

REFORMULATION OF LAND AND/OR BUILDING ACQUISITION TAX REFUNDS AS A FORM OF JUSTICE FOR TAXPAYERS

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Abstrak

Penelitian ini membahas konflik norma yang timbul antara peraturan daerah dan peraturan pemerintah yang lebih tinggi terkait dengan pengembalian Bea Perolehan Hak Atas Tanah dan Bangunan (BPHTB) dalam kasus pembatalan Perjanjian Pengikatan Jual Beli (PPJB). Fokus penelitian ini adalah untuk menganalisis dan merumuskan solusi normatif terhadap ketidaksesuaian antara Pasal 16 Ayat (9) Peraturan Bupati Malang Nomor 191 Tahun 2024 dan peraturan lainnya yang mengatur BPHTB. Metodologi yang digunakan adalah penelitian yuridis normatif dengan pendekatan peraturan perundang-undangan dan konsep hukum. Data dikumpulkan melalui studi pustaka, dengan bahan hukum primer dan sekunder, kemudian dianalisis secara preskriptif dan sistematis. Hasil penelitian menunjukkan bahwa reformulasi terhadap pasal yang mengatur pengembalian BPHTB sangat diperlukan untuk menciptakan keadilan dan kepastian hukum bagi wajib pajak. Penelitian ini berkontribusi pada penataan ulang regulasi BPHTB, serta memberikan solusi terhadap konflik norma yang ada.

Kata Kunci: *Bea Perolehan Hak Atas Tanah dan Bangunan, BPHTB, Konflik Norma, Peraturan Daerah, Pembatalan PPJB*

Abstract

This study addresses the conflict of norms arising between regional regulations and higher government regulations concerning the refund of Land and Building Acquisition Duty (BPHTB) in the case of the cancellation of the Sale and Purchase Binding Agreement (PPJB). The focus of this research is to analyze and formulate a normative solution to the inconsistency between Article 16 Paragraph (9) of the Regent of Malang Regulation No. 191 of 2024 and other regulations governing BPHTB. The methodology used is a normative legal research with an approach of

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legislation and legal concepts. Data were collected through library research, using primary and secondary legal sources, and then analyzed prescriptively and systematically. The results of the study indicate that a reformulation of the article governing BPHTB refunds is necessary to create justice and legal certainty for taxpayers. This research contributes to the reorganization of BPHTB regulations and provides solutions to the existing norm conflicts.

Keywords: Land and Building Acquisition Duty, BPHTB, Norm Conflict, Regional Regulations, Cancellation of PPJB

INTRODUCTION

Taxes play a crucial role in a country's economy, not only as a source of state revenue but also as an instrument for regulating the economic relations between the central and regional governments. In Indonesia, with its vast territorial expanse, taxes are a primary pillar supporting the national economy. Along with the development of the governance and regional financial systems, it is essential to address fiscal distribution between the central and regional governments to ensure greater efficiency and fairness. This is reflected in the recent regulations, such as Law No. 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments, and Government Regulation No. 35 of 2023 concerning General Provisions on Regional Taxes and Levies. Although Indonesia adheres to a unitary state system, the decentralization principle is applied, granting regions the authority to manage fiscal resources, including regional taxes, to enhance independence and regional welfare.

Previous studies have extensively discussed the regulation of regional taxes, particularly concerning the Land and Building Acquisition Tax (BPHTB) and its implementation within legislation. For example, the thesis by Intan Permata Sari focuses on the ambiguity of norms in tax regulations and land rights transfer. Another study by Handayani Hasibuan explores the differences between the theory and the implementation of regional regulations related to BPHTB. Although numerous studies have examined this aspect, they mainly focus on existing policies without critiquing or reformulating controversial provisions in the practice of BPHTB returns, particularly in the case of the cancellation of a Sale and Purchase Agreement (PPJB). A major shortcoming of these studies is the lack of focus on how BPHTB refund procedures align with applicable laws and taxpayer rights.



This study aims to address the gap in previous research by offering a reformulation of taxpayers' rights regarding BPHTB refunds in the case of PPJB cancellation before the sale and purchase deed is signed. Specifically, this research will analyze and propose amendments to Article 16, Paragraph (9) of Malang Regent Regulation No. 191 of 2024, which regulates BPHTB refund procedures, to ensure consistency with higher laws and provide fairness for taxpayers. This objective aims to produce clearer, more transparent provisions that protect the legal rights of the public, particularly concerning the refund of overpaid taxes.

The hypothesis of this research is that by reformulating the provisions in Article 16, Paragraph (9) of Malang Regent Regulation No. 191 of 2024, the regional government will be able to provide a more equitable mechanism for BPHTB refunds that is in line with the prevailing legal principles. This reformulation will ensure that the rights of taxpayers, especially buyers in the event of PPJB cancellation, are well-protected, as well as create a more transparent and accountable financial relationship between the central and regional governments. This is crucial to ensure balance in fiscal decentralization, fairness in the management of regional taxes, and the protection of legal rights for the public.

LITERATURE REVIEW

Research on regional taxes, specifically regarding the Land and Building Acquisition Tax (BPHTB), has been extensively conducted. However, the focus of these studies has generally been on the mechanisms and policies in place, as well as the implementation of regulations, which are sometimes inconsistent with higher laws. Most studies discuss the importance of the sustainability of regional tax regulations in improving Local Revenue (PAD) and supporting fiscal independence in regions. One study, by Intan Permata Sari, entitled "Legal Certainty in the Imposition of Land and Building Acquisition Tax on Sale and Purchase Agreements," highlights the issues between the principles and norms in the transfer of land rights. This study found the lack of clarity in the norms, which led to inefficiencies in tax revenue collection (Sari, 2020). Another study, by Handayani Hasibuan, focuses on the discrepancies between local regulations and national law, particularly in the imposition of BPHTB and Final Income Tax (PPH Final). This research reveals the differences between regional regulations and national regulations, leading to legal uncertainty in the collection of local taxes (Hasibuan, 2018). Finally, a study by Alya Adelina, titled "Restitution of Overpayment of Land and Building Acquisition Tax," analyzes the procedure for refunding BPHTB. However, this research is still limited in addressing conflicting norms in related



regulations (Adelina, 2021). These three studies provide insights into the need for reorganization of BPHTB regulations but do not fully explore the issue of normative conflicts that arise due to the cancellation of the sale and purchase agreement (PPJB).

