

Human Rights Implications of Tax Validation Policies on Land and Building Sales: A Social Justice Perspective

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Abstract

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One of the taxable objects is the transfer of rights over land and/or buildings. Land and buildings gain value as they can be transferred from their owners to others who desire them. The taxable object of the transfer of rights over land and/or buildings is subject to taxes from both the seller and the buyer. The seller is subject to income tax (PPH), while the buyer is subject to a tax in the form of a duty on the acquisition of rights over land and buildings (BPHTB). The taxable object of the duty on the acquisition of rights over land and buildings includes land, buildings, as well as land and buildings. This analysis examines land procurement from a Human Rights perspective. The fundamental values of Human Rights should underlie development, as there is a close connection between development and Human Rights. The quality of life of the affected community must be improved or at least remain the same as before the land acquisition. Land procurement activities should also accommodate the protection of the rights and interests of the community, including the right to receive welfare guarantees so that they do not become poorer than before their land was acquired. The principles of taxation that are universally recognized, namely justice, convenience, and administrative efficiency, as well as the enhancement and optimization of state revenue, should be upheld while maintaining self-assessment.

1. Introduction

Theoretically, Human Rights are inherent and fundamental rights naturally attached to every human being, considered as Divine gifts that must be respected, safeguarded, and protected. The essence of Human Rights lies in the effort to maintain the security and integrity of humanity as a whole by balancing individual interests with public interests. Similarly, respecting, protecting, and upholding Human Rights is a shared responsibility that must be carried out by every individual and government, whether from the civil or military sector, as well as by the state.¹ Human Rights originate from their creator, God Almighty, and are inseparable rights inherent to every human individual.² These rights represent respect for the dignity of humans as beings of high standing from God. Human Rights are universal rights attached to every person, regardless of their location, and cannot be ignored or revoked by anyone. In addition to serving as protection for the self and human dignity, Human Rights also function as a moral foundation in social interactions and human relationships. Every right carries inherent obligations.³ Therefore, along with Human Rights, some obligations must be

¹ A. Bazar Harapan and Nawangsih Sutardi, *Hak Asasi Manusia Dan Hukumnya* (Jakarta: CV. Yani's, 2006).

² Nurul Farhana, "Aborsi Dalam Perspektif Hak Asasi Manusia Dan Hukum Islam," *Journal Presumption of Law* 4, no. 2 (October 10, 2022): 178–93, <https://doi.org/10.31949/jpl.v4i2.3431>; Hwian Christianto, "Penggunaan Media Internet Dalam Pemenuhan Hak Atas Pendidikan Di Masa Pandemi Covid-19: Perspektif Hak Asasi Manusia Dan Hukum Pidana," *Jurnal HAM* 11, no. 2 (2020), <https://doi.org/10.30641/ham.2020.11.239-253>.

³ Fatma Faisal, "Eksistensi Pengadilan Hak Asasi Manusia Terhadap Penegakan Hak Asasi Manusia Dalam Sistem Peradilan," *Gorontalo Law Review* 2, no. 1 (April 30, 2019): 33, <https://doi.org/10.32662/golrev.v2i1.559>; Tini Hadad, "Hak Asasi Manusia (HAM) Sebagai Parameter

fulfilled to ensure the validity and respect of these rights. In exercising Human Rights, we are responsible for considering, respecting, and valuing the rights of other individuals. Awareness of Human Rights, as well as respect for the inherent self-worth, dignity, and honor that come with being human from birth, is a natural right for every person.⁴ In general, the principles of Human Rights protection are objectively uniform across different countries. However, in practice, there are subjective differences that reflect varying perspectives. Although there may be consensus at a certain point in time regarding the essence of what should be protected and regulated, differences in perceptions of Human Rights among these countries simultaneously exist.⁵ These differences can be attributed to the diverse ideological, political, economic, socio-cultural backgrounds, and national interests of each country.

