

Legal Certainty Of Provision Of Land And Building Rights Acquisition Reduction Facilities For Foundations (Study in North Sumatra)

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Abstract

The issuance of Law Number 1 concerning Financial Relations Between the Central Government and Regional Governments has had a negative effect on foundations. Based on the results of the study, it was found that the regulation on the provision of BPHTB reduction or exemption facilities owned by foundations is an order from Law Number 28 of 2009 concerning Regional Taxes and Regional Levies, which was then followed by the issuance of Law Number 20 of 2000 concerning Amendments to Law Number 21 of 1997 concerning Land and Building Acquisition Fees. The issuance of Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments (HKPD) eliminates these facilities. There is a lack of synchronization in the implementation of Law Number 1 of 2002 with the regent/mayor regulations regarding the provision of BPHTB reduction or exemption facilities for foundations, considering that these regulations are still based on the old law. Law Number 7 of 2021 concerning the Harmonization of Tax Regulations is an important momentum for efforts to harmonize and synchronize taxation, including between laws and regulations and regional regulations (perda) related to taxation. Including the regulation that regulates the provision of BPHTB relief or exemption facilities for foundations. Law Number 7 of 2021 concerning the Harmonization of Tax Regulations is an important momentum for efforts to harmonize and synchronize taxation, including between laws and regulations and regional regulations (perda) related to taxation. Including the regulation that regulates the provision of BPHTB relief or exemption facilities for foundations.

I. Introduction

In general, in historical periodization, foundations began to be known and their existence recognized since the nineteenth century in the Netherlands, with *stichting*, which then entered Indonesia since the Dutch East Indies (R. Soemitro, 1993). Foundations in the past before the issuance of Law Number 16 of 2001, the legal basis was not so clear, because there were written rules. Foundations that were established at that time used customary law that existed in practice. Likewise when carrying out its activities, based on customary law. However, during that time the foundation was required to have the status of a legal entity (Supramono, 2008).

This does not mean that before the issuance of the Foundation Law, in Indonesia there were no provisions at all that regulated foundations. Historically, there have been several articles that referred to the existence of foundations, such as Articles 365, 899, 900, 1680 of the Civil Code, then in Article 6 paragraph (3) and Article 236 Rv, and Article 2 paragraph (7) of the Bankruptcy Law (*Faillissement-verordening*).

On October 6, 2004, through the State Gazette of the Republic of Indonesia 2004 Number 115, Law Number 28 of 2004 concerning amendments to Law Number 16 of 2001 concerning Foundations was enacted. The rapid changes to the law governing foundations indicate that the problem of foundations is not simple and this legal entity is indeed needed by the community. As is known, before the issuance of Law of the Republic of Indonesia Number 16 of 2001 concerning Foundations, the establishment of foundations in Indonesia was carried out based on customs in society, doctrine and jurisprudence (Ais, 2006).

Article 1 paragraph (1) of Law Number 16 of 2001 as amended by Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations defines a foundation as a legal entity consisting of assets that are separated and used to achieve certain goals in the social, religious and humanitarian fields, which does not have members.

Foundations in Indonesia have been recognized as legal entities. Recognition as a legal entity is based on custom and jurisprudence. It is not known for certain when a foundation becomes legal material, because there are no provisions governing this. In the legal practice in Indonesia, foundations are generally always established with a notarial deed as a foundation formed by Government Regulation (PP and Presidential Decree (Kepres).

In line with the principle of non-profit, the rights of foundations are not as companies. Foundations in carrying out their activities do not seek profit, while companies clearly aim to seek profit. A number of institutions such as firms, CVs, limited liability companies, and cooperatives are companies. The description above shows that the foundation where it is domiciled is not a company, because the foundation's activities do not run a business and do not seek profit.

Research related to the functions and social objectives of a non-profit nature owned by foundations in Indonesia becomes necessary. The first argument, based on ancient Egyptian history and in some Western or European laws, a foundation is an agency intended to engage in non-profit activities in the social, humanitarian, and religious fields. Since the

beginning, foundations have been prohibited from carrying out any legal activities aimed at obtaining personal benefits for the founders or administrators of the foundation. This means that the founders and administrators of the foundation who established and managed the foundation from the beginning indeed had the intention and goal solely to help people who needed a helping hand. The presence of the foundation in general is a response to the paradigm of realizing a civil society that prioritizes justice and human rights, the goal of which is for public welfare, thus giving rise to the urge to form a body that has a social goal in order to be able to push towards the realization of public welfare (Kristianti, 2021). as an institution that has a noble purpose, in fact in practice and its development in Indonesia, many are misused and deviate from their original function and purpose as a non-profit social institution. In the establishment of a foundation that was originally a non-profit institution and aimed at social humanity, in reality it was used for the purpose of laundering the wealth of its founders and administrators which was obtained illegally. Many foundations were deliberately established as institutions that can take advantage of tax breaks. Educational or training institutions that choose the form of establishment in the form of a foundation that falls into the category of social activities, in reality are often used for those who pursue profits which are then used to enrich the founders.