The first trend in this research is the study of the gap between existing tax provisions and their implementation in practice. As observed in Intan Permata Sari's study, which employs a normative-empirical approach, this research focuses on the unclear norms in regional tax regulations and the transfer of land rights. It also uses legal analysis methods to identify whether the existing regulations reflect practical needs and justice for society. The focus of this study is to assess the implementation of BPHTB in land and building transactions, which often do not align with applicable legal principles. This approach emphasizes the alignment between legal theory and practical reality, revealing inconsistencies that need immediate correction (Sari, 2020).

The second trend emerges from research that emphasizes comparisons between regional regulations and national law. Handayani Hasibuan's study, using a comparative approach, focuses on the differences between the foundational principles in local tax law and national law, particularly in the imposition of BPHTB and PPh Final. In this research, comparisons are made between various regulations and the broader legal framework, such as Law No. 1 of 2022 concerning Financial Relations between the Central Government and Local Governments. This study reveals inconsistencies that lead to legal uncertainty in tax collection, emphasizing the need for harmonization between regional law and national law to create a more just and efficient system (Hasibuan, 2018).

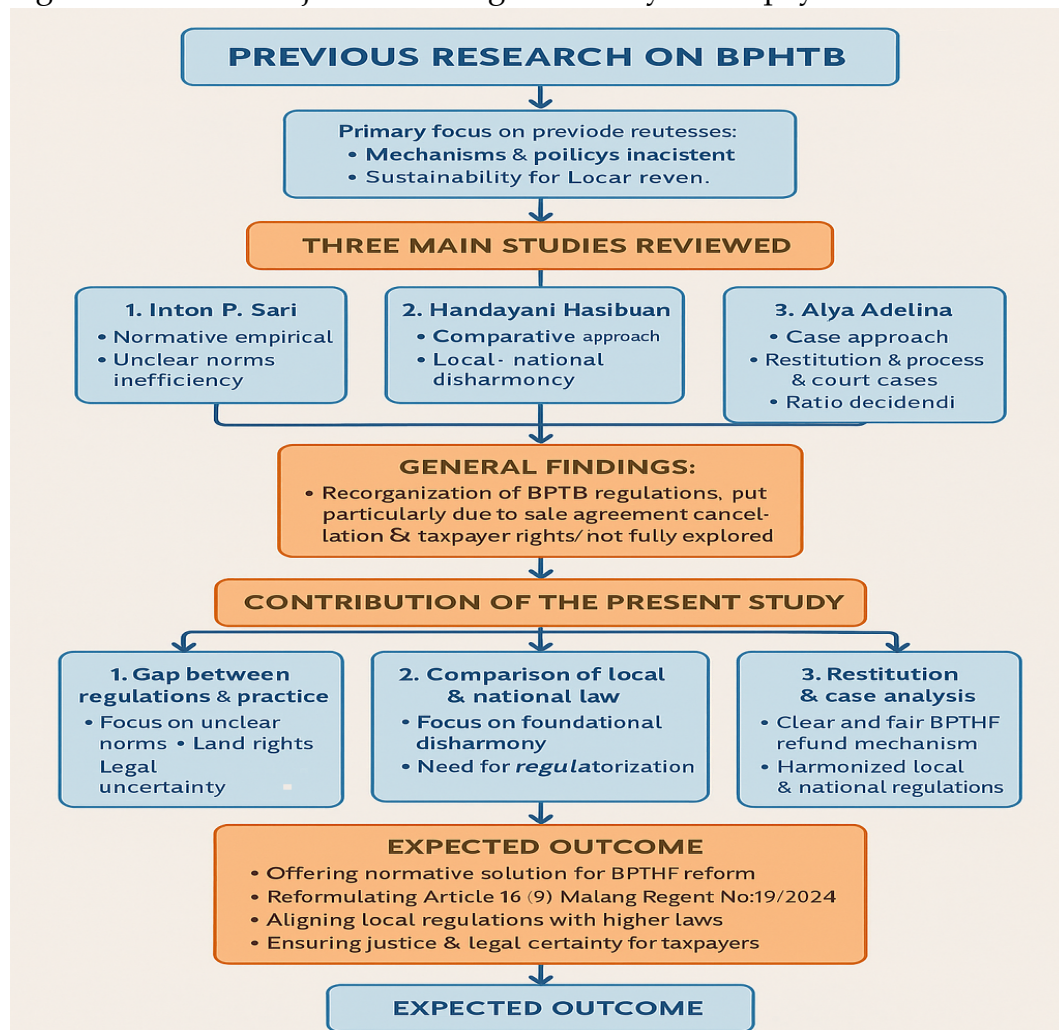
The third research trend, as done by Alya Adelina, focuses on procedural and normative analysis in the case of overpayment of taxes. This study uses a case approach, analyzing relevant court decisions, such as Supreme Court Decision No. 1154/B/PK/PJK/201. The aim of this research is to analyze the process of tax restitution, particularly when there is a miscalculation in BPHTB payment. This research also examines the ratio decidendi of judicial decisions, providing deeper insights into the application of law in cases of overpaid taxes. The method used is document analysis and case studies, viewing court decisions as part of the broader process of solving legal issues related to regional taxes (Adelina, 2021).

