

## JUSTICE PERSPECTIVE ON LAND AND BUILDING ACQUISITION DUTY UNDER GOVERNMENT REGULATION NO. 35/2023

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### Abstrak

Penelitian ini mengkaji perspektif keadilan dalam penarikan Bea Perolehan Hak atas Tanah dan Bangunan (BPHTB) berdasarkan Peraturan Pemerintah Nomor 35 Tahun 2023 tentang Ketentuan Umum Pajak Daerah dan Retribusi Daerah. Fokus utama adalah ketentuan pada Pasal 18 ayat (2) huruf a yang mengharuskan pembayaran BPHTB saat pembuatan Perjanjian Pengikatan Jual Beli (PPJB), yang berbeda dari aturan sebelumnya yang menetapkan pembayaran saat pembuatan Akta Jual Beli (AJB) oleh Pejabat Pembuat Akta Tanah (PPAT). Ketentuan baru ini menimbulkan ketidakadilan dan ketidakpastian hukum karena PPJB bukan alat bukti sah peralihan hak milik serta bertentangan dengan asas “tunai dan terang” menurut Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria. Penelitian menggunakan metode yuridis normatif dengan pendekatan historis dan konseptual. Data dianalisis secara kualitatif melalui interpretasi sistematis, gramatikal, dan teleologis. Hasil penelitian menunjukkan disharmonisasi norma antara PP No. 35 Tahun 2023 dan UUPA, terutama terkait waktu dan dasar hukum penarikan BPHTB. Kewajiban pembayaran pada tahap PPJB menimbulkan ketidakpastian dan ketidakadilan, khususnya bagi pihak yang belum melakukan peralihan hak secara sah. Kesimpulannya, ketentuan ini belum mencerminkan prinsip keadilan dan perlu revisi agar sesuai dengan ketentuan hukum peralihan hak.

**Kata Kunci:** Prinsip keadilan, BPHTB, PPJB, implikasi hukum, peralihan hak.

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### Abstract

This study examines the justice perspective in the collection of the Acquisition Duty of Right on Land and Building (BPHTB) based on Government Regulation Number 35 of 2023 concerning General Provisions on Regional Taxes and Regional Retributions. The research focuses on Article 18 paragraph (2) letter a, which mandates BPHTB payment upon the creation of the Sale and Purchase Binding Agreement (PPJB), differing from the previous regulation requiring payment at the creation of the Sale and Purchase Deed (AJB) by the Land Deed Official (PPAT). This new provision causes injustice and legal uncertainty as PPJB is not a valid proof of ownership transfer and contradicts the principle of “cash and clear” as regulated in Law Number 5 of 1960 on Basic Agrarian Regulations. The study employs a normative juridical method with historical and conceptual approaches. Data were qualitatively analyzed through systematic, grammatical, and teleological interpretation techniques. Findings reveal normative disharmony between Government Regulation No. 35 of 2023 and the Basic Agrarian Law, especially regarding timing and legal basis of BPHTB collection. Payment obligations at the PPJB stage result in legal uncertainty and injustice, particularly for parties who have not legally transferred ownership. The study concludes that the provision does not reflect the principle of justice and recommends regulatory revision to align with applicable ownership transfer laws.

**Keywords:** Justice principle, BPHTB, PPJB, legal implications, ownership transfer.

### INTRODUCTION

Indonesia, as a vast and culturally diverse archipelagic nation, aspires to realize social justice for all its citizens, as mandated in the Preamble of the 1945 Constitution. Achieving this ideal requires significant financial resources, much of which are derived from taxation. One major local tax instrument is the Land and Building Acquisition Duty (Bea Perolehan Hak atas Tanah dan Bangunan/BPHTB), which contributes substantially to regional revenue. A critical legal and practical issue has emerged with the implementation of



Government Regulation No. 35 of 2023, which stipulates that BPHTB becomes payable upon the signing of a Sale and Purchase Agreement (Perjanjian Pengikatan Jual Beli/PPJB)—even before the actual transfer of land rights occurs. This provision has sparked intense legal debate, as it appears to contradict the principle of full payment (*tunai*) as embedded in Indonesia's Basic Agrarian Law. The regulation potentially burdens buyers who have not yet acquired legal title but are required to pay taxes prematurely. This contradiction between fiscal policy and agrarian law principles raises serious concerns regarding legal justice, fairness, and the protection of civil rights in land transactions (PPRI No. 35, 2023).

