

The Payment of Inheritance Acquisition Duty of Right on Land and Building in Sleman

Perwitiningsih*; Rikardo Simarmata

Faculty of Law, Universitas Gadjah Mada, Indonesia

*Corresponding author: witinis@gmail.com

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ABSTRACT

This research is aimed at revealing the collection practice of inheritance Acquisition Duty of Right on Land and Building (BPHTB) of Marital Properties in the form of land rights at Regional Finance and Assets Office (BKAD) Sleman and analyzing the practice based on the inheritance and land law. This research is empirical legal research. The data collected in this research are analyzed using a qualitative method and presented descriptively in order to obtain descriptive qualitative results. The result shows that there has been an overpayment of tax that should not be billed in the collection of BPHTB inheritance in the form of land as the marital property at BKAD Sleman since the living widow's or widower's right is counted. Land titles as joint assets, if registered only in the name of the heir without registering the spouse's name, the BKAD Sleman does not take into account the spouse's right to the land titles. This calculation happens because a land certificate as the marital property is registered only under the name of a husband or a wife alone, and BKAD Sleman interprets this condition as that the owner of the certificate is the one whose name is registered on it.

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1. Introduction

Marital properties are regulated in Law No. 1 of 1974 concerning Marriage, hereinafter referred to as UUP, regulated in Chapter VII entitled marital properties. Article 35 Paragraph (1) of the UUP states that assets or properties acquired during a marriage become marital properties. The properties are calculated from the date the marriage is carried out until the marriage ends, whether it ends due to death, divorce or to a court decision.¹

¹ Maspeke, A.S. & Khisni, A. (2017). Kedudukan Harta Bersama dalam Perkawinan menurut Fiqih dan Hukum Positif Indonesia serta Praktek Putusan Pengadilan Agama. *Jurnal Hukum Khaira Ummah*, 12(2): 178.

Marital properties obtained during the marriage results in a form of prevalence in the midst of society. It is in the form of mutual trust (between husband and wife), that a Land Certificate or Freehold Title of marital properties states only a name (whether it is the wife's or the husband's). It has become a common practice when a husband and wife purchase land or vehicles, their Land Certificate or the Freehold Title is only in the husband's name or sometimes in the wife's name because when the land or vehicles gets the ownership rights transferred, or if they are to be charged as collateral for debt, it must still be based on an agreement between husband and wife² even if the name written on the Land Certificate of Freehold Title is only one of theirs.

The death of a husband or wife, as one of the reasons for the dissolution of a marriage, has a legal effect on the possession of properties and the settlement of the rights and obligations of the deceased. This reason does not change the condition that the properties obtained during the marriage are marital properties. The process of inheritance or distribution of inheritance is aimed to end the condition of the marital properties not being shared.³

Marital properties in inheritance must first be divided related to the owner whether it is husband's or wife's, then the heir's share of the marital properties become inheritance which can be distributed to the rightful heirs. One Supreme Court Decision which addresses this case is the Supreme Court Decision No. 370 K/Ag/2015. This decision strengthens the decision of the Manado High Religious Court No. 0007/Pdt.G/2014/PTA.Mdo of which in their legal considerations consist of the following opinion:

"In the dispute property, there is the right of Plaintiff I/Appellee I, which is a joint asset, earned during the marriage. The inheritance property should be separated a half because there is the right of Plaintiff I/Appellee I as the wife. The remaining half is the inheritance property that must be distributed to the heirs. It is in accordance with the provisions of Article 35 Paragraph (1) of Law No. 1 of 1974 jo. Article 92 Paragraph (1) Compilation of Islamic Law"

In practice, the reality speaks different in Sleman. According to H. Salim, one of the Land Deed Officers (PPAT) of Sleman endorsed by heirs to settle the payment of inheritance Acquisition Duty of Right on Land and Building (BPHTB), its calculation request on marital properties under the name of a husband or a wife does not concern on the separation of the inheritance first.⁴ Hitaprana, a Land Deed Officer of Sleman who also is endorsed by clients, also states the same view on it.⁵

BPHTB deposits are taxpayers' responsibility, however, they often entrust it to a PPAT because the taxpayers or the heir at the same time wants to transfer the inherited land or is in the process of transferring the ownership of the land.⁶ The PPAT does not consider the rights of widows or widowers in the calculation of inheritance BPHTB

² Article 36 Paragraph (1) Law No. 1 of 1974 concerning Marriage.

³ Murdiatmo, T. (2007). *Pelaksanaan Pengenaan Bea Perolehan Hak atas tanah dan Bangunan atas Warisan Tanah dan/Bangunan di Kota Malang*. (Master's Thesis). Diponegoro University, Semarang, p. 37.

⁴ An interview with Henry Salim, a Land Deed Officer in Sleman, 17 January 2020.

⁵ An interview with Hitaprana, a Land Deed Officer in Sleman, 17 January 2020.

⁶ Ravianto, R & Purnawan, A. (2017). Peran Pejabat Pembuat Akta Tanah (PPAT) dalam Pemungutan Bea Perolehan Hak atas Tanah dan Bangunan (BPHTB) dengan Pendekatan Self-Assessment System. *Jurnal Akta*, 4(4): 568.

because the BPHTB application form request should contains the estimated price along with the total of BPHTB calculation adjusted to those calculated by the Regional Finance and Assets Office (BKAD) in Sleman. Includes data on inheritance objects there must be a match between the BPHTB application form and the land certificate. Any discrepancy in data or calculations will cause the application form to be rejected by the BKAD.⁷

Based on the above-mentioned problems, the author is interested in revealing how the practice of collecting inheritance BPHTB of marital properties in the form of land that is registered in the name of a husband or a wife at BKAD in Sleman. Also, the author is interested in revealing the factors of the BKAD in Sleman not taking into account the rights of the widow or widower to marital properties in the calculation of the inheritance BPHTB of marital properties in the form of land registered only in the name of the husband or the wife. Furthermore, these practices were analyzed in relation to Indonesian inheritance and land law. This research was a normative-empirical legal research. The data collected in this research were analyzed using a qualitative method and presented descriptively in order to obtain descriptive qualitative results.