Although previous studies have provided valuable insights into BPHTB regulation, there are gaps in addressing the normative conflicts that arise between regional regulations and higher government regulations. These studies have not thoroughly discussed how normative solutions can be found to resolve conflicts, particularly in the case of the cancellation of



sale and purchase agreements (PPJB) affecting taxpayer rights. The inconsistency between Article 16, Paragraph (9) of Malang Regent Regulation No. 191 of 2024 and other provisions in local regulations remains an issue not yet fully addressed in prior research. This study will offer solutions to this legal problem by proposing a reformulation of the BPHTB refund provisions in the context of PPJB cancellation.

This research aims to address the gaps in previous studies by providing solutions to the normative conflict in the regulations governing BPHTB. The focus of this study is on reformulating Article 16, Paragraph (9) of Malang Regent Regulation No. 191 of 2024 regarding the BPHTB refund procedure, ensuring alignment with higher laws and providing justice for taxpayers. This study will make a significant contribution by clarifying the BPHTB refund mechanism and harmonizing applicable regulations to create justice and legal certainty for taxpayers in Indonesia.



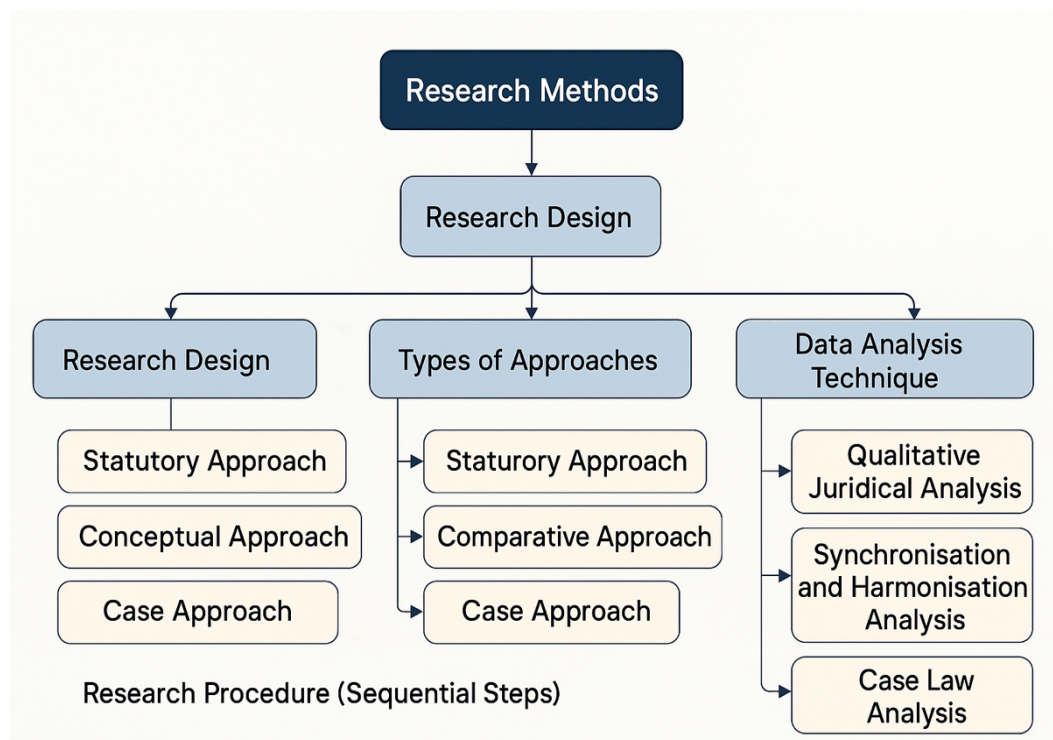
The flowchart visually summarizes the landscape of previous research on the Land and Building Acquisition Tax (BPHTB) by mapping out three major studies, their approaches, and their key findings. It highlights how earlier works predominantly examined regulatory mechanisms, discrepancies between local and national laws, unclear legal norms, and procedural issues in tax restitution. Despite these contributions, the chart shows that a significant research gap remains—particularly regarding unresolved normative conflicts surrounding the cancellation of sale and purchase agreements (PPJB) and inconsistencies in local regulations such as Malang Regent Regulation No. 191/2024. The flowchart then illustrates how the present study addresses this gap by proposing a reformulation of BPHTB refund provisions, offering normative solutions, and ensuring alignment between regional regulations and higher legal frameworks to strengthen justice and legal certainty for taxpayers.

RESEARCH METHODS

The focus of this research is on the legal norms contained in regulations related to Land and Building Acquisition Tax (BPHTB). The unit of analysis involves legal regulations and local regulations pertaining to BPHTB, as well as various views among legal scholars regarding the implementation and cancellation of Sale and Purchase Agreement (PPJB) which affects BPHTB payment obligations. This research follows a normative juridical design, with a qualitative orientation. The aim of this study is to explore, analyze, and provide a deeper understanding of the relevance of applicable laws in tax practices in Indonesia, particularly regarding PPJB cancellations and BPHTB refunds. The research uses an approach based on statutory regulations and legal concepts to analyze the legal objects under investigation.

The data sources used in this research consist of primary and secondary legal materials. Primary legal materials include statutory regulations, such as laws, government regulations, and regional regulations related to BPHTB. Secondary legal materials consist of books, journals, and articles that contain opinions from legal experts and relevant legal doctrines on the topic under discussion. Data collection techniques are carried out through library research, involving the search and analysis of legal literature, including both legal texts and relevant scholarly writings. Afterward, the legal materials are processed through stages of inventorying, identifying, classifying, and systematizing the legal sources. The data analysis technique used is prescriptive analysis with systematic interpretation, which aims to provide understanding regarding the applicability and fairness of the law in the context of BPHTB.