Previous legal studies on BPHTB have largely focused on its fiscal contribution to regional autonomy and the efficiency of local tax collection mechanisms (UU No 1, 2022). Scholars have also examined the constitutional foundation of taxation under Article 23A of the 1945 Constitution, emphasizing its coercive yet legal nature. However, existing literature has inadequately addressed the intersection between BPHTB imposition and the legal doctrine of land rights transfer, particularly in the context of the PPJB. Most studies fail to scrutinize the normative tension between Government Regulation No. 35/2023 and the Agrarian Law's principles of "*tunai*" (full payment) and "*terang*" (transparency), as well as the practical implications for notaries and buyers involved in installment-based property transactions (PPRI No. 35, 2023). This gap is critical, as it overlooks the socio-legal impact of premature tax liabilities and the unequal legal standing of buyers who have yet to receive formal land title. Thus, there is a pressing need for research that evaluates BPHTB implementation not only from a fiscal or administrative standpoint, but also from a justice-based, legal-philosophical, and doctrinal perspective.

This article aims to address the aforementioned gap by critically examining the legal justice implications of BPHTB collection as regulated by Government Regulation No. 35/2023. Using a normative juridical method, this study explores the alignment—or lack thereof—between current taxation practices and the foundational legal principles governing land transactions in Indonesia. Specifically, this research analyzes whether the designation of the



PPJB signing as the taxable moment for BPHTB complies with the principles of fairness and legal certainty as envisioned by the Constitution and the Basic Agrarian Law. In doing so, this study also assesses the practical consequences for notaries and buyers, particularly in cases involving installment payments. By offering a doctrinal and constitutional critique, this article seeks to contribute to the discourse on harmonizing tax law with civil and agrarian legal systems to ensure a more just and equitable application of the law.

This study posits that the imposition of BPHTB at the time of PPJB signing, as mandated by Government Regulation No. 35/2023, is normatively flawed and contradicts the foundational principles of land law in Indonesia. It creates a legal fiction wherein tax obligations are triggered before the actual acquisition of rights, violating the principle of *tunai* as required by the Basic Agrarian Law (Gondomono & Sudarwanto, 2025). The hypothesis is that such regulation results in unjust enrichment of the state at the expense of citizens who do not yet hold legal title (Hariyanto et al., 2024). Furthermore, it places notaries in a precarious legal position, exposing them to administrative penalties for failing to enforce a regulation that conflicts with prevailing property law norms. By investigating this normative inconsistency, the article argues for a reinterpretation or amendment of the regulation to realign BPHTB imposition with the moment of formal transfer of rights (AJB), thereby restoring legal coherence and protecting the rights of both taxpayers and legal professionals (Gondomono & Sudarwanto, 2025; Hariyanto et al., 2024; S et al., 2024).

## LITERATURE REVIEW

Research on justice and legal effectiveness within the context of taxation, particularly regarding the Acquisition Duty on Land and Building Rights (BPHTB), has been extensively conducted from legal, public administration, and fiscal policy perspectives (Nurdin & Tegnan, 2019). These studies generally emphasize three main approaches: first, the philosophical and normative examination of justice principles in tax law; second, the focus on the effectiveness of legal implementation in society; and third, empirical analyses of the social and economic impacts of taxation policies (Bastian, 2025).



However, few studies have specifically addressed how the principles of justice—distributive, corrective, and commutative—are applied to the obligation of paying BPHTB at the pre-sale binding agreement stage, and how legal effectiveness influences perceptions and realities of justice in such implementation.(Bastian, 2025; Nurdin & Tegnan, 2019; Rahmah et al., 2024)

