

Effectiveness of Payment of Income Tax from Binding  
Agreements on Buying and Selling Rights to Land and/or  
Buildings and the Implications of Its Jurisdiction  
(Case Study in West Manggarai District) .pdf  
*by : Ariani Kurniati<sup>1</sup>; Gatot<sup>2</sup>; Minollah<sup>2</sup>*

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## Effectiveness of Payment of Income Tax from Binding Agreements on Buying and Selling Rights to Land and/or Buildings and the Implications of Its Jurisdiction (Case Study in West Manggarai District)

Ariani Kurniati<sup>1</sup>; Gatot<sup>2</sup>; Minollah<sup>2</sup>

<sup>1</sup> Graduate Program Student in Notary, Faculty of Law, Mataram University, Indonesia

<sup>2</sup> Lecturer on Graduate Program in Notary, Faculty of Law, Mataram University, Indonesia

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### Abstract

Based on the background, the formulation of the problem is: How are the arrangements regarding the Agreement on Binding of Sale of Land and / or Buildings, What is the effectiveness of the implementation of Income Tax payments (*hereinafter referred to PPh*) based on the Land Purchase Binding Agreement (*hereinafter referred to PPJB*) and what are the obstacles in their implementation in the Regency West Manggarai, What are the legal consequences if PPh is not paid based on PPJB. The type of research used in this legal research is normative and empirical. Normative research is also called doctrinal law research. Types and sources of data used are primary data, secondary data. Data sources come from library materials, primary legal materials, secondary legal materials, tertiary legal materials. Data collection techniques with literature study and interview methods, documentation. Poses analysis uses the method of inductive thinking. The results of the study show that the regulation regarding PPJB or the Purchase Binding Agreement on Land and or Building in general refers to principle 1320 of the Civil Code Book, whereas the specific regulation of the term PPJB is used in Government Regulation Number 34 of 2016 letter a number 1b. There are 2 (*two*) characteristics of PPh payment based on the Sale and Purchase Binding Agreement in West Manggarai, namely the Purchase Binding Agreement which is made immediately and the land and building rights are certified, then the PPh payment is carried out, so that the Pph payment arrangement is based on PPJB because it is paid in full at West Manggarai is running effectively, while the Purchase Binding Agreement which is made by way of payment is not paid in full or is done in stages because the rights to land and or buildings are not yet certified, the PPh payment is not carried out, so the PPh payment arrangement based on PPJB (*phased*) in Labuan Bajo is not run effectively. Based on the results of the study that the average sale and purchase transactions based on the Purchase Binding Agreement in West Manggarai Regency are land that has not been certified so that payment can only be made by the buyer to the seller in stages, so the implementation of Pph payments in general is not effective. This can be understood because the nature of buying and selling by way of binding purchase agreements are not final.

**Keywords:** *Effectiveness; Income Tax (final PPh); Land Purchase Binding Agreement (PPJB)*

## Introduction

Labuan Bajo The capital of the West Manggarai in East Nusa Tenggara province is one of the areas where it is currently the target of buying and selling land for investors in connection with the to Labuan Bajo as one of the tourist destinations. Certainly the land buying and selling business is a promising thing in Labuan Bajo, where the land price over time is increasing. Speaking of land buying and selling price will be very influential in local government revenue and income for the central government. In this regard the income tax (PPH Final) of the transfer of land rights and/or buildings which is the authority and income for the central government.

Tax is the contribution of the people to the State treasury by law so that it can be imposed with no direct reply of services. Taxes are imposed by rulers based on legal norms to cover the cost of production of collective goods and services to achieve the general welfare.<sup>1</sup>

While the PPh which is one of the central tax administered by the Directorate General of Taxation is a tax imposed on the person or the body of income received or earned in a taxable year.

President Joko Widodo on 8 August 2016 has signed a Government Regulation number 34 of 2016 on income tax on income from the transfer of land rights and/or buildings, and the binding agreement on land and/or building with its changes. This is on the basis of consideration that in order to accelerate the implementation of government development programs for the public interest, the provision of ease of effort, as well as the protection of low-income communities, needs to reorganize policies on income tax received or acquired by individuals or entities on the transfer of land and/or building rights, and the binding agreements on sale and its changes.

In the Government Regulation, article 1 paragraph (1) shall be mentioned, for income received or obtained by a person or entity from:

Transfer of land and/or building rights; Or  
binding agreements on land and/or building and its changes;  
income tax payable in the final.

In article 1 paragraph (2) Government Regulation number 34 of 2016 mentioned:

*"Income from the transfer of land rights and/or buildings as intended is the income received or obtained by the party transferring the rights to the land and/or buildings through the sale, redemption, waiver, surrender of auction rights, grants, heirs, or other means agreed between the parties",*

Income from the binding agreement on the sale of land and/or building and its amendments as intended is income from (article 1 paragraph 3):

The seller's name is stated in the trade-in binding agreement when it is first signed.

The purchaser's name is contained in the binding trade agreement before the amendment or addendum of the binding trade agreement, for the occurrence of threaded buyer in the binding agreement.

As stipulated in article 2 of the Government regulation number 34 of 2016, that the amount of income tax from the transfer of rights on land and building as intended:

<sup>1</sup> Widyaniingsih Aristanti, *Hukum Pajak dan Perpajakandengan pendekatan Mind Map*, Penerbit Alfabeta Bandung, 2011, p.2.

2.5% (two points five percent) of the gross amount of transfer rights to land and/or buildings other than the transfer of land rights and/or buildings in the form of a simple house or a modest house made by a taxpayer whose business is to transfer rights to land and/or buildings.

1% (one percent) of the gross amount of the value of the transfer of land and/or buildings in the form of a simple house and a simple bunk is carried out by a taxpayer who does not need to transfer rights to land and/or buildings;

0% (zero percent) on the transfer of land and/or building rights to Governments, state-owned enterprises that receive special assignments from the government, or local enterprises, as referred to in the legislation governing the procurement of the development for public interest.