To develop capacity for increasing tax revenue, strategies for tax intensification and/or extensification can be implemented. One potential source of tax that can be explored in line with the current economic conditions and national development is the Duty on the Acquisition of Rights to Land and Buildings (BPHTB).⁶ BPHTB is a tax imposed on the acquisition of rights to land or buildings, where the tax obligation arises when such rights are acquired by an individual or legal entity. The government is highly committed to increasing regional original revenue from BPHTB taxes, as evidenced by the addition of new taxable objects under BPHTB and the enhancement of fines imposed on officials, particularly Land Deed Officials (PPAT), who do not comply with Law Number 20 of 2000 concerning Amendments to Law Number 21 of 1997 on the Duty on the Acquisition of Rights to Land and Buildings (hereinafter referred to as Law No. 20/2000) with full responsibility. The role of Land Deed Officials (PPAT) in land registration is crucial, as they assist the Head of the Regency/City Land Office in carrying out various related activities.⁷ However, it is important to note that their assistance to the land agency does not make them subordinates of the agency. Instead, their role is to facilitate and assist taxpayers in the process of paying the Duty on the Acquisition of Rights to Land and Buildings (BPHTB).

The term "Land Procurement" became popular following Presidential Decree Number 55 of 1993 concerning Land Procurement for the Implementation of Development for Public Interest (hereinafter referred to as Presidential Decree No. 55/1993). The use of this term is also evident in Presidential Regulation Number 36 of 2005 concerning Land Procurement for the Implementation of Development for Public Interest (hereinafter referred to as Presidential Regulation No. 36/2005), Presidential Regulation Number 65 of 2006 concerning the Amendment of Presidential Regulation Number 36 of 2005 concerning Land Procurement for the Implementation of Development for Public Interest (hereinafter referred to as Presidential Regulation No. 65/2006), and Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest (Law No. 2/2012). The term "land procurement" replaced the term "land release," which was previously used in regulations of the Ministry of Home Affairs. On the other hand, the term "Revocation of Land Rights" is regulated under Article 18

Pembangunan (Dilihat Dari Sisi Keikutsertaan Indonesia Dalam Pencapaian Tujuan Pembangunan Millenium - MDG)," *Jurnal Hak Asasi Manusia* 3, no. 3 (August 30, 2021): 41-61, <https://doi.org/10.58823/jham.v3i3.31>; Mimin Dwi Hartono, "Pendidikan Dan Penyuluhan Hak Asasi Manusia: Refleksi Program Komnas HAM Periode 2012-2017 1," *Jurnal Hak Asasi Manusia* 14, no. 14 (September 20, 2021): 1-33, <https://doi.org/10.58823/jham.v14i14.105>.

⁴ Harapan and Sutardi, *Hak Asasi Manusia Dan Hukumnya*.

⁵ Muhammad Amin Putra, "Eksistensi Lembaga Negara Dalam Penegakan Hak Asasi Manusia Di Indonesia," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 9, no. 3 (April 19, 2016), <https://doi.org/10.25041/fiatjustisia.v9no3.600>.

⁶ MARIHOT PAHALA SIAHAAN, *Hukum Pajak Elementer Konsep Dasar Perpajakan Indonesia*, 1st ed. (Yogyakarta: Graha Ilmu, 2010).

⁷ Siahaan.

of Law Number 5 of 1960 concerning Basic Agrarian Principles (hereinafter referred to as Law No. 5/1960), which explains that land rights can be revoked for public interest by providing appropriate compensation in accordance with the provisions of the law. These terms are related to the implementation of development for the benefit of society at large.

The transfer of rights by an unauthorized individual is invalid. A person who does not have legitimate rights over a piece of land has no authority to register or transfer the land to another party. This principle is designed to protect the legitimate right holder, ensuring that the rightful owner can always reclaim their rights if their land has been certified by another party.⁸ Currently, there are many cases of land disputes because the owner or the name recorded on the land certificate does not have legitimate rights to the land. This results in significant losses for the actual rightful holder. In principle, taxes must be paid directly by the applicant or the relevant taxpayer. However, a Notary or Land Deed Official (PPAT) may receive tax payments entrusted by the applicant. The receipt of entrusted tax payments by a Notary or PPAT is an additional financial measure in accordance with Law Number 28 of 2009 concerning Regional Taxes and Regional Levies (Law No. 28/2009). Based on the background outlined, the author is interested in addressing the issue with the title: "How do the policies for validating sales tax and purchase tax on the sale and purchase of land and/or buildings relate to human rights violations?"

2. Methods

The method used in this research is normative juridical, which is a legal research approach conducted by examining literature or secondary data as the basis for the study. This approach involves reviewing regulations and literature relevant to the issue being investigated.⁹ The research employs a descriptive-analytical approach, aiming to present a comprehensive, systematic, and in-depth description of the research situation. The data analysis technique applied is qualitative analysis, where the collected data is systematically organized and then analyzed to draw conclusions related to the issue being studied.

