

## Legal Certainty of Gustav Radbruch based on Tax Imposition on Land Acquisition and Building Rights on Sale and Purchase of Land and Building in Medan City

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### **Abstract**

*This study aims to analyze the legal certainty of the BPHTB DPP on the transfer of rights to buy and sell land buildings. Legal certainty is very important in the implementation of the law in Indonesia where without legal certainty the law cannot be used as a rule that can be held true because it will be dynamic or depending on who sees it, and tends to be used as a tool to benefit those who seek opportunities for legal uncertainty itself. The conclusion of the study is that there is already a regulation governing DPP BHTB on the sale and purchase of land and buildings in Medan City, but only up to the norm has not yet reached the implementation of the norm, for this reason DPP BPHTB on the sale and purchase of land and buildings in Medan City does not yet have legal certainty.*

**Keywords:** *Imposition on Land, Acquisition and Building Rights, Purchase of Land, Building in Medan City.*

### **INTRODUCTION**

Law is a rule that regulates society and is made by policy makers, namely the legislature together with the executive to achieve and towards state goals in every field of rules regulated in these rules, law regulates all areas of life. The law regulates a person from the womb to the grave, for that Law is eternal and binds everyone, both as individuals, communities and nations.

In the Civil Code regarding the definition of buying and selling, it has been determined in Article 1457 of the Civil Code (Frans Thiodoris et al., 2022). Selling and buying is a civil legal action that creates a legal relationship for the seller and buyer, which in turn, based on this legal relationship, the rights and obligations of each party arise. This agreement becomes an engagement between the parties in it, where one party binds itself to the other party. This engagement is referred to as a civil legal action, because buying and selling is regulated in Article 1457 of the Civil Code. The agreement in buying and selling is carried out by agreement, so that this legal action results in one or more people binding themselves to one person (HS, 2016).

The legal act of sale and purchase in a Sale and Purchase Deed (AJB) involves the buyer and seller in a sale and purchase deed made authentically by a Land Deed Official (PPAT) using an authentic deed, which by its nature becomes perfect evidence in court. Sale and purchase is one of the most recognized transactions in society, both in traditional and modern societies. In traditional societies, transactions are cash and real (Drehmann et al., 2002). A sale and purchase deed is a deed or written evidence containing clauses relating to the sale and purchase (Halimi, 2023). Article 1457 of the Civil Code states that "Sale and purchase is an agreement, whereby one party binds himself to deliver an object, and the other party pays the promised price".

In view of this law, it can be understood that the law has the purpose of the law itself, as according to Gustav Radbruch that the purpose and function of law are justice, certainty and expediency and in legal certainty there are philosophical aspects because there are legal norms and justice. Gustaf Radbruch in his book entitled

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"*einführung in die rechtswissenschaften*" discusses in depth about legal certainty (Fahamsyah & Chansrakaeo, 2022).

If the enforcement of a legal regulation gets resistance from the community, then the legal regulation gets resistance from the community, then the legal regulation does not have sociological validity. Conversely, if a legal regulation is obeyed by the community with a legal awareness, it is certain that the legal regulation has sociological validity (Cotterrell, 2017). The juridical strength of a legal regulation, apart from being related to the process or procedure for forming a legal regulation (Frändberg, 2018), can also be seen from the attraction between the legal spirit and the article.

Legal certainty is very important in the implementation of law in Indonesia where without legal certainty, the law cannot be used as a rule that can be held true because it will be dynamic or depends on who sees it, and tends to be used as a tool to benefit parties who are looking for opportunities for legal uncertainty itself.

Legal certainty in the opinion of scholars is defined as a universal legal principle, considering that this principle is applied both in countries with continental European legal systems (civil law) and countries with Anglo-American legal systems (Anglo-Saxon, common law). This principle of legal certainty is the core or main element of the rule of law (Bernstein, 2020). According to Sudikno Mertokusumo, legal certainty is the implementation of the law in accordance with its words. Thus, the community can ensure that the existing law can be implemented. In understanding the values of legal certainty, there are things that must be considered, namely that the value has a close relationship with positive legal instruments and the role of the state in actualizing the positive law (Silkenat et al., 2014).