Related to what is stipulated in the Government Regulation attracted the attention of the researcher is the income tax from the buy and sell binding agreement (PPJB) for the land and/or building and its changes as mentioned in article 1 Letter b Government Regulation number 34 of 2016, that for the income received or acquired by a person or entity from a binding agreement on the land and/or building and its amendments, the income tax owed shall be final. In this case there are 2 (two) elements that are subject to taxpayers, namely:

private persons; and  
enterprises

Further in article 3 paragraph (2) is governed:

*"For the individual or entity whose business is to transfer rights to the land and/or buildings that accept or make income from the transfer of land rights and/or buildings as referred to in article 1 paragraph (1) a, income tax as referred to in paragraph 1 owed at the time of receipt of part or all of payment of the transfer of land rights and/or buildings."*

The article is for a person or entity whose business does not transfer rights to the land and/or building of PPh owed at the time of receipt of part or all of the payment for the transfer of rights to land and/or buildings. This is in the case of the previous arrangement of payment of PPh on income from the transfer of land and/or building rights, that only for the taxpayer whose business is to transfer rights to the land and/or buildings required in the case of payment for the transfer of rights to land and/or buildings made in installments. means that the individual element as a tax subject from the binding agreement on the sale of land and/or building and its changes has been confirmed and required in Government Regulation number 34 of 2016.

In the application of withholding tax on income from binding agreements on land and/or building and its changes in practice in particular are still felt heavy and unfair if such tax charges are related to the taxpayer's personal taxpayers.

Based on the buy and sell binding agreement, that the buy or sell binding agreement abbreviated to PPJB, according to R. Subekti, is the agreement between the seller and the buyer before the implementation of the trade because the elements that must be fulfilled for the sale are:

sertificate have not existed because it is still in progress;  
no price settlement yet;  
still process the licensing of the; etc.

Binding agreement for Buy or sell or abbreviated PPJB there are 2 (*two*) types of PPJB paid and PPJB not paid off, namely:

PPJB paid in order when the buy and sell price has been paid in full by the buyer to the seller but the Sale and Purchase Deed can not be executed directly, among them for certain reasons such as the tax-buy and sell-unpaid taxes, still in the management of permits and others.

The PPJB is not paid to be made if the payment of the buy and sell price has not been paid (*in installments*) received by the seller. In the PPJB articles are not paid at least the amount of down payment payable at the time of the signing of the PPJB deed, the way or the repayment, when repayment and sanctioned sanctions are agreed if one of the default parties. And among the reasons is because the certificate is still in the process of registration (*first time*).

The consequences that will occur in the making of the buy and sell binding agreement are cancelled by the parties themselves. Cancelled by the parties, either by agreement or by a court ruling. It is in connection with the agreement made between the seller and the buyer party that is set forth in the PPJB deed is not paid off. Departing from the preferential actions of the parties, so the reason for the agreement can be cancelled by each party in the event of a problem both from the seller and the buyer.

At the time of registration, the first time may occur at risk. In this regard Government Regulation number 24 of 1997 adheres to negative publicity (*positive element*), meaning that in terms of negative publicity (*positive element*), it gives the opportunity to the person or party who feels the rights are stronger and true than those found and or recorded in a certificate of land rights that they have, for that matter then anyone who has the right to acknowledge with a confession (*claiming*) against the possession of land rights, they must prove it by filing the evidence they have to the local district court. If the correctness of evidence is evidenced and can convince the judge in his trial, the judge of the state court has the right and authority to declare that the certificate is void (*the judge is authorized to cancel the rights of the Land*), and declare the person who filed the matter more rightable and convincing.<sup>2</sup>

The problem may arise from the buyer's party, which PPJB is not settled in relation to the term of payment of the parties will be poured in agreement based on their agreement on the deadline or due. If the buyer's party, then the thing that will happen is the agreement (PPJB) canceled.

From the two problems above, there is an issue according to the author of PPh payment from PPJB is not paid off (*done in installments*). What if the conditions described above occur, while the PPh has been paid in accordance with the mandate of Government Regulation number 34 of 2016 in article 3 paragraph (2) which reads:

*"For the individual or entity whose business is to transfer rights to the land and/or buildings that accept or make income from the transfer of land rights and/or buildings as referred to in article 1 paragraph 1 a, the income tax referred to in paragraph (1) is payable at the time of receipt of part or all of the payment for the transfer of land rights and/or buildings."*

For private person as tax subject as desired by Government Regulation number 34 of 2016, in practice become a polemic to be implemented. Repeated PPh payments are no longer modest, because if problems arise it becomes complicated for taxpayers. Although the taxes that have been paid can be withdrawn, but the procedure is not easy and takes time. This is very detrimental and feels unfair to the individual person. So in its implementation based on PPJB there are paying and some are not paying. And one of the definite reasons is that with the PPJB has not occurred a transitional right.

<sup>2</sup> Widhi Handoko, *Kebijakan Hukum Pertanahan Sebuah Refleksi Keadilan Hukum Progresif*, Thafa Media, 2014, p.144.

As stipulated in article 37 paragraph (1) of government Regulation number 24 of 1997 on land registration that:

"Transfer of land and property rights in the unit of units through sale and purchase, Exchange, grant, income in company and other rights transfer law, unless the transfer of rights through the auction can only be registered if evidenced by the deed made by the Land Deed Official (hereinafter referred to PPAT) authorized according to the provisions applicable legislation".

By relying on the provisions of article 37 paragraph (1) of government Regulation number 24 of 1997, it is certainly only with the deed of PPJB will not be able to register rights switching.

In the initial observations that the authors have done, the average PPh payment related to the buy and sell binding agreement is not done by the seller, the reason for waiting for the certification process is completed published by the National Land Agency of West Manggarai regency. Therefore the author wants to examine,

"THE EFFECTIVENESS OF THE PAYMENT OF INCOME TAX BINDING AGREEMENT ON THE LAND AND/OR BUILDING AND THE IMPLICATIONS OF ITS JURISDICTION (STUDY IN WEST MANGGARAI DISTRICT) stipulated in government Regulation No. 34 of 2016

### Methodology

The type of research used in this legal study is normative and empirical. Normative research is also called doctrinal law research. The methods of approach used in this research are:

Approach to legislation (*Statute approach*) the approach of legislation or regulations relating to the problems discussed are:

- a. Law No. 36 of 2008 on income tax.
- b. Law number 16 of 2009 concerning general provisions and Tata Cara Perpajakan.
- c. Law No. 36 of 2008 on income tax.
- d. Government Regulation No. 34 of 2016 on income tax for the Resultant of Land and/or building, and binding agreement on land and/or building and/or buildings.

