

## **The Establishment of Tax on Land and Building Rights (BPHTB) Payment Arrangement in Notarial Sale and Purchase Agreement Deed**

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### **Abstract**

The transfer of land rights in Indonesia is governed by various positive laws currently in force, including Government Regulation Number 35 of 2023 (PP 35/2023) concerning General Provisions for Regional Taxes and Regional Levies. PP 35/2023 regulates the establishment of the Tax on Land and Building Rights (BPHTB), which is also imposed on the Sale and Purchase Agreement (PPJB) made by a notary. Specifically, the regulation addresses PPJBs that have been fully paid. However, this provision is not entirely consistent with the existing regulation requiring the payment of BPHTB for the Sale and Purchase Deed (AJB) executed by the Land Deed Making Officer (PPAT). This payment is a fundamental requirement for changing the name on the land and building title certificate, as stipulated by the National Land Agency. This study employs a normative legal research method, focusing on library materials or secondary data. Utilizing a qualitative approach, the research analyzes legal norms in statutory regulations. The findings indicate that PP 35/2023 still lacks a clear legal basis for recognizing a notary's PPJB as a condition for changing the name on the land certificate by the buyer.

**Keywords:** *Sale and Purchase Binding Agreement (PPJB), Notary, Land Deed Official (PPAT), The Establishment Of Tax On Land And Building Rights (BPHTB), Sale and Purchase Deed (AJB).*

### **Introduction**

The term agreement comes from the Dutch language, "overeenkomst", which refers to a legal relationship related to wealth or property between two or more people. In this relationship, one party has the right to obtain an achievement, while the other party

has an obligation to carry out the achievement.<sup>1</sup> This relationship arises from a legal act or "rechtshandeling", which forms a legal relationship of agreement in which one party obtains rights and the other party has an obligation to fulfill the achievement. From this action, an obligation is formed that originates from the agreement, apart from other sources. An agreement is often referred to as an agreement because both parties agree to carry out something.<sup>2</sup> The definition of a sale and purchase according to Article 1457 of the Civil Code is an agreement in which one party is committed to handing over an item, while the other party is obliged to pay the agreed price.<sup>3</sup> According to Subekti, a sale and purchase is an agreement in which one party promises to hand over ownership of an item and the other party promises to pay the agreed price.<sup>4</sup>

This sale and purchase agreement (PPJB) is very common and is commonly known in society in land rights transfer transactions. The practice that occurs is of course predictable, namely the cause of various civil disputes regarding land and/or building ownership.<sup>5</sup> There are 2 (two) types of PPJB, namely PPJB made privately by the parties only and PPJB made by and before a notary.<sup>6</sup> PPJB can be divided into two categories, namely PPJB paid in full and PPJB not paid in full. In the context of this article, what is discussed is PPJB paid in full made by and before a notary. However, laws and regulations have not clearly regulated the transfer of goods or leveraging in PPJB paid in full made by and before a notary. Therefore, the definition of a binding agreement in this PPJB still refers to the definition of PPJB not paid in full.<sup>7</sup>

PPJB not paid in full is regulated in Article 1458 of the Civil Code, which states that a sale and purchase is deemed to have occurred between the two parties immediately after they reach an agreement on the goods and their price, even though the goods have not been delivered and the price has not been paid. Tax and zakat are two different concepts in terms of their source or basis for collection, but both have similarities in their nature

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<sup>1</sup> Peter Kop, "Wettelijke Regels Voor Interpretatie van Overeenkomsten: Nodig of Overbodig?," *Fundamina: A Journal of Legal History* 20, no. 1 (January 2014): 478–88, <https://doi.org/10.10520/EJC159245>.

<sup>2</sup> Maija Halonen-Akatwijuka and Oliver Hart, "More Is Less: Why Parties May Deliberately Write Incomplete Contracts," *Elements in Law, Economics and Politics*, April 2024, <https://doi.org/10.1017/9781009396059>.

<sup>3</sup> Douglas J. Whaley and David Horton, *Cases, Problems, and Materials on Contracts* (Aspen Publishing, 2023).

<sup>4</sup> Prima Lestari Hardi, Saharuddin Daming, and Desty Anggie Mustika, "Legal Consequences Of Default In Agreement Sale And Purchase Of Land Rights," *JURNAL MAHASISWA YUSTISI* 1, no. 1 (August 1, 2023): 13–22.

<sup>5</sup> Mohammad Bagas Agy Pangestu and Ari Wahyudi Hertanto, "Legal Effects of Default on Land and Building Sale and Purchase Agreement in PPJB," *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 8, no. 1 (January 2, 2024): 343–50, <https://doi.org/10.58258/jisip.v8i1.6214>.