The landscape-format flowchart presents a clear and systematic visualization of the research methods used in this study, beginning with the overall research design and progressing through the core components of the methodological framework. It outlines the central role of the normative juridical approach, supported by statutory, conceptual, comparative, and case-based analyses, which together provide a comprehensive basis for examining inconsistencies and normative conflicts within BPHTB regulations. The chart also distinguishes between different types of legal materials—primary, secondary, and tertiary—illustrating how each contributes to building a strong foundation for legal interpretation and argumentation. The inclusion of qualitative juridical analysis, harmonization assessment, and case law interpretation highlights the depth of analytical techniques employed to ensure accuracy and coherence in evaluating legal issues. At the final stage, the flowchart presents the sequential research procedure, showing how each step logically follows the previous one, from identifying legal problems to formulating normative solutions. Overall, the flowchart offers a structured and easily readable representation of the methodological process, ensuring clarity, rigor, and consistency in conducting legal research.



RESULTS AND DISCUSSION

Results

Controversy in Fulfilling Subjective and Objective BPHTB

The data indicate that Malang Regent Regulation No. 191/2024 – particularly Article 5(3)–(5) and Article 16(9) – stipulates that BPHTB is considered due merely on the basis of signing a draft PPJB that contains clauses on “full payment” and “possession of the object.” Visualization of the data through excerpts of the regulation shows that the local government interprets the signing of the draft PPJB as sufficient to fulfill both subjective and objective requirements, even though no lawful transfer of rights has occurred under agrarian law. From the restated data, it becomes clear that tax administration positions the PPJB as a taxable event despite the fact that, in agrarian law, the transfer of rights only occurs after the AJB is executed before a PPAT. The descriptive patterns emerging from these data show three tendencies: first, an administrative simplification that neglects substantive legal principles; second, an expansion of subjective tax interpretation based more on documents than on legal events; and third, a regulatory tendency to broaden the tax base beyond what is permitted by higher laws.

Further data reveal that the subjective requirement for BPHTB should be based on the existence of a legitimate taxpayer – someone with a lawful legal relationship to the object – and administrative registration through a Taxpayer Identification Number (NPWP), as required by Malang Regional Regulation No. 7/2023 and Malang Regent Regulation 191/2024. Visualization of these provisions confirms two indicators of subjectivity: legal status and administrative registration. However, field findings show that BPHTB imposed at the PPJB stage treats an individual as a taxpayer even though no legal acquisition of rights has occurred. The restated data clarify that the subjective requirement – normally arising after a lawful event – is prematurely assumed fulfilled merely on the basis of a preliminary agreement. The descriptive patterns reveal: (1) an expanded interpretation of subjectivity without sufficient legal basis; (2) disharmony between tax requirements and land-rights acquisition requirements; (3) imposition of tax burdens on individuals who do not yet legally own the land; and (4) uncertainty regarding the taxpayer’s legal standing.



The data show that the objective requirement for BPHTB can be fulfilled only when a lawful acquisition of rights occurs – evidenced by the AJB executed before a PPAT and subsequently registered with the land office. Visualization of agrarian regulations (UUPA, PP 24/1997, PP 37/1998) confirms that the PPJB does not constitute a lawful transfer of rights. However, Malang Regent Regulation No. 191/2024 treats the PPJB as a “tax event,” making BPHTB payable even without a transfer of rights. The restated data highlight the sharp distinction between the objective requirement under local tax regulation and under agrarian law. Emerging patterns include: (1) an inaccurate determination of the tax object due to the absence of a lawful transfer of rights; (2) a shift from *causa legal* to mere administrative documentation; (3) a risk of unlawful tax collection; and (4) normative conflict between local tax regulation (*lex specialis*) and agrarian law (*lex generalis*).

Evidence from PPJB Cancellation and Absence of Legal Tax Basis

Data from the Civil Code (Articles 1319, 1320, 1338) establish that a PPJB is a preliminary agreement that creates only obligatoir, not proprietary, rights. Visualization of legal provisions shows that when a PPJB is cancelled, all legal consequences between the parties are nullified *ex tunc*. The restated data indicate that cancellation restores the parties to their original legal position – meaning no transfer of rights ever occurred, and thus no *causa legal* for taxation exists. The descriptive patterns reveal three tendencies: (1) a PPJB cannot generate proprietary rights; (2) cancellation eliminates the legal foundation for BPHTB; and (3) there is no financial or legal relationship capable of generating a tax obligation. Therefore, the cancellation of a PPJB confirms that BPHTB imposed at the PPJB stage lacks legal validity.

In tax law, data confirm that a tax debt arises only when all elements of the taxable event are fulfilled: a taxpayer, an object, a tax base, and the moment the tax becomes due. Visualization of Malang Regional Regulation No. 7/2023 clearly states that BPHTB becomes due only “when the acquisition of rights occurs.” However, field data indicate that BPHTB is imposed at the PPJB stage despite the absence of any transfer of rights. Restatement of the data clarifies that BPHTB imposed at the PPJB stage is taxation on an event that has not yet occurred. The descriptive patterns



reveal: (1) unlawful expansion of the tax base; (2) inconsistency with the principle of legal certainty; (3) violation of the principle “no taxation without legal cause”; and (4) emergence of the category “tax that should not have been due,” requiring refund under tax law.

Data on the normative status of BPHTB imposed at the PPJB stage show that, although the Regent Regulation treats the PPJB as a taxable event, theoretical tax concepts (*materiële belastingschuld*) reject this. Visualization of tax law principles shows that PPJB does not produce ownership, does not establish a fiscal relationship, and does not generate a taxable event. The restated data highlight that the PPJB is merely an obligatoir agreement and does not create the legal event necessary to trigger BPHTB. The descriptive patterns reveal: (1) the local government incorrectly determining the tax basis; (2) PPJB being constructed as a tax event merely for administrative convenience; (3) a fundamental disconnect between administrative taxation law and agrarian law; and (4) BPHTB payments at the PPJB stage meeting the category of “taxes that should not have been due,” therefore legally requiring restitution.