3. Results and Discussion

The Unitary State of the Republic of Indonesia adheres to the principles of Pancasila and the 1945 Constitution, with the aim of creating a safe, orderly, prosperous, and just national life.¹⁰ Over time, Indonesia's legal system has undergone significant, rapid, and complex changes. The shift from central to more decentralized control has affected bureaucratic behavior at both central and regional levels, altering the paradigm from the old to the new. Sometimes, this has led to the law being deprioritized in favor of power, which can result in policies that are disadvantageous to the people.

In Indonesia, types of taxes are divided based on their collecting authorities into two main categories: central taxes and regional taxes (including provincial and district/city taxes). Regional governments are only authorized to collect taxes that are officially designated as

⁸ Rofiqah Rahmi and Sudjito Sudjito, "Aspek Yuridis Pendaftaran Peralihan Hak Atas Tanah Karena Pewarisan," *Jurnal Ilmu Hukum* 9, no. 1 (February 29, 2020): 63, <https://doi.org/10.30652/jih.v9i1.7868>; Akmal Yogi Alfarizi, "Kedudukan Pendaftaran Tanah Dalam Peralihan Suatu Hak Atas Tanah," *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 7, no. 1 (January 16, 2023), <https://doi.org/10.58258/jisip.v7i1.4270>.

⁹ Soerjono Soekanto, *Pengantar Penelitian Hukum*, 3rd ed. (Jakarta: Universitas Indonesia, 2014).

¹⁰ Udiyo Basuki, "Dasar Negara Dan Hukum Dasar: Suatu Telaahan Yuridis Atas Relasi Pancasila Dan UUD 1945," *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 8, no. 1 (January 30, 2020), <https://doi.org/10.14421/sh.v8i1.2046>; Dairani Dairani, "Argumentasi Hukum Dan Upaya Mempertahankan Eksistensi Pancasila Sebagai Sumber Dari Segala Sumber Hukum Negara," *HUKMY: Jurnal Hukum* 1, no. 1 (April 30, 2021): 19–34, <https://doi.org/10.35316/hukmy.2021.v1i1.19-34>; Tubagus Muhammad Nasarudin, "Konsepsi Negara Hukum Pancasila Dan Implementasinya Di Indonesia," *PRANATA HUKUM* 15, no. 1 (January 31, 2020): 43–52, <https://doi.org/10.36448/pranatahukum.v15i1.217>.

within their jurisdiction, and they are not permitted to collect taxes outside their authority. This aims to prevent overlap in tax collection from the public. According to Law Number 20 of 1961 on the Revocation of Rights to Land and Objects on It (Law No. 20/1961), the President, in urgent situations after consulting with the Minister of Agrarian Affairs, the Minister of Justice, and other relevant ministers, may revoke rights to land and objects on it for public interest, including national and state interests, as well as the common interest of the people and development. However, the forced revocation of land rights from owners constitutes a violation of human rights, as stipulated in Article 1, Paragraph 6 of Law Number 39 of 1999 on Human Rights (Law No. 39/1999). Article 28H, Paragraph (4) of the 1945 Constitution of the Republic of Indonesia also affirms that everyone has the right to private ownership, which must not be arbitrarily seized by anyone.

Every human right also carries obligations. Therefore, alongside Human Rights (HR), there are responsibilities that must be fulfilled to ensure the proper implementation of HR. In exercising HR, we must respect and value the fundamental rights of others. Awareness of HR includes recognizing the inherent self-worth, dignity, and honor of every human being from birth, as part of the natural essence of humanity.¹¹ The protection of Human Rights focuses on various enforcement measures to prevent human rights violations. This is primarily achieved by creating effective human rights instruments and institutions. Additionally, efforts to protect human rights also involve various factors related to the prevention of human rights violations, through actions taken by individuals, communities, and the state.

According to Law No. 39/1999, the legal protection provided includes the recognition and protection of Human Rights by the state, the recognition and protection of customary rights, protection of property rights, property as a human right, and the guarantee that such rights cannot be arbitrarily taken except for public interest with fair compensation. In principle, under the national land law concept, land acquisition should be carried out through deliberation, where communities voluntarily relinquish their land with appropriate compensation. If deliberation for public interest fails and the development cannot be relocated, the revocation of land rights is carried out according to the procedures outlined in Law No. 20/1961, which is based on Article 18 of Law No. 5/1960.¹² In practice, throughout almost all regions of Indonesia, although the system for collecting and paying BPHTB (Duty on the Acquisition of Rights to Land and Buildings) is based on self-assessment, taxpayers who have already paid and deposited the BPHTB must obtain approval in the form of validation from the Regional Revenue, Financial Management, and Asset Agency (DPPKAD). Problems arise when the statements from the parties (sellers and buyers) regarding the amount of the price (transaction value) are rejected or not recognized as accurate by the DPPKAD. On the other hand, sellers and buyers adhere to the provisions of Law No. 28/2009, which state that the Selling Value of Tax Objects (NJOP) set by the regional head can serve as a reference for the public, as it represents the selling value (price) determined by the government.

