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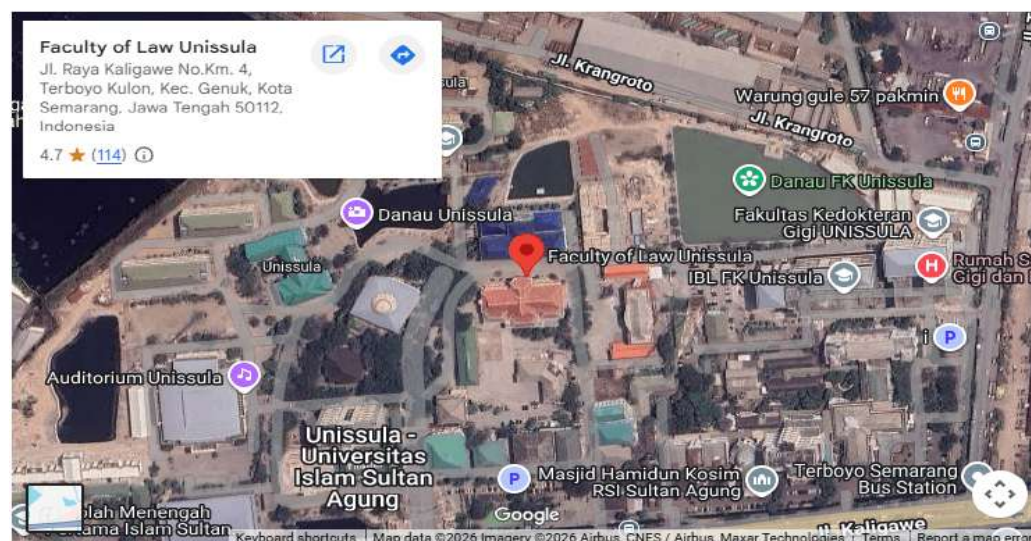
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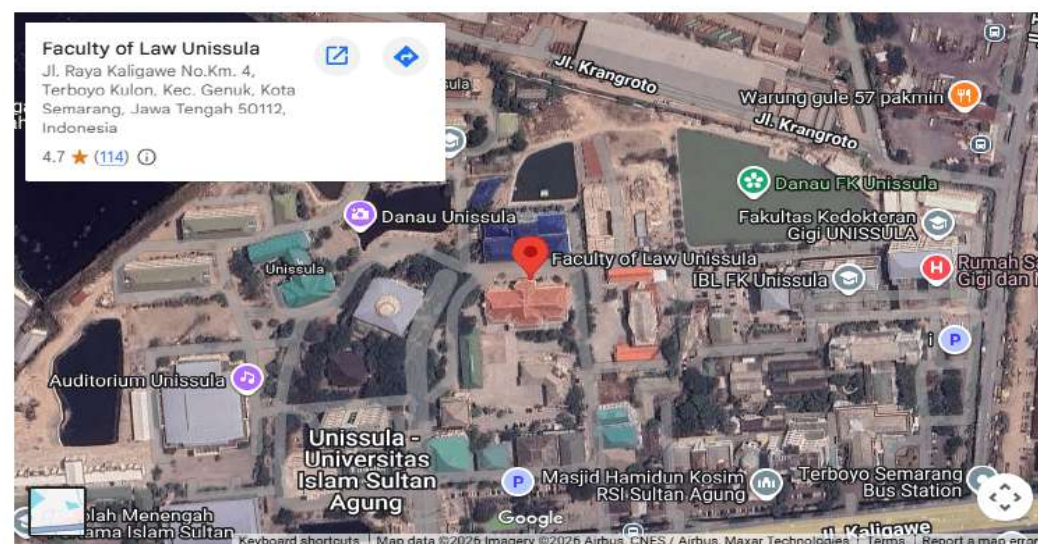
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Penulis : Dinda Keumala, Ignatius Pradipa Probondaru, Anda Setiawati, I Gede Yudi Arsawan, Wiratno Wiratno

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- The title is still too long, a maximum of 20 words.
- The abstract is too long, a maximum of 200 words.
- The keywords are not relevant, use keywords such as: Binding Sale, Purchase Agreement, and so on (Provide 5 keywords).
- The citations are still in the form of bodynotes, rearrange them using footnotes with Chicago style.
- The discussion in the Introduction section is too much and unclear, rearrange it in 1000 words.
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Quo Vadis Arrangement of Binding Sale and Purchase Agreement as Object of BPHTB

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Abstract

A Sale and Purchase Agreement (PPJB) is a preliminary agreement made by parties before a Notary prior to the execution of a Sale and Purchase Deed (AJB) before the Land Deed Official (PPAT). This study examines the existence of PPJB regulation as the object of Land and Building Rights Acquisition Duty (BPHTB) payment, and identifies the factors causing inconsistencies in the normative regulation of PPJB transactions as BPHTB objects. This normative-descriptive research uses secondary data obtained through a literature study and qualitative analysis. The findings show that there are inconsistencies between the provisions stipulated in 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 for Regional Taxes and Regional Levies regarding the timing and object of BPHTB payment. Specifically, Article 49 letter a of Law No. 1/2022 determines BPHTB is due at the signing of the PPJB, while Article 18 paragraph (3) of PP No. 35/2023 stipulates different conditions, leading to regulatory disharmony. The inconsistency of the norms is caused by violations of the principles of hierarchical conformity and clarity of formulation in the formation of laws and regulations. Therefore, harmonization of regulations is needed to ensure legal certainty and protection for the parties involved in land and building transactions.

A Sale and Purchase Agreement (PPJB) is a preliminary agreement made by the parties before the Notary before the sale and purchase is carried out before the PPAT. PPJB was made because there are requirements that have not been fulfilled by the parties to make a Deed of Sale and Purchase. The problem in this study is how the existence of PPJB regulation as the object of payment of Land and Building Rights Acquisition Duty (BPHTB) and what factors cause the inconsistency of PPJB transaction regulation norms as the object of payment of Land and BPHTB. This research is a normative and descriptive type of research. Secondary data collection was carried out by literature study. Data analysis is carried out qualitatively, and the method of concluding is carried out in a deductive way. In conclusion, the existence of PPJB transaction regulation as the object of BPHTB payment is different between the provisions regulated in laws and government regulations and the factors that cause the inconsistency of the norms of regulating PPJB transactions as the object of BPHTB payment because in the formation of laws and government regulations do not meet the elements of the formation of good laws and regulations.

Keywords: *Acquisition of Land Rights, BPHTB, and Sale and Purchase Binding Agreement*

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~~1. Regulation, Sale and Purchase Binding Agreement, BPHTB, Acquisition of Land Rights~~

1. Introduction

Land is one of the necessities of human life that can be obtained in various ways. If the available land is state land, then the way to obtain it is to apply for rights to the State, but if the land is already owned by another person with a land right, then the way to obtain the right to the land can be done by transferring land rights.

The transfer of land rights can be carried out in two ways, namely switching for the sake of law and transferring land rights in the form of a transfer (Abaidata, 2023). The process of switching to land rights law can occur because of the inheritance process. With the death of

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a person, for the sake of the law, there is a transfer of rights and obligations from an Heir to his/her heirs (Muhammad Daud & Azahari, 2022). Meanwhile, the process of transferring land rights in the form of being transferred to a third party can occur with legal acts of sale and purchase, grants, exchanges, and division of common rights and income in the company (*inbreng*) (Dimas Surya Pratama & Nynda Fatmawati Octarina, 2022).

Land buying and selling is a legal act of transferring land rights for eternity, which is cash, light, and real. Cash is two acts that are carried out simultaneously, where the Seller hands over the right to his land to the Buyer, and the Buyer makes a payment to the Seller. The transfer of ownership is considered to have occurred as a result of a consensus (agreement) between the parties. Thus, the concept of consensualism in a purely causal system refers to the transfer of rights and agreements that are seen to have occurred (Fathoni et al., 2024). Meanwhile, the light refers to the act of buying and selling that is carried out in the presence of the authorized Land Deed Making Officer (hereinafter referred to as PPAT). PPAT makes a Deed of Sale and Purchase by the provisions of Article 37 paragraph (1) of Government Regulation number 24 of 1997 concerning Land Registration for Registration of Transfer of Land Rights. The definition of real conditions is the will to do the act of buying and selling, followed by the actual act. Under certain conditions, the sale and purchase of land can also include buildings on it provided that the building is a unit with the land, the building belongs to the land owner, and this is expressly stated in the sale and purchase deed.

In practice, the provisions of the [Basic Agrarian Law](#) atau [Law No. 5 of 1960 concerning Basic Agrarian Principles](#) (hereinafter referred to as UUPA) and Government Regulation number 24 of 1997 are considered to hinder where the sale and purchase of land and buildings cannot be carried out because there are several requirements for the signing of the Sale and Purchase Deed in front of PPAT that have not been met, for example: the certificate is still in the process of changing the name of the heir or the certificate is still in the process of being resolved. Similarly, in the property business, most of the properties offered are still in the process of construction, and the certificate management has not been completed. The difficulties experienced by developers gave rise to the birth of a *pre-project selling* system or buying and selling with an indent system, by making a down payment. To provide a legally binding agreement for the parties, a preliminary agreement is made, which contains an agreement to carry out a sale and purchase made in front of a notary as stated in a Deed of Binding Sale and Purchase Agreement (hereinafter referred to as PPJB).

In contrast to the sale and purchase of land which is light, cash and real, the characteristics of PPJB refer to the provisions of Book III of the Civil Code which adheres to the principle of consensualism where the agreement made has been born from the moment the agreement is reached which can be seen from the evidence of signatures from the parties. The signing of the PPJB has not brought results in the form of the transfer of ownership of land and buildings that are used as the object of the transaction (Dahlani & Marwenny, 2024). The position of the parties is still limited to prospective sellers and potential buyers. The transfer or transfer of ownership only occurs after the signing of the Sale and Purchase Deed as required by the provisions of the UUPA and Government Regulation number 24 of 1997, which is based on customary law, which is light and cash.

Currently, the legal regulation that regulates PPJB is the Regulation of the Minister of Public Works and Public Housing Number 11/PRT/M/2019 concerning the System of Preliminary Agreement for the Sale and Purchase of Houses. In Article 1 number 1 of the Minister of [Public Works and Housing PUPR](#), it is stated that the PPJB system is a series of agreement processes between each person and development actors (developers) in marketing activities outlined in the preliminary sale and purchase agreement or the binding agreement before the sale and purchase deed (AJB) is signed.