Moreover, currently foundations in Indonesia often run business and commercial ventures with all aspects and manifestations. This is due to differences in arguments, on the one hand stating that there is no prohibition for foundations to conduct business activities so that foundations may do business in order to increase economic activities and open up employment opportunities. Arguments on the other hand state that although there are no rules prohibiting foundations from conducting business activities, in essence the purpose of foundations is not profit oriented but social oriented.

2. Research Method

Soemitro said that normative legal research is also called library legal research, because it is mostly carried out on secondary data found in libraries (R. H. Soemitro, 1990). An approach is a researcher's perspective in selecting a spectrum of discussion space which is expected to provide a clear description of the substance of a scientific work (Diantha, 2017). The data sources needed in this study were obtained from libraries and documents, through secondary data. According to Sugiyono, secondary data is a source of data that does not directly provide data to data collectors, for example through other people or through documents. In research, the sources of secondary data can be laws, books, journals, articles related to the research topic.

3. Results and Discussion

a. Rules For Providing Facilities For Reducing The Acquisition Fees For Rights To Land And Buildings Owned By Foundations After The Issuance Of Law Number 1 Of 2022

According to Article 18 of the 1945 Constitution of the Republic of Indonesia, Indonesia is a unitary state consisting of provinces which are further divided into districts

and cities. Each province, district, and city has its own regional government. The principle of regional autonomy is recognized in this Constitution, granting the rights, authorities, and obligations to these regions to regulate and manage government affairs and the interests of the local community within the framework of the Unitary State of the Republic of Indonesia. The rights, authorities, and obligations of regions to regulate have an important meaning because each region has the right and responsibility to formulate policies according to its needs and characteristics. This also reflects that each local entity has the same rights to manage public services in accordance with its duties and authorities that have been determined by applicable laws and regulations.

To support the rights, authorities, and obligations of regions in regulating government affairs and the interests of local communities, sufficient sources of funding are needed from regional economic potential. Lack of funding sources can threaten regional autonomy and increase the burden of responsibility of the Central Government in managing the Unitary State of the Republic of Indonesia.

Law Number 23 of 2014 regulates the strengthening of the authority of the implementation of autonomous regional government to improve public welfare through better services, empowerment, and active community participation. This also aims to improve regional competitiveness by paying attention to the principles of democracy, equality, justice, and regional characteristics within the framework of the Unitary State of the Republic of Indonesia. Regional government finances are key to their ability to provide public services and encourage development.

The granting of authority to regional governments is an important part of broad fiscal decentralization. In accordance with Article 18A paragraph (2) of the 1945 Constitution of the Republic of Indonesia, this involves fair and harmonious regulation in financial relations, public services, and the use of natural resources between the Central Government and regional governments in accordance with applicable laws. Regional autonomy aims to apply the principles of justice and harmony in financial management and public services throughout Indonesia. Article 23A of the 1945 Constitution stipulates that all taxes and other compulsory levies for the benefit of the State must be regulated by law. No economic burden may be imposed on the people without a clear legal basis. This provision is not only the legal basis for imposing taxes and other levies, but also reflects the philosophy of tax collection. This principle is in line with the principle of tax collection upheld in the United States, namely: "Taxation without representation is robbery." Similarly, in England, the principle that applies in tax collection is: "No taxation without representation."

The provisions contained in Article 23A of the 1945 Constitution of the Republic of Indonesia are the basis for regional governments to regulate their authority in exploring sources of local revenue in accordance with their potential through the tax collection

process. Currently, this authority is further regulated in Law Number 28 of 2009 concerning Regional Taxes and Regional Levies. Law Number 28 of 2009 replaces the previous Law, namely Law Number 18 of 1997 concerning Regional Taxes and Regional Levies, which has been amended by Law Number 34 of 2004 concerning Amendments to Law Number 18 of 1997 concerning Regional Taxes and Regional Levies. If observed, the comparison between Law Number 28 of 2009 concerning Regional Taxes and Regional Levies with the previous law shows an increase in the number of types of regional taxes and regional levies at the provincial and district/city levels. Currently, there are a total of 16 types of taxes (5 types for provinces and 11 types for districts/cities), and 30 types of levies, consisting of 14 types of general service levies, 11 types of business service levies, and 5 types of specific licensing levies). This means that there has been an increase of 5 types of taxes and 9 types of levies. It should be noted that the increase in the number of types of regional taxes and levies has a positive impact on increasing Regional Original Income. The addition of types of regional taxes and levies not only increases Regional Original Income, but also has an impact on increasing regional spending. Before Law Number 28 of 2009 concerning Regional Taxes and Regional Levies was enacted, the role of regional taxes and levies tended to decline, unable to meet the increasing spending needs. After the law was enacted, the percentage of regional taxes and levies to regional spending increased, indicating a positive relationship between the addition of types of regional taxes and levies with increased revenue and regional spending needs.