2. Analysis and Results

2.1. Land as a Marital Property

According to M. Yahya Harahap, properties that can be categorized as marital properties are those purchased by husband and wife in a legal marriage and all income earned from marital properties or their respective properties. It does not matter who bought and whose name the property is registered. It does not matter who works or who gets income. As long as the properties are obtained during the legal marriage period, they are categorized as marital properties.⁸

The consequence of marital properties is collective ownership by husband and wife as the results of their livelihood properties. The existence of this collective ownership gives the same authority and responsibility to them over the properties.⁹ The second consequence of this marital property is the provision regarding the agreement of both parties in the management or transfer of the proerties.¹⁰ Mutual agreement between husband and wife is limited to actions that may result in the transfer or burden of marital properties. The provision reading that the use of marital properties must be based on the consent of the husband and wife together is a manifestation of their balanced rights and positions.¹¹

UUP does not provide further explanation regarding what kind of properties that can become marital properties, nor is there any exception to certain properties. Properties in any form as long as they are obtained during the marriage become marital properties. This provision also applies to properties in the form of land. When land is categorized as a marital property with Land Title registered in the name of anyone, the

⁷ An interview with Hitaprana, a Land Deed Officer in Sleman, 17 January 2020.

⁸ Harahap, M.Y. on Mk, M.A. 2010. *Hukum Perkawinan Indonesia Masalah-Masalah Krusial*, Yogyakarta: Pustaka Pelajar. p. 134-137.

⁹ Djuniarti, E. (2017). Hukum Harta Bersama ditinjau dari Perspektif Undang-Undang Perkawinan dan KUH Perdata. *De Jure Kementerian Hukum dan HAM RI*, 17(4): 455.

¹⁰ Article 36 Paragraph (1) of Law No. 1 of 1974 concerning Marriage.

¹¹ Maspeke, A.S. & Khisni, A. *op.cit.* p. 179.

land remains mutually owned by husband and wife. The consequence of marital properties creates an obligation for the consent of both parties when they are going to carry out a legal act of transferring land rights.

According to N. Wahyu Triashari, what is meant by a seller in a legal act of selling marital properties in the form of land is not only limited to the name registered in the land title, but also the consent of a married couple whose name is not listed on the certificate. Even the agreement of a spouse as a seller is classified as an agreement or agreement of will which is included in one of the conditions for the validity of the agreement as referred to in Article 1320 of the Civil Code. In addition to having an agreement in the article, it also requires the parties to be legally competent. The object of the agreement must be clear about certain matters and why it must be lawful. The agreement is a subjective condition in the validity of the agreement. Therefore, if these conditions are not met, the agreement can be canceled.¹²

The provision regarding marital properties as described above can be distorted by the making of a marriage agreement on separation of properties by a husband and wife. Article 29 Paragraph (1) UUP regulate that both parties (husband and wife candidates) with mutual consent may propose a written agreement legalized by a marriage registrar at or before the marriage takes place. After the issuance of the Constitutional Court Decision Register No. 69/PUU-XIII/2015, Article 29 Paragraph (1) of the Marriage Law receives the addition of the phrase "...during the marriage...". The addition of this phrase results in the making of the marriage agreement not having to be done at the time or before the marriage is carried out. However, a husband and wife can make it after the marriage has been carried out, or they are in marriage.¹³

2.2. The Inheritance Distribution of Marital Properties

Death as one of the causes for the dissolution of marriage results in the inheritance process. The transfer of properties left by the deceased person (heir) to their heirs is called inheritance.¹⁴ One of the elements that must be present in the process is inheritance i.e., properties that are left by the heir and can be shared.¹⁵

There are two kinds of inheritance in marriage in Indonesia. First, the inheritance or property that was owned before the marriage and brought into the marriage by the husband and wife. Second, marital properties or *harta pencaharian* (Minangese) or *gono-gini* (Javanese) are properties purchased during marriage and mutually owned by husband and wife. The problem that arises is how is the right of the widow or widower to the inheritance left by her marriage partner? While the widow or widower also takes part in obtaining the properties.¹⁶

There are at least three systems of inheritance law that are still valid in Indonesia, namely customary law, Islamic law (regulated in the Islamic Law Compilation or KHI) and Western law (regulated in the Civil Code). The three legal systems in principle

¹² Triashari, N.W. (2018). Kekuatan Hukum Persetujuan Suami atau Isteri yang dibuat di Bawah Tangan. *Acta Comitatus*, 3(3): 5.

¹³ Hasana, U. (2017). *Tinjauan Hukum Terhadap Perjanjian Perkawinan (Prenuptial Agreement) Pasca Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015*. (Undergraduate's Thesis). Hassanuddin University, Makassar, p. 6.

¹⁴ Nugroho, S.S. (2016). *Hukum Waris Adat di Indonesia*. Solo: Pustaka Iltizam, p. 21.

¹⁵ *Ibid.* p. 19.