From this view, it can be understood that without legal certainty people do not know what to do and eventually there is uncertainty which will eventually lead to violence (chaos) due to the uncertainty of the legal system. Thus, legal certainty refers to the enactment of a clear, fixed and consistent law where its implementation cannot be influenced by subjective circumstances (Ávila, 2016).

Radbruch fully explains legal certainty in his book entitled *Rechphilosophie*. A juridical, sociological and philosophical legal enforceability is taken from Radbruch's ideas, as written by Purbacararaka and Soerjono Soekanto. For this reason, we can say that Radbruch can be said to be an expert in the field of law who conveyed that the idea of a philosophical foundation, along with other foundations; juridical and sociological. There are no legal experts who convey the question of validity in three scopes at once. Some legal experts such as Hans Kelsen have a view on validity, Kelsen views that validity lies in the nature of the rule itself (Kelsen, 2017).

Radbruch places a legal validity as part of the concept of legal certainty. For this reason, when discussing legal validity, it is also necessary to conduct a study of Radbruch's ideas regarding the purpose of law, one of which is legal certainty (Bix, 2013).

Radbruch focuses on emphasizing that the concept of law is a cultural concept, meaning that the concept is connected to values. That is, in every value that exists in law in particular, there will be a legal idea. Every law must be understood as a form of effort to serve the idea of law itself. The idea is justice, in addition to the elements of expediency and legal certainty. Justice is understood as an effort to provide equality. However, it should be noted that equality is only within the scope of relations, not regarding equality itself in substance. For this reason, Radbruch considers it necessary to inform the elements of law, which are needed to complement the idea of justice, namely expediency. Expediency is interpreted as an effort to serve the diverse desires of various parties. This effort can be fulfilled relatively, because various parties have a variety of views that cannot be united, which can lead to endless differences in views. For this reason, Radbruch offers the last element, namely legal certainty. In this context, the law is positively established, thus differences can be eliminated.

Ignoring the antinomy between justice, benefit and legal certainty is often done. Although it is very important to understand the philosophical underpinnings of why Radbruch talks about validity under the element of legal certainty. According to Radbruch, there is an antinomy between the three because they need each other, but at the same time, they reject each other. However, the antinomy is not triangular. The antinomy occurs between the elements of justice and expediency on the one hand and legal certainty on the other. This happens because justice only asks for equal treatment and therefore generalization, while expediency is the opposite. Community

benefits are unequal, because benefits can only be enjoyed individually, so in the element of benefits, what happens is individualization, as opposed to generalization.

It is legal certainty that requires something entirely different, namely validity. Validity does not speak of generalization or individualization. Validity requires positivization, so that a positive law is valid without linking it to justice and expediency. Positivization is a factual thing. This happens because every effort to make a law positive requires power (politically). Power is a factual thing, so the law itself is a normative thing, not a true fact in contrast to power which is really factual. This happens because the law does not only require validity, but also requires power so that the law can be administered definitively and practically.

Radbruch placed justice and expediency in an antinomic situation to legal certainty. It can also be seen why validity is part of legal certainty, as stated above. In addition, it can also be seen how Radbruch views law as factual as long as law is coupled with power. Following Georg Jellinek's idea, Radbruch shows that a norm is born from a fact, but the norm is a legal Ought that should be born from the legal will that exists in a state and society. If a will is only accompanied by a power, it can fall into Must instead of Ought. The extra-legal approach was offered by Radbruch, because when he saw a clash between norms, there was a leap from the world of meaning to the existential world, which was inevitable. That is, a legal system is considered factually effective, if it is embodied in the minds of everyone who is subject to certain punishments.

When examined in the perspective of idealism versus empiricism, the will of law seems to discuss "an ideal". The quotation marks here explain that the will of law is an idea that is absolutely idealistic. This happens because for Radbruch it is a matter of normative ideas and factual matters, for this reason it is not an idea that is definitely abstract. Seeing that the sociological doctrine of validity according to Radbruch is a continuation of the idea of the juridical doctrine of validity, the discussion of the sociological doctrine of validity cannot be seen as a definite empirical one. Radbruch emphasizes the term doctrine in a sociological context. This is not sociology an *Sich*. Therefore, the term doctrine is very important here, given the implications that have been applied above.