Regional Tax and Regional Retribution Revenue from the provincial, district, and city levels is only a portion of the total consolidated revenue between the central and regional governments, indicating the dominance of state revenue sources by the central government. This can increase regional dependence on the Central Government's Original Income, which threatens the spirit of government decentralization and regional autonomy. Limited regional revenue from Regional Tax and Regional Retribution results in limitations in Regional Original Income, which affects the ability of regions to meet their spending needs. Finally, efforts are needed to expand the collection base of Regional Tax and Regional Retribution for regional governments, especially at the district and city levels, through tax transfer from the central government.

It is necessary to strengthen the Regional Original Income instruments from taxes, levies, management of separated regional assets, and other sources of Regional Original Income to increase regional independence and achieve equitable public welfare. This step is in accordance with Law Number 23 of 2014 concerning Regional Government which adds to the affairs that must be handled by the regions, but there has been no change in the law regarding regional financial sources to finance these additional affairs.

A new policy is needed to consider regional performance and capacity in improving public services and strengthening fiscal decentralization. This is important to create an

effective and efficient allocation of national resources by regulating the governance of financial relations between the central and regional governments in accordance with the values of Pancasila and the 1945 Constitution of the Republic of Indonesia. As a concrete step, the President of the Republic of Indonesia has signed Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments (HKPD Law) on January 5, 2022. This law revokes Law Number 33 of 2004 concerning Financial Balance between the Central Government and Regional Governments and Law Number 28 of 2009 concerning Regional Taxes and Levies (PDRD Law). The goal is to equalize public services and improve the welfare of the people throughout Indonesia. To achieve this, financial relations between the central and regional governments are based on four main pillars: developing a tax system for efficient allocation of national resources, reducing vertical and horizontal inequality through Transfers to Regions (TKD) and financing regional debt, improving the quality of regional spending, and harmonizing fiscal policies for optimal public services and fiscal sustainability.

The implementation of the HKPD Law requires local governments to adjust their financial structure based on the previous legal framework of Law Number 33 of 2004 and the PDRD Law. This involves updating the TKD policy that is oriented towards performance, efficiency of the regional tax system, development of regional financing schemes, improvement of spending quality standards, and harmonization of spending between the central and regional governments. Local governments also need to pay attention to the management of regional taxes and levies that were previously regulated by the PDRD Law which was revoked by the HKPD Law. The BPHTB rate is set at a maximum of 5% (five percent). The BPHTB rate is set by Regional Regulation. The amount of the principal BPHTB owed is calculated by multiplying the BPHTB tax base after deducting the acquisition value of non-taxable taxable objects, by the BPHTB rate. The BPHTB owed is collected in the Regional area where the land and/or building is located.

When the BPHTB is due:

- a. on the date the sale and purchase agreement for the sale and purchase is made and signed;
- b. on the date the deed for exchange, grant, testamentary grant, inclusion in a company or other legal entity, separation of rights resulting in transfer, business merger, business amalgamation, business expansion, and/or gift is made and signed;
- c. on the date the beneficiary or the person authorized by the beneficiary registers the transfer of his/her rights to the land office for inheritance;
- d. on the date of a court decision that has permanent legal force for a judge's

decision;

- e. on the date of issuance of a decree granting rights for granting new rights to land as a continuation of the release of rights;
- f. on the date of issuance of a decree granting rights for granting new rights outside the release of rights; or
- g. on the date of appointment of the auction winner for the auction.

Based on the arguments above, there is actually no significant difference between the BPHTB Law and the HKPD Law regarding BPHTB. The transfer of BPHTB from the Center to the regions is a shift in taxation power as a result of fiscal decentralization, because every authority that is transferred or delegated must be accompanied by the transfer of financing or basically the principle of "money follows function". The goal is to increase Regional Original Income (PAD) and improve regional accountability.

b. Synchronization Of The Implementation Of Law Number 1 OF 2022 With The Regent Regulation/Mayor Regulation On The Provision Of Bhtb Reduction Facilities To Foundations In North Sumatera

Article 1 number 20 of Law Number 1 of 2022 concerning Financial Relations Between the Central Government and Regional Governments stipulates that Regional Original Income, hereinafter abbreviated as PAD, is Regional income obtained from regional taxes, regional levies, results of managing separated regional assets, and other legitimate regional original income in accordance with laws and regulations.