<sup>6</sup> Elita Guspitawaty and Faisal Santiago, "Responsibility of the Notary to The Parties in Terms of Binding Purchase Agreement (Ppjb) Based on Their Legal Analysis," *Journal of World Science* 2, no. 4 (April 26, 2023): 508–12, <https://doi.org/10.58344/jws.v2i4.278>.

<sup>7</sup> Zora Febriena Dwithia Hidayat Putri, "Sale and Purchase Binding Agreement As A Legal Protection On The Sale and Purchase of Mortgaged Land | Jurnal Hukum Dan Kenotariatan," *Jurnal Hukum Dan Kenotariatan* 7, no. 4 (December 24, 2023), <https://riset.unisma.ac.id/index.php/hukeno/article/view/20588>.

as an effort to take or collect wealth from the community for social interests. Zakat is used for interests regulated by religion or Allah SWT, while taxes are used for interests regulated by the state through a legitimate democratic process.<sup>8</sup> The term tax comes from the concept of the state, while zakat comes from the concept of Islam.

The process of transferring land rights, commonly known as land sale and purchase, is regulated in several regulations, including Government Regulation number 14 of 2016 concerning the Implementation of Housing and Residential Areas (PP 14/2016) and its amendments. In PP 14/2016, it is explained that the PPJB system is a series of agreement processes between each person and the development actor in marketing activities, which are stated in a preliminary sale and purchase agreement or PPJB before the sale and purchase deed is signed.<sup>9</sup> PPJB not paid in full is regulated in Article 1458 of the Civil Code, which states that a sale and purchase is deemed to have occurred between the two parties immediately after they reach an agreement on the goods and their price, even though the goods have not been delivered and the price has not been paid.<sup>10</sup>

Tax and zakat are two different concepts in terms of their source or basis for collection, but both have similarities in their nature as an effort to take or collect wealth from the community for social interests. Zakat is used for interests regulated by religion or Allah SWT, while taxes are used for interests regulated by the state through a legitimate democratic process. The term tax comes from the concept of the state, while zakat comes from the concept of Islam. The process of transferring land rights, commonly known as land sale and purchase, is regulated in several regulations, including Government Regulation number 14 of 2016 concerning the Implementation of Housing and Residential Areas (PP 14/2016) and its amendments. In PP 14/2016, it is explained that the PPJB system is a series of agreement processes between each person and the development actor in marketing activities, which are stated in a preliminary sale and purchase agreement or PPJB before the sale and purchase deed is signed.

## Method

This research was conducted using a normative legal research method, namely library legal research conducted by examining library materials or secondary data.<sup>11</sup> The object analyzed with a qualitative approach is a research method that refers to legal norms contained in laws and regulations.<sup>12</sup> This study aims to find and analyze the

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<sup>8</sup> Mira Mira and Faidul Adziem, "Ambiguity Between The Placement Of Zakat Collecting Objects And The Tax Payable (Literature Study)," *Amnesty: Jurnal Riset Perpajakan* 6, no. 1 (May 31, 2023): 30–37, <https://doi.org/10.26618/jrp.v6i1.10811>.

<sup>9</sup> Naufal Azaki and Achmad Lutfi, "Regulatory Review on Policy of Special Allocation Fund for Road Sector in 2015-2019," *Jurnal Public Policy* 9, no. 2 (April 30, 2023): 117–23, <https://doi.org/10.35308/jpp.v9i2.6976>.

<sup>10</sup> Ivan Damasco Menzori, Isabel Cristina Nunes de Sousa, and Luciana Márcia Gonçalves, "Local Government Shift and National Housing Program: Spatial Repercussions on Urban Growth," *Land Use Policy* 126 (March 1, 2023): 106548, <https://doi.org/10.1016/j.landusepol.2023.106548>.

<sup>11</sup> Sharlene Hesse-Biber, "Qualitative Approaches to Mixed Methods Practice," *Qualitative Inquiry* 16, no. 6 (July 1, 2010): 455–68, <https://doi.org/10.1177/1077800410364611>.