Conceptual approach sociological approach Diimaksudkan as an effort to approach the problem examined by the real legal nature or in accordance with the reality that lives in society, then the research is focused on the West Manggarai regency in the province of East Nusa Tenggara.

The type and source data used is primary data, secondary data. The Data source comes from the literature material, primary legal material, secondary legal material, tertiary legal material. Data collection techniques with library study methods and interviews, documentation. The data analysis process begins with analyzing all available data obtained from literature research and field research. All data obtained will be analyzed qualitatively, namely to compile the data obtained systematically, logically and presented in the form of the concept description so that the data has meaning and useful to answer the problems and research questions. Next after the data is finished analysed, the conclusion will be drawn using inductive thinking method.

## Discussion

### Income Tax Payment (PPH FINAL) Based on Land Buy and Sell Binding Agreement (PPJB)

Income tax (PPH) that is final or completed is the type of a special treatment in which the imposition of the tax has been deemed to be completed at the time of the deducted from the income or the self-paid by the taxpayer to the State treasury. The final PPH is not an upfront tax payment, thus the PPH which has been deducted or collected by the other party or that has been paid or paid for itself cannot be counted or credited by the taxpayer when reporting the tax owed at the end of the of in the annual SPT to be charged the general tariff with the other income. The treatment of this tax is reflected in the 3 characters which are attach to it.<sup>3</sup>

The income that has been imposed by the PPH final shall not be combined with any other income when the taxpayer calculates the taxable income in the annual Text Return (*hereinafter referred to annual SPT*).

The fees incurred to earn, collect and maintain the income that has been charged the final PPH should not be a deduction in calculating the taxable income in the SPT into a deduction in calculating the taxable income at the taxpayer's annual SPT. (*Non deductible expense fee*).

Any tax owed by her/himself or deducted by the other party for the income issued by the PPH is final, cannot be credited by the taxpayer concerned at the time of tax calculation in the annual SPT (*PPH is non-tax credit*).

The underlying considerations given by this special treatment are for the sake of simplicity in the collection of taxes, fairness and equitable in the taxation of tax in order not to increase the administrative burden for taxpayers as well as the Directorate General of Taxation and pay attention to economic and monetary developments.

Income from transaction of transfer of land rights and/or buildings shall be imposed by PPH which is final in accordance with the provisions of article 4 paragraph (2) of PPH LAW. The legal basis are:

- PP-48 of 1994, regarding PPH payment on income from transfer of rights to land and/or building.
- PP-27 of 1996, on change of PP-48 of 1994.
- PP-79 of 1999, on the Second amendment of PP-48 of 1994.
- PP-71 of 2008, about the third amendment of PP-48 of 1994.
- KMK-635/KMK. 04/1994, concerning the execution of payments and the voting of income from the transfer of rights to land and/or buildings.
- KMK-392/KMK. 04/1996, concerning the amendment of KMK-635/KMK. 04/1994.
- PMK-243/PMK. 03/2008, about the Second amendment of KMK-635/KMK. 04/1994.
- PER-30/PJ/2009, on the Ordinance of granting exemption from the payment obligation or the poll of income from the transfer of rights to land and/or building.
- PER-35/PJ/2008, concerning NPWP ownership obligation in the framework of transferring rights to land and/or building.
- PER-26/PJ/2010, on the procedures of the tax deposit study on income from the transfer of rights to land and/or buildings.
- The SE-81/PJ/2010, about implementation instruction PER-26/PJ/2010.

<sup>3</sup> Billy Ivan Tansuria, *Pajak Penghasilan Final: Sifat, Pengertian, Pengenaan Pajak, serta Tatacara Penyetoran dan Pelaporannya*, Cetakan I, Graha Ilmu, Jakarta, p. 51.

The definition of income from transactions to the <sup>1</sup> transfer of land rights and/or buildings as the object of the imposition of PPh, includes:<sup>4</sup>

Sales, recharges include *Ruislag*, treaty transfer of Rights, waiver, submission of rights, auctions, grants, or other means agreed with other parties other than the government.

Sales, recharges include *Ruislag*, waiver, entitlement, or other means agreed with the Government for the implementation of the development, including the development of public interest that does not require specific requirements such as sales or land rights waiver to the Government for general Hospital projects and for university campus projects.

Sales, recharges including *Ruislag*, waiver, submission of rights, or other means agreed to the Government for the implementation of development for public interest requiring special requirements, namely land acquisition by the government for public road projects, drainage, reservoirs, dams and other irrigation buildings, irrigation channels, seaports, airports, general safety facilities such as flood hazard, lava and other disasters, and facilities of the Republic of Indonesia armed forces.

Final PPh arrangement of the <sup>2</sup> transfer of rights to land and/or buildings based on Government Regulation number 34 of 2016 is:<sup>5</sup>

<sup>9</sup> For income received or earned by a person or entity from:  
Transfer of land rights and or buildings.  
Binding agreement on land and/or building and its changes.  
Income tax payable.

<sup>7</sup> Income from the transfer of land rights and/or buildings is income received or acquired by the party transferring the rights to the land and/or buildings through:

- a. Sales;
- b. Exchange;
- c. Waiver;
- d. Auction;
- e. Grants;
- f. Heirs;
- g. or any other means by which the parties

Income from the binding agreement on the sale of land and/or building and its changes is income from:

The seller's name is provided in the buy and sell binding agreement at the first time of signing.

The purchaser whose name is provided in the buy and sell binding agreement prior to the amendment or the sale of buy binding agreement is in the event of a change in the buyer's party in the sale binding agreement.