PPAT has the obligation and responsibility to verify that the taxpayer has settled all due taxes before signing the deed of transfer of rights. Meanwhile, the authority to assess whether BPHTB is required for the transfer of land rights, according to Law No. 28/2009, lies with the respective local government, as BPHTB is a type of regional tax. Accuracy in determining the transaction value for the transfer of rights is crucial in determining the amount of BPHTB that must be paid by the taxpayer. Sometimes, taxpayers request notaries or PPATs to lower the transaction value on the transfer documents to reduce the amount of BPHTB payable. Nevertheless, the government has made efforts to secure the human rights of its citizens as

¹¹ Harapan and Sutardi, *Hak Asasi Manusia Dan Hukumnya*.

¹² Umar Said Sugiharto, Suratman, and Noorhudha Muchsin, *Hukum Pengadaan Tanah: Pengadaan Hak Atas Tanah Untuk Kepentingan Umum Pra Dan Pasca Reformasi* (Malang: Setara Press, 2015).

previously mentioned, with the hope that the implementation and protection of human rights can be improved in the future. Legal certainty regarding land rights must be clear to minimize potential impacts from land acquisition.

In the context of social justice theory, analyzing the legal system and tax policies in Indonesia requires a deep understanding of the justice principles espoused by Pancasila and the 1945 Constitution. The Unitary State of the Republic of Indonesia is committed to creating a national life that is secure, orderly, prosperous, and fair, as emphasized in these principles. Social justice here includes efforts to ensure that all citizens have equal rights and opportunities to participate and benefit from social and economic progress. Over time, the Indonesian legal system has undergone significant changes that reflect the country's social and political dynamics. One major change is the shift from a centralized control system to greater decentralization. The aim of decentralization is to bring decision-making closer to the needs and aspirations of local communities and to grant greater autonomy to regions in managing their own affairs. This is intended to make each region more responsive to local issues and to create solutions that are more relevant to their specific contexts. However, in practice, decentralization often faces complex challenges. One such challenge is the emergence of legal uncertainty due to differences in the interpretation and application of laws at the regional level. This uncertainty can lead to injustice if local power is prioritized over universal legal principles. When local power and political interests dominate, principles of justice and equality are often neglected, reducing the effectiveness of the legal system in ensuring social justice. As a result, citizens may feel neglected or disadvantaged, and the legal system becomes less effective in creating a fair and just society.

The division of tax authority between central and regional taxes is a crucial step in Indonesia's taxation system aimed at avoiding overlap and duplication of tax burdens on the public. This separation is intended to manage tax obligations more efficiently, thereby reducing the likelihood of excessive or inconsistent taxation. Central taxes typically cover national-level taxes that support the overall national budget, while regional taxes are related to local funding needs and regional development. Social justice is a fundamental principle in the taxation system, which requires that the tax burden be distributed proportionally according to the financial capacity of each individual or entity.¹³ To achieve this justice, the tax system must be designed to ensure that taxes are levied fairly and do not disproportionately burden the public. This includes applying appropriate tax rates, clear regulations regarding the division of authority between central and regional governments, and effective oversight mechanisms to ensure compliance and fairness in implementation. By doing so, the tax system is expected to support more equitable development and the well-being of society in a fairer and more balanced manner.

One of the crucial issues faced in land management in Indonesia is land rights and the potential human rights violations that may arise from the expropriation of land for public purposes. Land rights are fundamental rights recognized in social justice theory, which emphasizes the importance of protecting individual rights, including property rights. When land rights are expropriated for public purposes, such as infrastructure development or government projects, social justice theory demands that this process be carried out carefully and fairly.¹⁴ Expropriation of land must balance between public interest and individual rights.

¹³ Fitri Wahyuni, "Analisis Perbandingan Sistem Pajak Progresif Dan Pajak Proporsional: Implikasi Terhadap Keadilan Sosial," *PAPATUNG: Jurnal Ilmu Administrasi Publik, Pemerintahan Dan Politik* 7, no. 1 (February 13, 2024): 1–10, <https://doi.org/10.54783/japp.v7i1.899>.