¹⁶ Irianto, S. (2016). *Pluralisme Hukum Waris dan Keadilan Perempuan*. Jakarta: Yayasan Pustaka Obor Indonesia, p. 30.

regulate the transfer of rights to the assets of the heirs. The KHI and the Civil Code requires death. The distribution of the assets can be done after the heir has passed away. It is different from customary law which allows distribution of inheritance while the heir is still alive.¹⁷

When one of the spouses has passed away, he or she will leave an inheritance to be passed on to his or her heirs. Regarding marital properties, which are inheritance properties, the KHI in Article 96 Paragraph (1) stipulates that when a marriage ends due to the death of a husband or a wife, then half of the marital properties become the right of the married couple who has lived the longest. Furthermore, the provision of Article 97 of the KHI also stipulates that a divorced husband and wife, a widow or widower, is each entitled to a half of the marital properties as long as there is not another agreement in the marriage agreement. The KHI determines that after the dissolution of a marriage whether due to death or divorce, each widow or widower has been entitled to a half of the marital properties.

The Civil Code also regulates the rights of husband and wife to marital properties after the dissolution of the marriage, which is regulated in Article 128 Paragraph (1) of the Civil Code. After the end of the marriage, the properties are shared in half between husband and wife or between their respective heirs regardless of who bought the properties. Meanwhile, in customary inheritance law, there is still pluralism in the arrangement of inheritance. The distribution of inheritance properties will follow the provision of customary law that apply existing tribes or ethnic groups, usually not free from the influence of the kinship community structure.¹⁸

Interpretation based on the judiciary can be stated as valid interpretation because the Court is the only party that has the authority to provide a binding interpretation of law.¹⁹ One of the jurisprudence that decides the right of a widow or widower to inheritance in the form of marital properties is the Supreme Court Decision No. 3764/Pdt/1992 March 30 1992, which states: "A widow will receive 1/2 (half) of marital properties, and the remaining 1/2 (half) of the properties will be the inheritance of the deceased husband, which will be divided between the widow and her children, and each will receive an equal share."²⁰

Based on the jurisprudence mentioned above, when a marriage has to be dissolved due to the death of any of the husband or wife, half of the inheritance in the form of marital properties is the right to the husband or wife who has lived longer. The other half which is the right of the heir can be referred to as inheritance object. The object of this inheritance can then be distributed to the heirs.

2.3. The Collection Practice of Inheritance BPHTB at BKAD in Sleman

After the promulgation of Law No. 28 of 2009 concerning Local Taxes and Retributions, hereinafter referred to as the PDRD Law, the BPHTB is included in the type of Regency/City taxes.²¹ The PDRD Law is a law that regulates all taxes

¹⁷ Nasution, A. (2018). Pluralisme Hukum Waris di Indonesia. *Jurnal Al-Qadha*, 5(1): 23.

¹⁸ *Ibid.* p. 24.

¹⁹ Herliana "Penalaran Hukum" on Riyanto, S. et.al. (2013). *Keterampilan Hukum: Panduan untuk Mahasiswa, Akademisi dan Praktisi*. Yogyakarta: Gadjah Mada University Press, p. 162.

²⁰ Several decisions that have the same legal principles i.e., Supreme Court Decision No. 444 K/Sip/1975 on September 9, 1976, Supreme Court Decision No. 32 K/AG/2002 on April 20, 2005.

²¹ Article 2 Paragraph (2) letter k Law No. 28 of 2009 concerning Local Taxes and Retributions.

categorized as regional taxes including BPHTB. Thus, the management of BPHTB which was previously managed by the Central Government through the Directorate General of Taxes is transferred to the Regional Government.²²

The BPHTB as a regional tax makes its collection and regulation the domain and jurisdiction of each Regional Government. Regional governments collecting the BPHTB as a source of regional revenue must first issue a Regional Regulation (*Perda*) on the BPHTB which is the legal basis for collecting the BPHTB. At the latest on January 1, 2011, all regions throughout Indonesia must have the *Perda*. The Regional Regulation referred to here is a Regency or City *Perda*, specifically for the area of the Special Capital Region of Jakarta, it can be a Provincial Regulation. The *Perda* on BPHTB in all regions must pay attention and must not conflict with the provisions stipulated in the PDRD Law.²³

Sleman Regency Government, in regulating BPHTB as a regional tax, issued Regional Regulation of Sleman Regency No. 14 of 2010 concerning Acquisition Duty of Right on Land and Building. It was enacted on 27 December 2010 and effective from 1 January 2011. The definition of BPHTB is stated in the provisions of Article 1 No. 5 of Regional Regulation of Sleman Regency No. 14 of 2010 concerning Acquisition Duty of Right on Land and Building, hereinafter referred to as *Perda* BPHTB Sleman, namely, "Acquisition Duty of Right on Land and Building is taxes on the acquisition of right on land and building".²⁴

The acquisition of land and building rights that becomes objects of the BPHTB can come from the transfer of rights or from granting new rights due to the continuation of the release or outside the release of rights. The Acquisition of land and building acquisition resulting from the transfer of rights can occur due to sale and purchase, exchange, grants, will, inheritance, *inbreng*, separation of rights resulting in transfer, appointment of buyers in auction, implementation of judges' decisions with permanent legal force, business merging, business consolidation, business expansion and gift.²⁵ The land and building right can be in the form of property rights, rights to cultivate, rights to building, rights to use, ownership to apartment units and maintenance rights.²⁶

The BPHTB rate set by the government of Sleman is 5% (five percent).²⁷ The 5% (five percent) rate is the maximum limit all by the PDRD Law. The regional law of each region may differ in determining the BPHTB rate. The PDRD Law itself does not specify exactly what amount will be used as the basis for calculating the BPHTB. Article 88 Paragraph (1) of the PDRD Law only provides a limitation that the maximum rate all as the basis for calculating the BPHTB is 5% (five percent). It means

²² Mustofa. (2014). *Tuntunan Pembuatan Akta-Akta PPAT*. Yogyakarta: KaryaMedia, p. 30-31.