Furthermore, according to Article 1 number 2 of the Minister of [Public Works and Housing PUPR](#) Number 11/PRT/M/2019, PPJB is an agreement between the developer and

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prospective buyers to buy and sell houses or flats, which can be done before the construction of flats or in the construction process for single houses, and row houses stated in the notary deed. In another provision, namely Article 1 number 10 of Government Regulation Number 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Residential Areas, the PPJB system is interpreted as a series of agreement processes between each person and Development actors (developers) in marketing activities outlined in the preliminary sale and purchase agreement or sale binding agreement before the sale and purchase deed is signed. The meaning of PPJB according to Article 1 number 11 of Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Residential Areas is an agreement between the developer and each person to buy and sell houses or flats that can be carried out by the development actors before the construction of flats or in the construction process for single houses and row houses stated in the notary deed.

The issuance of regulations on PPJB as contained in Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Residential Areas is an implementation of Law Number 11 of 2020 concerning Job Creation, which aims to provide legal protection for consumers of houses and flats through strengthening PPJB regulations that were previously regulated by Ministerial regulations. In the provisions of Article 22A of Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Residential Areas, it is stated that the PPJB system consists of marketing and PPJB, where the requirements between marketing and PPJB differ from one another. The difference in requirements is intended to protect consumers of houses and flats and to strike a balance between developers and potential buyers.

The requirements for marketing as stipulated in Article 22C paragraph (1) of Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Residential Areas include, among others, requirements for certainty of space allocation, certainty of land rights, certainty of house ownership status, permits for the construction of houses or flats, and guarantees for the construction of houses or flats from the guarantee institution. The requirements for PPJB as stated in Article 22I paragraph (1) of Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Residential Areas must meet the requirements for certainty on: land ownership status, agreed matters, PBG, availability of facilities, infrastructure and public utilities and construction at least 20% (twenty percent).

As an agreement, PPJB made by the parties who will carry out land purchase and sale transactions contains an agreement on the land price, payment procedures, payment period, and when the implementation time of making the Sale and Purchase Deed will be carried out in front of PPAT (Khalda Athiyyah & Priadharsana, 2024). The PPJB deed itself is a type of "partij deed", which is a deed that contains the will and desires of the parties made before a Notary (Smaratungga et al., 2022). In making PPJB, the parties, including notaries, must not deviate from the general provisions of Book III of the Civil Code, such as the conditions for the validity of the agreement, the principles, and the basic principles of the law of the agreement. Although the parties, based on the principle of freedom of contract, are allowed to determine the content of the agreement on their own, the law, especially Article 1339 of the Civil Code, prohibits the parties from making an agreement whose content violates propriety, decency, and public order. After the PPJB process is completed, it will be followed up with the making and signing of the Sale and Purchase Deed.

Before the signing of the PPJB Deed, based on the provisions of Article 1 paragraph (1) letter b of the Government Regulation of the Republic of Indonesia Number 34 of 2016 concerning Income Tax on Income from the Transfer of Rights to Land and/or Buildings and the Binding Agreement on Sale and Purchase of Land and/or Buildings and its Amendments require the seller to pay Income Tax (hereinafter referred to as PPH) because the seller earns income from the signing of the PPJB Deed aforementioned. Meanwhile, the buyer is subject

to the Land and Building Rights Acquisition Duty (hereinafter referred to as "BPHTB"). BPHTB is a tax on the acquisition of land and/or building rights.

The regulation regarding when BPHTB is payable is different between what is regulated in Article 49 letter a of Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments and those regulated in Article 18 paragraph (3) of Government Regulation of the Republic of Indonesia Number 35 of 2023 concerning General Provisions for Regional Taxes and Regional Levies, where according to Article 49 letter a of Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between The Central Government and the Regional Government when BPHTB is payable is "on the date of making and signing the binding agreement for sale and purchase for sale".

Meanwhile, Article 18 paragraph (3) of Government Regulation of the Republic of Indonesia Number 35 of 2023 concerning General Provisions for Regional Taxes and Regional Levies stipulates that "if the sale and purchase of land and/or buildings does not use the binding agreement as referred to in paragraph (2) letter a, then the time when BPHTB is payable for sale and purchase is at the time of signing the sale and purchase deed". Article 18 paragraph (3) of Government Regulation of the Republic of Indonesia Number 35 of 2023 concerning General Provisions for Regional Taxes and Regional Levies apparently regulates things that are not regulated in Article 49 letter a of Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments, which only emphasizes the existence of buying and selling acts that are always preceded by PPJB, even though not all acts of buying and selling are preceded by the creation of a PPJB deed, so that the provisions stipulated in Article 18 paragraph (3) of Government Regulation of the Republic of Indonesia Number 35 of 2023 concerning General Provisions for Regional Taxes and Regional Levies have exceeded the provisions in Article 49 letter a of Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments, In fact, the regulations contained in a Government Regulation should be sourced directly from the Law.

Research conducted by *Sulistiyowati, Devarita, and Dewi Nadya Maharani on "Regulations of Buyer's Tax Imposition before Transfer of Land Rights"* (Sulistiyowati et al., 2023) Discussed the arrangement of BPHTB payments at the time before the transfer of land rights, while the discrepancy in the norms of regulation between Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments and Government Regulation of the Republic of Indonesia Number 35 of 2023 concerning General Provisions for Regional Taxes and Regional Levies was not explained in detail. In contrast to the study, this study is more problematic about the existence of PPJB transaction arrangements as the object of payment of Land and Building Rights Acquisition Duty (hereinafter referred to as BPHTB) and what factors cause the inconsistency of PPJB transaction arrangements as the object of payment of BPHTB in Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments with Government Regulation of the Republic of Indonesia Number 35 of 2023 concerning General Provisions for Regional Taxes and Regional Levies.

2. Research Methods

The type of research used in this study is normative. The data used in this study is sourced from both primary and secondary legal materials obtained through literature studies. Primary legal materials include Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments and Government Regulation of the Republic of Indonesia Number 35 of 2023 concerning General Provisions on Regional Taxes and Regional Levies. The type of research used in this study is normative; the data used in this study is sourced from primary legal materials and

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~~secondary legal materials obtained through literature studies~~ (Hafizhah et al., 2024). Secondary legal materials consist of legal journals, articles, books, related literature, as well as government and corporate documentation and official publications (Fitriani et al., 2024).

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~~Data analysis in this study is conducted qualitatively by systematically reviewing and comparing the relevant legal norms contained in Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments and Government Regulation Number 35 of 2023 concerning General Provisions on Regional Taxes and Regional Levies. The analysis involves examining the consistency and conformity of these regulations using the principles of statutory clarity and of formulation. Norms are compared by identifying similarities and differences in the provisions regarding the timing and object of BPHTB payments, as well as by assessing whether the lower regulations (government regulations) are in accordance with and do not exceed the authority provided by the higher law. The deductive method is then used to draw conclusions from these comparisons and analyses. The findings and recommendations formulated from this process are expected to provide valuable guidance for policymakers and legal practitioners in addressing issues related to the regulation of PPJB transactions as objects of BPHTB payment and the factors causing normative inconsistencies in these regulations. Data analysis is carried out qualitatively, while the method of concluding is carried out in a deductive way. The results of the data analysis will be used to formulate findings and recommendations in this study, which is expected to provide valuable guidance for policymakers and legal practitioners in dealing with issues related to the existence of PPJB transaction arrangements as the object of payment of Land and Building Rights Acquisition Duty (BPHTB) and the factors that cause the non-conformity of PPJB transaction regulation norms as the object of payment of Land Rights Acquisition Duty and Buildings (BPHTB) in Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments and Government Regulation of the Republic of Indonesia Number 35 of 2023 concerning General Provisions on Regional Taxes and Regional Levies (Muhadar, 2024).~~

3. Analysis and Discussion

3.1 Existence of PPJB Transaction Regulation as an object of BPHTB

PPJB, as a preliminary agreement made by the parties, can be made with a deed under hand or with an authentic deed made by and before a Notary. Regardless of the form in the form of an authentic deed or a deed under hand, Article 1319 of the Civil Code requires that every agreement is subject to the general provisions of Book III of the Civil Code, such as the conditions for the validity of the agreement as stipulated in Article 1320 of the Civil Code which contains the conditions for the existence of an agreement from the parties, the ability to make an engagement, a certain matter and a halal causa or cause. Through the principle of freedom of contract, the parties in the PPJB are given the freedom to determine the form and content of the agreement, although the content does not necessarily provide justice for parties whose positions are weak such as home or flat consumers, considering that in practice the PPJB document has been prepared in advance by the party with a stronger position (no bargaining power).

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The authority of the Notary to make authentic deeds is regulated in the provisions of Article 15 paragraph (1) of Law of the Republic of Indonesia Number 30 of 2004 concerning the Notary Position as amended by Law Number 2 of 2014 which reads: *"The Notary is authorized to make authentic deeds regarding all acts, agreements, and determinations required by laws and regulations and/or desired by interested parties to be stated in authentic deeds, guarantee the certainty of the date of making the deed, keeping the deed,*

providing grosse, copies and quotations of the deed, all of that as long as the making of the deed is not also assigned or exempted to other officials or other persons stipulated by law." Guided by these provisions, the notary will only make an authentic deed at the request of interested parties because the laws and regulations require it to be made by or before a Notary (Keumala, 2023).

In practice, there are two types of PPJB, namely PPJB with full payment (PPJB in full) and PPJB with non-payment (in installments). The difference between the two is that in PPJB with full payment, there is a clause granting power of attorney from the prospective seller to the prospective buyer, so that at the time of signing the Deed of Sale and Purchase, the seller no longer needs to come to the PPAT to sign the Deed of Sale and Purchase. The inclusion of the clause on the power of attorney is intended to protect the prospective buyer because the prospective buyer has paid off the payment, and the power of attorney is an absolute power of attorney that cannot be terminated for any reason. Such a power of attorney is not available in PPJB in installments. The next difference is the inclusion of a clause stating that PPJB will not be void due to the death of one of the parties but can also be binding on the heirs of the parties who agreed. In PPJB with non-payment or installments, there is usually a clause regarding the conditions if the sale and purchase are canceled in the middle of the road (Gundogdu, 2023). This is related to payments where, after the first stage of payment, for example, the payment is the right of the prospective seller or must be returned to the prospective buyer.

The provisions of Article 22H paragraph (3) of Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Residential Areas state that if a prospective buyer cancels the purchase of a house or flat not due to the fault or negligence of the development actor, then the development actor must return the payment he has received and deduct at least 20% (twenty percent) of the payment that has been received plus the tax fee that has been taken into account. Furthermore, Article 22H paragraph (4) of Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Residential Areas states that for the purchase of a house made in installments, if the home ownership credit submitted by the prospective buyer is rejected by the bank or financing company, then the development actor is obliged to return the payment that has been received and deduct 10% (ten percent) of the payment that has been received plus tax fees that have been taken into account.