The amount of income tax is:

<sup>1</sup> 2.5% (two points of five percent) of the gross amount of the value of the transfer of land rights and/or buildings other than the transfer of rights to land and or buildings in the form of a simple house or a modest house made by the taxpayer whose business is to transfer rights to land and or buildings.

<sup>4</sup> Ibid, p. 52.

<sup>5</sup> Mardiasmo, *Perpajakan*, Cetakan I, Penderbit Andi, Yogyakarta, 2018, p. 312-313.



1% (one percent) of the gross amount of the value of the transfer of land and or buildings in the form of a modest house or a modest house made by the taxpayer whose business is to transfer rights to land and or buildings.

0% (zero Porsen) for the transfer of land rights and/or buildings to the government, state-owned enterprises who received a special assignment from the regional head, as mentioned in the legislation governing land procurement for development for the public interest.

Exempt from payment obligations of income tax transfer rights on land and/or building:

A personal who has income under Tax Bearer that redirects land rights and/or buildings with a gross amount of its allocation is less than Rp. 60,000,000.00 and is not a combine amount.

A personal who has a income under the Tax Bearer that conducts the transfer of land rights and/or buildings by means of grants to a family of blood in a straight lineage of one degree, a religious body, a body of education, a social body, including foundations, cooperatives or private persons running micro and small businesses, whose conditions are further regulated by , occupation, possession, or mastery of the parties concerned.

The agency that conducts the transfer of rights to land and/or buildings by means of grants to a religious body, education body, social body, including foundations, cooperatives or private persons running micro and small businesses, whose conditions are further regulated by the Decree of the Minister of Finance, as long as the grants have no relationship with the business, occupation, possession, or mastery of the parties concerned.

Transfer of land rights and/or buildings due to inheritance.

The agency that conducts the transfer of land rights and/or buildings in the framework of the merger, consolidation, or expansion of the business that has been determined by the Minister of Finance to use the value of the book.

A personal person who has income under Tax Bearer that transfers the property in the form of buildings in order to implement a build-up agreement for handover, build up, or use of state-owned goods in the form of land and or building.

Individuals or entities that do not include tax subjects that carry out the transfer of rights to land and or buildings.

PPh is payable at the time of receiving part or all of the payment for the transfer of rights to land and/or buildings as specified in article 3 paragraph (2) Government Regulation number 34 of 2016. Must be paid by the person or entity concerned to the bank/postal perception by the latest 15 (five) months following the month of receipt of payment.

Based on an interview with a notary in the research conducted by the authors in West Manggarai Regency, some of the notaries found are as follows:

Notary 1:<sup>6</sup>

Notary Public dealing with the parties who transact buy and sell rights on land and/or buildings, with the creation of the PPJB deed. And an average of 90% is PPJB with a gradual payout, the reason is because land objects are not yet strapped. The gradual payment is done with a porsentasecalculation agreement of the buy and sell price agreed according to the stages of the process that has been passed in the Land

<sup>6</sup> an interview with a Notary, Lalu Muhamad Supriandi, SH.M.Kn. Monday 20 January 2020.

Office of West Manggarai Regency, with the contents of the common stages and often used are as follows<sup>7</sup>:

At the time of creation and signing of the Sell and buy binding agreement on the condition that the right mat (*formal requirement*) is fulfilled, namely:

- a. The old letter of submission is customary or also known as Golo's old letter;
- b. Sporadik (*Letter of Land Mastery Declaration*);
- c. Certificate of ownership from local village chief.

At the moment the map field is published by the measurement field or at the time after through the announcement stage.

At the time of the Certificate was published. In such a notary role is necessary in providing legal consideration, in order to minimize the risk that will occur, so that the notary will give advice that if there is an unwanted risk can be resolved properly by means of deliberation and prevalent occurs on the basis of risk considerations that will and or may occur, notary to give the calculation of the phase-stage percentase with an initial range of 10 to 15 Porsen, the second stage maximal 30% (*thirty*) Porsen and the final stage at the time of Certificate has been published is the repayment stage is 50% to 60%. At the repayment stage and immediately and instantaneously the parties signed a buy and sell act in front of PPAT.

Further searches in the interview, Notary explained that in the series of phases, this notary office until now no one pays the PPh (*final*) based on the value of payment received by the seller (*landlord*), the reason of the taxpayer is the funds are not enough to be divided and wait for certificate so and notary in this case only appealed by giving a view on the tax sanctions.

Related to PPJB full payment means the second party authority as the buyer has existed so that will be followed by the provision of the granting authority by the first party as the seller, the second party with the widest of which the authority to do the switching of rights. Before the Government Regulation number 34 of 2016, there is a lot of creation agreement deed of buying and selling with paid payment, however, there is no obligation to pay taxes instantaneously and immediately, so that taxpayers will pay taxes at the time of the transition will occur by signing the buy and sell act in front of PPAT, this is done on the grounds of which tax payments can be suspended for not having funds for taxes, and also for reasons that the buyer wants to resell the purchased object.

With the issuance of Government Regulation number 34 of 2016, which has required tax payment based on PPJB, it is confirmed since then only 1 (*one*) that has been doing the sale and purchase agreement by making the deed of Binding Purchase Agreement Deed (*keel*), and there is no reason from the seller not to pay. In this case notary is a strong and decisive role to require immediately to be settled payment of PPh. With the obligation of payment of taxes that immediately have to be done when the payment of buy and sell has been paid off, through PPJB (*keel*), many clients no longer ask to be made such, but has shifted to direct the transfer of rights through the creation of buy and sell

From the results of the interview with the notary, notarial view of Government Regulation number 34 of 2016 is<sup>8</sup>: Related to PPJB gradually there is no certainty that the owner of the land in this case as the seller, if there is a problem for the object that is requested, there will be a cancellation. PPJB (*gradual*) is not final, with respect to the risks posed by the parties in the event of default. Repeated payments according to the stages of acceptance of money does not make a simple job for the seller, let alone most

<sup>7</sup> An interview with a Notary, Lalu Muhamad Supriandi, SH.M.Kn. Monday 20 January 2020.