²³ *Ibid.*

²⁴ See Article 1 No. 41 Law No. 28 of 2009 concerning Local Taxes and Retributions.

²⁵ Article 3 Paragraph (2) Regional Regulation of Sleman Regency No. 14 of 2010 concerning Acquisition Duty of Right on Land and Building, also see Article 85 Paragraph (2) Law No. 28 of 2009 concerning Local Taxes and Retributions.

²⁶ Article 3 Paragraph (3) Regional Regulation of Sleman Regency No. 14 of 2010 concerning Acquisition Duty of Right on Land and Building, also see Article 85 Paragraph (3) Law No. 28 of 2009 concerning Local Taxes and Retributions.

²⁷ Article 9 Paragraph (1) Regional Regulation of Sleman Regency No. 14 of 2010 concerning Acquisition Duty of Right on Land and Building.

that each region is all to determine the rate for its respective BPHTB as long as the rate is less than or equal to 5% (five percent).

As specifically for the Acquisition Duty of Right on Land and Building based on inheritance or will (from parent to child or vice versa, from husband to wife or vice versa), the *Perda* BPHTB Sleman provides a reduction of 50% (fifty percent) of the rate. The set BPHTB rate is 5% (five percent), so that the special BPHTB rate for inheritance and will grants in Sleman is 2.5% (two-point five percent).²⁸ Not all regions provide a reduction of 50% (fifty percent) of the rates of inheritance BPHTB and will grant. It depends on whether there are Articles regulating these special reductions and rates or not.²⁹

The inheritance NPOPTKP (Acquisition Value of Non Taxable Object) received by blood relatives with a will grant, including husband and wife in Sleman is IDR 300,000,000 (three hundred million rupiah).³⁰ The amount of the NPOPTKP of each region may be different.³¹ The basis for the imposition of BPHTB is the higher value between the Sales Value of Taxable Object (NJOP) of Land and Building Tax (PBB) for the current year when the object is acquired and the Acquisition Value of Taxable Object (NPOP). The NPOP for inheritance itself is based on market value. The market value is the average price of a fair sale and purchase transaction that occurs in the vicinity of the land that becomes the tax object.³²

If the NPOP or market value is unknown or lower than the Sales Value of Taxable Object used in the imposition of Land and Building Tax in the year the acquisition was made, then what is used as the basis for the imposition of BPHTB is the Sales Value of Taxable Object used in the imposition of the Land and Building Tax in the year of the purchase.³³ The principal amount of the tax is calculated by means of the NPOP minus the NPOPTKP and multiplying the tax rate determined by the *Perda* BPHTB of Sleman and the NPOP minus the NPOPTKP. How to calculate the inheritance BPHTB in Sleman Regency can be formulated as follows:

$$\begin{aligned} \text{BPHTB} &= \text{NPOP} - \text{NPOPTKP} \times \text{Inheritance BPHTB rate} \\ &= (\text{NPOP} - \text{NPOPTKP}) \times \text{Inheritance BPHTB rate} \\ &= (\text{NPOP} - \text{IDR } 300,000,000) \times 2.5\% \end{aligned}$$

²⁸ Article 9 Paragraph (2) Regional Regulation of Sleman Regency No. 14 of 2010 concerning Acquisition Duty of Right on Land and Building.

²⁹ Regional Regulation of DKI Jakarta No. 18 of 2010 concerning Acquisition Duty of Right on Land determines the rate of BPHTB, i.e., 5% for all BPHTB objects, Regional Regulation of Surabaya No. 11 of 2010 concerning Acquisition Duty of Right on Land and Building determines the rate, i.e., 5% for all BPHTB objects.

³⁰ Article 8 Paragraph (2) Regional Regulation of Sleman Regency No. 14 of 2010 concerning Acquisition Duty of Right on Land and Building.

³¹ Regional Regulation of DKI Jakarta No. 18 of 2010 concerning Acquisition Duty of Right on Land determines NPOPTKP DKI Jakarta which is IDR 350,000,000, Regional Regulation of Surabaya No. 11 of 2010 concerning Acquisition Duty of Right on Land and Building determines NPOPTKP Surabaya which is IDR 400,000,000.

³² Mustofa, *op. cit.* p. 118.

³³ Article 7 Paragraph (3) Regional Regulation of Sleman Regency No. 14 of 2010 concerning Acquisition Duty of Right on Land and Building, also see Article 87 Paragraph (3) Law No. 28 of 2009 concerning Local Taxes and Retributions.

The collection of BPHTB in Sleman requires taxpayers to calculate and pay the tax payable by the taxpayers using the SSPD (Regional Tax Payment Slip) which also applies as SPTPD (Regional Tax Return).³⁴ It means that the collection of BPHTB uses a self-assessment system, namely that the taxpayer calculates, pays or remits and reports the tax himself. The government as the tax authority supervises the implementation of taxpayers' rights and obligations in the field of taxation.³⁵ The rule also applies to the collection of inheritance BPHTB. One of the practices of collecting inheritance BPHTB in BKAD Sleman is collecting inheritance BPHTB for Mr. A's inheritance (not his real name). The inheritance is also a marital property of Mr. A and his wife.