Departing from the provisions of Article 22H paragraphs (3) and (4) of Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Residential Areas, related to the imposition of BPHTB, it is implied that at the time of PPJB, prospective buyers are required to pay taxes, including BPHTB. This can be seen from the phrase "tax costs that have been calculated". The arrangement of PPJB as an object of BPHTB consists of:

- 1) Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and the Regional Government

This Law comes into effect on January 5, 2022 by repealing the previously applicable Law, namely Law of the Republic of Indonesia Number 28 of 2009 concerning Regional Taxes and Regional Levies (hereinafter referred to as the "PDRD Law"). BPHTB is included in the Regional Tax, which is a tax collected by the Regional Government. Regional taxes and regional levies are important sources of regional revenue to finance

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regional development. To improve services to the community, the government, through the PDRD Law, has expanded the objects of regional taxes and regional levies, as well as provided discretion in determining the rates. Optimizing regional revenues derived from regional taxes and regional levies is a hope and, at the same time, a solution to one of the regional financial problems (Sudeska et al., 2023).

Based on the provisions of Article 1 number 21 of Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments, the meaning of Regional Tax is "a mandatory contribution to the Region that is owed by an individual or entity that is coercive based on the Law, by not getting a direct reward and is used for Regional purposes for the maximum prosperity of the people".

The main components of a region's revenue come from Regional Original Revenue (hereinafter referred to as PAD) and Central Government Transfer Revenue. PAD consists of Regional Taxes, Regional Levies, Results of Segregated Regional Wealth Management, and other valid PAD. Meanwhile, the Central Government's Transfer Revenue comes from the Tax Revenue Sharing Fund, the Natural Resources Revenue Sharing Fund, the General Allocation Fund (hereinafter referred to as DAU), and the Special Allocation Fund (hereinafter referred to as DAK) (Utami et al., 2023).

According to the 2022 Macroeconomic Framework and Fiscal Policy Principles (hereinafter referred to as KEM-PPKF 2022) document, Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments is intended to develop the regional tax system, minimize vertical and horizontal inequality through transfer policies to the regions, encourage the improvement of the quality of regional spending and maintain fiscal sustainability promptly. Joint between the Central Government and the Regional Government (Wibowo et al., 2022).

Changes to regional tax policies in Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments are carried out with a *top-down* approach in the context of fiscal decentralization. This means that the regional tax policy confirms the policy narrative and is developed to maintain national economic stability and efficient resource allocation by the government (Purnomo et al., 2022).

The definition of acquisition according to the Great Dictionary of Indonesian is something that is obtained; income; yield, while the definition of "acquisition of land and/or building rights is a legal act or event that results in the acquisition of land and/or building rights by an individual or entity." What is the Object of BPHTB is the Acquisition of Rights to Land and/or Buildings and what is included in the acquisition of rights to land and/or buildings, one of which is due to the transfer of rights in the form of buying and selling. When BPHTB is payable in Article 49 letter a of Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments, it is stipulated that the legal act of buying and selling is on the date of making and signing the PPJB for buying and selling.

- 2) Government Regulation of the Republic of Indonesia Number 35 of 2023 Concerning Provisions of General Regional Taxes and Regional Levies

From June 16, 2023, the Government Regulation of the Republic comes into force Indonesia Number 35 of 2023 concerning General Provisions for Regional Taxes and Levies Regional as the implementing regulation of the Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and the Government Regions that will be the basis and guideline for Regional Governments in issuing Regional Regulations, Perkada, and/or other implementing regulations in the context of Tax and Levy Collection, including collection systems and procedures, while still considering the conditions and needs of each Region.

The basic provisions for the imposition of BPHTB regulated in Article 18 (1) of Government Regulation of the Republic of Indonesia Number 35 of 2023 concerning General Provisions on Regional Taxes and Regional Levies are the same as those regulated in the provisions of Article 46 paragraph (1) of Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments is based on the value of the acquisition of tax objects. However, when BPHTB is payable in Government Regulation of the Republic of Indonesia Number 35 of 2023 concerning General Provisions for Regional Taxes and Regional Levies, it is regulated differently from that regulated in Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments, where in Government Regulation of the Republic of Indonesia Number 35 of 2023 concerning General Provisions for Regional Taxes and Regional Levies, it is stipulated that when BPHTB is payable is stipulated at when the acquisition of land and/or buildings occurs with the provisions on the date of making and signing PPJB for Sale and Purchase. And if the sale and purchase of land and/or buildings does not use the binding agreement as intended in paragraph (2) letter a, when BPHTB is payable for sale and purchase is at the time of signing the sale and purchase deed.

Table 1. Regulatory Norms Problems When Owning BPHTB for Buying and Selling

Problems	Law Number 1 of 2022	Government Regulation Number 35 of 2023
When BPHTB is owed for buying and selling.	On the date of the conclusion and signing of the binding agreement for sale and purchase (Article 49 letter a).	- On the date of the conclusion and signing of the binding agreement for sale and purchase (Article 18, paragraph (2) letter a) - If the sale and purchase of land and/or buildings does not use the binding sale and purchase agreement as referred to in paragraph (2) letter a, the time when BPHTB is payable for sale and purchase is at the time of signing the sale and purchase deed (Article 18, paragraph 3).

The table above shows normative problems related to when the Land and Building Rights Acquisition Duty (BPHTB) becomes payable in land and building purchase and sale transactions, based on two main regulations: Law Number 1 of 2022 and Government Regulation Number 35 of 2023. According to Article 49 letter a of Law No. 1 of 2022, BPHTB is payable on the date of creation and signing of the Binding Sale and Purchase Agreement (PPJB). This provision is also adopted in Article 18, paragraph (2), letter a of Government Regulation No. 35 of 2023. This means that these two regulations basically agree that BPHTB has become an obligation since the existence of PPJB. However, Government Regulation No. 35 of 2023 adds further provisions in Article 18 paragraph (3), namely that if the transaction of buying and selling land and/or buildings does not use PPJB, BPHTB will be payable at the time of signing the Deed of Sale and Purchase (AJB) in front of PPAT. This additional provision is not explicitly regulated in Law No. 1 of 2022, thus causing potential disharmony and confusion in the field. This difference in arrangement shows that there is a lack of synchronization between laws and government regulations, especially related to the flexibility of the BPHTB payment mechanism in transactions that do not always begin with PPJB. This is one of the sources of debate and emphasizes the need for regulatory harmonization in order to create legal certainty for the parties to the transaction.

It is not appropriate for Article 49 letter a of Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments to stipulate that BPHTB is payable at the date of making and signing the PPJB, rather than at the time of making and signing the AJB before the authorized PPAT. This raises questions about situations where both the seller and the buyer agree to immediately execute a Sale and Purchase Deed (hereinafter referred to as AJB) without first making and signing a PPJB. Does this mean that every land sale and purchase must always be preceded by the making and signing of a PPJB before a Notary? Such a provision could create legal uncertainty in practice.

The ambiguity in the formulation of Article 49 letter a of Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments creates legal uncertainty, while legal certainty can be obtained through clear and specific legal texts. The principle of legality in civil law is interpreted as the basis for ensuring proper justice. Starting from its history, the idea of legality that is claimed to be able to provide legal certainty was born from the teachings of legism in the 19th Century. Quoting the opinion of a Dutch jurist, L.J. van Apeldoorn, the doctrine of legism is a movement that places the law as a logical system that can be applied to every case (Jansen, 2023). Therefore, to provide legal certainty, every law and regulation must contain clear and firm rules.

According to the perspective of adherents of analytical positivism, the measure of legal certainty is seen from the provisions in the law because, in the view of its adherents, such as John Austin, the law comes from positive law in the form of a law. One of the guidelines for ensuring the legal certainty of a regulation is the legal principles contained in it. According to Satjipto Rahardjo, legal principles are the "heart" of legal regulations (Ariyanti, 2019), so to be able to understand a regulation, it is very necessary to have a legal principle. In another opinion, Karl Larens said that legal principles are measures of ethical law that can provide direction in the formation of laws (Julyano &

Sulistiyawan, 2019). From these ethical demands, the function of the legal principle is as a bridge between legal regulations, social ideals, and the ethical views of society.

Gustaf Radbruch, in his book *"Introduction to Law"*, writes that there are 3 three) basic values in law, namely legal certainty, justice, and usefulness(Wandi, 2023). In the political dynamics in Indonesia, the issue of legal certainty is found in Article 28I paragraph (1) of the Second Amendment of the 1945 Constitution which reads: "... *The right not to be prosecuted based on retroactive law is a human right that cannot be reduced under any circumstances*", although the idea of legal certainty already exists in the Criminal Code. Legal certainty requires that the law can function as a regulation that must be obeyed. Of course, not only must the regulation be implemented, but the norms or content materials in the norms in the regulation must contain the basic principles of law. In the context of the Indonesian state of law, laws and regulations as written legal norms are the basis for state administration.

Certainty refers to definite conditions and clear conditions. The law must be clear and fair in essence. Both of these things are important because the law, as a guide to behavior, must support an order that is considered reasonable. Only with this justice and certainty can the legal function run properly. Legal certainty is a question that can only be answered normatively, not sociologically. Certainty includes several concepts, such as clarity, absence of multiple interpretations, consistency, and the ability to be implemented. The law must be applied firmly in society in a way that is easy to understand so that it can be understood by anyone. The laws must not contradict each other so as not to cause doubt among the public. Legal certainty refers to the clear, consistent, and consequential application of the law, which is not influenced by subjective factors. The importance of legal certainty is by Article 28D, paragraph (1) of the 1945 Constitution Third Amendment, which states that every individual has the right to fair legal recognition, protection, and certainty, as well as equal treatment in the eyes of the law (Mirza et al., 2023). Lon Fuller, in his book *The Morality of Law*, proposes 8 eight principles that must be fulfilled by the law to meet legal certainty. The principles are as follows:

1. A legal system consisting of regulations, not based on heretical judgments for certain matters;
2. The regulation is announced to the public;
3. It does not apply retroactively because it will damage the integrity of the system;
4. Made in a formula that is understood by the public;
5. There should be no conflicting rules;
6. It is not permissible to demand an action that exceeds what can be done;
7. It should not be changed frequently;
8. There must be consistency between the regulations and the day-to-day implementation.(Nur, 2023)

Both Law Number 1 of 2022 and Government Regulation Number 35 of 2023 do not provide an explanation about PPJB, which is subject to BPHTB collection, considering that in practice, there are 2 types of PPJB, namely, PPJB with full payment and PPJB with payment in installments or installments. If what happens is PPJB with installment payments, how do you pay the BPHTB? Does it follow each stage of payment from the buyer to the seller, or does BPHTB have to be paid in full at the beginning of the first time the PPJB is made and

signed? These things can bring legal uncertainty for the parties, as no arrangements are made in writing.