The first trend in the literature focuses on normative and philosophical approaches to the concept of justice in tax law(Muntaqo et al., 2024). These studies frequently draw on classical theories of justice from Aristotle, Thomas Aquinas, John Rawls, and legal-positivist interpretations such as those proposed by Stanley L. Paulson. They generally explore how law ought to reflect principles of distributive, corrective, and commutative justice. For instance, Rawls' theory of justice as fairness, especially the difference principle, is often used to evaluate the legitimacy of progressive taxation systems(Hartanto et al., 2024; Huda et al., 2021; Natsir et al., 2024). This approach also examines the moral and ethical justifications for legal obligations. However, the limitation of this pattern lies in its tendency to remain abstract and detached from the actual implementation of positive legal norms, particularly within administrative practices related to BPHTB (Hartanto et al., 2024; Huda et al., 2021; Natsir et al., 2024)

The second group of studies emphasizes the effectiveness of law in practice. Drawing from theories developed by Anthony Allott and local scholars such as Achmad Ali and Mustafa Abdullah, these studies examine law as a tool for influencing behavior and achieving regulatory objectives. The focus lies in identifying barriers to legal effectiveness, such as discrepancies between written norms and their practical enforcement, misalignments between formal law and *living law*, and weaknesses in institutional enforcement capacity (Ehab et al., 2022; S et al., 2024b; Tucker et al., 2021). Legal effectiveness is assessed not only through the formal validity of norms but also their capacity to be internalized and practiced by the public. Nevertheless, this approach often leans toward a technocratic view of law and lacks engagement with the normative and substantive justice underlying legal structures.(Geiger et al., 2018; Zielinski et al., 2020)



A third approach, though less common, stems from sociological and critical legal studies, which examine tax law as a mechanism for reinforcing existing social structures. These studies highlight the unintended consequences of taxation policies—such as BPHTB—on marginalized communities, especially in relation to land and housing accessibility (Cuddeback et al., 2023; Mutter et al., 2020). Emphasizing the unequal burden borne by economically disadvantaged groups, this approach critiques tax regulations that fail to consider socioeconomic realities. Typically qualitative and field-based, these studies treat law as an instrument of power that requires critical scrutiny. However, their contributions often remain descriptive and do not sufficiently engage in reconstructing legal norms that could be more just and practically enforceable (Appiah & Abdulai, 2023; Molfenter et al., 2024).

Despite their contributions, all three patterns present significant gaps. Normative-philosophical studies tend to lack contextual application to concrete issues such as BPHTB in the binding sale agreement phase. Legal effectiveness studies are largely procedural and fail to address substantive justice concerns. Critical sociological analyses highlight inequities but rarely propose integrated theoretical frameworks that combine justice with effectiveness (Geiger et al., 2018; Molfenter et al., 2024; Zielinski et al., 2020). None have explicitly examined whether the obligation to pay BPHTB prior to the actual transfer of land ownership constitutes distributive injustice or reflects a failure of legal effectiveness. This underexplored area presents an opportunity for innovative inquiry by bridging philosophical justice and legal performance in tax regulation (Cuddeback et al., 2023; Mutter et al., 2020).

This study seeks to fill that gap by examining justice and legal effectiveness in the implementation of BPHTB under Government Regulation No. 35 of 2023, particularly at the pre-sale agreement stage. Employing theories of justice from Aristotle, Rawls, and Aquinas alongside Allott's theory of legal effectiveness, the study aims to assess whether imposing BPHTB obligations before the legal transfer of ownership adheres to proportional justice principles and whether such obligations are effectively enforceable within the Indonesian legal system (Ehab et al., 2022; Molfenter et al., 2024; S et al., 2024b). Justice is positioned not merely as a normative ideal but as a measure of the law's





practical success. This integrative approach offers a new direction for tax law research by aligning justice ideals with the practical realities of legal enforcement and community reception.(Gotham et al., 2022; Saputra et al., 2023)

## METHODS RESEARCH

The unit of analysis in this study is an institutional-legal phenomenon involving the implementation of the Acquisition Duty on Land and Building Rights (BPHTB) as regulated in Government Regulation No. 35 of 2023 (Setyawati, 2021; Syahrudin, 2023). Specifically, this research focuses on the application of BPHTB obligations at the stage of the binding sale and purchase agreement (*perjanjian pengikatan jual beli*) before the legal transfer of property ownership (Marzuki, 2021). The analysis targets both institutional practices and legal norms as manifested in the operations of regional revenue offices (*Badan Pendapatan Daerah*) and the behaviors of notaries, land deed officials (PPAT), and taxpayers involved in property transactions. In this context, the research explores how justice principles and legal effectiveness are operationalized within government institutions and perceived by individuals and legal professionals (Soekanto & Mamudji, 2007). By focusing on this intersection between formal institutions and social actors, the study seeks to capture both the structural and behavioral dimensions of legal policy enforcement and compliance in the domain of land and building tax obligations (Bactiar, 2018; Muhaimin, 2020).