Mr. A passed away on June 16, 2017. He, during his life, was married to Mrs. B and had four children. During their marriage they bought two plots of land. The first land is registered in the Freehold Certificate Number 13815 Maguwoharjo, Letter of Measurement dated 4 November 2013 Number 00520/2013. An area of 1,082 m² (one thousand eighty-two square meters) is registered in the name of Mr. A, on which stands a building covering an area of 253 m² (two hundred and fifty-three square meters). Second, Freehold Certificate Number 13816 Maguwoharjo, Letter of Measurement dated September 4, 2013, Number 00521/2013, an area of 2,007 m² (two thousand and seven square meters) is registered in the name of Mr. A, on top of which stands a 53 m² (fifty-three square meter) building.

Based on the above data, the calculation of BPHTB that will be received by BKAD Sleman by referring to *Perda* BPHTB Sleman is as follows:

- a) The rate of freehold Title Number 13815 covering an area of 1,082, NJOP PBB/m² was IDR 335.000 (three hundred thirty-five thousand rupiah). There lies a building with an area of 253 m² with a NJOP PBB/m² which costed IDR 429.000 (four hundred twenty-nine thousand rupiah). The calculation is as follows:

$$\begin{aligned} 1,082 \text{ m}^2 \times \text{IDR } 335,000 &= \text{IDR } 362,470,000 \\ 253 \text{ m}^2 \times \text{IDR } 429,000 &= \text{IDR } 108,537,000 \\ \text{Total} &= \text{IDR } 471,007,000 \end{aligned}$$

- b) The rate of Freehold Title Number 13816 covering an area of 2.007, NJOP PBB/m² was IDR 1.032.000 (one million thirty two thousands rupiah). On the land there is a building with an area of 53 m² with the NJOP of PBB/m² which costed IDR 310,000 (three hundred and ten thousand rupiah). The calculation is as follows:

$$\begin{aligned} 2,007 \text{ m}^2 \times \text{IDR } 1,032,000 &= \text{IDR } 2,071,224,000 \\ 53 \text{ m}^2 \times \text{IDR } 310,000 &= \text{IDR } 10,850,000 \\ \text{Total} &= \text{IDR } 2,082,074,000 \end{aligned}$$

- c) The calculation of the outstanding BPHTB is as follows:

$$\text{The amount of NPOP: IDR } 471,007,000 + \text{IDR } 2,082,074,000 = \text{IDR } 2,553,081,000$$

³⁴ Article 14 Paragraph (1) Regional Regulation of Sleman Regency No. 14 of 2010 concerning Acquisition Duty of Right on Land and Building, also stipulated on Article 9 Regent Regulation No. 32.3 of 2018 concerning The Collection of Acquisition Duty of Right on Land and Building.

³⁵ Dwiputrianti, S. (2013). Analisis Self Assesment System dalam Meningkatkan Kepatuhan Wajib Pajak Hotel di Kabupaten Karimun, Provinsi Kepulauan Riau. *Jurnal Ilmu Administrasi*, X(1): 4-5.

$$\begin{aligned} \text{BPHTB} &: (\text{NPOP} - \text{NPOPTKP}) \times 2.5\% \\ & (\text{IDR } 2,553,081,000 - \text{IDR } 300,000,000) \times 2.5\% \\ & \text{IDR } 2,253,081,000 \times 2.5\% \\ & \text{IDR } 56,327,025 \end{aligned}$$

2.4. The Collection of Inheritance BPHTB in the Form of Land as a Marital Property at BKAD in Sleman Seen from Inheritance and Land Law Perspectives

Based on the above calculations, it can be seen that there is not any half share to be given to Mrs. B as the longest living married partner. The two freehold titles were purchased during their marriage meaning that the two freehold titles are marital properties. In this case, all inheritance is considered as Mr. A's inheritance and the amount of the BPHTB is calculated from all existing inheritance without considering Mrs. B's share of the marital properties.

The calculation above is what has been applied in the calculation of the Inheritance BPHTB of marital properties at BKAD in Sleman. If a taxpayer takes an initiative to submit a calculation of the inheritance BPHTB that is by halving Mrs. B's share as her right to marital properties, the BKAD employees will reject the calculation if the only legal document shown is a Freehold Title in the name of Mr. A.³⁶

The BPHTB does use a self-assessment system, but the BKAD employees will also conduct audits and research on the calculations made by the taxpayer.³⁷ The BKAD employees will conduct office research by matching the NPOP, NJOP of land and buildings listed in the SSPD with those listed in the SPPT PBB, also conducting research by doing:³⁸

- 1) Examining the correctness of tax calculation which includes the components of the acquisition value of the tax object, the non-taxable acquisition value of the tax object, the rate, the amount of tax and the tax to be paid;
- 2) Examining the accuracy of the calculation of the amount of tax deduction calculated by the taxpayer.

The reason the BKAD employees refuse the calculation of the reduction in half of the joint assets which are inheritance properties is that the legal documents attached by the heirs are only a Freehold Title rights registered in the name of Mr. A. Even though they have known that the land which becomes the inheritance was purchased during the legal marriage between Mr. A and Mrs. B, but if the formal evidence in the form of the Freehold Title is only registered in Mr. A's name, it will be interpreted that all the inheritance in the form of land is Mr. A's property.³⁹ A land certificate is a strong tool of proof as long as the physical data and juridical data contained therein correspond to

³⁶ An interview with Tintin Fathonah, S.Sos., M.Si., The Head of Inspection Session at BKAD Sleman on March 16, 2020.

³⁷ An interview with Tintin Fathonah, S.Sos., M.Si., The Head of Inspection Session at BKAD Sleman on March 16, 2020. As governed in Article 12 Paragraph (1) Sleman Regent regulation No. 32.3 of 2018 concerning the Collection of Acquisition Duty of Right on Land and Building reading that "the BKAD Sleman will do an inspection to offices and/or field for SSPD reported by tax payers".