<sup>8</sup> An interview with a Notary, Lalu Muhamad Supriandi, SH.M.Kn. Monday 20 January 2020.

of the objects of rural people who are in education very minimal and even illiterate. To withdraw and deduct payments that are allocated as tax payments, is a tricky thing for them. The existence of this notary services since 2011 in Manggarai Barat, has been many through and facing various issues related to the land has not been strapped as a traded object. Whether the seller is caused by the relevant object, or the issue posed by the buyer by not having fulfilled the achievement of the seller's right in accordance with the agreed agreement. So it would be difficult PPh paid based on the gradual PPJB related an object does not have a certificate.

Notary 2:<sup>9</sup>

No different from the first notary, in the interview with the second notary. The notari also faced with the parties concerned with the making of the deed of buy and sell binding agreement gradually and the average traded object does not have a certificate. However, the second notary, objects that have certificate in the waiting period for transitional rights due to the pre-transitional processes, the notary will make PPJB gradual as well. A gradual PPJB who already has a certificate, notary asserted to landowners as the seller in this case as taxpayers, to make payments PPh not through the of running. That means if there is a transition during different years after the transaction, but the responsibility of the payment does not pass the of did the buy and sell transactions.

In the gradual payment with the agreement on the payment of the porsentase payout calculated from the price of the purchase and agreed to the stages of the process passed in the Land Office of West Manggarai Regency, with the following stages of the charge:

At the time of creation and signing of the trade binding agreement deed with the requirement of the right mat fulfilled, namely:

The old letter of submission is customary or also known as Golo's old letter;  
Sporadik (Letter of Land Mastery Declaration);  
Certificate of ownership from local village chief.  
When field map is published by Measurement field or after through announcement stage.  
At the time of the Sertificate was published.

Just like the first notary, the second notary also gives the calculation of the phases of the stages with an initial range of 10 to 15 percent, the second stage maximum 30% (*thirty*) percent and the final stage at the time of Sertificate has been published is the repayment stage is 50% to 60% by signing a direct buy deed before PPAT.

In the series of phases, the office of this notary until now there are paying and some are not paying PPh (*final*), but the comparison of the 30% range that pays, and 70% do not pay. The notary in this case only appealed, felt obliged to socialize the rules, and asserted that therefore the rules should be implemented.

Notary Public in this case related to the poll of PPJB land that has not been strapped, it should after the Sertificate was published newly paid PPH over the PPJB, because no guarantee of the new application is automatically granted by the state.

Notary 3:<sup>10</sup>

There is no difference with the results of previous interviews. In Notarial 3 found the same thing with notary 1 and 2, that in conducting a buy and sell agreement related to the creation of the sale of PPJB 90% is PPJB with a gradual payment, the reason is because the land object has not been strapped.

<sup>9</sup> An interview with a Notary, Taufik, SH.M.Kn Tuesday, 21 January 2020.

<sup>10</sup> An interview with a Notary, Ronald Djabumir, SH.M.Kn, Monday, 20 January 2020.

The gradual payment with the agreement on the payment of the percentage payout is calculated from the price of the purchase that is agreed according to the process stages by the Land office of West Manggarai Regency, with the contents of the following stages:

At the time of creation and signing of the trade binding agreement deed with the requirement of the right mat fulfilled, namely:

The old letter of submission is customary or also known as Golo's old letter;

Sporadik (*Letter of Land Mastery Declaration*);

Certificate of ownership from local village chief.

At the moment the map field is published by the measurement field or at the time after through the announcement stage.

At the time of the Certificate was published.

In the same way, notaries give the calculation of the phases of the stages with an initial range of 10 to 15 Porsen, the second stage maximum 30% (*thirty*) Porsen and the final stage at the time of Certificate has been published is the repayment stage is 50% to 60% by signing a direct buy deed before PPAT.

In the series of phases, this notary office until now there are 2 (*two*) faced:

PPJB (*gradual*) and a strapped yet no one pays the PPH (*final*), the reason of the taxpayer waiting for a certificate so;

PPJB (*gradual*) and notarized notary stressed that the salespeople pay in the current year, although the transition has not been implemented and will be done in the following year. Reasons for the use of PPJB are due to the pre-transitional management, such as the permission to change usage and land utilization, change of rights status, inheritance and others.

PPJB (*keel*) and notarized notary stressed that the salespeople pay in the of and the payment of PPh is the final is not gradual, although the transition has not been implemented and will be done in the next year. With keel PPJB will be followed by the granting of widest authority to the benefit of the buyer whenever the buyer will do the switch right is the most important PPh has been paid.

Notary Public in this case (*suggestion*) related to the poll of PPJB land that has not been hoisted, should be after the Certificate was published newly paid PPh over the PPJB, it is so to avoid the risk of remembering many problems and conflicts in the sale and purchase of land especially in West Manggarai regency.

Notary 4:<sup>11</sup>

At the time of the interview with the fourth Notary, all are still in the same view. However, the thing that was reached by the fourth notary that in conducting a buy and sell agreement related to the creation of PPJB 100% is PPJB with a gradual payment, the reason is because the land object has not been strapped.

The gradual payment with the agreement on the payment of the percentage payout is calculated from the price of the purchase that is agreed according to the process stages by the Land office of West Manggarai Regency, with the contents of the following stages:

At the time of the creation and the signing of the PPJB with the terms of rights fulfilled:

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<sup>11</sup> An interview with a Notary, Wawan Istia Negara, SH.M.Kn Tuesday, 21 January 2020.

The old letter of submission is customary or also known as Golo's old letter;  
 Sporadik (Letter of Land Mastery Declaration);  
 Certificate of ownership from local village chief.  
 At the moment the map field is published by the measurement field or at the time after through the announcement stage.  
 At the time of the Certificate was published.

There is no difference between Notary 1, notary 2, notary 3, or notary 4. All in the same way and concept is the payment of those stages with an initial stage range of 10 to 15 Porsen, the second stage maximum 30% (thirty) Porsen and the final stage at the time of the Certificate has been published is the repayment stage is 50% to 60% by directly signing the buy and sell act in front of PPAT.