<sup>12</sup> Iman Jalaludin Rifa'i et al., *Metodologi Penelitian Hukum* (Sada Kurnia Pustaka, 2023).

objectives/juridical sociological basis in making PPJB by a notary and to find the basis for regulating BPHTB payments for PPJB deeds made by and before a notary so that they can be used as a requirement for changing the name of ownership of land rights certificates.<sup>13</sup> The expected benefits of this study theoretically are to see the relationship between *das sein* and *das solen* from what happens in the scope of the state, namely by studying the implementation of laws and regulations, especially in the field of state revenue through BPHTB taxes originating from the transfer of land rights using a notarial deed PPJB. Through theoretical studies, research has a clear and directed basis for achieving these ideals. Meanwhile, the practical benefits of this research will greatly affect the increase in state revenue through the region in the field of taxes derived from BPHTB tax on the transfer of land rights using a notary deed PPJB. Practitioners related to taxation such as tax consultants, notaries, PPAT and other practitioners will also get more space to carry out counseling. Therefore, this research is very necessary and useful both theoretically and practically.<sup>14</sup>

### **Legal Principles of the Land Rights Transfer Process Using Notarial Deeds**

The PPJB deed is a legal solution found by notaries to overcome challenges in land rights sale and purchase transactions. The process of acquiring land rights involves various mechanisms such as inheritance, grants, or sale and purchase.<sup>15</sup> Land or building sale and purchase transactions involve a binding agreement between the seller and the buyer, where the seller hands over the property and the buyer pays according to the agreement, according to Article 1457 of the Civil Code.<sup>16</sup> In this transaction, both parties have rights and obligations. A down payment is one of the things commonly known in this transaction. Article 1454 of the Civil Code explains that with a down payment, the sale and purchase transaction cannot be canceled, thus preventing disputes in the future.<sup>17</sup>

In general, the sale and purchase process before a notary/PPAT involves several stages, such as payment of taxes by the seller and buyer, physical verification of the original land certificate, signing the Sale and Purchase Deed (AJB), validation, and other steps. However, the process of making AJB often experiences obstacles for various reasons, such as the absence of one of the parties, the object of sale and purchase is still

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<sup>13</sup> Made Subawa, Ni Putu Niti Suari Giri, and Bagus Hermanto, *Kapita Selekta Dan Filsafat Ilmu Hukum Kenotariatan Kontemporer Indonesia* (Uwais Inspirasi Indonesia, 2024).

<sup>14</sup> Abdul Halim and Mohammad Nurman, "Implementasi Pemberian Bantuan Jasa Hukum Kenotariatan Kepada Masyarakat Kurang Mampu Di Situbondo," *CERMIN: Jurnal Penelitian* 7, no. 2 (December 29, 2023): 476–87, [https://doi.org/10.36841/cermin\\_unars.v7i2.3952](https://doi.org/10.36841/cermin_unars.v7i2.3952).

<sup>15</sup> Natasya Rizki Asti and Fransiscus Xaverius Arsin, "Duties And Authority Of A Notary In Producing Land Deeds," *Anang Long Law Review* 6, no. 1 (November 29, 2023): 74–82, <https://doi.org/10.56301/awl.v6i1.1004>.

<sup>16</sup> Frans Thiodoris, Mohammad Roesli, and Adies Kadir, "Juridical Analysis Comparison of Electronic Civil Code The Role of the Land," *YURISDIKSI: Jurnal Wacana Hukum Dan Sains* 18, no. 2 (September 9, 2022): 266–77, <https://doi.org/10.55173/yurisiksi.v18i2.137>.

<sup>17</sup> Bagus Zodiac A and Siti Nurhayati, "Civil Law Analysis," *Proceedings: International Forum Research on Education, Social Sciences Technology and Humanities* 1, no. 2 (May 4, 2024): 11–15.

being pledged at the bank, or in the process of splitting the certificate (Eriyanti & Ridwan, 2022). To overcome these obstacles, notaries/PPAT often offer a solution by making a temporary agreement between the buyer and seller known as PPJB (Sales and Purchase Binding Agreement). Although PPJB provides a practical solution, in practice, this agreement often causes problems, both from the perspective of the buyer, seller, and notary/PPAT, because PPJB is only a preliminary agreement.<sup>18</sup>

The temporary binding referred to is an agreement in which the seller agrees to sell the agreed object to the buyer, and the buyer also agrees to purchase the object as stated in the PPJB. To achieve AJB, the object of sale and purchase must go through a series of stages such as physical inspection, certificate splitting, elimination of mortgage rights, and other processes submitted to the Land Office by the PPAT. This process takes quite a long time, and in situations where the buyer has limited time, PPJB is a solution to facilitate the transfer of rights process.<sup>19</sup> For sellers or developers, PPJB can be proof of the buyer's seriousness, allowing the seller to receive a down payment on the object of sale and purchase. This facilitates the transaction of transfer of rights to the object of sale and purchase, be it land or land and buildings, towards achieving AJB which is the basis for the transfer of rights from the seller to the buyer, thus providing legal protection and legal certainty. In the context of The Establishment of Tax on Land and Building Rights (BPHTB) for notary PPJB, there are several principles that need to be considered.<sup>20</sup>