¹⁴ Safaruddin Harefa, "Penyelesaian Sengketa Tanah Dalam Pengadaan Proyek Jalan Tol Dengan Asas Keadilan," *Sosio Yustisia: Jurnal Hukum Dan Perubahan Sosial* 2, no. 1 (June 23, 2022): 140–55, <https://doi.org/10.15642/sosyus.v2i1.154>.

In this context, it is essential to provide fair compensation to affected landowners. Adequate compensation should not only cover the economic value of the land but also consider the social and emotional impacts on the owners. If violations of land rights are not properly addressed, it may reflect that the implementation of social justice in the context of land law is still inadequate. Therefore, reforms in land management policies and practices are necessary to ensure that individual rights are protected while meeting broader development needs.

In the context of human rights protection, social justice theory emphasizes that individual rights involve not only the right to protection but also the obligation to respect the rights of others. Social justice argues that every individual has fundamental rights that must be respected and protected, but these rights should be exercised within a framework of mutual respect for the rights of others.¹⁵ To ensure effective human rights protection, instruments and institutions are needed to prevent and address rights violations. These instruments include clear legal regulations and robust oversight mechanisms, while the institutions can comprise government bodies, independent agencies, and non-governmental organizations actively involved in monitoring and enforcing human rights. This obligation also encompasses active participation from all sectors of society in maintaining and improving social conditions and legal systems that support justice.¹⁶ This means that every individual and group has a responsibility to engage in efforts aimed at improving and strengthening human rights protection systems and contributing to the creation of a more just and equitable society. Without this active participation, human rights violations may continue and undermine the effectiveness of existing protections.

Challenges in tax collection, particularly regarding BPHTB, often reflect inaccuracies in transaction valuation and tax obligations. These inaccuracies can arise from various factors, such as differences in market value interpretation or unintentional administrative errors. Errors in valuation can lead to economic injustice, where some parties may face tax burdens that do not align with their economic capacity, while others may pay significantly lower taxes than required. Consequently, this injustice can undermine public trust in the legal and tax administration systems. Although the government has made various efforts to protect citizens' rights and ensure fair tax collection, there is an urgent need to improve the system for more optimal implementation of social justice. It is crucial to uphold the legality and legal certainty related to land rights and to ensure that the acquisition and valuation of land are conducted transparently and accurately. With appropriate corrective measures, the negative impacts of land acquisition can be minimized, and public confidence in the tax and legal systems will be enhanced. Despite efforts to achieve social justice through legal and tax policies, challenges such as the decentralization of power, violations of land rights, and issues in tax collection indicate that the application of social justice in Indonesia still requires ongoing attention and improvement. Social justice necessitates a commitment to ensuring that legal policies and practices are carried out fairly, transparently, and with respect for individual rights.

4. Conclusions

Legal certainty regarding community land rights must be ensured and respected. Land acquisition should be avoided if possible or minimized. If unavoidable, an early evaluation of

¹⁵ Radiyatun Adabiyah, "Keadilan Dan Hak Asasi Dalam Terang Fajar Filsafat Islam," *Sophist: Jurnal Sosial Politik Kajian Islam Dan Tafsir* 4, no. 1 (July 14, 2022), <https://doi.org/10.20414/sophist.v4i1.69>.

¹⁶ Hautami Nadia Zahratul Afifah, "Analisis Penegakan Hak Asasi Manusia Dalam Mewujudkan Keadilan," *Konstruksi Sosial: Jurnal Penelitian Ilmu Sosial* 2, no. 2 (April 24, 2024): 61–67, <https://doi.org/10.56393/konstruksisocial.v1i8.1325>.

the potential impacts of land acquisition is necessary. Affected communities should be supported by improving their livelihoods or at least restoring their conditions to those prior to the land acquisition, while also safeguarding their rights and interests, including ensuring they do not become poorer after their land has been acquired. Validation of BPHTB tax payments can be carried out without hindering the land registration process. Verification and validation are conducted after the taxpayer has paid the due BPHTB. If all requirements and tax object data are met, the applicant can proceed with their land registration. The self-assessment system remains in place and is enhanced, particularly concerning reporting and payment procedures, to achieve fair, easy, and administratively efficient tax principles, and to optimize state revenue while ensuring widespread community benefits.

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