In the series of stages, this notary office until now no one pays PPh (*final*). The notary in this case only appealed, felt obliged to socialize the rules, and asserted that therefore the rules should be implemented.

The notarial view in this regard relates to the voting of PPH on land which has not been hoisted, supposedly after the Certificate is published a new income PPH over the PPJB.

Based on the results of interviews from several notary public that is used as a respondent from the notary population in West Manggarai Regency, totalling 9 people, can be concluded that the average PPH payment is not made by reason as mentioned above are very basic because the certificate did not exist and only a small portion received by the land owner community as the seller as taxpayer.

Based on the results of the interview with notary 1, notary 2, Notary 3 and Notary 4 (*Structure of law*), to see the reality in the field as a direct implementation of the implementation of Government Regulation number 34 of 2016, then the author directly conducted an interview with the respondent as the taxpayer as the seller. To 8 (*eight*) respondents as taxpayers, taken from each notary as many as 2 (*two*) people, all said that they never pay taxes when selling an untapped land where the selling price of the purchase is not paid off or the acceptance gradually.

In this case the author does not conduct interviews in detail against taxpayer respondents. In connection with this, there is no certainty that the rights (*Has not been certificated*) for the traded objects. In addition to the things that have been outlined by the notary with the reasons of payment is still minimal so it can not meet their needs. And the addition of the respondent as taxpayer gave the information that they mean, they do not understand about taxes, what their notary-directed nature received, it was submitted to the notary public. But in principle they do not want to be cut by the time they only accept new payments only a small part.

From the results of the research, both the notary as a legal structure, as well as the society as a legal culture, that the taxpayer does not execute the payment according to the Government Regulation number 34 of 2016. It is with several reasons:

1. There has been no certificate;
2. Payment has not been paid;
3. Tort;

With such reasons above, so that the provisions of article 1 paragraph (1) Letter b Government Regulation Number 34 of 2016, not carried out. In accordance with this, referring to the provisions of Government Regulation 24 of 1997, that the transition of land rights and property rights in the unit of House can only be registered if evidenced by the deed made by the authorized PPAT. This means that the

3 sale and purchase binding agreement on land and/or building has not been qualified for the switching of rights. As known conditions the formyl transitional rights are as follows:

The right mat is the original sertificate rights to the land;  
 Proof of identity of the parties and other supporting identities;  
 Proof of tax deposit of the parties, namely PPh and Duty on Land and Building Right Acquisition (*hereinafter referred to BPHTB*).

Based on the conditions of the formil, it is according to the research requirement or the obligation of PPh (*final*) in the implementation precisely is at the time of the creation of a purchase deed before PPAT in order to register the right and reverse name in the land office.

### ***Constraints in Its Implementation in West Manggarai District***

In the implementation of income tax payment (*PPh final*) against the land sale and purchase binding agreement (PPJB) based on Government Regulation number 34 in 2016 adaseveral obstacles encountered in the implementation in Labuan Bajo West, judging from three components of the legal system namely:

#### *Legal Structure*

The legal structure of the institutional framework in the legal presence includes law enforcement agencies or government agencies including notary. In seeing the obstacles that occur related to the implementation or effectiveness of the law by notary as a legal structure is Report of notarial work in one month related to the creation of notary deed. There is no obligation to be submitted to the Tax Office, so there is no control of the government (*Fiskus*) in the implementation of the payment of PPh based on PPJB.

There has been no assurance of entitlement because it has not yet attracted the land rights requested by the owner (*seller*) In this regard as taxpayers. Payment of buying and selling price of land as traded object is not paid off (*not final*).

There is a fear of society as the owner of the traded land due to many disputes in land, in connection with the application or registration of the first right.

Notary Public cannot be picked up by the PPh based on the Porsentase calculated from the payment of the buy and sell price received by the landlord (*seller*) as taxpayer. It is related to the Self Assessment system<sup>12</sup> in respect of which Notoris cannot suppress such a tax collection system, which authorizes certain parties or third parties (*Withholder*) to deduct or levy taxes owed by a certain percentage to the amount of payment made with the beneficiary.

#### *Legal Substance*

The subsatation of the law is the rule or norm that is the guiding community. In the context of tax payments should be guided by the norms or the basis of tax collection, which is clearly fair and simple. Comparison between PPh and BPHTB where based on Government Regulation 34 of 2016 PPh in article

<sup>12</sup> Self Assesment System is a tax-withholding system that provides the authority, trust, and responsibility to the taxpayer to carry out its own obligations and taxation rights.

3 paragraph (2), that is for private person or entity whose business is transferring right on land and/or buildings that accept or obtain income from the transfer of land rights and/or buildings of income tax payable at the time of receipt of part or all of the payment for the transfer of rights to land and/or buildings. The BPHTB payment will be carried out at the time of the transfer of rights by first doing verification at the local Dispenda office, which results in verification will affect the value of the PPh calculation because it concerns the zone value of an area stipulated by local Perda. So in this case the author looked at no balance between the PPh and the BPHTB.

### Legal Culture

Theoretically the barriers or constraints of withholding tax can be grouped into passive resistance and active resistance. Passive resistance is that people do not pay taxes that can be caused by the intellectual and moral development of society, taxation system that is difficult to understand by the community, and control system can not be done or implemented properly, while the active resistance covers all the efforts and deeds made by the taxpayer with the aim to avoid tax by way of tax avoidances, efforts to relieve tax burden by not violating the law, and the tax evasion effort to alleviate the tax burden by violating the law.<sup>13</sup>

### ***The Constraints of the People of West Manggarai Regency in This Regard as Taxpayers as the Seller of Land and or Building***

The Community owners of land rights as taxpayers have not felt the right to land that was requested by the owner at the West Manggarai Land Office.

There is a fear of society as a landlord who traded as a result of many conflicts in the land, in connection with Permohonan or the first-time Registrar of Rights.

Payment of buying and selling price of land as traded object is not paid off (*not final*).