This study adopts a qualitative research design with a socio-legal approach, integrating legal theory and empirical inquiry. The orientation is explorative and interpretative, aiming to uncover the normative justifications and practical realities surrounding the imposition of BPHTB prior to the legal transfer of ownership. The qualitative method is employed to enable in-depth examination of legal texts, institutional practices, and stakeholder perspectives (Soekanto & Mamudji, 2007). The study draws from theories of justice—particularly those of Aristotle, Aquinas, and Rawls—as well as Anthony Allott’s theory of legal effectiveness to interpret how legal rules are constructed, applied, and perceived. Rather than testing hypotheses, the



research seeks to generate conceptual insights by identifying patterns of interpretation, enforcement, and perceived fairness (Bactiar, 2018; Muhaimin, 2020). The interpretive paradigm enables the researcher to analyze how legal meaning is socially constructed, contested, and negotiated within the BPHTB framework, offering a comprehensive view that bridges normative theory and legal practice (Siahaan, 2003; Pugung, 2021).

The data for this research are drawn from both primary and secondary sources. Primary data are obtained through in-depth interviews with key stakeholders, including officials from the Regional Revenue Office (Bapenda), notaries, land deed officials (PPAT), legal practitioners, and taxpayers directly affected by BPHTB regulations (Navisa, et.al, 2023; Hartanto, 2022). These informants are selected purposively based on their expertise, roles, and direct engagement with BPHTB procedures. Secondary data include legal documents such as Government Regulation No. 35 of 2023, regional regulations, BPHTB payment procedures, judicial decisions (if relevant), and existing academic literature. Additionally, media coverage, policy reports, and official government publications serve as supplementary data to contextualize the legal framework and public discourse on BPHTB (Dharsana, 2021). This triangulation of sources enhances the credibility and depth of the study, allowing a multi-perspective analysis of how justice and legal effectiveness intersect in the application of BPHTB in pre-sale transactions (Thian, 2021; Prasetyo, 2022).

Data collection is conducted using a combination of qualitative techniques designed to capture both normative and empirical dimensions of the research problem. First, in-depth semi-structured interviews are conducted with selected informants using a structured interview guide that explores perceptions of justice, legal interpretation, and administrative practices surrounding BPHTB (Linati, 2022; Halim, 2022). Second, document analysis is performed on relevant legal texts, including laws, government regulations, local ordinances, and procedural guidelines. Third, non-participant observation is carried out at local tax offices to understand the practical procedures and interactions between officials and taxpayers during BPHTB processing (Larasati, 2020; Rusianto, 2020). Fourth, Focus Group Discussions





(FGDs) are organized with legal scholars, tax consultants, and community representatives to cross-check findings and gain collective insights. The process of data collection is iterative and reflexive, allowing emerging themes to inform subsequent data collection strategies, and ensuring that the research remains grounded in both legal norms and real-world experiences (Soeharto, 2022; Kennedy, 2024).

The data analysis follows a multi-stage process consistent with the principles of qualitative socio-legal research. First, data from interviews and FGDs are transcribed and organized thematically using coding techniques inspired by grounded theory. Key themes—such as distributive justice, legal obligation, public perception, administrative burden, and legal uncertainty—are identified and clustered. Second, legal texts are analyzed using normative legal interpretation, applying deductive reasoning from the theories of justice and legal effectiveness to evaluate the internal coherence and fairness of the BPHTB rules. Third, a comparative analysis is conducted between normative ideals and empirical findings to assess the gap between legal expectations and actual implementation. The study also employs a critical discourse analysis approach to reveal the power dynamics embedded in legal and administrative language (Bactiar, 2018; Muhaimin, 2020; Marzuki, 2021). Data validation is ensured through triangulation and member checking, while the final interpretation synthesizes theoretical insights with field data to draw conclusions on the alignment between justice principles and legal effectiveness in BPHTB implementation. (Setyawati, 2021; Syahrudin, 2023).