Strong Evidence from Agrarian and Local Government Law

Agrarian law data – UUPA, PP 24/1997, PP 37/1998 – show that a transfer of rights is lawful only when executed through an AJB before a PPAT and registered with the land office. Visualization of these regulations strengthens the understanding that PPJB cannot be used as evidence of transfer of rights or as a basis for land registration. Restated, the data indicate that legal acquisition of rights occurs only after the AJB is signed, not before. The descriptive patterns show: (1) PPJB does not generate proprietary rights; (2) imposing BPHTB before the AJB contradicts agrarian legal principles; (3) PPJB fails to meet the objective requirement for BPHTB; and (4) overlapping interpretations between tax regulation and agrarian law create legal uncertainty.

Data from regional government law show that imposing taxes without a lawful basis may be categorized as illegal levies, violating the principle of legality under Law No. 23/2014 and Law No. 30/2014. Visualization of statutory excerpts indicates that a regional head may be sanctioned for imposing unauthorized levies. The restated data make clear that BPHTB imposed on PPJB – particularly when the PPJB is cancelled –



cannot be classified as legitimate regional revenue. Descriptive patterns reveal: (1) risk of violating the principle of legality; (2) potential losses to citizens due to unlawful taxation; (3) normative disharmony between the Regent Regulation and higher laws; and (4) urgent need for reformulation of BPHTB regulations.

Overall data show that BPHTB can only be imposed when a lawful transfer of rights actually occurs. Visualization of a comparative matrix between PPJB and AJB demonstrates that the PPJB does not change ownership, cannot serve as a basis for land registration, and does not create the conditions required for BPHTB to become due. The restatement indicates that cancellation of a PPJB nullifies the foundation for BPHTB and renders any tax paid at that stage a "tax not legally due." Descriptive patterns include: (1) PPJB is not a lawful basis for rights acquisition; (2) cancellation eliminates the basis for BPHTB; (3) BPHTB imposed at the PPJB stage constitutes an unlawful tax obligation; and (4) reformulation of Article 16(9) of Malang Regent Regulation is essential because it contradicts tax law, agrarian law, and principles of good governance.

Discussion

Resolving Normative Conflicts

Article 16, paragraph (9) of the Malang Regent Regulation No. 191 of 2024 concerning the Procedures for the Imposition of the Land and Building Acquisition Duty (BPHTB) states: "Based on the fulfillment of the subjective and objective requirements as referred to in Article 5, paragraph (5), the taxpayer may not request a refund of the BPHTB that has been paid in the event of the cancellation of an agreement between the parties, which occurs after the payment of the BPHTB due." This article regulates the legal consequences of the cancellation of a PPJB (Sale and Purchase Agreement) regarding the BPHTB that has already been paid, but it results in the inability to refund the BPHTB paid. This causes a normative conflict with the provisions allowing the BPHTB to be refunded if a PPJB is canceled, as outlined in Article 122, paragraph (4) letter a of the Regional Regulation of Malang No. 7 of 2023 on Regional Taxes and Retributions (Perda Kab. Malang No. 7 of 2023), which states: "In the case of changes or cancellation of the sale and purchase agreement before the deed of sale is signed, which causes: a. the BPHTB paid is in excess or not due, the taxpayer may submit a request for a refund of the excess BPHTB paid." In conjunction with Article 129, paragraph (2) of the Regional Regulation of Malang No. 7 of 2023,



which further stipulates that: "Specifically for BPHTB, in the case of changes or cancellation of the sale and purchase agreement before the deed of sale is signed, which causes the BPHTB paid to be in excess or not due, the taxpayer may submit a request for a refund of the excess BPHTB paid (Aqmadea Eshafia et al., 2024; Hidayah et al., 2021; Vianney Bagus Raditya et al., 2024)."

Hans Kelsen, in his theory of the hierarchy of norms, asserts: "Hans Kelsen's Theory of the Hierarchy of Norms (Stufentheorie) posits that norms are structured hierarchically and layered in a system, where lower norms are valid only as they are based on higher norms, continuing until the highest norm, which cannot be traced further and is of a hypothetical, fictional nature, known as the Basic Norm (grundnorm/fundamental norm); the validity of the basic norm is not based on, nor derived from, any higher norm but is presupposed by society as the foundation for all norms beneath it. If the basic norm is altered, it undermines the entire system of norms below it.

Kelsen's theory is implemented in Indonesia through the concept of the hierarchy of legal regulations. The existence of the hierarchy of legal regulations is essentially intended to maintain consistency between legal norms. In general, this principle refers to the legal maxims *lex superior derogat legi inferiori* (higher law prevails over lower law), *lex specialis derogat legi generalis* (special law prevails over general law), and *lex posteriori derogat legi priori* (later law prevails over earlier law). The legal system in Indonesia essentially adopts the theory developed by Hans Kelsen. This can be observed in the formulation of Indonesia's legal regulatory hierarchy as found in Article 7, paragraph (1) of Law No. 12 of 2011 on the Formation of Legal Regulations. It stipulates the types and hierarchy of legal regulations as follows:

- a) The 1945 Constitution of the Republic of Indonesia;
- b) The Decrees of the People's Consultative Assembly (MPR);
- c) Laws/Regulations in Lieu of Law;
- d) Government Regulations;
- e) Presidential Regulations;
- f) Provincial Regional Regulations;
- g) District/City Regional Regulations.