Based on the constraints that occur from the legal system is the legal structure (*structure of law*) notary, the substance of law that is the Government Regulation number 34 of 2016 and the culture of public law in this case as the seller as taxpayer.

From these constraints, a very basic weakness according to the PPJB researcher is an unfinal agreement that has not been a transitional right. As stipulated in article 37 paragraph (1) of Government Regulation number 24 of 1997, the transitional land rights and property rights in the units through sale and purchase, exchange, grant, income in company and other rights transfer law, unless the transfer of rights through the auction can only be registered if evidenced by the deed made by the Land Deed Office (PPAT) authorized according to the provisions of the This condition does not allow the public as the seller to be taxpayers to avoid the transfer of rights on land or building because one of the terms of the transitional rights have been settled in the term PPh.

Related to the constraints as outlined above that notary no legal obligation to give the report of accountability for each month to the Tax office on the creation of the deed before the notary of such as the creation of a buy-and-sell binding agreement by the parties. So the government control related to the payment of PPh based on PPJB does not exist. On the side of the community in particular, the tax-deductible government should prioritize a sense of fairness and simplicity. A sense of fairness and simple tax-voting as the basis of the principle that must be in each tax collection activity, i.e. the tax collection

<sup>13</sup> Mardiasmo, *Op.Cit.*, hlm. 10-11.

must be based on justice, both in statutory regulations and in the implementation of tax collection Sertasederhana and easily understandable taxpayers. A simple tax-voting system will help taxpayers in reporting their taxes and encouraging people to meet tax obligations.

### ***The Legal Consequences of PPh Not Paid Based on PPJB***

The consequences of the law are caused by legal events. Because a legal event is caused by legal action, while a legal deed can also produce a legal relationship, the consequences of the law can also be interpreted as a consequence incurred by the existence of a legal deed and/or legal relationship.

According to Syarifin the law is all the consequences that occur from any legal action done by the subject of law against the object of law or other consequences caused by certain events by the law in question has been determined or regarded as a result of the law. In this study saw the consequences of the law PPh not paid based on PPJB.

That the PPJB or trade binding agreement as described in the preceding chapters is as a preliminary step which in principle as the Obligoir agreement, which is free form. Because the terms for the right transition have not been fulfilled, in this case it is related to buying and selling rights on land and/or buildings.

In connection with the PPJB the final purpose is the occurrence of the transfer of land and/or building rights where the achievement has been fulfilled by each party. The obligation as an achievement is nothing but a manifestation of the promises that the parties pledge.

In article 91 of Law No. 28 of 2009 concerning Regional Taxes and Regional Retribution are:

The notary can only sign the deed of transfer of land and/or building after the taxpayer submits a proof of payment of tax.

Head of office in charge of state auction service can only sign the treatise on obtaining rights to land and/or the buildings after the taxpayer submits the proof of payment of tax.

The head of the Land Office shall only register the rights to lands or the registration of land right after the taxpayer submits the proof of payment of tax.

Achievement by the parties in the PPJB is the beginning of the momentum of the transition of rights, as all liabilities have been implemented by the parties. And generally with the fulfilment of all obligations between the seller and the buyer is an absolute requirement to proceed and be increased by signing the buy and sell deed in front of PPAT. As the Government regulation No. 24 of 1997 about register for transitional Registration and loading rights.

### ***Article 37***

The transition of land rights and property rights in the units through buying and selling, exchange, grants, income in the company and other rights transfer law, except the transfer of rights through the auction, can only be registered, if evidenced by the deed made by the authorized PPAT according to the provisions of the prevailing laws and regulations.



15 Under certain circumstances as determined by the minister, the head of the land Office can register for the transfer of rights to the property of land rights, which are carried out among the individual Indonesian citizens who are evidenced by the deed not made by PPAT, but which, according to the head of Land office, the correct content is deemed sufficient to register the transfer of the relevant rights. The creation of sell and purchase deed in front of PPAT is as the first step in the event of transitional rights prior to the registration of name behind the Land Office. In accordance with the descriptions in previous chapters as a result of research conducted by authors in West Manggarai regency, that the sale and purchase binding agreement made between the seller and the buyer's right to and or building is the agreement with the payment made gradually. Therefore, because of its unending nature and not qualified yet for the final purpose of the transition of rights, then as in the case of the Income tax binding agreement on land and/or building suspended by the seller. With reasons that are not yet published certificate. In this case a fairness according to the authors of the attitudes of the parties who conduct buy-and-sell transactions based on the PPJB conducted gradually, because its not final so vulnerable to the emergence of problems so that the nature of anticipation by not making tax payments first before the rights gained by each party, especially the seller obtained a guarantee of its rights as a responsibility to the buyer and the buyer who has the obligation to submit the payment with the paid.

1 With the advent of the rights to the land and/or buildings, it is instantaneously a further transaction to settlement will be conducted in front of PPAT by signing the sale and purchase act. And before the signing of PPAT requires the payment of taxes either by the seller with its obligation to pay the Income tax (*final*) and the buyer with its obligation to pay BPHTB.

The parties who will do the signing of the sell and purchase deed in front of PPAT will fulfill the terms by verifying in the office of the Regional Revenue Service conducted by the buyer because it relates to the obligations of BPHTB, and the position of PPh which is the obligation of the Seller will follow the results of verification so that the value set by NJOP (*tax object sell value*) and zone of an area will affect also the value that should be taken into account for payment of PPh. To find out how many obligations the seller pays PPh is not enough only based on the price stated in the PPJB will but will be influenced also the result of the verification performed by the local revenue Service. PPh which is payable repeatedly as per payment received based on the steps agreed on in the agreement is not a simple thing for the taxpayer (*seller*). Because in principle when an object is promised to be problematic, as to allow the parties to cancel according to the promised, it is not a simple thing for the seller as taxpayers who has paid the Income tax gradually to request and apply to refund the PPh that has been paid. In such circumstances it becomes a dilemma in the implementation in particular the payment of PPh based on PPJB which is done gradually.