³⁸ Article 12 Paragraph (2) Sleman Regent Regulation No. 32.3 of 2018 concerning the Collection of Acquisition Duty of Right on Land and Building.

³⁹ An interview with Tintin Fathonah, S.Sos., M.Si., the Head of Inspection Session at BKAD Sleman on March 16, 2020.

those in the measuring document and land book.⁴⁰ That is, as long as there is not any other evidence that can prove otherwise, the information in the certificate must be considered true.⁴¹

It is excluded if the heirs can attach a legal document in the form of a court decision that is legally binding or an authentic deed which states that the inheritance in the form of land is a marital property, then the provisions that apply in the distribution of the inheritance of marital properties according to the KHI, Civil Code and jurisprudence of the Supreme Court can be enforced.⁴² That is, the inheritance is divided in half first, half of which becomes the right of the living widow or widower, and the other half becomes the right of the heir to subsequently become inheritance and become the object of the inheritance BPHTB. If applied in the calculation of BPHTB, the inheritance of Mr. A's inheritance will be as follows:

$$\begin{aligned} \text{NPOP Total} & : 1/2 \times \text{IDR } 2,553,081,000 = \text{IDR } 1,276,540,500 \\ \text{BPHTB: (NPOP - NPOPTKP)} & \times 2.5\% \\ & (\text{IDR } 1,276,540,500 - \text{IDR } 300,000,000) \times 2.5\% \\ & \text{IDR } 976,540,500 \times 2.5\% \\ & \text{IDR } 24,413,512,5 \end{aligned}$$

Mrs. B's right to marital properties is taken into account, so that the inheritance becomes only half of the total inheritance of Mr. A, or 50% (fifty percent) from the previously calculated NPOP total. The inheritance BPHTB that will be IDR 24,413,512,5 (twenty-four million four hundred thirteen thousand five hundred- and twelve-point five rupiah) as calculated above. There is a difference of IDR 31,915,512,5 (thirty-one million nine hundred fifteen thousand five hundred- and twelve-point five rupiah) or $\pm 56.67\%$ (approximately fifty-six-point six seven percent) from the calculated BPHTB which does not take into account the share rights of Mrs. B previously. The more the heir's inheritance, the greater the difference in calculating the inheritance BPHTB will be.

Based on the research results, the author finds that Mr. A's heirs have actually attached a statement letter signed by the heirs, witnesses, village officials and the head of the sub-district. Through this letter, it can be seen that Mrs. B is Mr. A's wife, and that two Freehold Titles registered in Mr. A's name were purchased during their marriage. However, because the attached statement letter is not an authentic deed, the BKAD employees do not consider the statement letter as material consideration to become proof of joint assets. Thus, the documents used as the basis for calculating Mr. A's inheritance are only based on the freehold titles in the name of Mr. A.⁴³

The Freehold Title is a product of the National Land Agency. Everything related to physical data and legal data on land title certificates becomes the jurisdiction of the National Land Agency or the local Land Office. BKAD Sleman employees will only

⁴⁰ Article 32 Paragraph (1) Government Regulation No. 24 of 1997 concerning Land Registration.

⁴¹ Elucidation of Article 32 Paragraph (1) Government Regulation No. 24 of 1997 concerning Land Registration.

⁴² An interview with Tintin Fathonah, S.Sos., M.Si., the Head of Inspection Session at BKAD Sleman on March 16, 2020.

⁴³ Based on attachments from the heirs submitted to BKAD Sleman Regency in the form of a statement/ statement of inheritance, a statement letter for landowners and a statement of distribution of inheritance.

look at the existing formal legality. This is to ensure legal certainty; when a legal document shows who the owner is, the legal document will be the basis for calculating the BPHTB.⁴⁴

Legal certainty is a form of protection for the seekers of justice from arbitrary actions.⁴⁵ It is defined as the clarity of norms, so that it can be used as a guide for people who are subject to regulations, such clarity so as not to cause many misinterpretations, and that those who are entitled according to law will be able to obtain their rights.⁴⁶ It is a clear, permanent and consistent law enforcement, so that its implementation is not affected by subjective circumstances.⁴⁷

Indonesia's efforts in realizing legal certainty regarding land rights are through land registration. The form of legal certainty from land registration is to make the right holder of the land can easily prove him or herself as the holder.⁴⁸ The technical aspect of this manifestation of legal certainty is that land rights holders are given a land title certificate.⁴⁹

The purpose of land registration is to provide legal certainty and protection to holders, so that they can easily prove themselves as legal holders, and for the government to easily obtain the data needed to carry out legal actions regarding the land that have already been registered.⁵⁰ A letter which is proof of rights that a person is the holder of rights to a parcel of land is called a land title.⁵¹

Every human being is inherent in what is called a right. The term right itself has different meanings. There is a right to an item and the right to demand someone to act in a certain way.⁵² The word right has an essence. When someone is declared to have a certain right, then other people are also required to treat it in a certain way as well. For example, someone has the right to use an object that belongs to him or her resulting in an obligation for others not to disturb him or her in using that object.⁵³ Rights in legal terminology means a law that is related to certain legal subjects, which is why there is freedom for the legal subject.⁵⁴

Article 36 of Law No. 39 of 1999 on Human Rights has regulated to protect the rights of everyone to own property, either to be controlled by themselves or collectively with others, and no one may take someone's property in legal arbitrarily. Philosophical and juridical individual rights to land are also protected on the basis of the principle of

⁴⁴ An interview with Tintin Fathonah, S.Sos., M.Sc., Head of the Inspection Session of BKAD Sleman, on March 16, 2020.

⁴⁵ Mertokusumo, S. & Pitlo, A. (2013). *Bab-Bab Tentang Penemuan Hukum*. Bandung: Citra Aditya Bakti, p.1-2.