Article 16, paragraph (9) of the Malang Regent Regulation No. 191 of 2024 concerning the Procedures for the Imposition of BPHTB is a form of regional regulation established by the regent. A Regent Regulation (Perbup) is a legal regulation established by the Regent to implement the higher regulations (regional laws) or to exercise regional government authority.



The position of the regent regulation in the hierarchy of legal regulations in Indonesia has binding legal force, as stipulated in Articles 8, paragraph (1) and (2) of Law No. 12 of 2011 concerning the Formation of Legal Regulations, which reads:

- (1) The types of legal regulations, other than those referred to in Article 7, paragraph (1), include regulations established by the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Audit Board, the Judicial Commission, Bank Indonesia, Ministers, bodies, agencies, or commissions at the same level established by law or the Government upon the mandate of the law, the Provincial Regional People's Representative Council, the Governor, the District/City Regional People's Representative Council, the Regent/Mayor, Village Heads, or those at the same level;
- (2) Legal regulations as referred to in paragraph (1) are acknowledged and have binding legal force as long as they are mandated by a higher legal regulation or formed based on authority.

Thus, Article 16, paragraph (9) of Malang Regent Regulation No. 191 of 2024 concerning the Procedures for the Imposition of BPHTB contradicts Article 122, paragraph (4) in conjunction with Article 129, paragraph (2) of the Malang District Regulation No. 7 of 2023 on Regional Taxes and Retributions, as well as Article 59, paragraph (9) of Government Regulation No. 35 of 2023 on Regional Taxes and Retributions (Lutfiah et al., 2024; Lutfianah et al., 2025). Therefore, resolving this normative conflict can be addressed using the principle of law. Satjipto Rahardjo states: "The principle of law is the essence of legal regulations, as the principles of law serve as the broadest foundation for the creation of legal regulations. This means that legal regulations can ultimately be traced back to these principles."

Referring to the principle *lex superior derogat legi inferiori* (higher law prevails over lower law), in resolving the issue of BPHTB refunds when a PPJB is canceled, the provisions of Article 16, paragraph (9) of the Malang Regent Regulation No. 191 of 2024 on the Procedures for the Imposition of BPHTB cannot be used. Instead, reference should be made to the higher regulations, namely Article 122, paragraph (4) in conjunction with Article 129, paragraph (2) of the Malang District Regulation No. 7 of 2023 on Regional Taxes and Retributions, as well as Article 59, paragraph (9) of Government Regulation No. 35 of 2023 on Regional Taxes and Retributions. Thus, by resolving the normative conflict using the *lex superior derogat legi*



inferiori principle, the implementation of BPHTB refunds in the case of PPJB cancellations becomes consistent with higher norms (Lutfianah et al., 2025; Suraya et al., 2021; Vianney Bagus Raditya et al., 2024).

Formulation of Taxpayer Rights in BPHTB Refunds upon Cancellation of PPJB Agreement

To optimize regional revenue in Malang Regency, the regional government has based the theoretical foundation of the academic manuscript for the regional regulation, which states that in order to achieve fiscal balance (vertical fiscal imbalance) between the central government and regional governments, property tax (land and buildings) is determined as a suitable tax for the region. This tax type is immobile within a specific area, its tax base is evenly distributed among regions, and it can generate stable revenue. Land, as a fundamental need in Indonesian society, plays a critical role in people's lives. Owning land for housing, buildings, or business purposes is a primary goal in the lives of many individuals. Human activities are intimately connected with land, whether directly or indirectly. Land is no longer solely associated with agrarian concerns but has expanded in its uses and benefits

In order to encourage tax compliance, the Malang Regency government must not only ensure that taxpayers fulfill their tax obligations but also protect taxpayer rights. This protection can take the form of good tax services, simplifying or facilitating the tax payment process, monitoring taxpayer compliance with effective evidence, and enforcing tax law fairly and firmly. Tax rights and obligations are closely related. In fulfilling tax obligations, taxpayers also acquire rights that serve to protect their tax interests. One such right is the right to receive a refund of overpaid BPHTB, as stipulated in Article 21, paragraph (1) of the Malang Regent Regulation No. 191 of 2024 concerning the Procedures for the Imposition of Land and Building Acquisition Duty (BPHTB). This refund right includes two scenarios: overpayment of taxes greater than the owed tax, and payment of taxes that should not have been collected, as per Article 17 of Law No. 28 of 2007, which amends Law No. 6 of 1983 concerning General Provisions and Tax Procedures. The provision states:

- (1) The Director General of Taxes, after conducting an audit, issues a Tax Overpayment Notice if the tax credit or paid tax is greater than the owed tax;
- (2) Upon taxpayer request, the Director General of Taxes, after verifying the tax payment accuracy, issues a Tax Overpayment Notice if there is a payment of tax that should not have been



collected, as regulated by or based on the Minister of Finance's Regulation.

Article 16, paragraph (9) of the Malang Regent Regulation No. 191 of 2024 must be adjusted to align with various legal aspects (agrarian law, contract law, obligation law, regional government law, and tax law) to avoid conflicts with higher regulations. Satjipto Rahardjo's progressive legal theory asserts: "Progressive legal theory, according to Satjipto Rahardjo, holds that law must return to its basic philosophy: Law for Human Beings. With this philosophy, humans become the determining factor and orientation of the law; the law serves people, not the other way around". Rahardjo emphasizes that law is for humans, not the other way around. Law should not be an end in itself but rather a tool for a greater societal purpose. If the law cannot address justice issues, then it is the law that must be changed, not the people who are forced to adjust to a rigid legal framework. In the case of Article 16, paragraph (9) of the Malang Regent Regulation No. 191 of 2024, which prohibits BPHTB refunds upon PPJB cancellation, the norm reflects a rigid legal orientation, prioritizing the text over substantive justice. If the PPJB is canceled, the BPHTB levy no longer has a rational basis, thus violating the law's role as a servant of public interest. Prohibiting BPHTB refunds exemplifies a law that pursues formal certainty but fails to deliver justice to taxpayers. In such cases, society is burdened with tax obligations for a transaction that no longer exists. This scenario reveals that the law loses its humanistic aspect and favors administrative interests over the people's needs. Therefore, when the law cannot ensure justice, it is the law that needs reform, not society that must conform to it.