A spiritual and passive acknowledgment is not sufficient to answer the validity of a law. This is because a criminal may recognize a law, but in reality the criminal violates the law he recognizes. A corruptor recognizes the existence of legal institutions related to corruption, but that recognition does not prevent him from committing corruption (Gardiner, 2017). This proves that the indication of a confession held by an individual, is not the true interest, which makes a confession fall into a feigned confession. The DPP of BPHTB in land and building sale and purchase transactions is clearly regulated in Article 46 paragraph (1) of Law Number 1 of 2022 concerning Financial Relations between the Central Government and Local Governments, namely the Acquisition Value of the Tax Object which is regulated in paragraph (2) of Law Number 1 of 2022 concerning HKPP, namely the Acquisition Value of the Tax Object is the transaction price for sale and purchase. DPP BPHTB in land and building sale and purchase transactions, not only taken from the transaction price (Wibhawa, 2023), NJOP can be used as DPP BPHTB in land and building sale and purchase transactions in accordance with the provisions of article 46 paragraph (3) of Law Number 1 of 2022, that the NJOP as unknown or lower than the NJOP used in determining the value of Rural and Urban PBB.

## **Research Method**

The type of research used in this study is normative law research and empirical law research. The data used by the relevant legal regulations concerning the transfer of property and the interview to the authorities (PPAT/Notary) and the head of the land institution. The results of the data and interview will be associated with the existing case and then formulated to find a solution to the problem of transfer of a property and land.

## **DISCUSSION**

To find a legal will, to clarify whether the will is a mere will or normative will, Radbruch provides recommendations, several ways in several stages, the ways and stages must first begin with the juridical doctrine of validity. Radbruch states that the juridical doctrine of validity aims to assess whether a will comes from a

normative will or not, where for Radbruch a will must be separated from its psychological impulses. If that can be done, then the will is factually normative. The will is considered to have given an imperative command.

Radbruch saw a further problem. Even if there is a juridical doctrine of validity, and the constitution is *causa sui*. This means in other words, in the constitution there is an authoritative will which is the only initial source that becomes the juridical doctrine of validity. Radbruch saw a further problem. Even if there is a juridical doctrine of validity, and the constitution is *causa sui*, there will be a "collision of norms". This is because there are other norms outside the law, such as custom or morals. There are even international norms, not just domestic norms and so on. Therefore, in such a situation, according to Radbruch, a different approach is needed, because this is a situation that cannot be answered by law. In other words, an extra-legal approach is needed.

According to Gustav Radbruch, the law must contain 3 (three) identity values, namely as follows:

The principle of legal certainty (*rechtmatigheid*). This principle reviews from a juridical point of view.

The principle of legal justice (*gerechtigheid*). This principle looks from a philosophical point of view, where justice is equal rights for all people before the court.

The principle of legal expediency (*zweckmatigheid* or *doelmatigheid* or utility).

According to Utrecht, legal certainty contains two meanings, namely first, the existence of general rules that make individuals know what actions can or cannot be done and second, in the form of legal security for individuals from government arbitrariness because with the existence of general rules, individuals can know what the State can impose or do to individuals. The doctrine of legal certainty is derived from the doctrine of Juridical Dogmatik which is based on the positivistic school of thought in the legal world, which tends to see the law as something autonomous, independent, because for adherents of this thought, the law is nothing but a collection of rules. For adherents of this school, the purpose of law is nothing but to ensure the realization of legal certainty. Legal certainty is realized by the law by its nature which only makes a general rule of law. The general nature of legal rules proves that the law does not aim to realize justice or benefit, but solely for certainty.

In accordance with the mandate of law number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments in article 46 paragraph (2) a, it is said that the Tax Object Acquisition Value as referred to in paragraph (1) is the transaction price for sale and purchase. From this article, we can conclude that BPHTB, which is a local tax, is a self-assessment system, where the taxpayer in this system collects himself, calculates himself, reports his own tax and pays the tax he must pay himself as a taxpayer. However, in article (46) c of Law number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments, it is also explained that "In the event that the acquisition value of the tax object as referred to in paragraph (2) is unknown or lower than the NJOP used in the imposition of land and building tax in the year of acquisition, the basis for the imposition of BPHTB used is the NJOP used in the imposition of land and building tax in the year of acquisition."