### Theory of Legal Purpose and Theory of Utility

In carrying out its role as an instrument of social control and change, law aims to create an orderly, peaceful, and just social order, supported by legal certainty to protect the interests of individuals and society as a whole. Legal experts have diverse perspectives on the purpose of law, which underlies the emergence of three schools or theories, namely:

#### a) Ethical Theory

The ethical theory, first proposed by the Greek philosopher Aristotle in his works "Ethica" and "Rhetorica", states that law has a noble purpose, namely to give every individual the rights he or she deserves.<sup>21</sup> According to this view, law is entirely aimed at

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<sup>18</sup> Bayun Kismantoro, "Legal Due To The Implementation Of Absolute Authorization In The Sale And Purchase Agreement Before The Development Of Sale And Purchases," *Legal Reconstruction in Indonesia Based on Human Right*, no. 0 (November 15, 2019), <https://jurnal.unissula.ac.id/index.php/apic/article/view/14111>.

<sup>19</sup> Harmen Syarif, Azmi Fendri, and Delfiyanti Delfiyanti, "Transfer of Land Rights Based on the Data Authorization of Selling in Terms of Authority Giver Died in Pekanbaru," *International Journal of Multicultural and Multireligious Understanding* 6, no. 4 (October 8, 2019): 561–69, <https://doi.org/10.18415/ijmmu.v6i4.1071>.

<sup>20</sup> Charis Imraatus Sholichah, "Cancellation Of The Deed Of Land Sale And Purchase Agreement Due To One Of The Parties Defaulting, Viewed From The Aspects Of Legal Certainty And The Value Of Justice," *International Significance of Notary* 4, no. 2 (April 3, 2024): 24–44, <https://doi.org/10.2020/ison.v4i2.24348>.

<sup>21</sup> Robert C. Rowland and Deanna F. Womack, "Aristotle's View of Ethical Rhetoric," *Rhetoric Society Quarterly*, January 1, 1985, <https://doi.org/10.1080/02773948509390718>.

achieving justice. The content of the law is determined by our ethical beliefs about what is considered fair and unfair. In other words, the law in this theory seeks to realize justice. Ethical theory asserts that law exists to achieve justice, by referring to ethical beliefs about what constitutes fair or unfair treatment.<sup>22</sup> The focus of this theory is on the nature of justice and the norms that guide concrete actions in certain situations. The purpose of law from the perspective of ethical theory is to achieve justice. Furthermore, this theory teaches that the law must be applied fairly to all members of society so that they feel protected.

b) Utilities

According to the theory of utilitarianism, the purpose of law is to create the greatest benefit for humans by prioritizing pleasure and happiness. This theory is driven by Jeremy Bentham's views as stated in his work "Introduction to the Morals and Legislation". Adherents of this theory emphasize the importance of things that provide benefits to many people without considering aspects of justice.<sup>23</sup> Furthermore, this theory emphasizes that the purpose of law is to provide benefits to as many individuals as possible in society. Utilitarianism, as a school of philosophy that underlies this theory, has a significant role in the use of punishment in the human context. The basic principle of utilitarianism states that fair punishment for lawbreakers must consider the consequences that arise.<sup>24</sup> This theory is a limited application of the basic principle of utilitarian ethics which states that an action can be considered moral if it produces maximum benefits for as many people as possible. In the context of punishment, this means that the punishment given to the perpetrator of the crime must take into account its positive impact. The concept of consequentialism introduced by Elizabeth Anscombe in 1957 is also related to this theory. The purpose of law from a utilitarian perspective is to achieve maximum benefit or happiness for as many individuals as possible in society.<sup>25</sup>

c) Mixture

According to Apeldoorn, the essence of law lies in the regulation of order in society in a just and peaceful manner. Mochtar Kusumaatmadja explained that the need for such order is the foundation for the formation of an organized and prosperous society.<sup>26</sup> To achieve peace in society, it is important to maintain a balance between individual and collective interests, and to ensure that each individual obtains the rights they deserve. This view is considered a middle ground between ethical and utility theories because it

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<sup>22</sup> Hans Kelsen, "What Is the Pure Theory of Law?," in *Law and Morality* (Routledge, 2005).

<sup>23</sup> Jeremy Bentham, *The Collected Works of Jeremy Bentham: An Introduction to the Principles of Morals and Legislation* (Clarendon Press, 1996).