⁴⁶ Wijayanta, T. (2014). Asas Kepastian Hukum, Keadilan dan Kemanfaatan dalam kaitannya dengan Putusan Kepailitan Pengadilan Niaga. *Jurnal Dinamika Hukum* 14(2): 219-220.

⁴⁷ Ismail, F.K. (2011). *Kepastian Hukum atas Akta Notaris yang berkaitan dengan Pertanahan*. (Master's Thesis). University of Indonesia, Jakarta, p.2.

⁴⁸ Article 3 letter a Government Regulation No. 24 of 1997 concerning Land Registration.

⁴⁹ Article 4 Paragraph (1) Government Regulation No. 24 of 1997 concerning Land Registration.

⁵⁰ Article 3 Government Regulation No. 24 of 1997 concerning Land Registration.

⁵¹ Article 1 number 20 Government Regulation No. 24 of 1997 concerning Land Regulation.

⁵² Kelsen, H. "General Theory of Law and State" on Raisul Muttaqien (ed). (2014). *Teori Umum tentang Hukum dan Negara*. Bandung: Nusa Media, p.109.

⁵³ Kelsen, H. (2014). *What is Justice? Justice, Politic, and Law in the Mirror of Science*. Bandung: Nusa Media, p.330.

⁵⁴ Kansil, C. S. T. (2008). *Pengantar Ilmu Hukum dan Tata Hukum Indonesia: Jilid I Pengantar Ilmu Hukum (Semester Ganjil)*, Jakarta: Balai Pustaka, p.87.

“just and civilized humanity”, which is further regulated explicitly in Article 28 H of the 1945 Constitution which reads “Every person has the right to private property, and these rights cannot be taken over arbitrarily by anyone”.

Land as a marital property whose certificate of ownership rights over the land is only registered in the name of a husband or a wife alone cannot guarantee legal certainty or legal protection for the owner. In fact, at least it is guaranteed by what applies to the calculation of inheritance BPHTB at BKAD Sleman; that the rights of married couples whose names are not included in the certificate of land title are not taken into account if they only look at the land title certificate.

A Land Certificate as a marital property registered only under the name of a husband or a wife contains a gap that can be interpreted differently. Based on the marital property law and inheritance law, the owners of the land are the husband and the wife even though the certificate is registered only under the name of the husband or the wife. On the other hand, based on the taxation, in this case the BKAD Sleman, the owner of the certificate is the person whose name is written on the registered certificate.

According to BKAD employees of Sleman, they do not rule out the possibility of accepting the BPHTB inheritance calculation by considering the applicable provisions according to the KHI, Civil Code and Supreme Court jurisprudence as long as the taxpayer brings legal documents in the form of authentic deeds or court decisions having permanent legal force which explains the joint ownership between the heir and his marriage partner. However, there has not been a single person who attaches another document, except the land certificate. Thus, the calculation of BPHTB is only based on the land certificate.

According to the author, in the collection of inheritance BPHTB in the form of marital property at BKAD Sleman, especially in the case of BPHTB collection of Mr. A's inheritance, there is an overpayment of taxes that should not be billed in the amount of IDR 31,915,512,5 (thirty-one million nine hundred fifteen thousand five hundred- and twelve-point five rupiah) or $\pm 56.67\%$ (approximately fifty-six-point six seven percent). The consideration is that the right of Mrs. B who is still alive should not be an object of inheritance, and the inheritance of the BPHTB should not be collected. Inheritance is a legal phenomenon occurred because someone's death. The heirs who are still in mourning will be burdened more if they have to pay high inheritance BPHTB.

In terms of the overpayment, the heirs have right to apply for a refund. Based on the Minister of Finance Regulation Number 187/PMK.03/2015 on The Ways to Settle the Overpayment of Tax that should not be Billed, Article 2 point a state that requests for refunds of the overpayment of tax that should be billed can be proposed under the conditions of that there are tax payment that is not a tax payable object or that should not be billed.

Tax payments that are not taxable objects that are payable or that should not be payable other than those already mentioned can also be in the form of; Tax payments paid which are greater than the tax payable, tax payments on canceled transactions, tax payments that should not have been paid, tax payments related to requests to stop investigations of tax crimes as referred to Article 44B of Law Number 28 of 2007

concerning the Third Amendments of Law Number 6 Year 1983 concerning General Provisions and Tax Procedures that are not approved.⁵⁵

3. Conclusion

3.1. Conclusion

There is an overpayment of tax that should not be owed in collecting BPHTB inheritance of marital properties at BKAD Sleman because 50% (fifty percent) of the total NPOP is the right of a living married couple that should not be considered as inheritance object. This occurs because the land certificate of marital property is registered only under the name of the husband, so that the BKAD Sleman interprets the owner of the certificate is the husband. All inheritance registered under the name of the husband is included into the inheritance object. The inheritance BPHTB is calculated based on the total number of the inheritance objects. The marital properties in the inheritance BPHTB for the spouse that is still alive will be calculated by BKAD Sleman if the heirs can show evidence in the form of authentic deeds or a legally binding judge's decision explaining that the land is a marital property for heirs and the spouse.

3.2. Suggestions

In order to guarantee legal certainty and protect the rights of every legal subject, synergy is needed between the collection of BPHTB and land registration. The government of Sleman, in this case, the BKAD needs to make an agreement with the Land Office of Sleman in relation to the interpretation of the names of the owners or rights holders in the marital property certificates.