The use of NJOP as the basis for the imposition of BPHTB tax makes the self-assessment system seem to no longer apply because the NJOP is made by the local government not because of the agreement of the parties and is listed on the Sale and Purchase Deed. In fact, it will be closer to the official assessment system because the basis for imposing BPHTB tax has been determined by the government even before the agreement between the seller and the buyer takes place. For this reason, the BPHTB DPP in land and building sale and purchase transactions can be taken from the NPOP and NJOP (seen from the highest price of these values).

### **Tax Object Acquisition Value**

When the seller and buyer agree to sell and buy a land and building, they will set an agreement price where the seller hands over the object, namely land and building, while the buyer hands over money as a form of payment. The money paid is the acquisition price which in the law is referred to as the Tax Object Acquisition Value, the Tax Object Acquisition Value is the basis of tax imposition.

The Tax Object Acquisition Value cannot be determined by the rules because the NPOP comes from an agreement between the seller and the buyer until it is made in the sale and purchase deed on the PPAT deed. Because the NPOP comes from an agreement, it is very difficult to measure the price because the needs of the seller and buyer in this sale and purchase can be different. There are buyers who want to buy because of its aesthetic value, historical value, value so they want to buy at a price far above the market price, there are also buyers who want to buy because of its cheap value far below the market price, so it is very much related to the motivation and needs between the seller and the buyer.

NPOP as the basis for imposing BPHTB tax greatly affects the value of BPHTB payable that must be paid by taxpayers, for this reason taxpayers must be honest in disclosing the actual NPOP. The value of BPHTB paid by taxpayers will have an impact on local revenue from the local tax sector, so BPHTB is a potential source of revenue for local governments. Because BPHTB is a potential source of local revenue, the government makes NJOP as a buffer (comparison).

### **Tax Object Sale Value**

BPHTB as a potential source of local tax revenue certainly makes the government not want to lose the source of tax revenue from the BPHTB sector. For this reason, NJOP is made as the basis for imposing BPHTB tax if the NPOP is unknown or smaller than the NJOP made by the government. For this reason, NJOP will change to become the basis for imposing BPHTB tax.

The selling value of the tax object is the average price obtained from the sale and purchase value transaction that occurs reasonably, and if there is no sale and purchase transaction, the Tax Object Selling Value is determined by using a price comparison with other similar objects that are located nearby and have the same function and have known selling prices or new acquisition values or replacement NJOP. The Tax Object Sale Value includes the sale value of the earth's surface (land, inland waters and seas of Indonesian territory) along with natural resources above and below it (Kadir et al., 2019), and/or buildings attached to it. Thus, NJOP is the average price of a taxable object obtained from the sale and purchase transactions including the sale and purchase of property, including land and buildings that are traded. NJOP is the sum of the estimated prices of buildings and land obtained from calculations based on the area of land and buildings. This value is important because it provides calculations related to Land and Building Tax that must be borne from the sale and purchase of houses and determines the lowest price of the object.

Based on the Decree of the Minister of Finance of the Republic of Indonesia No. 523/KMK.04/1998 concerning the determination of the classification and the amount of NJOP as the basis for the imposition of PBB which regulates the main points, among others: Definition of NJOP as described in the description above :Investment Standard is the amount invested for a development and/or planting/extraction of certain types of natural resources or cultivation which is calculated based on the components of labor, materials and tools starting from the beginning of the implementation of the work until the production stage or produce.

NJOP includes the selling value of the object of the earth's surface (land, waters, and sea areas in Indonesia) along with the natural resources below or above it and/or the building above it.

Special tax objects are objects whose location, shape, designation and/or use have special properties and characteristics.

In the case of a tax object whose perimeter selling value is greater than the NJOP provision, the NJOP that occurs in the field is used as the basis for the imposition of PBB.

Rural and urban sector tax objects that are not special in nature shall have their NJOP determined based on the Average Indication Value (NIR) obtained from the results of mass appraisal.