<sup>24</sup> P. J. Kelly, "Utilitarianism and Distributive Justice: The Civil Law and the Foundations of Bentham's Economic Thought," *Utilitas* 1, no. 1 (May 1989): 62–81, <https://doi.org/10.1017/S0953820800000066>.

<sup>25</sup> G. E. M. Anscombe, "Modern Moral Philosophy," *Philosophy* 33, no. 124 (January 1958): 1–19, <https://doi.org/10.1017/S0031819100037943>.

<sup>26</sup> Teuku Syahrul Ansari, "State, BUMN (State Owned Enterprises - SOEs) and Role of Law in Economic Development: A Theoretical Approach," *Britain International of Humanities and Social Sciences (BioHS) Journal* 1, no. 2 (October 1, 2019): 20–29, <https://doi.org/10.33258/biohs.v1i2.32>.

emphasizes that the law must pay attention not only to justice, but also to the public interest. The mixed theory can be seen as a middle ground between ethical theory and utilitarianism because it emphasizes the importance of law in achieving justice and benefit for many people. One of the legal experts who adheres to the mixed theory is Mochtar Kusumaatmadja. For him, the purpose of law in the mixed theory is to create order in society.<sup>27</sup> Furthermore, it is explained that order in society is an absolute requirement for the creation of order and peace. To achieve this peace, it is necessary to ensure that the interests of all parties are considered and individual rights are protected.

### **Philosophy and Study of Tax Benefit Theory**

From an ontological perspective, taxes are regarded as a crucial source of state revenue, essential for financing development and state expenditures to achieve public welfare. Consequently, the role of taxes is significantly dominant, grounded in legal principles that mandate every tax imposition to be in strict accordance with statutory provisions. This necessity has led to the creation of tax laws designed to regulate the tax collection process, embodying the fundamental characteristics of law: regulation, enforcement, and protection.<sup>28</sup> From an epistemological perspective, the taxation system is considered very complex, so that existing laws have not been fully able to address how the system can be run effectively. Various problems that arise in its implementation have caused taxpayers' awareness to fulfill their obligations to pay taxes to decrease.<sup>29</sup> Taxes are considered a reflection of cooperation between the government and its people, therefore the government is also responsible for overseeing the achievement of these goals. Therefore, legal efforts must still be carried out as a legal basis that provides certainty.<sup>30</sup>

From an axiological perspective, Indonesia is considered a state of law that is still influenced by religious law, especially Islamic law, in the realm of taxation.<sup>31</sup> Economic history in the time of the Prophet Muhammad has known the concept of tax under the name zakat. Although basically taxes are permitted for the benefit of the people and the state, zakat funds are not directly used for development. In other words, if taxes and zakat work synergistically based on strong laws, this can help reduce the problems of poverty and social inequality in order to achieve people's welfare in accordance with the spirit of the 1945 Constitution. Tax law in Indonesia is regulated in Article 23A of the 1945 Constitution, with its legal structure divided into two main aspects.<sup>32</sup> The first is material

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<sup>27</sup> Arief Syahrul Alam, "Private Pawn Institution in Antimonopoly Law in Indonesia," *Journal of Law, Policy and Globalization* 64 (2017): 39.

<sup>28</sup> Victor Thuronyi and Kim Brooks, *Comparative Tax Law* (Kluwer Law International B.V., 2016).

<sup>29</sup> Richard Allen EPSTEIN and Richard Allen Epstein, *Simple Rules for a Complex World* (Harvard University Press, 2009).

<sup>30</sup> Bruce Ackerman, "Taxation and the Constitution," *Columbia Law Review* 99 (1999): 1.

<sup>31</sup> Muchamad Ali Safa'at, "The Roles of the Indonesian Constitutional Court in Determining State-Religion Relations," *Constitutional Review (Consrev)* 8 (2022): 113.

<sup>32</sup> Nurul Hidayat, *Islamic Religiosity and Tax Morale: The Case of Self-Employed Taxpayers in Indonesia*, 2022, <https://doi.org/10.26182/peat-cm41>.

tax law which includes tax subjects, tax objects, tax rates, and sanctions in the relationship between the government and taxpayers. The second is formal tax law which includes procedures for implementing material tax law into a reality or its practical implementation.