Regional taxes based on the provisions contained in Article 1 number 21 of Law Number 1 of 2022 are mandatory contributions to the Region owed by individuals or entities that are coercive based on the Law, without receiving direct compensation and are used for Regional needs for the greatest prosperity of the people. One of the taxes collected by the district/city government is BPHTB. Starting in January 2011, the central government transferred its management of the BPHTB tax to the regional government. The transfer of BPHTB from the central government to the district/city regional government based on Law Number 28 of 2009 concerning Regional Taxes and Regional Retributions which was followed up by Joint Regulation of the Minister of Finance and Minister of Home Affairs Number: 186/PMK.07/2010 and Number 53 of 2010 (Arbayah, 2017).

Changing the Land and Building Acquisition Fee (BPHTB) from a central tax to a regional tax is a strategic step in implementing fiscal decentralization in Indonesia. In addition to having strong technical reasons, the transfer of BPHTB to a regional tax can increase Regional Original Income (PAD) as one way to improve the quality of regional spending. Improving the quality of regional spending, which refers to more effective and efficient spending and better allocation of resources, will have a positive impact on improving the quality of public services. Improving the quality of public services, which

is one of the main objectives of the regional autonomy policy, directly contributes to efforts to improve public welfare.

Article 85 paragraph (4) of Law Number 28 of 2009 concerning Regional Taxes and Regional Retributions regulates that one of the objects that is not subject to BPHTB is letter f, namely individuals or bodies used for religious purposes. In Law Number. 1 of 2022 concerning Financial Relations Between the Central Government and Regional Governments, it is regulated in Article 44 paragraph (4) that what is excluded from the BPHTB object is the Acquisition of Land and/or Building Rights:

- a. For government offices, regional governments, state administrators and other state institutions that are recorded as state property or regional property;
- b. By the state for the implementation of government and/or for the implementation of development for the public interest;
- c. For international institutions or representatives on the condition that they do not run a business or carry out other activities outside the functions and duties of the institutions or representatives as regulated by the Ministerial Regulation;
- d. For diplomatic representatives and consulates based on the principle of reciprocal treatment;
- e. By individuals or entities due to conversion of rights or due to other legal acts without any change of name;
- f. By individuals or entities due to endowments;
- g. By individuals or entities used for religious purposes; and
- h. For low-income communities in accordance with the provisions of laws and regulations.

The provisions governing the exemption or reduction of BPHTB are contained in Law Number 28 of 2009 concerning Regional Taxes and Regional Retributions which were later declared no longer valid with the issuance of Law Number 1 of 2022 concerning Financial Relations Between the Central Government and Regional Governments. This means that both laws and regulations still provide facilities for relief or exemption from BPHTB, which are regulated through regent regulations (perbup) or perwal (mayor's representative). The Province of Sumatra, which has 25 regencies and 8 cities, in implementing the provision of BPHTB reduction facilities for individuals or bodies used for worship purposes, there are 3 categories, namely there are regencies/cities that regulate the provision of BPHTB reduction facilities for houses of worship, some regulate BPHTB exemptions and some do not regulate it at all.

The ideals and goals of the Indonesian nation to realize prosperity, justice, and progress are carried out through a legal system that functions as a means to determine the steps taken by the government in achieving these goals, by regulating the procedures, principles, and norms that regulate social, national, and state life in a fair, transparent,

and just manner. Laws (UU) are one of the key elements and very important tools in the process of realizing legal reform, because laws are binding, coercive, provide legal certainty, and occupy the highest position in the hierarchy of the legal system in Indonesia. With its strong legal force, laws provide a solid foundation for the implementation and enforcement of fair laws, respond to changes in society, and ensure the sustainability of a just and effective legal system. Laws (UU) are the result of an agreement in the political process, which is influenced by economic, social, and cultural factors. The role of politics in the social, economic, and cultural contexts has a significant impact on the process of forming laws (M.D, 2018).

As a democratic constitutional state, legislation should be designed to respond to and address various national issues, without being influenced by the political interests of political parties and politicians in representative institutions. However, as a legal product, legislation is considered objective because the process of drafting it is carried out in accordance with legal principles by representative institutions. Legislation can be defined as a collection of written regulations containing generally binding legal norms, and is formed or stipulated within the framework of legislation. The government's efforts to increase tax revenue have resulted in policies that collaborate synergistically with taxpayers. One of these policies is the Law on Harmonization of Tax Regulations Number 7 of 2021 (UU HPP) which was passed, announced, and enforced by the Government on October 29, 2021. This regulation is seen as a milestone in building a fair, healthy, effective, and accountable taxation system. The implementation of this regulation is expected to lead Indonesia towards achieving the nation's ideals, because a developed country is a country that is supported by a fair, healthy, effective, and accountable taxation system (Mokhlas, 2022).