3.2 Factors causing the non-conformity of PPJB regulatory norms as an object of BPHTB

Lawmakers must always be committed to the country's goals in making laws. This is to ensure justice, benefits, and legal certainty for the community, which is always an inseparable part of every legal product produced (Abi Zaifa, 2024). The legal system is influenced by the prevailing political system (although it is also heavily influenced by historical traditions). The government of a country determines the legal framework within which the company does business, and often, the laws governing business reflect the dominant political ideology of the ruler. For example, totalitarian countries that tend to be collectivist tend to enact laws that severely restrict private companies, while laws enacted by governments in democracies where individualism is the dominant political philosophy tend to be pro-corporate and private consumers (Bryan et al., 2024).

Legal politics that produce good legal products must be supported by effective law enforcement, as legal politics cannot stand alone. Legal products are expected not only to resolve existing disputes but also to function as instruments of social engineering that shape and guide societal behavior (Setiyono et al., 2024). In Indonesia, the formal structure of legal policy is hierarchical, meaning that higher-level regulations with binding authority take precedence over lower-level regulations. This ensures that the legal system remains orderly and consistent in its application. In terms of substance, Indonesia's legal policies are generally structured according to the main sectors of life or the scope of authority of ministries and sectoral institutions (Purnomo & Gunadi, 2023). This sectoral approach allows each ministry or institution to regulate specific areas under its responsibility, ensuring that legal norms are tailored to the unique needs and challenges of each sector. However, it also highlights the importance of harmonization between different levels and sectors of regulation to prevent inconsistencies and overlaps that can undermine legal certainty and effectiveness.

The laws and regulations that are made must meet the principles of the formation of laws and regulations as stipulated in Articles 5 and 6 of Law of the Republic of Indonesia Number 12 of 2011 concerning the Establishment of Laws and Regulations. In the provisions of Article 5 of the Law, it is stated that 7 (seven) principles must be complied with in the formation of laws and regulations, namely:

1. Principle of clarity of purpose

Laws and regulations must have a clear goal to be achieved. This purpose must be explained in the consideration and explanation of the regulation so that every interested party can understand the purpose of the regulation.

2. Institutional basis or proper constituting office

The formation of regulations must be carried out by authorized institutions or officials by the provisions of higher laws and regulations. This ensures that every regulation is made by a party that has the competence and authority to do so.

3. Principle of conformity between types, hierarchy, and content material

Each type of law and regulation may only contain material that is appropriate to its type. For example, materials that contain general rules should be regulated in the law, not in the ministerial regulation.

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4. Principles can be implemented

Laws and regulations must be enforceable by paying attention to effectiveness and efficiency. The regulations must be realistic and applicable in real life with existing facilities and infrastructure.

5. Principle of usefulness

Laws and regulations must provide the greatest benefits to the community and must be able to achieve the expected goals. This aspect emphasizes the importance of effective regulation in solving the problems it faces.

6. Principle of clarity of formulation

Laws and regulations must be formulated in clear and easy-to-understand language so as not to cause multiple interpretations or confusion among the public who must comply with them.

7. The principle of openness

The process of forming regulations must be carried out transparently and involve community participation. This is important to ensure that the regulations made reflect the aspirations and needs of the community, as well as increase the legitimacy of the regulations.

In addition to the principle of forming good laws and regulations, there is also the principle of the content of laws and regulations explained in Article 6 of the same Law. This article states that the content of laws and regulations must contain the following principles:

1. The Principle of Protection

The content of laws and regulations must protect to create public peace. This means that regulations must be able to provide a sense of security and protect the rights and interests of the community.

2. Principles of Humanity

The content of laws and regulations must reflect respect for human rights and uphold the human values and dignity of every citizen and resident of Indonesia proportionately.

3. National Foundations

The content of laws and regulations must reflect the character and interests of the Indonesian nation, as well as strengthen the unity of the nation. This aspect prioritizes the values of nationalism and national integrity.

4. Family Basics

The content of laws and regulations must prioritize deliberation and consensus in every decision-making process. This reflects the values of togetherness and cooperation that are characteristic of Indonesian culture.

5. Principles of Necessity

The content of laws and regulations must pay attention to the interests of all regions of Indonesia and must not prioritize the interests of certain regions or groups.

In addition to the principles of the formation of good laws and regulations, Article 6 of the same Law also emphasizes the importance of the material principles of the content of laws and regulations. These principles include protection, humanity, nationality, family, and justice. The principle of protection requires that every regulation provide a sense of security and protect the rights and interests of the community. The principle of humanity demands that every regulation reflect respect for human rights and uphold the dignity of every citizen

proportionately. Meanwhile, the principle of nationality emphasizes the importance of reflecting the character and interests of the Indonesian nation and strengthening national unity. In addition, the principle of kinship requires that the decision-making process in laws and regulations prioritize deliberation and consensus, reflecting the value of togetherness that is a characteristic of Indonesian culture.

The principle of justice also emphasizes that regulations must pay attention to the interests of all regions of Indonesia without taking sides with certain groups or regions. In the context of PPJB and BPHTB regulations, the application of these principles is very important so that the resulting regulations are not only formally valid, but also fair, protect the community, and in accordance with the noble values of the nation. Inconsistency or disharmony between higher regulations and their derivatives, such as what occurred between Law No. 1 of 2022 and Government Regulation No. 35 of 2023, shows that the application of these principles has not been optimal in the formation of laws and regulations.

Regulations must reflect the spirit of unity in diversity.

1. The Principle of *Bhinneka Tunggal Ika*

The content of laws and regulations must pay attention to the diversity of the population, religion, ethnicity, and culture of the Indonesian nation, as well as strengthen unity in this diversity. This is to maintain harmony and tolerance between community groups.

2. Principles of Justice

The content of laws and regulations must reflect justice proportionately for every citizen. Regulations must provide equal treatment before the law regardless of social, economic, and other status.

3. The Principle of Equality of Position in Law and Government

The content of laws and regulations must ensure that every citizen has the same position in law and government. This means that there is no discrimination in the application of the law.

4. Principles of Order and Legal Certainty

The content of laws and regulations must be able to create order in society and provide legal certainty. Regulations must be clear, firm, and consistent so that they are easy to understand and apply.

5. Principles of Balance, Compatibility, and Harmony

The content of laws and regulations must consider the balance and harmony between various interests, including individuals, communities, and the state. Regulations must be able to accommodate various interests fairly.

Good regulations must reflect the spirit of unity in diversity (*Bhinneka Tunggal Ika*), by paying attention to the diversity of Indonesia's population, religion, ethnicity, and culture in order to maintain harmony and tolerance between community groups. In addition, the principle of justice demands that every regulation provides fair and equal treatment for all citizens regardless of social or economic status. The principle of equality before the law and government ensures that there is no discrimination in the application of the law. On the other hand, the principles of order and legal certainty require regulations to be made clearly, firmly, and consistently so that they are easy to understand and apply. Finally, the principles of balance, harmony, and harmony require that regulations be able to accommodate the various interests of individuals, communities, and the state in a fair manner. The application of these

principles is very important so that the resulting laws and regulations are truly able to create justice, order, and unity in a pluralistic society.

Regarding the problem of differences in PPJB regulatory norms, there are differences in regulations when BPHTB is payable, where Article 49 letter a of Law Number 1 of 2022 stipulates on the date of making and signing PPJB for buying and selling, while Article 18 paragraph (2) letter a of Government Regulation Number 35 of 2023 stipulates on the date of making and signing PPJB for buying and selling and in Article 18 paragraph (3) of Government Regulation Number 35 of 2023 stipulates in terms of buying and selling land and/or the building does not use PPJB as referred to in paragraph (2) letter a, when BPHTB is payable for sale and purchase is at the time of signing the sale and purchase deed, it violates several principles of the content of laws and regulations. These violations include the principle of conformity between types, hierarchies, and content materials, as well as the principles of order and legal certainty.

The principle of conformity between types, hierarchies, and content materials requires that the content of laws and regulations must be by the type and hierarchy of the regulation. Government regulations should only regulate technical matters that are the implementation of the provisions of the Law. Article 18 Paragraph (3) of Government Regulation Number 35 of 2023 adds additional rules that are not regulated in Law Number 1 of 2022. It provides rules regarding situations where a binding sale and purchase agreement is not used and stipulates that the time when the BPHTB is payable is when the sale and purchase deed is signed. This provision is an expansion of the regulation that goes beyond the provisions in the law, thus violating the principle of hierarchy and suitability of the content material.

Meanwhile, the principle of Legal Order and Certainty requires that a regulation must be clear, firm, and consistent. The goal is for the public to easily understand the regulations so that they can be applied. Differences in the regulation of when BPHTB is payable between laws and government regulations can cause confusion and legal uncertainty for people who must comply with this provision. Inconsistencies between laws and government regulations can reduce legal protection for people who carry out land and/or building purchase and sale transactions because they may not know when exactly they have to pay BPHTB.

4. Conclusion

The difference in normative arrangements regarding when BPHTB becomes payable in sale and purchase transactions, as regulated in Law Number 1 of 2022 and Government Regulation Number 35 of 2023, occurs because the lawmakers did not fully adhere to the principles of good legislative drafting. This inconsistency is primarily caused by a lack of hierarchical conformity and clarity of formulation between the higher law and its implementing regulation. Specifically, Law Number 1 of 2022 stipulates that BPHTB is due at the time of making and signing the PPJB, while Government Regulation Number 35 of 2023 provides additional provisions for cases where a PPJB is not made, leading to confusion and legal uncertainty.

Based on these conclusions, it is recommended that the relevant regulations be harmonized. Lawmakers should clarify and align the provisions regarding when BPHTB is payable in both Law Number 1 of 2022 and Government Regulation Number 35 of 2023. This harmonization is essential to ensure legal certainty, protect the interests of the parties

involved in land and building transactions, and uphold the principles of good legislative drafting.