### **Principles of Tax Collection**

As an effort of imposition carried out by the state on its citizens, tax collection must be in accordance with the law. In this context, Article 23A of the 1945 Constitution emphasizes that:<sup>33</sup> "Taxes and other compulsory levies for the benefit of the State are regulated by law." The philosophy contained in Article 23A of the 1945 Constitution is in line with the tax principles in England, which state "No Taxation Without Representation," as well as the tax principles of the United States which state "Taxation Without Representation is Robbery." Adam Smith, in his work "An Inquiry into the Nature and Cause of Nations," stated that tax collection should be based on the principle:<sup>34</sup>

Taxation must be fair and equitable, meaning that taxes must be in accordance with the ability to pay and the benefits received by individuals. For example, in income tax, it is not that people with the same income will be taxed identically, but rather people with equivalent taxable income will be taxed similarly. The income earned by a taxpayer is reduced by non-taxable income, the amount of which is not always the same for each individual because it depends on the family situation. If the number of family dependents for a taxpayer is large, then spending on basic needs will tend to be greater than that of taxpayers who have fewer family dependents. Tax determination is not arbitrary, but must be based on law. This means that taxpayers must have clear and firm certainty, which allows them to know the subject, object, and amount of tax to be paid, as well as the payment period.<sup>35</sup>

### **Result and Discussion**

#### ***Taxes as a Community Obligation***

Tax is the responsibility of all citizens to support development. Tax is a contribution from the community to the state treasury in accordance with the law (which can be imposed by force), without receiving direct compensation that can be shown, and is used to finance general expenses. Tax and zakat in Islam are two different terms in terms of

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<sup>33</sup> Putri Andreana and Inayati Inayati, "Principles of Tax Collection in Value Added Tax (VAT) on Digital Services in Indonesia," *Jurnal Public Policy* 8, no. 1 (March 20, 2022): 29–35, <https://doi.org/10.35308/jpp.v8i1.4692>.

<sup>34</sup> Kwangsu Kim, "New Light on Adam Smith's View of Taxation via the Concept of Equity," *The European Journal of the History of Economic Thought* 0, no. 0 (2023): 1–24, <https://doi.org/10.1080/09672567.2023.2225869>.

<sup>35</sup> John A. Miller, "Indeterminacy, Complexity, and Fairness: Justifying Rule Simplification in the Law of Taxation," *Washington Law Review* 68 (1993): 1.



the source or basis of their collection, but have the same nature as an effort to take or collect wealth from the community for social interests.

Etymologically according to sharia, tax comes from Arabic called "dharibah," which means to oblige, determine, determine, hit, explain, or burden. Although in its use, "dharibah" has many meanings, scholars use this term to refer to assets that are collected as an obligation. This is reflected in the use of the expression that jizyah and kharaj are collected in a "dharibah," which means obligatory. Some scholars even say that kharaj is also a "dharibah."

Indonesia, as a country based on the principle of law, also regulates agreements with valid conditions that have been determined by law. This aims to prevent one party from violating the contract or default, or even both parties. As a country based on Pancasila and the 1945 Constitution (UUD 1945), Indonesia guarantees certainty, order, and legal protection for all its citizens. Social justice for all Indonesian people is one of the main values of Pancasila which reflects the spirit of shared prosperity, which is in line with the role of taxes and the provisions in Article 23A of the 1945 Constitution which regulates taxes and other compulsory levies for the benefit of the state. F.J. Stahl describes the concept of a state of law with four main elements:

- a) Recognition and protection of human rights.
- b) The state is based on the principle of trias politica.
- c) The implementation of government follows the law (wetmatig bestuur).
- d) There is a state administrative court tasked with handling government actions that violate the law (onrechtmatige overheidsdaad).

One of the Government's efforts to realize legal certainty, order, and protection is by establishing a Notary institution, which serves as an intermediary between the Government and the community in creating good governance. In this context, authentic written evidence regarding acts, contracts, determinations, and legal events is an important instrument to achieve legal certainty. Notaries are given authority based on applicable laws and regulations, limited to the provisions stipulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN). The position of notary is carried out on the basis of legal regulations with the aim of providing services to the community in terms of making authentic written evidence related to situations, events, or legal acts. The duties of a notary, some of which are duties that should be carried out by the government, have a significant legal impact, because notaries are given some state authority and authentic and executorial powers on the deeds they make. In this context, Indonesia's national goal as stated in the Preamble to the 1945 Constitution is to create a just and prosperous society, both materially and spiritually, including in fulfilling the need for ownership of a place to live.

#### ***Land Deed Making Officer (PPAT) as the Maker of Sale and Purchase Deed (AJB)***

There are two types of Sales and Purchase Agreements (PPJB): new PPJB, which is a promise because often the transaction has not been completed or paid off, and paid

PPJB, which has been paid in full but the sale and purchase deed cannot be processed before the PPAT because several processes have not been completed, such as certificate division and so on. Developers can market single houses, terraced houses, and/or flats that are still under construction through the PPJB system. However, the PPJB system can only be implemented after meeting several certainty requirements, including:

- a) Land ownership status,
- b) Contents of the agreement that was promised,
- c) Payment of Booking Fee (PBG),
- d) Availability of infrastructure, facilities, and public utilities,
- e) Construction progress of at least 20%.

