (internet for everything), Artificial Intelligence (artificial intelligence), Big Data (large amounts of data), and robots to improve the quality of human life. Society 5.0 can also be interpreted as a concept of a human-centered and technology-based society. In order to carry out legal development and implement the rule of law, technology is needed to help the law achieve its legal goals. As the systems handling taxation become more digitalized, several problems can potentially arise. These include technical problems such as both the system itself and the internet are prone to errors and virus attacks and the technological literacy of taxpayers in utilizing digital systems [14].

## **4 Conclusion**

In determining its value, it is time for property transfer tax in notarial transaction agreements to stop using the highest value of the SVTO or transaction value under the Regional Tax and Retribution Law, so that the law can be more appropriately amended by establishing one sole value basis. As the needs of the public are higher than their obligation to follow the law, many have falsified property transaction prices. Through digitalization, it is possible to determine the basis of property transfer tax not from the highest value of the SVTO or transaction value but rather from the fair market price which can always change according to existing conditions. The development of technology should support the implementation of the law to keep up with the fast economic development of Indonesia, which causes delays in determining SVTO.

## Acknowledgments

I would like to express my highest gratitude to Prof. Ningrum Sirait for her support and recommendation in completing and publishing this research.

## References

- [1] M. B. P. Darwin, "Pajak Bumi Dan Bangunan dalam tataran praktis," *Mitra Wacana Media. Jakarta*, 2009.
- [2] M. D. Saidi, *Perlindungan hukum wajib pajak dalam penyelesaian sengketa pajak*. Divisi Buku Perguruan Tinggi, RajaGrafindo Persada, 2007.
- [3] M. R. Ruwiasuti, "Menuju Pluralisme Hukum Agraria: Analisa dan Kritik terhadap Marginalisasi Posisi Hukum-hukum dan Hak-hak Adat Penduduk Asli atas Tanah dan Sumber-sumber Agraria oleh UUPA 1960," *Usulan Revisi Undang. Pokok Agrar. Menuju Penegakan Hak-Hak Rakyat atas Sumber-Sumber Agrar.*, 1998.
- [4] M. Dixon, *Principles of land law*. Routledge, 2002.
- [5] M. D. Poesponegoro and N. Notosusanto, *Sejarah Nasional Indonesia*, vol. 6. Departemen Pendidikan dan Kebudayaan, Direktorat Sejarah dan Nilai ..., 1984.
- [6] C. Nasucha, *Politik ekonomi pertanahan dan struktur perpajakan atas tanah*. Megapoin, divisi dari Kesaint Blanc, 1995.
- [7] D. W. Bromley, *Environment and economy: Property rights and public policy*. Basil Blackwell Ltd., 1991.
- [8] Y. W. W. Winangun, *Tanah sumber nilai hidup*. Kanisius, 2004.
- [9] E. M. Fisher, "Economic aspects of urban land use patterns," *J. Ind. Econ.*, vol. 6, no. 3, pp. 198–208, 1958.
- [10] D. McCrone and B. Elliott, *Property and Power in a City*. Springer, 1989.
- [11] W. Hidayati and B. Harjanto, "Konsep dasar penilaian properti," *BPFE, Yogyakarta*, 2003.
- [12] L. Djunardi, "Studi Keandalan Luas Persil dalam Pendaftaran Tanah Sistematis di Perkotaan dan Pedesaan," ITB University, 1997.
- [13] W. N. M. Dj and A. B. Cahyono, "Perancangan Sistem Informasi Geografis Zona Nilai Tanah Berbasis Web Menggunakan Leaflet Javascript Library (Studi Kasus: Kecamatan Kenjeran, Kecamatan Gubeng, Kecamatan Tambak Sari dan Kecamatan Bulak, Kota Surabaya, Jawa Timur)," *J. Tek. ITS*, vol. 5, no. 2, pp. A809–A816, 2016.
- [14] F. Jawas, I. P. G. Diatmika, S. E. AK, and I. N. P. Yasa, "Efektivitas Penerapan Sistem Elektronik dan Pelayanan Perpajakan terhadap Penerimaan Pajak (Studi Kasus pada Kantor Pelayanan Pajak Pratama Singaraja, Bali)," *JIMAT (Jurnal Ilm. Mhs. Akuntansi) Undiksha*, vol. 8, no. 2, 2018.