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Arrange all references using chicago style

REVIEW RESULT

ID : JHU #44247

Title : Quo Vadis Arrangement of Binding Sale and Purchase Agreement as Object of the Levy on Acquisition of Land and Building Rights

Points that need revision:

Review Result	Corrections by the author	Page
The title is still too long, maximum 20 words.	We've revised it into 16 words.	1
The abstract is too long, maximum 200 words.	We've revised it into 198 words.	1
The keywords are not relevant, use keywords such as: Binding Sale, Purchase Agreement, and so on (Provide 5 keywords).	We've revised it into 5 keywords: binding sale, land and building rights, purchase agreements, tax, and the acquisition.	1
The quotations/citations are still in the form of bodynotes, rearrange them using footnotes with the Chicago style.	We've changed it using footnotes with the Chicago Style.	1- 17
The discussion in the Introduction section is too much and unclear, rearrange it in 1000 words.	We have reduced the words from 2200 to 1200.	1-5
Arrange the references using Chicago style.	We have arranged the references using the Chicago Style.	18-21

Future Direction of Binding Sale-Purchase Agreements as Tax Objects for Land and Building Rights Acquisition

Dinda Keumala^{1*)}, Ignatius Pradipa Probondaru²⁾, Anda Setiawati³⁾, I Gede Yudi Arsawan⁴⁾ & Wiratno⁵⁾

¹⁾Faculty of Law, Universitas Trisakti, Jakarta, Indonesia, E-mail: dinda.k@trisakti.ac.id

²⁾Faculty of Law, Universitas Trisakti, Jakarta, Indonesia, E-mail: ignatius@trisakti.ac.id

³⁾Faculty of Law, Universitas Trisakti, Jakarta, Indonesia, E-mail: anda.s@trisakti.ac.id

⁴⁾Faculty of Law, Universitas Trisakti, Jakarta, Indonesia, E-mail: yudi_arsawan@trisakti.ac.id

⁵⁾Faculty of Law, Universitas Trisakti, Jakarta, Indonesia, E-mail: wiratno@trisakti.ac.id

Abstract. *A Binding Sale and Purchase Agreement is a preliminary agreement made by parties before a Notary before the execution of a Sale and Purchase Deed before the Land Deed Official. This study examines the existence of a binding sale and purchase agreement regulation as the object of the Levy on Acquisition of Land and Building Rights payment, it identifies the factors causing inconsistencies in the normative regulation of A Binding Sale and Purchase Agreement transaction as the Levy on Acquisition of Land and Building Rights objects. The findings show that there are inconsistencies between the provisions stipulated in 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 for Regional Taxes and Regional Levies regarding the timing and object of the Levy on Acquisition of Land and Building Rights payment. Specifically, Article 49 letter a of Law No. 1 of 2022 determines that the Levy on Acquisition of Land and Building Rights is due at the signing of the binding Sale and Purchase Agreement, while Article 18 paragraph (3) of Government Regulation No. 35 of 2023 stipulates different conditions, leading to regulatory disharmony.*

Keywords: *Binding Sale; Purchase Agreement; Tax; Regulation.*

1. Introduction

The transfer of land rights can be carried out in two ways, namely, by switching for the sake of law and by transferring land rights in the form of a transfer (Abaidata, 2023). The process of switching to land rights law can occur because of the inheritance process. With the death of a person, for the sake of the law, there is a transfer of rights and obligations from the Heir to his/her heirs. Meanwhile, the process of transferring land rights in the form of being transferred to a third party can occur with legal acts of sale and purchase, grants, exchanges, and division of common rights and income in the company (inbreng) (Daud & Azari, 2022).

The transfer of ownership is considered to have occurred as a result of a consensus (agreement) between the parties. Thus, the concept of consensualism in a purely causal system refers to the transfer of rights and agreements that are seen to have occurred (Fathoni et al., 2022). Meanwhile, the light refers to the act of buying and selling that is carried out in the presence of the authorized Land Deed Making Officer (hereinafter referred to as PPAT). The definition of real conditions is the will to do the act of buying and selling, followed by the actual act. Under certain conditions, the sale and purchase of land can also include buildings on it, provided that the building is a unit with the land, the building belongs to the landowner, and this is expressly stated in the sale and purchase deed.

In practice, the provisions of the Basic Agrarian Law or Law No. 5 of 1960 concerning Basic Agrarian Principles (hereinafter referred to as Law No. 5 of 1960) and Government Regulation number 24 of 1997 are considered to hinder where the sale and purchase of land and buildings cannot be carried out because there are several requirements for the signing of the Sale and Purchase Deed in front of PPAT that have not been met. The difficulties experienced by developers gave rise to the birth of a pre-project selling system, or buying and selling with an indent system, by making a down payment. To provide a legally binding agreement for the parties, a preliminary agreement is made, which contains an agreement to carry out a sale and purchase made in front of a notary as stated in a Deed of Binding Sale and Purchase Agreement.

In contrast to the sale and purchase of land which is light, cash and real, the characteristics of a binding sale and purchase agreement refer to the provisions of Book III of the Civil Code which adheres to the principle of consensualism where the agreement made has been born from the moment the agreement is reached which can be seen from the evidence of signatures from the parties. The signing of a binding sale and purchase agreement has not brought results in the form of the transfer of ownership of land and buildings that are used as the object of the transaction (Dahlia & Marwenny, 2024). The position of the parties is still limited to prospective sellers and potential buyers. The transfer of ownership only occurs after the signing of the Sale and Purchase Deed (Rosmita et al., 2024).

In the provisions of Article 22A of Government Regulation Number 14 of 2016, it is stated that the binding sale and purchase agreement system consists of marketing and a binding sale and purchase agreement, where the requirements between marketing and a binding sale and purchase agreement differ from one another. The difference in requirements is intended to protect consumers of houses and flats and to strike a balance between developers and potential buyers. The requirements for a binding sale and purchase agreement as stated in Article 22I paragraph (1) of Government Regulation Number 14 of 2016 must meet the requirements for certainty on: land ownership status, agreed matters, PBG, availability of facilities, infrastructure and public utilities and construction at least twenty percent.

As an agreement, a binding sale and purchase agreement made by the parties who will carry out land purchase and sale transactions contain an agreement on the land price, payment procedures, payment period, and the implementation time of making the Sale and Purchase Deed will be carried out in front of PPAT (Athiyah & Priadharsan, 2024). The binding sale and purchase agreement deed itself is a type of "partij deed", which is

a deed that contains the will and desires of the parties made before a Notary (Smaratungga et al., 2022).

In making a binding sale and purchase agreement, the parties, including notaries, must not deviate from the general provisions of Book III of the Civil Code, such as the conditions for the validity of the agreement, the principles, and the basic principles of the law of the agreement. Although the parties, based on the principle of freedom of contract, are allowed to determine the content of the agreement on their own, the law, especially Article 1339 of the Civil Code, prohibits the parties from making an agreement whose content violates propriety, decency, and public order (Maulaya et al., 2024). After the binding sale and purchase agreement process is completed, it will be followed up with the making and signing of the Sale and Purchase Deed. Before the signing of a binding sale and purchase agreement deed require the seller is required to pay Income tax because the seller earns income from the signing of the binding sale and purchase agreement Deed. Meanwhile, the buyer is subject to the Levy on Acquisition of Land and Building Rights. A levy on the acquisition of land and building rights is a tax on the acquisition of land and/or building rights (Suyanto & Khulsum, 2022).

Article 18 paragraph (3) of Government Regulation of the Republic of Indonesia Number 35 of 2023 stipulates that "if the sale and purchase of land and/or buildings does not use the binding agreement as referred to in paragraph (2) letter a, then the time when levy on acquisition of land and building rights is payable for sale and purchase is at the time of signing the sale and purchase deed". Article 18 paragraph (3) of Government Regulation of the Republic of Indonesia Number 35 of 2023 apparently regulates things that are not regulated in Article 49 letter a of Law of the Republic of Indonesia Number 1 of 2022, which only emphasizes the existence of buying and selling acts that are always preceded by a binding sale and purchase agreement, even though not all acts of buying and selling are preceded by the creation of a binding sale and purchase agreement deed, so that the provisions stipulated in Article 18 paragraph (3) of Government Regulation of the Republic of Indonesia Number 35 of 2023 have exceeded the provisions in Article 49 letter a of Law of the Republic of Indonesia Number 1 of 2022.

Research conducted by Sulistyowati et al. (2023) discussed the arrangement of levy on acquisition of land and building rights payments at the time before the transfer of land rights, while the discrepancy in the norms of regulation between Law of the Republic of Indonesia Number 1 of 2022 and Government Regulation of the Republic of Indonesia Number 35 of 2023 was not explained in detail. In contrast to the study, this study is more problematic about the existence of a binding sale and purchase agreement transaction arrangements as the object of payment of levy on acquisition of land and building rights and what factors cause the inconsistency of a binding sale and purchase agreement transaction arrangements as the object of payment of levy on acquisition of land and building rights.

2. Research Methods

The type of research used in this study is normative. The data used in this study is sourced from both primary and secondary legal materials obtained through literature studies. Primary legal materials include Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments and Government Regulation of the Republic of Indonesia Number 35 of

2023 concerning General Provisions on Regional Taxes and Regional Levies (Hafizhah et al., 2024). Secondary legal materials consist of legal journals, articles, books, related literature, as well as government and corporate documentation, and official publications.

Data analysis in this study is conducted qualitatively by systematically reviewing and comparing the relevant legal norms contained in Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments and Government Regulation Number 35 of 2023 concerning General Provisions on Regional Taxes and Regional Levies. The analysis involves examining the consistency and conformity of these regulations using the principles of statutory clarity and formulation. Norms are compared by identifying similarities and differences in the provisions regarding the timing and object of levy on acquisition of land and building rights payments, as well as by assessing whether the lower regulations (government regulations) are in accordance with and do not exceed the authority provided by the higher law (Anggraini et al., 2023). The deductive method is then used to draw conclusions from these comparisons and analyses. The findings and recommendations formulated from this process are expected to provide valuable guidance for policymakers and legal practitioners in addressing issues related to the regulation of binding sale and purchase agreement transactions as objects of levy on acquisition of land and building rights payment, and the factors causing normative inconsistencies in these regulations.

3. Results and Discussion

3.1. Existence of A Binding Sale and Purchase Agreement, A Transaction Regulation as an Object of the Levy on Acquisition of Land and Building Rights

A binding sale and purchase agreement, as a preliminary agreement made by the parties, can be made with a deed under hand or with an authentic deed made by and before a Notary. Regardless of the form in the form of an authentic deed or a deed under hand, Article 1319 of the Civil Code requires that every agreement is subject to the general provisions of Book III of the Civil Code, such as the conditions for the validity of the agreement as stipulated in Article 1320 of the Civil Code which contains the conditions for the existence of an agreement from the parties, the ability to make an engagement, a certain matter and a *halal causa* or cause. Through the principle of freedom of contract, the parties in the a binding sale and purchase agreement are given the freedom to determine the form and content of the agreement, although the content does not necessarily provide justice for parties whose positions are weak such as home or flat consumers, considering that in practice the binding sale and purchase agreement document has been prepared in advance by the party with a stronger position (no *bargaining power*) (Glöckner, 2017).