Based on the legal reasoning of the Constitutional Court Judges in Decision No. 117/PUU-XXI/2023, point 3.15, it is evident that the introduction of BPHTB liability at the time of PPJB signing was intended to enhance BPHTB revenues as one of the fiscal decentralization tools for financing regional development. This mechanism prevents tax avoidance by delaying the formalization of the PPJB into a deed of sale and encourages buyers to be more cautious when purchasing properties. Moreover, taxpayers are entitled to a refund of the BPHTB if the PPJB is subsequently canceled, providing legal certainty and protection against undue tax burdens.

The prohibition of BPHTB refunds, as stated in Article 16, paragraph (9) of the Malang Regent Regulation No. 191 of 2024, creates an injustice for taxpayers (buyers) when the transaction, which formed the basis for the levy, is canceled. This contrasts with the provisions for taxpayers who pay Final Income Tax (PPh Final), where sellers can claim a refund of PPh Final



due to canceled transactions, according to Article 123(b) of the Minister of Finance Regulation No. 81 of 2024 regarding Tax Provisions under the Core Tax Administration System. This regulation states: "Tax payments that are not the object of owed tax or should not have been collected, as stipulated in Article 122, paragraph (1) letter a, include: b. tax payments for canceled transactions."

Formulation of Taxpayer Rights to BPHTB Refunds upon Cancellation of PPJB Agreement

Article 16, paragraph (9) of the Malang Regent Regulation No. 191 of 2024 emphasizes formal legal certainty but neglects the principle of fiscal justice and the right of the public not to be taxed without a valid object. Through the lens of Satjipto Rahardjo's progressive legal theory, law should serve people and be dynamic. Therefore, when a regulation fails to reflect a sense of justice, it warrants revision. This reformulation is essential to ensure that the law does not remain a rigid text but moves towards substantive justice. Reformulating the regulation to allow the refund of BPHTB upon the cancellation of PPJB reflects that the law is not an end in itself but a tool for fulfilling human needs, guaranteeing justice, and protecting taxpayers. The benefits of such reformulation are as follows:

- 1) Strengthening the taxpayer's right to obtain a refund for BPHTB paid on taxes that should not have been due.
- 2) Clarifying the legal position of the buyer, who is not the rightful owner of the land, and confirming the seller's position, where there is still an obligation to transfer ownership of the land/building.
- 3) Achieving substantive justice for the taxpayer (buyer).
- 4) Providing legal certainty and protection for the buyer.
- 5) Protecting the parties from misunderstandings about the equivalence of PPJB and AJB.
- 6) Educating the parties involved that the sale process should not rely solely on PPJB but must be formalized with AJB and followed by registration of the transfer at the land office.
- 7) Increasing taxpayer confidence in the regional tax system, encouraging compliance.
- 8) Reflecting good governance in tax collection, based on the principles of effective and transparent administration.
- 9) Reducing legal disputes.
- 10) Enhancing the oversight and verification functions of the BPHTB team in processing BPHTB refunds.

The form of reformulation can be done by clarifying, improving, and adjusting the substance of Article 16, paragraph (9) of the Malang Regent



Regulation No. 191 of 2024 concerning the Procedures for the Imposition of Land and Building Acquisition Duty (BPHTB), to align it with higher legal provisions as follows:

- a) Based on lex superior, the BPHTB liability during PPJB signing can be levied for optimizing regional revenue, while considering fairness and the protection of taxpayer rights. If a PPJB agreement is canceled, taxpayers should have the right to receive a refund of the BPHTB paid.
- b) To create a balance between the regional revenue interests and fairness/protection for taxpayers, the cancellation of PPJB for BPHTB refunds should be proven through a notarized cancellation deed (the binding obligation created by the original agreement is nullified by a new agreement) or a court decision that has become final and binding. This way, the regional government is not only following the prudential principle but also ensuring that each refund is based on verified legal and administrative facts.

Based on the Constitutional Court Decision No. 5/PUU-XII/2014, it is clear that Notaries and PPATs have distinct authority as stipulated by law, with specific powers outlined for both professionals. One of these powers involves creating agreements related to land transactions, as per Article 15, paragraph (2) letter f of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 on Notary Positions.

The notarized deed of cancellation serves as an authentic proof, ensuring legal certainty about what is recorded.

If the notary deed is problematic, the parties involved can return to the notary to cancel the deed, thereby rendering it non-binding. In the case of a canceled PPJB, the cancellation deed serves as authentic proof that the agreement no longer has legal consequences. Therefore, this cancellation deed automatically invalidates the BPHTB obligation, as no legal event of the transfer of land or property rights has occurred. As such, the cancellation deed can serve as a valid basis for the taxpayer to request a BPHTB refund. Moreover, a final and binding court decision (*inkracht van gewijsde*) also constitutes a strong proof of PPJB cancellation, as it is final and binding, providing full legitimacy that the PPJB is no longer valid and has no legal consequences. In such cases, BPHTB paid becomes a tax that should not have been owed and must be refunded to the taxpayer. The use of both the notarized cancellation deed and a final court decision aligns with the principles of fairness and legal certainty in tax law. Without authentic documentation, the regional



government would face difficulties in validating the claim of PPJB cancellation. With such documents, the regional government has clear legal grounds for processing BPHTB refunds while ensuring compliance with regulations.