NJOP on building is determined based on the maintenance of the building. The maintenance of the building is seen from the construction and when (based on the year) the building was built.

The amount of NJOP in the plantation, forestry, mining and fishery, livestock and water business sectors for production areas is determined based on the selling value of the surface of the land and/or building plus the value of the building.

In accordance with the interview with the appraisal in determining the price or value there are several approaches that can be used to determine the price of a land and building, namely: "So there are 3 approaches, each of which has a method. Hierarchically yes, there is a market approach, an income approach and a cost approach (D'AMATO, 2015). So each of these approaches is a method of comparing market data". With this approach, the NJOP is obtained based on the respective local regulations made by the local government, where the NJOP will be used as the basis for imposing BPHTB tax if the NPOP value is unknown or the NPOP is smaller than the NJOP price set by the government.

The Tax Imposition Base or DPP is a basis for calculating each tax object to obtain the amount of tax to be paid. The Tax Imposition Base can be found in each type of tax type as the basis for calculating the imposition of tax (the type of tax itself). The tax base can be taken from the value of the object assessed by the Government (Nyabwengi & K'Akumu, 2019), either the local government or the central government and also third parties or professionals who have expertise in the calculation of the tax. The Tax Imposition Base as the basis for tax calculation has a strong correlation to certainty in the calculation of the tax object in order to achieve legal certainty in the rule of law itself. The Tax Imposition Base should not be different because the difference in the value of the tax object as the basis for tax imposition will affect the value of the tax to be paid, this will obscure the existing legal certainty.

The Tax Imposition Base must have an assessment standard in calculating the value of a tax object and the assessment standard must be one and cannot be two or more because it will result in multiple interpretations and each taxpayer will choose which value is profitable for him and the government will determine which value is most profitable for the government (central government or regional government) itself, so that legal certainty in determining the Tax Imposition Base in calculating the value of the tax is very important to obtain certainty in taxation itself.

In calculating the BPHTB DPP, it is regulated in Article 46 paragraph (2) of Law Number 1 of 2022 concerning Financial Relations between the Central Government and Local Government, namely:

Sale and purchase is the transaction price;

Market value for exchange, grants, bequests, inheritance, inclusion in a company or other legal entity, separation of rights resulting in transfer, transfer of rights due to the implementation of a judge's decision that has permanent legal force, granting new rights to land as a continuation of the release of rights, granting new rights to land outside the release of rights, business mergers, business consolidation, business expansion and gifts; and;

The transaction price stated in the minutes of auction for the appointment of a buyer in the auction (Bonacquisto et al., 2015).

Article 46 paragraph (3) of Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments, namely if the Tax Object Acquisition Value as referred to in paragraph (2) letter a is unknown or lower than the NJOP used in the imposition of Land and Building Tax in the year of acquisition, the imposition base used is the NJOP for the calculation of Rural and Urban Land and Building Tax. To guide Law Number 1 of 2022 concerning the HKPP, Government Regulation Number 35 of 2023 concerning General Provisions of Local Taxes and Levies as formal law regulates several matters related to objects that are exempt from BPHTB collection, namely "the suitability of certain tax object criteria that are exempted from the imposition of BPHTB, including the criteria for the exclusion of BPHTB objects for low-income people (Firnanda et al., 2024). In paragraph (3) it is stated that the criteria for the exclusion of BPHTB objects for low-income people. In paragraph (3) it is stated that the criteria for the exclusion of BPHTB objects for low-income communities as referred to in paragraph (1) letter f are for first home ownership with certain criteria determined by the regional head.

In Paragraph 4, it is stipulated that "Certain criteria as referred to in paragraph (3) shall be harmonized with the policy of providing ease of construction and acquisition of houses for low-income people regulated by the minister who organizes Government Affairs in the field of public works and public housing. For this reason, not all objects can be subject to BPHTB on the transfer of land and building rights in sale and purchase transactions in Medan City (Suhaimi, 2021). Medan City Regional Regulation No. 1 of 2024 on Regional Taxes and Levies in Article 16 states "In the event that the acquisition of rights to land and buildings stipulated under the laws and regulations is not an object of BPHTB, the mayor may issue a certificate of non-object of BPHTB". The Mayor of Medan may issue a tax exemption certificate because based on the laws and regulations, it is exempted as a tax object.