The authority of the Notary to make authentic deeds is regulated in the provisions of Article 15 paragraph (1) of Law of the Republic of Indonesia Number 30 of 2004 concerning the Notary Position as amended by Law Number 2 of 2014 which reads: The Notary is authorized to make authentic deeds regarding all acts, agreements, and determinations required by laws and regulations and/or desired by interested parties to be stated in authentic deeds, guarantee the certainty of the date of making the deed, keeping the deed, providing grosses, copies and quotations of the deed, all of that as

long as the making of the deed is not also assigned or exempted to other officials or other persons stipulated by law. Guided by these provisions, the notary will only make an authentic deed at the request of interested parties because the laws and regulations require it to be made by or before a Notary (Keumala, 2023).

In practice, there are two types of binding sale and purchase agreements, namely a binding sale and purchase agreement with full payment (a sale and purchase agreement in full) and a binding sale and purchase agreement with non-payment (in installments). The difference between the two is that in a binding sale and purchase agreement with full payment, there is a clause granting power of attorney from the prospective seller to the prospective buyer, so that at the time of signing the Deed of Sale and Purchase, the seller no longer needs to come to the PPAT to sign the Deed of Sale and Purchase. The inclusion of the clause on the power of attorney is intended to protect the prospective buyer because the prospective buyer has paid off the payment, and the power of attorney is an absolute power of attorney that cannot be terminated for any reason. Such a power of attorney is not available in a binding sale and purchase agreement in installments. The next difference is the inclusion of a clause stating that a binding sale and purchase agreement will not be void due to the death of one of the parties but can also be binding on the heirs of the parties who agreed. In a binding Sale and Purchase Agreement with non-payment or installments, there is usually a clause regarding the conditions if the sale and purchase are canceled in the middle of the road (Gundogdu, 2023). This is related to payments where, after the first stage of payment, for example, the payment is the right of the prospective seller or must be returned to the prospective buyer.

The provisions of Article 22H paragraph (3) of Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Residential Areas state that if a prospective buyer cancels the purchase of a house or flat not due to the fault or negligence of the development actor, then the development actor must return the payment he has received and deduct at least 20% (twenty percent) of the payment that has been received plus the tax fee that has been taken into account. Furthermore, Article 22H paragraph (4) of Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Residential Areas states that for the purchase of a house made in installments, if the home ownership credit submitted by the prospective buyer is rejected by the bank or financing company, then the development actor is obliged to return the payment that has been received and deduct 10% (ten percent) of the payment that has been received plus tax fees that have been taken into account.

Departing from the provisions of Article 22H paragraphs (3) and (4) of Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Residential Areas, related to the imposition of levy on acquisition of land and building rights, it is implied that at the time of a binding sale and purchase agreement, prospective buyers are required to pay taxes, including levy on acquisition of land and building rights. This can be seen from the phrase "tax costs that have been calculated". The arrangement of a binding sale and purchase agreement as an object of levy on the acquisition of land and building rights consists of:

- 1) Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and the Regional Government.

This Law comes into effect on January 5, 2022, by repealing the previously applicable Law, namely Law of the Republic of Indonesia Number 28 of 2009 concerning Regional Taxes and Regional Levies (hereinafter referred to as the "Law No. 28 of

2009"). A levy on the acquisition of land and building rights is included in the Regional Tax, which is a tax collected by the Regional Government. Regional taxes and regional levies are important sources of regional revenue to finance regional development. To improve services to the community, the government, through Law No. 28 of 2009, has expanded the objects of regional taxes and regional levies, as well as provided discretion in determining the rates. Optimizing regional revenues derived from regional taxes and regional levies is a hope and, at the same time, a solution to one of the regional financial problems (Sudeska et al., 2023).

Based on the provisions of Article 1 number 21 of Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments, the meaning of Regional Tax is "a mandatory contribution to the Region that is owed by an individual or entity that is coercive based on the Law, by not getting a direct reward and is used for Regional purposes for the maximum prosperity of the people".

The main components of a region's revenue come from Regional Original Revenue and Central Government Transfer Revenue. Regional Original Revenue consists of Regional Taxes, Regional Levies, Results of Segregated Regional Wealth Management, and other valid Regional Original Revenue. Meanwhile, the Central Government's Transfer Revenue comes from the Tax Revenue Sharing Fund, the Natural Resources Revenue Sharing Fund, the General Allocation Fund, and the Special Allocation Fund (Utami et al., 2023).

According to the 2022 Macroeconomic Framework and Fiscal Policy Principles (hereinafter referred to as KEM-PPKF 2022) document, Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments is intended to develop the regional tax system, minimize vertical and horizontal inequality through transfer policies to the regions, encourage the improvement of the quality of regional spending and maintain fiscal sustainability promptly. Joint between the Central Government and the Regional Government (Wibowo et al., 2022).

Changes to regional tax policies in Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments are carried out with a top-down approach in the context of fiscal decentralization. This means that the regional tax policy confirms the policy narrative and is developed to maintain national economic stability and efficient resource allocation by the government (Purnomo et al., 2022).

The definition of acquisition according to the Great Dictionary of Indonesian is something that is obtained; income; yield, while the definition of "acquisition of land and/or building rights is a legal act or event that results in the acquisition of land and/or building rights by an individual or entity." What is the object of the levy on the acquisition of land and building rights is the Acquisition of Rights to Land and/or Buildings and what is included in the acquisition of rights to land and/or buildings, one of which is due to the transfer of rights in the form of buying and selling (Diany et al., 2024). When levy on acquisition of land and building rights is payable in Article 49 letter a of Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments, it is stipulated that the legal act of buying and selling is on the date of making and signing a binding sale and purchase agreement for buying and selling (Ali et al., 2021).

2) Government Regulation of the Republic of Indonesia Number 35 of 2023 Concerning Provisions of General Regional Taxes and Regional Levies.

From June 16, 2023, the Government Regulation of the Republic comes into force Indonesia Number 35 of 2023 concerning General Provisions for Regional Taxes and Levies Regional as the implementing regulation of the Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and the Government Regions that will be the basis and guideline for Regional Governments in issuing Regional Regulations, Regional Regulation, and/or other implementing regulations in the context of Tax and Levy Collection, including collection systems and procedures, while still considering the conditions and needs of each Region (Kanosue, 2015).

The basic provisions for the imposition of levy on acquisition of land and building rights regulated in Article 18 (1) of Government Regulation of the Republic of Indonesia Number 35 of 2023 concerning General Provisions on Regional Taxes and Regional Levies are the same as those regulated in the provisions of Article 46 paragraph (1) of Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments is based on the value of the acquisition of tax objects. However, when levy on acquisition of land and building rights is payable in Government Regulation of the Republic of Indonesia Number 35 of 2023 concerning General Provisions for Regional Taxes and Regional Levies, it is regulated differently from that regulated in Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments, where in Government Regulation of the Republic of Indonesia Number 35 of 2023 concerning General Provisions for Regional Taxes and Regional Levies, it is stipulated that when levy on acquisition of land and building rights is payable is stipulated at when the acquisition of land and/or buildings occurs with the provisions on the date of making and signing a binding sale and purchase agreement for Sale and Purchase. And if the sale and purchase of land and/or buildings does not use the binding agreement as intended in paragraph (2) letter a, when a levy on the acquisition of land and building rights is payable for the sale and purchase is at the time of signing the sale and purchase deed.

Table 1. Regulatory Norms Problems When Owning Levy on Acquisition of Land and Building Rights for Buying and Selling.

Problems	Law Number 1 of 2022	Government Regulation Number 35 of 2023
A levy on the acquisition of land and building RIGHTS is owed for buying and selling.	On the date of the conclusion and signing of the binding agreement for sale and purchase (Article 49 letter a).	– On the date of the conclusion and signing of the binding agreement for sale and purchase (Article 18, paragraph (2) letter a) – If the sale and purchase of land and/or buildings does not use the binding sale and purchase agreement as referred to in paragraph (2) letter a, the time when levy on acquisition of land and building RIGHTS is payable for sale and purchase is at the time of signing the sale and purchase deed (Article 18, paragraph 3).

The Table 1 shows normative problems related to when the levy on the acquisition of

land and building rights becomes payable in land and building purchase and sale transactions, based on two main regulations: Law Number 1 of 2022 and Government Regulation Number 35 of 2023. According to Article 49, letter a of Law No. 1 of 2022, the levy on the acquisition of land and building rights is payable on the date of creation and signing of the Binding Sale and Purchase Agreement. This provision is also adopted in Article 18, paragraph (2), letter a of Government Regulation No. 35 of 2023. This means that these two regulations basically agree that the levy on the acquisition of land and building rights has become an obligation since the existence of a binding sale and purchase agreement. However, Government Regulation No. 35 of 2023 adds further provisions in Article 18 paragraph (3), namely that if the transaction of buying and selling land and/or buildings does not use a binding sale and purchase agreement, levy on acquisition of land and building rights will be payable at the time of signing the Deed of Sale and Purchase in front of PPAT. This additional provision is not explicitly regulated in Law No. 1 of 2022, thus causing potential disharmony and confusion in the field. This difference in arrangement shows that there is a lack of synchronization between laws and government regulations, especially related to the flexibility of the levy on the acquisition of land and building rights payment mechanism in transactions that do not always begin with a binding sale and purchase agreement. This is one of the sources of debate and emphasizes the need for regulatory harmonization in order to create legal certainty for the parties to the transaction (Rosalia, 2025).

It is not appropriate for Article 49 letter a of Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments to stipulate that levy on acquisition of land and building rights is payable at the date of making and signing the binding sale and purchase agreement, rather than at the time of making and signing the purchase deed before the authorized PPAT. Does this mean that every land sale and purchase must always be preceded by the making and signing of a binding sale and purchase agreement before a Notary? Such a provision could create legal uncertainty in practice.

The ambiguity in the formulation of Article 49 letter a of Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments creates legal uncertainty, while legal certainty can be obtained through clear and specific legal texts. The principle of legality in civil law is interpreted as the basis for ensuring proper justice (Saputa & Luthviati, 2020). Starting from its history, the idea of legality that is claimed to be able to provide legal certainty was born from the teachings of legism in the 19th Century. Quoting the opinion of a Dutch jurist, L.J. van Apeldoorn, the doctrine of legism is a movement that places the law as a logical system that can be applied to every case (Jansen, 2023). Therefore, to provide legal certainty, every law and regulation must contain clear and firm rules.