9 PPh which is a unit with BPHTB is a tax that must be paid by the seller or the buyer before obtaining the Sell and Purchase deed made in front of PPAT. Without any proof of deposit PPh then the seller is considered to violate the rules so that PPAT can refuse to make AJB. This provision can be found in article 39 paragraph 1 letter g Government Regulation number 24 of 1997 on land registration. Then verse (2) mentioned that the refusal to make the deed be notified in writing to the relevant parties along with the reason. By rejection making a buy and sell deed by PPAT, then the registration of rights switching to the land Office is not possible. In the explanation of this paragraph manifested function and responsibility of PPAT as implementing land registration. The PPAT act must be made in such a way that it can be a strong basis for the registration of transfer of rights and the loading of rights concerned. Therefore PPAT is responsible for examining the terms of the legal action in question. Similarly, as set forth in article 37 paragraph (1) of government Regulation Number 24 of 1997 stated that:

*"The transfer of land rights and property rights in the unit through buying and selling, exchange, grants, income in the company and other rights transfer law, unless the transfer through the auction can*

*only be registered if evidenced by the deed made by the authorized PPAT under the provisions of the prevailing laws and regulations"*

In accordance with article 37 paragraph (1), indeed, PPh (*final*) for the transaction of transfer of land rights and/or buildings as mandated by government Regulation No. 34 of 2016 Article 1 paragraph (1) letter b of the binding agreement on the land and/or building and its changes if not paid by the seller, it will be in the process of making a buy and sell deed before PPAT.

Based on the explanation above, the deed, which is made by PPAT, shall be the requirement of the registration of the transitional rights. From the analysis that if the payment of PPh is not executed under the binding agreement on the buy and sell rights to land and/or buildings there is no result of the law caused, because its nature only postpones the payment is made until the term Formil transitional rights fulfilled.

In the matter of not doing PPh payments based on the buy and sell binding agreement in the West Manggarai district so far there has been no consequences felt directly by the taxpayer either in the form of reprimand or sanctions from the tax *Fiscus*. Found from the research conducted as stated by the notary public as a respondent, there is no *fiscus* benchmark to make a bill or strike related to tax payments based on the binding agreement on buy and sell rights on land and/or buildings, because of legal deed committed before the notary until now is not done reporting. However, the reporting obligation must be done by the notary related to the deeds he made. The existing and running orderly monthly Report submitted to the Tax Office is a PPAT report related to the creation of the Transitional Rights Deed by PPAT. It is not in line with the provisions of article 3 paragraph (6) of government Regulation No. 34 of 2016 which stipulates that:

*"The authorized officer signs the deed, decision, agreement, or treatise of the auction shall submit a monthly report on the issuance of the deed, decision, agreement or the treatise of the auction on the transfer of rights to the land and/or buildings as referred to in paragraph (2) to the Director general of Taxation".*

The legal consequences of the payment of PPh pursuant to the Buy and sell binding agreement will result in no process of registration behind the name of the land office. This is according to the author nor as a result because in the moment the payment of the settlement will be done before the PPAT and the requirement for the implementation of the signing of Sell and Purchase Deed before PPAT is to do tax verification first. Based on the results of the tax verification conducted by the buyer at the local district Revenue Service office, the obligation of the parties to promptly pay tax in this case Pph which is the obligation of the seller immediately executed. So there is no excuse for not making tax payments.

## **Conclusion**

Arrangement regarding the PPJB or the binding agreement on the sale of land and/or public buildings in principle refers to article 1320 of the Civil Code, while the specific arrangement of the term PPJB is used in government Regulation No. 34 of 2016 letter a figure 1b.

The implementation of PPh payment based on buy and sell binding agreement in West Manggarai there are 2 (*two*) characteristics. First, Trade binding agreement which is done instantaneously and the right to land and/or buildings has been scatter, PPh payment is executed, so the payment arrangement PPh based on PPJB because the keel in Manggarai Barat run effectively, while second, Sale and purchase binding agreements made by means of payment not paid off or made gradually

by due to land rights and/or buildings have not been strapped, PPh payment is not executed, so the PPh payment arrangement based on PPJB (*gradual*) in Labuan Bajo does not run effectively.

Based on the results of the study that the average buy and sell transactions based on the buy and sell binding agreement in the West Manggarai district is against unboxed lands so that only can be paid by the buyer to the seller gradually then the implementation of the payment of PPh generally does not run effectively. This is understandable due to the nature of the sale and purchase by means of conducting a sale and purchase binding agreement is not final.

In the matter of not doing PPh payments based on the buy and sell binding agreement in the West Manggarai district so far there has been no consequences felt directly by the taxpayer either in the form of reprimand or sanctions from the tax *Fiscus*. However, the result of the law does not perform PPh payments based on the buy and sell binding agreement will result in the registration process behind the name of the land office. This is according to the author nor as a result because it is immediately when the payment of the settlement will be done before the PPAT and the requirement to conduct the signing of Sell and Purchase Deed before PPAT is to verify the tax first. Based on the results of the tax verification conducted by the buyer at the local Department of Revenue Office, the obligation of the parties to promptly pay the tax in this case Pph which is the obligation of the seller immediately executed. So there is no excuse for not making tax payments.

### **Suggestions**

8

Based on the results of research in the prison class IIA Banceuy about the program of coaching mapenaling on the new convicts, then there are some suggestions that we summarize as follows:

1. There is an innovation in the form of the construction of prisoners that are inserted into the *mapenaling* program, which can attract and evoke the spirit of prisoners to follow the development of *mapenaling* well.
2. The officers should be also involved in providing support to the implementation of this program, both financial support, moral, facilities, and infrastructure and to monitor the progress of convicts during the *mapenaling* program. As there are schedules of officers conducted alternately to provide coaching to the new convicts.
3. IIA Banceuy Grade Prison officers must coordinate with the prison, Rutan or other parties related to the acceptance of prisoners or new convicts so that there is no new inmate build up at *mapenaling* stage that will cause *mapenaling* implementation time is different and the construction program at *mapenaling* Stage can not be delivered optimally.
4. There is a regular schedule in the implementation of *Mapenaling* program so that every implementation of the activities will run well and directed.

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