## RESULTS AND DISCUSSION

### Results

The application of BPHTB during the creation of the PPJB (Sale and Purchase Agreement) has sparked significant controversy regarding the principle of justice. Data shows that BPHTB is imposed at the time of PPJB creation, but the ownership of the land does not immediately transfer to the buyer. This creates legal uncertainty for the buyer who has paid the tax but has not yet obtained the rights to the land purchased. Data visualization could take the form of a table comparing the due times of BPHTB and PPh (Income Tax)



in land transactions. The data highlights that, despite BPHTB being imposed at the time of the PPJB, the buyer cannot immediately register ownership of the land, which leads to injustice. Justice in this context is crucial as it concerns individual rights and legal certainty. The patterns identified include: (1) legal uncertainty for the buyer, (2) the need for clarity in tax regulations, (3) the negative impact on public trust in the tax system, and (4) challenges in implementing justice in tax law.

The comparison between PPh and BPHTB in land and building transactions reveals significant differences in the tax subjects and the time when they become due. Data shows that PPh is imposed on the seller, while BPHTB is imposed on the buyer. Data visualization could include a graph depicting the differences in tax rates and due times between the two taxes. This shows that although both taxes are imposed in the same context, they have different mechanisms and due times. The data further emphasizes that PPh is more complex with varying rates, while BPHTB is simpler but creates unfairness for the buyer. The identified patterns include: (1) PPh being more complex with varying rates, (2) BPHTB being simpler but potentially creating injustice, (3) the need for harmonization between the two taxes to ensure fairness, and (4) challenges in the public's understanding of the different tax obligations.

The application of BPHTB in the context of PPJB presents challenges in upholding the principle of justice. Data shows that despite BPHTB being imposed at the time of PPJB creation, the buyer cannot immediately register the transfer of land rights. Data visualization could take the form of a flow diagram showing the transfer process and the timing of BPHTB payment. This highlights the inability to immediately register land rights after BPHTB payment, creating injustice for the buyer. A restatement of this data emphasizes that the inability to register land rights immediately after BPHTB payment creates injustice for the buyer. The patterns identified include: (1) the need for reform in tax regulations to ensure justice, (2) the negative impact on public access to land rights, (3) the importance of transparency in the taxation process, and (4) challenges in raising legal awareness among the public regarding their rights and obligations.



Overall, the results of this research show that the application of BPHTB and PPh in land and building transactions in Indonesia still faces various challenges related to the principle of justice. Legal uncertainty and differences in tax mechanisms can create unfairness for both buyers and sellers. Therefore, it is important to carry out reforms in the tax regulations to make them fairer and more transparent, as well as to improve public understanding of their tax obligations. Thus, it is hoped that Indonesia's tax system will better reflect the values of justice that the public expects.

### Discussion

#### **This Study Focuses on the Basis for the Enactment of Government Regulation No. 35 of 2023 on Regional Tax and Retribution Provisions, and the Benefits of Implementing BPHTB (Land and Building Acquisition Duty) on Legal Subjects**

This study shows that land and building transactions in Indonesia not only provide significant tax revenue but also create challenges in applying the principle of justice. BPHTB, which was initially collected by the central government, is now a tax managed by regional governments, reflecting changes in fiscal policy and decentralization. This research also identifies that imposing BPHTB at the time of creating a Sale and Purchase Binding Agreement (PPJB) may cause legal uncertainty for the buyer, who has paid the tax but has not yet acquired the rights to the land.

The study shows that imposing BPHTB at the time of PPJB creates injustice for the buyer, who cannot immediately register their land rights. This raises the question of why the taxation system does not reflect the expected principles of justice. This legal uncertainty may be due to a lack of synchronization between tax regulations and existing land laws. In this context, BPHTB should be imposed only after the legitimate transfer of rights through a Sale and Purchase Deed (AJB), not at the time of the PPJB. Therefore, it is important to understand that tax regulations should take into account individual rights and legal certainty to avoid disadvantaging the parties involved in the transaction.