According to the perspective of adherents of analytical positivism, the measure of legal certainty is seen from the provisions in the law because, in the view of its adherents, such as John Austin, the law comes from positive law in the form of a law. One of the guidelines for ensuring the legal certainty of a regulation is the legal principles contained in it. According to Ariyanti (2019), legal principles are the "heart" of legal regulations, so to be able to understand a regulation, it is very necessary to have a legal principle. In another opinion, Julyano & Sulistyawan (2019) said that legal principles are measures of ethical law that can provide direction in the formation of laws. From these ethical demands, the function of the legal principle is as a bridge

between legal regulations, social ideals, and the ethical views of society.

In the political dynamics in Indonesia, the issue of legal certainty is found in Article 28I paragraph (1) of the Second Amendment of the 1945 Constitution which reads: "...The right not to be prosecuted based on retroactive law is a human right that cannot be reduced under any circumstances", although the idea of legal certainty already exists in the Criminal Code. Legal certainty requires that the law can function as a regulation that must be obeyed. Of course, not only must the regulation be implemented, but the norms or content materials in the norms in the regulation must contain the basic principles of law. In the context of the Indonesian state of law, laws and regulations, as written legal norms, are the basis for state administration (Wandi, 2023; Gafuraningtyas et al., 2024).

Certainty refers to definite conditions and clear conditions. The law must be clear and fair in essence. Both of these things are important because the law, as a guide to behavior, must support an order that is considered reasonable. Only with this justice and certainty can the legal function run properly. Legal certainty is a question that can only be answered normatively, not sociologically. Certainty includes several concepts, such as clarity, absence of multiple interpretations, consistency, and the ability to be implemented (Nurnaningsih et al., 2024). The law must be applied firmly in society in a way that is easy to understand, so that it can be understood by anyone. The laws must not contradict each other so as not to cause doubt among the public. Legal certainty refers to the clear, consistent, and consequential application of the law, which is not influenced by subjective factors. The importance of legal certainty is by Article 28D, paragraph (1) of the 1945 Constitution Third Amendment, which states that every individual has the right to fair legal recognition, protection, and certainty, as well as equal treatment in the eyes of the law (Mirza et al., 2023). Furthermore, eight principles that must be fulfilled by the law to meet legal certainty (Nur, 2023).

- a. A legal system consisting of regulations, not based on heretical judgments for certain matters;
- b. The regulation is announced to the public;
- c. It does not apply retroactively because it will damage the integrity of the system;
- d. Made in a formula that is understood by the public;
- e. There should be no conflicting rules.
- f. It is not permissible to demand an action that exceeds what can be done;
- g. It should not be changed frequently;
- h. There must be consistency between the regulations and the day-to-day implementation.

Both Law Number 1 of 2022 and Government Regulation Number 35 of 2023 do not provide an explanation about a binding sale and purchase agreement, which is subject to levy on acquisition of land and building rights collection, considering that in practice, there are 2 types of a binding sale and purchase agreements, namely, a sale and purchase agreement with full payment and a binding sale and purchase agreement with payment in installments or installments. If what happens is a binding sale and purchase agreement with installment payments, how do you pay the levy on the acquisition of land and building rights? Does it follow each stage of payment from the buyer to the seller, or does a levy on the acquisition of land and building rights have to be paid in full at the beginning of the first time a binding sale and purchase agreement is made and

signed? These things can bring legal uncertainty for the parties, as no arrangements are made in writing.

3.2. Factors Causing the Non-Conformity of a Binding Sale and Purchase Agreement: Regulatory Norms as an Object of Levy on Acquisition of Land and Building Rights

Lawmakers must always be committed to the country's goals in making laws. This is to ensure justice, benefits, and legal certainty for the community, which is always an inseparable part of every legal product produced. The legal system is influenced by the prevailing political system (although it is also heavily influenced by historical traditions). The government of a country determines the legal framework within which the company does business, and often, the laws governing business reflect the dominant political ideology of the ruler. For example, totalitarian countries that tend to be collectivist tend to enact laws that severely restrict private companies, while laws enacted by governments in democracies where individualism is the dominant political philosophy tend to be pro-corporate and private consumers (Bryan et al., 2024).

Legal politics that produce good legal products must be supported by effective law enforcement, as legal politics cannot stand alone. Legal products are expected not only to resolve existing disputes but also to function as instruments of social engineering that shape and guide societal behavior (Setiyono et al., 2024). In Indonesia, the formal structure of legal policy is hierarchical, meaning that higher-level regulations with binding authority take precedence over lower-level regulations. This ensures that the legal system remains orderly and consistent in its application. In terms of substance, Indonesia's legal policies are generally structured according to the main sectors of life or the scope of authority of ministries and sectoral institutions (Purnomo & Gunadi, 2023). This sectoral approach allows each ministry or institution to regulate specific areas under its responsibility, ensuring that legal norms are tailored to the unique needs and challenges of each sector. However, it also highlights the importance of harmonization between different levels and sectors of regulation to prevent inconsistencies and overlaps that can undermine legal certainty and effectiveness.

The laws and regulations that are made must meet the principles of the formation of laws and regulations as stipulated in Articles 5 and 6 of Law of the Republic of Indonesia Number 12 of 2011 concerning the Establishment of Laws and Regulations. In the provisions of Article 5 of the Law, it is stated that 7 (seven) principles must be complied with in the formation of laws and regulations, namely:

- a. Principle of clarity of purpose
Laws and regulations must have a clear goal to be achieved. This purpose must be explained in the consideration and explanation of the regulation so that every interested party can understand the purpose of the regulation.
- b. Institutional basis or properly constituted office
The formation of regulations must be carried out by authorized institutions or officials by the provisions of higher laws and regulations. This ensures that every regulation is made by a party that has the competence and authority to do so.
- c. Principle of conformity between types, hierarchy, and content material
Each type of law and regulation may only contain material that is appropriate to its

type. For example, materials that contain general rules should be regulated in the law, not in the ministerial regulation.

- d. Principles can be implemented
Laws and regulations must be enforceable by paying attention to effectiveness and efficiency. The regulations must be realistic and applicable in real life with existing facilities and infrastructure.
- e. Principle of usefulness
Laws and regulations must provide the greatest benefits to the community and must be able to achieve the expected goals. This aspect emphasizes the importance of effective regulation in solving the problems it faces.
- f. Principle of clarity of formulation
Laws and regulations must be formulated in clear and easy-to-understand language so as not to cause multiple interpretations or confusion among the public who must comply with them.
- g. The principle of openness
The process of forming regulations must be carried out transparently and involve community participation. This is important to ensure that the regulations made reflect the aspirations and needs of the community, as well as increase the legitimacy of the regulations.

In addition to the principle of forming good laws and regulations, there is also the principle of the content of laws and regulations explained in Article 6 of the same Law. This article states that the content of laws and regulations must contain the following principles:

- a. The Principle of Protection
The content of laws and regulations must protect to create public peace. This means that regulations must be able to provide a sense of security and protect the rights and interests of the community.
- b. Principles of Humanity
The content of laws and regulations must reflect respect for human rights and uphold the human values and dignity of every citizen and resident of Indonesia proportionately.
- c. National Foundations
The content of laws and regulations must reflect the character and interests of the Indonesian nation, as well as strengthen the unity of the nation. This aspect prioritizes the values of nationalism and national integrity.
- d. Family Basics
The content of laws and regulations must prioritize deliberation and consensus in every decision-making process. This reflects the values of togetherness and cooperation that are characteristic of Indonesian culture.
- e. Principles of Necessity
The content of laws and regulations must pay attention to the interests of all regions of Indonesia and must not prioritize the interests of certain regions or groups.

In addition to the principles of the formation of good laws and regulations, Article 6 of the same Law also emphasizes the importance of the material principles of the content of laws and regulations. These principles include protection, humanity, nationality, family, and justice. The principle of protection requires that every regulation provide a sense of security and protect the rights and interests of the community. The principle of humanity demands that every regulation reflect respect for human rights and uphold the

dignity of every citizen proportionately. Meanwhile, the principle of nationality emphasizes the importance of reflecting the character and interests of the Indonesian nation and strengthening national unity. In addition, the principle of kinship requires that the decision-making process in laws and regulations prioritize deliberation and consensus, reflecting the value of togetherness that is a characteristic of Indonesian culture.

The principle of justice also emphasizes that regulations must pay attention to the interests of all regions of Indonesia without taking sides with certain groups or regions. In the context of a binding sale and purchase agreement and the levy on the acquisition of land and building rights regulations, the application of these principles is very important so that the resulting regulations are not only formally valid, but also fair, protect the community, and in accordance with the noble values of the nation. Inconsistency or disharmony between higher regulations and their derivatives, such as what occurred between Law No. 1 of 2022 and Government Regulation No. 35 of 2023, shows that the application of these principles has not been optimal in the formation of laws and regulations. Regulations must reflect the spirit of unity in diversity.

- a. The Principle of Bhinneka Tunggal Ika
The content of laws and regulations must pay attention to the diversity of the population, religion, ethnicity, and culture of the Indonesian nation, as well as strengthen unity in this diversity. This is to maintain harmony and tolerance between community groups.
- b. Principles of Justice
The content of laws and regulations must reflect justice proportionately for every citizen. Regulations must provide equal treatment before the law regardless of social, economic, and other status.
- c. The Principle of Equality of Position in Law and Government
The content of laws and regulations must ensure that every citizen has the same position in law and government. This means that there is no discrimination in the application of the law.
- d. Principles of Order and Legal Certainty
The content of laws and regulations must be able to create order in society and provide legal certainty. Regulations must be clear, firm, and consistent so that they are easy to understand and apply.
- e. Principles of Balance, Compatibility, and Harmony
The content of laws and regulations must consider the balance and harmony between various interests, including individuals, communities, and the state. Regulations must be able to accommodate various interests fairly.

Good regulations must reflect the spirit of unity in diversity (Bhinneka Tunggal Ika), by paying attention to the diversity of Indonesia's population, religion, ethnicity, and culture in order to maintain harmony and tolerance between community groups. In addition, the principle of justice demands that every regulation provides fair and equal treatment for all citizens regardless of social or economic status. The principle of equality before the law and government ensures that there is no discrimination in the application of the law. On the other hand, the principles of order and legal certainty require regulations to be made clearly, firmly, and consistently so that they are easy to understand and apply. Finally, the principles of balance, harmony, and harmony require that regulations be able to accommodate the various interests of individuals, communities, and the state in a fair

manner. The application of these principles is very important so that the resulting laws and regulations are truly able to create justice, order, and unity in a pluralistic society (Sanders et al., 2024).