One of the taxes levied on citizens is the Land and Building Acquisition Tax. Article 1 number 37 stipulates that what is meant by Land and Building Acquisition Tax is a Tax on the acquisition of land and/or building rights. Article 1 number 39 Land and/or Building Rights are rights to land, including management rights, along with the buildings on it, as referred to in the law in the field of land and buildings.

Based on the provisions contained in Article 44 paragraph (6) of the HKPD Law above, there are no provisions for BPHTB reduction or exemption facilities for foundations. On the other hand, many regional regulations, regent regulations and mayoral regulations in North Sumatra still provide BPHTB reduction or even exemption facilities for foundations. This is because the regional regulations, regent regulations and mayoral regulations that have existed so far follow the laws and regulations before the HKPD Law came into effect. Of course, this reality gives rise to a lack of synchronicity or disharmony between one law and another. The problem of overlapping regulations between the central and regional governments is one of the various problems that exist.

The problem of regulations that are still lacking in terms of content and substance is caused by the uncontrolled number of regulations, the lack of a single authority in managing regulations, and the lack of understanding that causes disharmony in regulations. In addition, because of the many state institutions that have the authority to make laws, there is often a lack of conformity between one legal norm and another.

There are three main challenges in managing regulations in Indonesia today that need to be considered. First, when faced with what can be called "obesity" of regulations, both at the central and regional levels, which tend to hamper economic growth, especially private investment. The presence of too many regulations not only hampers the efficiency of public services, but also creates administrative complexity that is detrimental to business actors. Second, there is disharmony between regulatory products from various agencies at the central level. This can create difficulties in implementing regulations and reduce legal clarity. Third, there is disharmony between regulatory products from agencies at the central level and regulations at the regional level, both in terms of substance and drafting techniques. This problem can result in legal conflicts and difficulties in achieving regulatory consistency nationally. Issues related to the quality and quantity of regulations in Indonesia have attracted the attention of many parties, including international institutions, which consider it one of the challenges that need to be overcome to increase the country's competitiveness and economic stability.

Lack of coordination between institutions is often the main cause of disharmony in legislation, where each institution has its own interests in making rules. The importance of serious attention to regulatory arrangements in Indonesia is becoming increasingly urgent. The impact of disharmony in legislation includes legal uncertainty as a major problem. Moreover, when regional autonomy was implemented after the 1998 reformation, many regulations were issued by regional governments, resulting in disharmony between legislation, both from laws and regional regulations. The paradigm shift in the implementation of regional governance, from a centralized pattern to a decentralized pattern in Indonesia, has resulted in two significant consequences. On the one hand, there has been a significant increase in the transfer of authority from the central government to regional governments. On the other hand, regional governments are given broad authority to regulate and manage their own households autonomously. One of the main pillars of regional autonomy is the authority of regions to manage regional finances independently. As a Unitary State of the Republic of Indonesia, Indonesia adopts an approach that combines elements of recognition of regional authority to manage its own finances with fiscal transfer policies and supervision of regional fiscal policies.

Article 236 paragraph (3) of Law Number 23 of 2014 concerning Regional Government states that Regional Regulations are written documents that attributionally grant autonomy rights to regions. Each region has the authority to formulate Regional

Regulations as part of the task of organizing regional government. As the organizer of government at the local level, the regional government is also responsible for understanding the needs of the community in its region. This is reflected in the material regulated in the Regional Regulation, which aims to accommodate these needs. The material in the Regional Regulation is designed to support the implementation of regional autonomy and assistance tasks, as well as to explain in more detail the provisions regulated in the laws and regulations that apply at a higher level. Like other types of laws and regulations, there are generally several stages that must be taken in forming a Regional Regulation starting from planning, drafting, discussion, ratification, promulgation and dissemination. At the stage of drafting the Regional Regulation, there are a series of activities known as harmonization. The process of implementing the harmonization of Regional Regulations is not only based on the provisions of the law, but is also regulated by Presidential Regulation Number 87 of 2014 as the implementing regulation of Law Number 12 of 2011. In addition, technically, there is also a regulation of the Minister of Law and Human Rights Regulation Number 22 of 2018 which requires the involvement of functional designers in the harmonization process to form regulations in the regions. Harmonization of Regional Regulations involves a series of comprehensive steps and follows the provisions of the law that have been set.