- c) Paid BPHTB is acknowledged as a regional tax credit, which must be accounted for at the time of the AJB signing. However, if PPJB is canceled, the BPHTB refund process should only proceed if the PPJB has not yet been converted into AJB. This is because, upon the AJB signing by the PPAT, the land or building rights transfer from the previous owner to the new one, and the new owner can register the change at the land office.
- d) Proof of the transfer of land and/or building rights is confirmed with the sale and purchase deed (AJB) made by the PPAT, as outlined in Article 37, paragraph (1) of Government Regulation No. 24 of 1997.
- e) The certificate serves as strong proof that the name change on the land title has occurred, as per Article 32, paragraph (1) of the same regulation.

The cancellation of PPJB does not fulfill the legal conditions for BPHTB, as no taxable object exists. In such cases, where the BPHTB refund is denied, the buyer taxpayer can file an objection, providing an opportunity for a review of the tax assessment, which may be incorrect. This provision covers not only objections but also appeals or lawsuits, including a possible Judicial Review by the Supreme Court.

Table 1: Reformulation of Article 16 Paragraph (9) of the Regent of Malang Regulation No. 191 of 2024 on the Procedure for Collecting the Land and Building Acquisition Duty (BPHTB)

Sebelum	Sesudah
(9) Based on the fulfillment of the subjective and objective requirements as referred to in Article 5 paragraph (5), the taxpayer cannot request a refund of the BPHTB (Land and Building Acquisition Duty) that has been paid,	<p>(9) The BPHTB tax obligation arises once the subjective and objective requirements for BPHTB have been met.</p> <p>(10) The subjective requirement is fulfilled if the taxpayer has met Article 14 paragraph (1) of the Regional Regulation of Malang District No. 7 of 2023 on Regional Tax and Retribution in conjunction with Article 4 paragraph (1) and (3) and Article 5 paragraph (5) of the Regent Regulation of Malang No. 191 of 2024 on the Procedures for the Collection of Land and Building Acquisition Duty (BPHTB);</p>



Sebelum	Sesudah
in the event of the cancellation of the agreement between the parties, which occurs after the payment of the BPHTB due.	<p>(11)The objective requirement is fulfilled if there has been an acquisition of rights to land and/or buildings through a sale, which in the case of acquiring rights using PPJB must be followed by AJB (Deed of Sale and Purchase) made by PPAT (Land Deed Official);</p> <p>(12)BPHTB on the PPJB that has been paid and deposited is recognized as a regional tax credit, and must be calculated at the time of signing the sale and purchase deed (AJB);</p> <p>(13)In the case of the cancellation of the agreement or the cancellation of the acquisition of land and/or building rights on the PPJB after the BPHTB payment, the taxpayer may apply for a refund of BPHTB paid as taxes that should not have been due;</p> <p>(14)Refunds of BPHTB deposited as regional tax credit can only be processed before the signing of the sale and purchase deed (AJB);</p> <p>(15)Regarding the payment of BPHTB due on PPJB, the buyer taxpayer may be granted physical/de facto possession if agreed as per Article 5 paragraph (3) letter b, but not with juridical/de jure possession;</p> <p>(16)The transfer of rights to land and/or buildings occurs when there is physical and juridical possession of the land and/or buildings, which is evidenced by the signing of the sale and purchase deed (AJB) before the Land Deed Official (PPAT);</p> <p>(17)The transfer of rights as described in paragraph 16 is registered at the local land office to obtain the certificate of rights;</p> <p>(18)Evidence of cancellation as referred to in paragraph (13) must be proven by: a. a</p>



Sebelum	Sesudah
	<p>deed of cancellation of PPJB made by a notary and agreed upon by the parties; and/or b. a court decision that has the force of law (inkracht van gewijsde).</p> <p>(19) If the results of the examination and investigation as mentioned in paragraphs (13) and (18) are rejected, the taxpayer may file an administrative objection and/or legal actions such as an appeal or tax lawsuit, including judicial review (PK).</p>

Source: Data Processed by the Author

CONCLUSION

The most important finding from this research is the necessity of reformulating Article 16 paragraph (9) of the Regent Regulation of Malang No. 191 of 2024 to align with various applicable legal perspectives, including tax law, contract law, obligation law, agrarian law, and regional government law. This reformulation aims at clarifying and adjusting the substance of the regulation to prevent any unlawful collection of BPHTB and to ensure that BPHTB refunds can be made when the PPJB agreement is canceled. The takeaway from this research is the importance of ensuring fair, transparent tax regulations and tax administration that align with the principles of applicable law. Furthermore, this research highlights the need for harmonizing regulations across various fields of law to achieve legal certainty for both taxpayers and local governments.

This research makes a significant contribution to understanding the application of BPHTB in the context of PPJB cancellation from a multidisciplinary perspective. By analyzing various legal perspectives, this study offers a more comprehensive approach in evaluating and reformulating existing regulatory provisions. The academic contribution of this research lies in the development of understanding the relationship between tax law, contract law, obligation law, agrarian law, and regional government law in the regulation of BPHTB, a topic that has not been extensively covered in previous studies. This research also provides recommendations regarding the importance of adjusting the substance of Article 16 paragraph (9) to clarify the rights and obligations of the parties in the context of BPHTB refunds.

The limitations of this research lie in its focus solely on Article 16 paragraph (9) of the Regent Regulation of Malang No. 191 of 2024, while the



regulation concerning BPHTB as a whole within the context of regional tax law could be further explored. This study does not delve deeply into the impact of the implementation of this regulation on tax practices in other regions, thus further research is needed to observe the consistency of policy implementation in various regions. This research also does not cover an evaluation of the practical aspects and challenges faced by local governments in implementing the reformulation, which could provide deeper insights into the difficulties in managing BPHTB in the field.

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