If DPP BPHTB is included as a tax object in the laws and regulations, it must be implemented in accordance with the local regulations of each city/regency. In Medan City, the relevant regulation is stipulated in Medan City Regional Regulation No. 1 of 2024, Article 13 paragraphs 1, 2 (a) and 3. The BPHTB DPP on the transfer of land and building rights in sale and purchase transactions used as a guideline for tax officers and taxpayers are two values that are deducted by the NPOPTKP that has been determined in Medan City Regional Regulation No. 1 of 2024 concerning PDRD, namely IDR 80,000,000, where the two Tax Object Acquisition Values are taken from the transaction price or NJOP.

The transaction price referred to in the local regulation is taken from the agreement price between the seller and the buyer of the land and building tax object. The agreement is a form of freedom between the seller and the buyer in a form of business agreement, where the price will be stated in the Deed of Sale and Purchase signed by both parties who agree. The price agreement in the sale and purchase deed may be above the market price, fair price or NJOP set by the government. The agreement may be below the market price, fair price or NJOP set by the government. For this reason, it is difficult to ensure that the transaction price used as NPOP in the calculation of BPHTB on the transfer of land and building rights in a sale and purchase transaction, can match or be close to the fair price according to the view of the tax officer who verifies the SSPD BPHTB on the transfer of land rights to the sale and purchase transaction. This is because the NPOP itself is always initially taken from the transaction price based on applicable law. For this reason, NJOP is made as NPOP if the transaction price is made below NJOP or the transaction price is unknown.

NJOP is determined by the local government based on provisions made by the government itself using the size of the size guided by the government, where the NJOP is used initially for the calculation of PBB P2 (Rural and Urban), meaning that it is not to determine NPOP as DPP BPHTB on the transfer of land and building rights in sale and purchase transactions. In order to create a legal certainty in the legal provisions of DPP BPHTB on the transfer of land and building rights in sale and purchase transactions, which have been regulated in Article 46 paragraphs (1), (2) and (3), Law No. 1 of 2022 on HKPP in general and Article 13 of Medan City Regional Regulation No. 1 of 2024 on PDRD in particular, which is guided by PP No. 35 of 2023 on General Provisions of PDRD, must still be implemented so that there is legal certainty itself in determining NPOP. So that the provisions of the BPHTB DPP on the transfer of land and building rights in sale and purchase transactions can be implemented by local tax officers and BPHTB taxpayers, as guidelines and constitutional orders.

But the question is whether the constitutional order is carried out or implemented by tax officials and taxpayers themselves. Based on interview data and respondents to PPAT Kot Medan, who are considered to be involved and aware of the implementation process in the management of SSPD BPHTB, the constitution has not been implemented as mandated by the binding rules. Thus, DPP BPHTB on the transfer of rights of sale and purchase transactions of land and buildings in Medan City does not yet have legal certainty, because in fact a law has legal certainty if the rules governing it are implemented in the implementation of the provisions of DPP BPHTB on the transfer of rights of sale and purchase transactions of land and buildings.

## **CONCLUSION**

The BPHTB DPP on sale and purchase transactions of land and buildings in Medan City is regulated in Article 13 paragraphs 1, 2(a) and 3 of Medan City Local Regulation No. 1 Year 2024 on Local Taxes and Local

Retribution, that the basis of BPHTB tax imposition is the Tax Object Acquisition Value. When BPHTB payment is made due to the sale and purchase of land and building, the Tax Object Acquisition Value is the transaction price if the transaction price is higher than the Tax Object Sale Value. The norms of the BPHTB Tax Base fulfill legal certainty in the normative aspect, but legal certainty does not only involve norms but when the norms are implemented they must be in accordance with the norms. The non-implementation of the norms in the implementation aspect of the BPHTB Tax Base on the sale and purchase transaction explains that there is no legal certainty, because legal certainty only touches on the normative aspect but has not touched the implementation aspect of the norm.

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