The laws and regulations issued are limited to joint ministerial regulations, namely the Minister of Home Affairs and the Minister of Finance, aimed at overseeing the process of transferring Rural and Urban Land and Building Tax (PBB-P2) and Land/Building Acquisition Fee (BPHTB). It should be noted that Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments not only regulates PBB-P2 and BPHTB, but also various types of other regional taxes and levies. This situation often causes confusion for Regional Governments in formulating implementing regulations for a Regional Regulation. For example, related to the technicalities of granting relief, the mechanism for imposing administrative sanctions or fines, and the authority to issue letters of compulsion or carry out confiscations. This problem arises because there are no technical guidelines for Regional Governments in formulating their technical regulations. In Law Number 1 of 2022, too much authority is given to Regional Heads in making technical regulations without being accompanied by technical guidelines in their preparation. This condition can allow for administrative abuse of authority, so that it does not meet the principle that it can be implemented properly because it is considered to not take into account the effectiveness of this law from a legal perspective for stakeholders, especially the Regional Government. There are still many regional regulations that regulate the provision of facilities for reducing and exempting BPHTB for foundations in the BPHTB Law. The issuance of the HKPD Law does not provide the same facilities for foundations. Almost all regional regulations,

regent/mayoral regulations still provide facilities for reducing and/or exempting BPHTB for foundations. This means that in this case synchronization is needed.

Alignment and harmonization of laws and regulations is the process of coordinating various regulations related to existing regulations and those being drafted to regulate a particular field. The purpose of this synchronization is so that the substance regulated in the legislation does not overlap, but rather complements each other, is related, and is increasingly detailed. This activity aims to create a regulatory basis that provides adequate legal certainty for the implementation of the field efficiently and effectively.

c. Legal Certainty Of The Rules For Providing Bphtb Reduction Facilities To Foundations In North Sumatera After The Issuance Of Law Number 1 OF 2022

In the context of its practice in Indonesia, the foundation functions as the main institution that realizes social concern for the community. The important role of the foundation is reflected in the various programs implemented, where the majority of these programs focus on social, community, and humanitarian aspects. These programs cover various fields, such as education, health, economic empowerment, disaster relief, and child protection. Through these activities, the foundation seeks to address various social challenges faced by the community, as well as improve the welfare and quality of life of the less fortunate. The foundation also often collaborates with the government, non-governmental organizations, and the private sector to expand the reach and impact of the programs it runs. The foundation not only acts as an implementer of social programs, but also as a strategic partner in sustainable social development. The existence of foundations in Indonesia shows a strong commitment from various parties to contribute to creating a more just, prosperous, and socially just society.

This foundation is formed or managed by individuals or groups who come from various levels of society, reflecting the diversity of social, economic, and cultural backgrounds. The people involved in the formation and management of this foundation have a similar vision and mission, namely being committed to carrying out activities that are beneficial to the wider community. This common goal is based on a collective awareness to care for and help each other, demonstrating a sense of shared responsibility in facing various existing social problems.

The founders and managers of these foundations generally have a high level of concern for issues such as education, health, social welfare, and community empowerment. People who work with a spirit of mutual cooperation and solidarity, strive to create positive change through programs specifically designed to address the most pressing needs of the community. Through these efforts, the foundation serves as a bridge connecting the good intentions of individuals or groups with real actions that have a direct impact on improving the quality of life of the communities served. Ultimately, this forms a platform where social concerns can be carried out together.

The revocation of the facility for granting relief or exemption from Land and Building Acquisition Tax (BPHTB) has a legal impact on the exclusion of foundations as tax objects that receive the BPHTB reduction or exemption facility. Consequently, foundations now face a heavier burden in paying BPHTB, a burden that could previously be reduced or eliminated through the revoked facility. In fact, these foundations generally have social objectives and are not business entities seeking profit to support their operations and sustainability. Foundations often operate with limited funds and rely on donations and assistance to carry out their social activities, such as education, health, and humanitarian assistance. As a result, this additional tax burden can reduce their ability to provide services to communities in need, and overall is contrary to the social and humanitarian objectives they uphold.

Foundations exist as a forum whose main objective is to achieve various social goals. The social goals carried out by these foundations are one of the reasons underlying the government to provide tax reduction and/or exemption facilities such as BPHTB. This facility is provided as a form of support to foundations in carrying out their mission to improve community welfare and make positive contributions to social development in various sectors, such as education, health, and environmental conservation. The existence of foundations is not only as a legal entity, but also as a strategic partner in the government's efforts to strengthen social capacity and achieve inclusive and sustainable development goals. The fact that foundations are not regulated as parties receiving facilities for reduction or exemption from Land and Building Acquisition Tax (BPHTB) is due to changes in the orientation of foundations at this time. Foundations are no longer entirely social in purpose, but are more directed towards pure business activities, as seen in the schools, colleges, and hospitals they manage. These foundations, although legally non-profit, often operate with a business model that generates significant profits. This makes foundations more focused on financial aspects and operational sustainability, rather than just running social programs alone.