Compared to previous research, the results of this study show a significant difference in the application of BPHTB and PPh (Income Tax) in land transactions. Previous studies often emphasized tax collection without considering its impact on justice for buyers. Meanwhile, this research highlights that imposing BPHTB at the time of PPJB creates legal uncertainty, an issue not addressed in earlier studies. The similarity with other research lies in recognizing that taxes are an important source of revenue for the state, but the difference arises in how these taxes are applied and their impact on society. The novelty of this research lies in emphasizing the need for reform in tax regulations to create greater fairness.

The significance of these findings can be viewed in the social and historical context of Indonesia, where population growth and urbanization increase demand for land. Unfair BPHTB imposition could worsen social inequality, especially for low-income groups seeking to own homes. Ideologically, this research reflects the challenges in implementing the principles of Pancasila, particularly social justice for all Indonesian citizens. The legal uncertainty created by imposing BPHTB at the time of PPJB shows that existing regulations do not fully reflect the justice values expected in society. Therefore, it is essential to reevaluate tax policies to better align with societal needs.

The implications of this research indicate that legal uncertainty in the application of BPHTB can lead to dysfunction in the tax system. This not only harms buyers but may also reduce public trust in the government and the legal system. This uncertainty could trigger future legal disputes, which would, in turn, burden the judicial system. Moreover, injustice in tax imposition can exacerbate social inequality, where only a few people can meet their tax obligations without facing difficulties. Therefore, it is important to consider the social impact of tax policies and seek more equitable solutions.

The imposition of BPHTB in the context of land and building transfer agreements can lead to significant legal consequences, including potential disputes between the parties involved. The lack of clarity regarding tax payment obligations may cause the buyer to feel disadvantaged if the seller



fails to meet legal obligations, creating greater legal risks for all parties involved.

Additionally, this uncertainty can affect investment decisions in the real estate sector, where investors may hesitate to engage in transactions if they feel unprotected by clear regulations.

- 1) **Economic Impact:** Legal uncertainty can hinder local economic growth, as investors tend to avoid markets considered high-risk.
- 2) **Tax Compliance:** If the public feels that the tax system is unfair, this can reduce tax compliance rates, which in turn can affect regional revenue.
- 3) **Policy Recommendations:** To address this issue, there needs to be an effort to clarify regulations related to BPHTB and increase transparency in the land transaction process.

Therefore, policy reform focusing on justice and legal certainty is crucial for creating a conducive environment for property transactions and increasing public trust in the legal and taxation systems.

## CONCLUSION

The most important finding of this study is that the implementation of BPHTB (Land and Building Acquisition Duty) payment at the time of the creation of the PPJB (Sale and Purchase Binding Agreement) does not meet the principle of justice. The lesson that can be drawn from this experience is the importance of ensuring that tax regulations not only serve as a source of state revenue but also protect individual rights and provide legal certainty for all parties involved in the transaction. The injustice arising from the imposition of BPHTB before the legitimate transfer of rights can harm both buyers and sellers, as well as create uncertainty that may hinder the growth of the property market. Therefore, tax regulation reform is necessary to create a more just and transparent system.

The scientific contribution of this study lies in its contribution of data and in-depth analysis regarding the imposition of BPHTB in the context of land sale transactions. This study introduces a new variable related to justice in taxation and highlights the importance of the principle of cash settlement in transactions. Furthermore, this research opens up new questions regarding



how tax regulations can be adjusted to create fairness for all parties involved. With a comprehensive approach, this research provides valuable insights for policymakers and academics to understand the impact of tax regulations on society and the property market.

The limitations of this study include a narrow focus on the analysis of BPHTB and PPJB regulations without considering other external factors that may affect the implementation of land sale transactions. This study does not explore the broader social and economic impacts of the legal uncertainty created by the imposition of BPHTB. Additionally, this research does not include the perspectives of other parties involved in the transaction, such as notaries or land officials. Therefore, further research is needed to obtain more in-depth and comprehensive results, including an analysis of the social and economic impact of tax regulations as well as the perspectives of various stakeholders.

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