Further research on the inclusion of the names of the married partners in the marital property certificates is needed. Is the inclusion of one of the names of the married couple sufficient to provide legal certainty and protection as the purpose for which land registration is intended? or is the inclusion of the names of both at the same time in the land title certificates to guarantee the rights of both needed?

References

Books

- Irianto, S. (2016). *Pluralisme Hukum Waris dan Keadilan Perempuan*, Jakarta: Yayasan Pustaka Obor Indonesia.
- Kansil, C. S. T. (2008). *Pengantar Ilmu Hukum dan Tata Hukum Indonesia: Jilid I Pengantar Ilmu Hukum (Semester Ganjil)*, Jakarta: Balai Pustaka.
- Kelsen, H. (2014). *What is Justice? Justice, Politic, and Law in the Mirror of Science*. Bandung: Nusa Media.
- Mertokusumo, S. & Pitlo, A. 2013. *Bab-Bab tentang Penemuan Hukum*, Bandung: Citra Aditya Bakti.
- Mustofa. (2014). *Tuntunan Pembuatan Akta-Akta PPAT*. Yogyakarta: KaryaMedia.
- Nugroho, S.S. (2016). *Hukum Waris Adat di Indonesia*. Solo: Pustaka Iltizam.

⁵⁵ Article 3 The Minister of Finance Regulation No. 187/PMK.03/2015 concerning The Ways to Settle the Overpayment of Tax that should not be Billed.

- Sidik, S.H. (2014). *Pengantar Hukum Perdata Tertulis (BW)*, Jakarta: Sinar Grafika.
- Sudirman, R. & Amirudin, A. 2012. *Perpajakan Pendekatan Teori dan Praktik*, Malang: Empat Dua Media.

Section from a book

- Harahap, M.Y. on Mk, M.A. (2010). *Hukum Perkawinan Indonesia Masalah-Masalah Krusial*, Yogyakarta: Pustaka Pelajar.
- Herliana "Penalaran Hukum" on Riyanto, S. et.al. (2013). *Keterampilan Hukum: Panduan untuk Mahasiswa, Akademisi dan Praktisi*, Yogyakarta: Gadjah Mada University Press.
- Kelsen, H. "General Theory of Law and State" on Muttaqien, R. (ed). (2014). *Teori Umum Tentang Hukum dan Negara*. Bandung: Nusa Media.

Journal Articles

- Djuniarti, E. (2017). Hukum Harta Bersama Ditinjau dari Perspektif Undang-Undang Perkawinan dan KUH Perdata. *De Jure Kementerian Hukum dan HAM RI*, 17(4): 455.
- Dwiputrianti, S. (2013). Analisis *Self Assesment System* dalam Meningkatkan Kepatuhan Wajib Pajak Hotel di Kabupaten Karimun, Provinsi Kepulauan Riau. *Jurnal Ilmu Administrasi*, X (1): 4-5.
- Mahfiana, L. (2016). Konsepsi Kepemilikan dan Pemanfaatan Hak atas tanah Harta Bersama antara Suami Isteri. *Buana Gender (Jurnal Studi Gender dan Anak)*, I(1): 33.
- Maspeke, A.S. & Khisni, A. (2017). Kedudukan Harta Bersama dalam Perkawinan Menurut Fiqih dan Hukum Positif Indonesia serta Praktek Putusan Pengadilan Agama. *Jurnal Hukum Khaira Ummah*, 12(2): 178.
- Nasution, A. (2018). Pluralisme Hukum Waris di Indonesia. *Jurnal Al-Qadha*, 5(1): 23.
- Ravianto, R & Purnawan, A. (2017). Peran Pejabat Pembuat Akta Tanah (PPAT) dalam Pemungutan Bea Perolehan HaK atas Tanah dan Bangunan (BPHTB) dengan Pendekatan Self-Assessment System. *Jurnal Akta*, 4(4): 568.
- Triashari, N.W. (2018). Kekuatan Hukum Persetujuan Suami atau Isteri yang dibuat di Bawah Tangan. *Acta Comitatus*, 3(3): 5.
- Wijayanta, T. (2014). Asas Kepastian Hukum, Keadilan dan Kemanfaatan dalam kaitannya dengan Putusan Kepailitan Pengadilan Niaga. *Jurnal Dinamika Hukum*, 14(2): 219-220.

Undergraduate/Graduate Theses

- Hasana, U. (2017). *Tinjauan Hukum terhadap Perjanjian Perkawinan (Prenuptial Agreement) Pasca Putusan Mahkamah Konstitusi No. 69/PUU-XIII/2015*. (Undergraduate's thesis). Hassanuddin University, Makassar.
- Ismail, F.K. 2011. *Kepastian Hukum atas Akta Notaris yang Berkaitan dengan Pertanahan*. (Master's Thesis). Indonesia University, Jakarta.
- Murdiatmo, T. (2007). *Pelaksanaan Pengenaan Bea Perolehan Hak atas tanah dan Bangunan atas Warisan Tanah dan/Bangunan di Kota Malang*. (Master's Thesis). Diponegoro University, Semarang.

Laws and Regulations

Government Regulation No. 24 of 1997 concerning Land Registration.

Law No. 1 of 1974 concerning Marriage.

Law No. 28 of 2009 concerning Local Taxes and Retributions

Regional Regulation of Sleman Regency No. 14 of 2010 concerning Acquisition Duty of Right on Land and Building.

Sleman Regent Regulation No. 32.3 of 2018 concerning the Collection of Acquisition Duty of Right on Land and Building.

Supreme Court Decision No. 370 K/Ag/2015.

Supreme Court Decision No. 3764/Pdt/1992.

The Minister of Finance Regulation No. 187/PMK.03/2015 concerning the Ways to Settle the Overpayment of Tax that should not be Billed.