The collection of BPHTB or other taxes on educational foundations or hospitals is due to the fact that the activities carried out by the foundation are no longer in accordance with the original intent and purpose of the foundation as stated in the Articles of Association/Bylaws (AD/ART). Theoretically, a foundation is established on the principle of not seeking profit and the activities it carries out are intended to serve the public interest and improve the welfare of the community. In practice, many foundations now focus more on financial gain than on social services, as seen in the operations of the schools, colleges, and hospitals they manage. Although legally non-profit, many foundations have adopted a business model that optimizes income, resulting in them engaging in economic activities that generate significant profits. This is the reason why the government requires the collection of taxes on these foundations, considering that

their orientation is no longer exclusively serving social interests. As a result, the government sees the need to impose Land and Building Acquisition Tax (BPHTB) and other taxes on foundations that carry out activities such as schools, colleges, and hospitals that are business-oriented. This step aims to ensure that foundations that actually operate like business entities continue to provide fair tax contributions to the state, in accordance with the income they generate from their business activities. This means that even though the foundation is a non-profit legal entity, if its activities are more profit-oriented than social interests, they are not entitled to tax reduction or exemption facilities that are usually given to non-profit entities that are purely engaged in social activities or public services.

This step is also an effort by the government to encourage transparency and accountability in the management of foundations, as well as to ensure that only foundations that truly carry out their social missions benefit from tax facilities. This is important to maintain the integrity of the tax system and to ensure that state resources are used effectively to support activities that truly have a positive impact on the wider community. The enactment of Law Number 1 of 2022 concerning HKPD (previously Law Number 28 of 2009 concerning Regional Taxes and Regional Retributions (UU PDRD), Law Number 18 of 2010 concerning Land Acquisition Fees), then the regional government obtains an expansion of regional tax objects as a source of additional income in the implementation of development and other government affairs. As an instrument that provides rights to BPHTB taxpayers through the PDRD Law and the BPHTB Law, in November 2011, the Government implemented and provided facilities in the form of exemptions, reductions and relief for BPHTB. Based on the orders of the two laws, all regions are required to create regional regulations and regent/mayor regulations as implementing regulations.

The community establishes a foundation to carry out social activities. This social activity is not based on pity, but because of the sense of humanity that it has. As theories about social values say that humans are *homo homini socius* creatures. The community that establishes a foundation means that in society there are still those who care about human values. Caring for fellow people who have social problems. Through this foundation, the community puts its sense of care to channel its social responsibility to fellow human beings.

The central government has the authority to hand over some of its powers to the regions based on the right of autonomy, known as a unitary state with a decentralized system. In this system, regional governments are given the authority to regulate and manage certain government affairs independently according to the needs and conditions of each region. Although this authority is given, in the final stage the highest power remains in the hands of the central government. This means that the central government

still has full control and can take over or rearrange the authority that has been handed over to the regions if deemed necessary for the national interest or in an emergency situation. Another meaning, even though there is regional autonomy, the integrity and unity of the country are maintained under a strong central government (Budiardjo, 2003).

The principle of a unitary state is that the central government holds the highest power over all state affairs without any delegation or delegation of power to the regional government. In practice, the system built within the framework of the state mandates the division of affairs to the regional government. This reflects an effort to provide autonomy to the regional government in managing local affairs that are closer to the needs and dynamics of the local community, although it remains within the limits and framework set by national laws and regulations. The existence of regional governments is directed to accelerate the realization of community welfare through various efforts, such as improving more efficient and effective public services, empowering communities to be more independent and competitive, and encouraging community participation in the regional development process. In addition, regional governments also play a role in increasing regional competitiveness through optimal resource management, innovation, and development of local potential that can provide added value to the region. Based on these conditions, regional governments are given attribution and delegation authority by the central government to establish Regional Regulations (Perda) and various other regulations needed in implementing regional autonomy and carrying out assistance tasks.

This authority allows regional governments to make decisions that are appropriate and in accordance with the conditions and needs of their respective regions, so that they can be more responsive to local problems and challenges. The implementation of regional autonomy is expected to support the achievement of national development goals in a more equitable and sustainable manner, while still referring to the principles of decentralization that have been established. The basic principle used by regional governments in the process of making Regional Regulations (Perda) is to carefully consider the contents of the Perda in order to implement regional autonomy effectively and efficiently. Regional governments must ensure that the contents of the Perda are in accordance with the specific characteristics and needs of their respective regions, so that the Perda can be truly relevant and beneficial to the local community. In addition, it is very important that the Perda that is made does not conflict with laws and regulations that have a higher degree, such as national laws, government regulations, and presidential decrees, to ensure legal harmony and consistency at all levels of government.