In Government Regulation Number 24 of 1997, it is stated that the transfer of land rights and ownership rights to flat units through several methods, including sale and purchase, exchange, grants, income in companies, and other legal acts of transfer of rights, except for transfer of rights through auction. The transfer can only be registered if proven by a deed made by an authorized Land Deed Making Officer (PPAT) in accordance with the provisions of applicable laws and regulations.

From these provisions, it can be concluded that one of the expressly recognized methods for the transfer of land rights is through a Deed of Sale and Purchase (AJB) made by a PPAT, although a Sale and Purchase Agreement (PPJB) is also part of the land sale and purchase process. PPAT is a public official who has the authority to make authentic deeds regarding certain legal acts regarding land rights or ownership rights to apartment units.

### ***Case Review of PPJB BPHTB Payment Suspension Carried Out by Notaries/PPAT in Bandung Regency***

A sales and purchase agreement is one of 12 types of agreements regulated in the Civil Code. The legal consequences of a sales and purchase agreement legally made by a notary are that it applies as a law for the party making it (Article 1338 paragraph (1) of the Civil Code), in accordance with the principle of pacta sunt servanda which binds the parties making it and can even bind a third party if previously agreed (Article 1317 of the Civil Code). The parties involved in a sales and purchase agreement have rights and obligations that must be fulfilled. The main obligation of the buyer is to pay the purchase price according to the agreed time and place. However, if the time and place of payment are not specified in the agreement, payment must be made when and where the goods are delivered. Meanwhile, the seller's rights are included in the buyer's obligations that have been agreed between the two parties.

In a sales and purchase agreement, the seller's main obligation to the buyer after the price of the goods has been paid by the buyer is regulated in Article 1491 of the Civil Code. First, the seller must keep the goods sold safe and free from interference. Second, the goods sold must not have hidden defects. If the buyer does not pay the agreed price for the goods, the seller has the right to demand cancellation of the agreement, and vice

versa if the seller fails to deliver the goods, the buyer can also cancel the agreement. One of the weaknesses of the agreement in the process of transferring land rights using a binding agreement is related to the cancellation of the agreement, which can also be called the cancellation of the agreement. In theory, the cancellation of the agreement automatically ends the legal relationship between the parties, but the cancellation of the agreement will return the status of the parties to their original condition. Based on Article 1381 of the Civil Code, one way to cancel the agreement is through payment, namely payment in cash and immediately. However, this does not apply to the PPJB in full which is still an initial agreement because it does not meet the document requirements for sale and purchase.

The description shows that a notary PPJB is used when the land that will be the object of the sale and purchase cannot be transferred directly for several reasons, such as the land is still in collateral status or waiting for the certificate splitting process, and so on. Thus, PPJB is not a requirement, but can be done if the parties involved want a PPJB before making an AJB. PPJB prepared by a Notary basically does not result in a transfer of ownership rights, but according to Attachment SEMA 4/2016, the transfer of land rights based on PPJB legally occurs if the buyer has paid the land price in full, controls the object of the sale and purchase, and acts in good faith.

Basically, the transfer of land rights does not require a PPJB, where the PPJB functions as a preliminary agreement before a sale and purchase agreement is made with an AJB. The conceptual framework in this study is to maximize regional tax revenues from the land rights transfer sector, by determining the BPHTB payment requirements for land rights transfer transactions using a PPJB notary deed. Meanwhile, the theoretical framework used is the principle of utility and the principle of law as a tool of social engineering through research on the mechanism of BPHTB tax collection for the process of transferring land rights using PPJB.

From the results of interviews with several notaries in the Bandung district work area, it was revealed that they often deal with sellers and buyers who ask for a PPJB to be made on the grounds that they are not yet able to pay BPHTB tax. From the results of interviews in the field conducted with several notaries in Bandung district and Bandung city, the author found the fact that notaries whose parties pay taxes revealed that previously the notary had provided tax counseling to sellers and buyers before making a PPJB, so that the parties understood and were willing to pay it without delay, while notaries whose parties asked for a delay even though they had been given counseling, the notary still made a PPJB which was equipped with a statement of willingness to pay BPHTB which would be paid later. Regent Regulation Number 158 of 2022 concerning Amendments to Regent Regulation Number 9 of 2021 concerning Land and Building Acquisition Fees in Bandung Regency includes sanctions for PPAT/Notaries and other public officials who make PPJB without reporting proof of BPHTB payments.