Regional regulations serve as an operational basis for the authority of regional governments to regulate various aspects of community life in their regions, including the rights and obligations of citizens. With the existence of regional regulations, regional

governments can establish more specific and detailed rules that are in accordance with the local context, so that they can address problems that may not be regulated in detail by regulations at a higher level. Regional regulations are also expected to strengthen public service functions by bringing these services closer to the community, so that the community can more easily access the services they need. In implementing regional regulations, regional governments have an obligation to ensure that the process of making and implementing them is transparent and participatory, involving various stakeholders, including the community, so that the resulting regional regulations truly reflect the aspirations and needs of the community. Thus, it is hoped that regional regulations will not only be a tool for regulation but also a means to improve the quality of life of the community, strengthen public participation, and accelerate sustainable regional development. In an effort to make national development a success, financing is needed from domestic revenues and foreign loans. Significant development funds are needed to achieve the success of these programs. The central government cannot continue to rely on foreign loans, because this can worsen the economic conditions and welfare of the community. Based on these conditions, it is very important to continue to explore, develop, and optimize the role of financing sources from domestic revenues for the survival of the nation. Indonesia has two main sources of state revenue, namely tax revenue and non-tax revenue.

In its development, the Regional Tax and Regional Retribution Law (PDRD Law) was finally revoked and replaced by Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments (HKPD Law). One of the main implications of the revocation and replacement of the PDRD Law with the HKPD Law is a significant change in regional tax regulations. This change covers various aspects of tax regulations and policies that are more comprehensive and structured. One of the main objectives of this regulatory change is to increase regional fiscal independence. This improvement is attempted by granting broader and more flexible authority to regional governments in collecting tax options. This tax option covers various types of taxes managed at the provincial and district/city government levels, including Motor Vehicle Tax (PKB), Motor Vehicle Transfer Fee (BBNKB), and Non-Metallic Mineral and Rock Tax (MBLB Tax). By granting the authority to collect tax options to regional governments, it is hoped that each region can be more fiscally independent and have a stable and sustainable source of income. This income can then be used to support various development programs and better public services, so that it can ultimately improve the welfare of society as a whole.

Regional governments can determine and impose various types of regional taxes according to their economic potential. This can happen if the regional government has autonomy in determining the types of taxes to be imposed, without interference from

higher government agencies. To ensure that regional governments are able to optimize regional tax collection in their areas, it is important to consider the types of regional taxes that are appropriate in order to maintain efficiency and effectiveness in the tax collection process. One of the regional taxes regulated in laws and regulations in Indonesia is the Land and Building Acquisition Fee (BPHTB). Before the issuance of Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments, there were facilities for reducing or even exempting BPHTB for bodies or individuals who provide worship facilities. Then, this was followed by the implementation of regional regulations (perda) regulating these facilities, both regarding the reduction or exemption of BPHTB for bodies or individuals who provide worship, education, and health facilities. Until now, several regions in Indonesia still use various legal products such as regional regulations (perda), regent regulations (perbup), and mayoral regulations (perwal) to provide facilities for reducing or exempting Land and Building Acquisition Fees (BPHTB) for the foundation. This indicates legal uncertainty in the implementation of laws related to this matter.

4. Conclusion

The regulation on the provision of facilities for reducing or exempting BPHTB owned by foundations is an order from Law Number 28 of 2009 concerning Regional Taxes and Regional Levies, which was then followed by the issuance of Law Number 21 of 1997 in conjunction with Law Number 20 of 2000 concerning Amendments to Law Number 21 of 1997 concerning Land and Building Acquisition Fees. In these laws and regulations, it is stated that there are facilities for reducing or exempting BPHTB for people or bodies that have worship facilities. Then, as a follow-up to the related laws and regulations, there must be derivative regulations that must be made by the regional government, for the implementation of reducing or exempting BPHTB for the bodies or persons in question, as well as the objects and rates of the relief. The issuance of Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments (HKPD) has removed this facility, but until now there are still many regional regulations that have not revoked the existence of facilities for reducing or exempting BPHTB. When examined from the perspective of justice, especially social justice, the occurrence of disparities in various regional regulations related to the provision of BPHTB relief or exemption facilities for foundations, shows that there has not been an understanding from each regional government to create a uniform regional regulation. In fact, every district/city in North Sumatra is certain to have a foundation that is established.

There are still many local governments in North Sumatra that have not shown any signs of disobedience to the law. This means that some of the local regulations that regulate the provision of reduction facilities still apply the old regulations, while on the other hand the new law does not regulate it at all. This means that there is no synchronization between higher and lower regulations, resulting in legal uncertainty in society. In fact, the existence of laws, normatively, aims for society to obtain legal certainty from the existence of these

laws.

Synchronization and harmonization of regulations related to taxation should be an important part of tax reform. Law Number 7 of 2021 concerning Harmonization of Tax Regulations is an important momentum for efforts to harmonize and synchronize taxation, including between laws and regulations and regional regulations (perda) related to taxation. Including perda that regulates the provision of BPHTB relief or exemption facilities for foundations

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