In addition to the principle of *pacta sunt servanda*, Book III of the Civil Code also recognizes the principle of freedom to contract or make agreements as regulated in Article

1338 paragraph (1) of the Civil Code, which states that "All agreements made legally apply as laws for those who make them." This means that every agreement binds both parties, so that everyone can determine the contents of the agreement freely as long as it does not violate public order and morality, and agreements that have been made by the parties apply as laws for those who make them.

The general public knows notaries as parties who have the authority to make documents for the transfer of land and/or building rights or sales and purchase agreements. This is appropriate if the notary also acts as a Land Deed Making Officer (PPAT). Based on Article 2 of Government Regulation No. 37 of 1998 concerning the Regulations on the Position of Land Deed Making Officers ("PP No. 37/1998"), PPAT has the authority to make authentic deeds related to certain legal acts regarding land rights or Ownership Rights for Apartment Units. However, this does not apply if the notary is not a PPAT, so that his authority is limited to making certain deeds, including PPJB deeds.

Article 1458 of the Civil Code states that a sale and purchase is deemed to have occurred immediately after both parties reach an agreement on the goods and their price, even though the goods have not been delivered and the price has not been paid. However, ownership of the goods is only transferred after the delivery or levering is carried out. In this context, levering or transfer of ownership is a legal act to transfer ownership rights. Levering or transfer of ownership occurs when the owner or on behalf of him hands over goods to another person, so that the person obtains ownership rights to the goods, in this case, a condominium unit. Levering follows the obligor's agreement, which only creates rights and obligations without transferring ownership rights. To transfer ownership rights, it is necessary to hand over the goods, both physically and legally.

In a PPJB made by a notary, there is usually no delivery of goods (levering). A mere agreement to sell or exchange goods is not enough to transfer ownership of the goods. Delivery of goods (levering) is required. This delivery of goods is also known as *zakelijke overeenkomst* (an agreement related to objects), while a sale and purchase or exchange agreement is known as *obligatoire overeenkomst* (an agreement that only creates an agreement). In addition, Article 1459 of the Civil Code explains that ownership of the goods sold does not transfer to the buyer until delivery is made, which shows the nature of the agreement as an obligator, which does not require payment.

PPJB made by a Notary basically does not cause a transfer of ownership rights, but according to Attachment SEMA 4/2016, the transfer of land rights based on PPJB can be considered legally valid if the buyer has paid the price of the land, controlled the object of the sale and purchase, and acted in good faith. In principle, the transfer of land rights does not require PPJB; in this context, PPJB functions as a preliminary agreement before making AJB. Notaries who serve tax paying parties usually provide tax counseling to sellers and buyers before making a PPJB, so that they understand and agree to pay it without delay. However, if the parties request a delay in payment, even though they have been given counseling, the notary will still make a PPJB by including a statement of willingness to pay BPHTB at a later date. Regent Regulation Number 158 of 2022

stipulates sanctions for PPAT/Notaries and other public officials who make PPJB without reporting proof of BPHTB payments.

## Conclusion

The essence of buying and selling or transferring rights, both from the Islamic concept and from the national legal concept, is an agreement without any coercion or pressure to exchange goods for goods or goods for services. In this case, the agreement is stated in a form of agreement with certain requirements and made by and before a notary. Thus, there has been an absolute transfer of ownership rights that is free from any claims, either civil or criminal, in the future against something that is exchanged. This essence can bring happiness with a clear legal basis, legally binding so that legal certainty is obtained. In the PPJB in full which is made by and before a notary accompanied by leveraging, it has not been clearly regulated in the laws and regulations, so that the understanding of the agreement in the PPJB still refers to the understanding of the PPJB not in full, so that the essence of the sale and purchase as a basis for ownership rights becomes unclear. The process of transferring land rights using a PPJB notary deed has not been clearly regulated in the laws and regulations due to the conflict between the buying and selling process and the sale and purchase agreement process itself. However, this still occurs in society on the basis of Islamic legal philosophy, namely the existence of a sale and purchase agreement that is generally carried out verbally, but in positive law it is not yet perfect because the legal requirements are not yet complete. This shows the influence of Islamic legal philosophy on buying and selling, as well as other legal philosophies, namely humans as social beings and law as a tool for social renewal (Law as a tool of social engineering) from Roscoe Pound. The regulation on BPHTB payments for PPJB deeds made by and before a notary is not a requirement for changing the name of land and/or building ownership to the buyer's name. This is regulated in positive law to date. Thus, this regulation still causes confusion in the process of transferring land rights using a paid PPJB made by and before a notary.

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