Regarding the problem of differences in a binding sale and purchase agreement regulatory norms, there are differences in regulations when levy on acquisition of land and building rights is payable, where Article 49 letter a of Law Number 1 of 2022 stipulates on the date of making and signing a binding sale and purchase agreement for buying and selling, while Article 18 paragraph (2) letter a of Government Regulation Number 35 of 2023 stipulates on the date of making and signing a binding sale and purchase agreement for buying and selling and in Article 18 paragraph (3) of Government Regulation Number 35 of 2023 stipulates in terms of buying and selling land and/or the building does not use a binding sale and purchase agreement as referred to in paragraph (2) letter a, when levy on acquisition of land and building rights is payable for sale and purchase is at the time of signing the sale and purchase deed, it violates several principles of the content of laws and regulations. These violations include the principle of conformity between types, hierarchies, and content materials, as well as the principles of order and legal certainty.

The principle of conformity between types, hierarchies, and content materials requires that the content of laws and regulations must be determined by the type and hierarchy of the regulation. Government regulations should only regulate technical matters that are the implementation of the provisions of the Law. Article 18, Paragraph (3) of Government Regulation Number 35 of 2023 adds additional rules that are not regulated in Law Number 1 of 2022. It provides rules regarding situations where a binding sale and purchase agreement is not used and stipulates that the time when the levy on the acquisition of land and building rights is payable is when the sale and purchase deed is signed. This provision is an expansion of the regulation that goes beyond the provisions in the law, thus violating the principle of hierarchy and suitability of the content material.

Meanwhile, the principle of Legal Order and Certainty requires that a regulation must be clear, firm, and consistent. The goal is for the public to easily understand the regulations so that they can be applied. Differences in the regulation of when a levy on the acquisition of land and building rights is payable between laws and government regulations can cause confusion and legal uncertainty for people who must comply with this provision. Inconsistencies between laws and government regulations can reduce legal protection for people who carry out land and/or building purchase and sale transactions because they may not know when exactly they have to pay the levy on the acquisition of land and building rights.

4. Conclusion

The difference in normative arrangements regarding when the levy on the acquisition of land and building rights becomes payable in sale and purchase transactions, as regulated in Law Number 1 of 2022 and Government Regulation Number 35 of 2023, occurs because the lawmakers did not fully adhere to the principles of good legislative drafting. This inconsistency is primarily caused by a lack of hierarchical conformity and clarity of formulation between the higher law and its implementing regulation. Specifically, Law Number 1 of 2022 stipulates that levy on acquisition of land and building rights is due at the time of making and signing the binding sale and purchase agreement, while

Government Regulation Number 35 of 2023 provides additional provisions for cases where the binding Sale and Purchase Agreement is not made, leading to confusion and legal uncertainty. Based on these conclusions, it is recommended that the relevant regulations be harmonized. Lawmakers should clarify and align the provisions regarding when the levy on the acquisition of land and building rights is payable in both Law Number 1 of 2022 and Government Regulation Number 35 of 2023. This harmonization is essential to ensure legal certainty, protect the interests of the parties involved in land and building transactions, and uphold the principles of good legislative drafting.

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DINDA KEUMALA ET AL - Future Direction of Binding Sale- Purchase Agreements as Tax Objects for Land and Building Rights Acquisition

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Future Direction of Binding Sale-Purchase Agreements as Tax Objects for Land and Building Rights Acquisition

Dinda Keumala^{1*)}, Ignatius Pradipa Probondaru²⁾, Anda Setiawati³⁾, I Gede Yudi Arsawan⁴⁾ & Wiratno⁵⁾

¹⁾Faculty of Law, Universitas Trisakti, Jakarta, Indonesia, E-mail: dinda.k@trisakti.ac.id

²⁾Faculty of Law, Universitas Trisakti, Jakarta, Indonesia, E-mail: ignatius@trisakti.ac.id

³⁾Faculty of Law, Universitas Trisakti, Jakarta, Indonesia, E-mail: anda.s@trisakti.ac.id

⁴⁾Faculty of Law, Universitas Trisakti, Jakarta, Indonesia, E-mail: yudi.arsawan@trisakti.ac.id

⁵⁾Faculty of Law, Universitas Trisakti, Jakarta, Indonesia, E-mail: wiratno@trisakti.ac.id

Abstract. *A Binding Sale and Purchase Agreement is a preliminary agreement made by parties before a Notary before the execution of a Sale and Purchase Deed before the Land Deed Official. This study examines the existence of a binding sale and purchase agreement regulation as the object of the Levy on Acquisition of Land and Building Rights payment, it identifies the factors causing inconsistencies in the normative regulation of A Binding Sale and Purchase Agreement transaction as the Levy on Acquisition of Land and Building Rights objects. The findings show that there are inconsistencies between the provisions stipulated in 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 for Regional Taxes and Regional Levies regarding the timing and object of the Levy on Acquisition of Land and Building Rights payment. Specifically, Article 49 letter a of Law No. 1 of 2022 determines that the Levy on Acquisition of Land and Building Rights is due at the signing of the binding Sale and Purchase Agreement, while Article 18 paragraph (3) of Government Regulation No. 35 of 2023 stipulates different conditions, leading to regulatory disharmony.*

Keywords: *Binding Sale; Purchase Agreement; Tax; Regulation.*

1. Introduction

The transfer of land rights can be carried out in two ways, namely, by switching for the sake of law and by transferring land rights in the form of a transfer (Abaidata, 2023). The process of switching to land rights law can occur because of the inheritance process. With the death of a person, for the sake of the law, there is a transfer of rights and obligations from the Heir to his/her heirs. Meanwhile, the process of transferring land rights in the form of being transferred to a third party can occur with legal acts of sale and purchase, grants, exchanges, and division of common rights and income in the company (inbreng) (Daud & Azari, 2022).

The transfer of ownership is considered to have occurred as a result of a consensus (agreement) between the parties. Thus, the concept of consensualism in a purely causal system refers to the transfer of rights and agreements that are seen to have occurred (Fathoni et al., 2022). Meanwhile, the light refers to the act of buying and selling that is carried out in the presence of the authorized Land Deed Making Officer (hereinafter referred to as PPAT). The definition of real conditions is the will to do the act of buying and selling, followed by the actual act. Under certain conditions, the sale and purchase of land can also include buildings on it, provided that the building is a unit with the land, the building belongs to the landowner, and this is expressly stated in the sale and purchase deed.

²⁸ In practice, the provisions of the Basic Agrarian Law or Law No. 5 of 1960 concerning Basic Agrarian Principles (hereinafter referred to as Law No. 5 of 1960) and Government Regulation number 24 of 1997 are considered to hinder where the sale and purchase of land and buildings cannot be carried out because there are several requirements for the signing of the Sale and Purchase Deed in front of PPAT that have not been met. The difficulties experienced by developers gave rise to the birth of a pre-project selling system, or buying and selling with an indent system, by making a down payment. To provide a legally binding agreement for the parties, a preliminary agreement is made, which contains an agreement to carry out a sale and purchase made in front of a notary as stated in a Deed of Binding Sale and Purchase Agreement.

In contrast to the sale and purchase of land which is light, cash and real, the characteristics of a binding sale and purchase agreement refer to the provisions of Book III of the Civil Code which adheres to the principle of consensualism where the agreement made has been born from the moment the agreement is reached which can be seen from the evidence of signatures from the parties. The signing of a binding sale and purchase agreement has not brought results in the form of the transfer of ownership of land and buildings that are used as the object of the transaction (Dahlia & Marwenny, 2024). The position of the parties is still limited to prospective sellers and potential buyers. The transfer of ownership only occurs after the signing of the Sale and Purchase Deed (Rosmita et al., 2024).

²⁰ In the provisions of Article 22A of Government Regulation Number 14 of 2016, it is stated that the binding sale and purchase agreement system consists of marketing and a binding sale and purchase agreement, where the requirements between marketing and a binding sale and purchase agreement differ from one another. The difference in requirements is intended to protect consumers of houses and flats and to strike a balance between developers and potential buyers. The requirements for a binding sale and purchase agreement as stated in Article 22I paragraph (1) of Government Regulation Number 14 of 2016 must meet the requirements for certainty on: land ownership status, agreed matters, PBG, availability of facilities, infrastructure and public utilities and construction at least twenty percent.

³⁴ As an agreement, a binding sale and purchase agreement made by the parties who will carry out land purchase and sale transactions contain an agreement on the land price, payment procedures, payment period, and the implementation time of making the Sale and Purchase Deed will be carried out in front of PPAT (Athiyah & Priadharsan, 2024). The binding sale and purchase agreement deed itself is a type of "partij deed", which is

a deed that contains the will and desires of the parties made before a Notary (Smaratungga et al., 2022).

In making a binding sale and purchase agreement, the parties, including notaries, must not deviate from the general provisions of Book III of the Civil Code, such as the conditions for the validity of the agreement, the principles, and the basic principles of the law of the agreement. Although the parties, based on the principle of freedom of contract, are allowed to determine the content of the agreement on their own, the law, especially Article 1339 of the Civil Code, prohibits the parties from making an agreement whose content violates propriety, decency, and public order (Maulaya et al., 2024). After the binding sale and purchase agreement process is completed, it will be followed up with the making and signing of the Sale and Purchase Deed. Before the signing of a binding sale and purchase agreement deed require the seller is required to pay Income tax because the seller earns income from the signing of the binding sale and purchase agreement Deed. Meanwhile, the buyer is subject to the Levy on Acquisition of Land and Building Rights. A levy on the acquisition of land and building rights is a tax on the acquisition of land and/or building rights (Suyanto & Khulsum, 2022).

Article 18 paragraph (3) of Government Regulation of the Republic of Indonesia Number 35 of 2023 stipulates that "if the sale and purchase of land and/or buildings does not use the binding agreement as referred to in paragraph (2) letter a, then the time when levy on acquisition of land and building rights is payable for sale and purchase is at the time of signing the sale and purchase deed". Article 18 paragraph (3) of Government Regulation of the Republic of Indonesia Number 35 of 2023 apparently regulates things that are not regulated in Article 49 letter a of Law of the Republic of Indonesia Number 1 of 2022, which only emphasizes the existence of buying and selling acts that are always preceded by a binding sale and purchase agreement, even though not all acts of buying and selling are preceded by the creation of a binding sale and purchase agreement deed, so that the provisions stipulated in Article 18 paragraph (3) of Government Regulation of the Republic of Indonesia Number 35 of 2023 have exceeded the provisions in Article 49 letter a of Law of the Republic of Indonesia Number 1 of 2022.

Research conducted by Sulistyowati et al. (2023) discussed the arrangement of levy on acquisition of land and building rights payments at the time before the transfer of land rights, while the discrepancy in the norms of regulation between Law of the Republic of Indonesia Number 1 of 2022 and Government Regulation of the Republic of Indonesia Number 35 of 2023 was not explained in detail. In contrast to the study, this study is more problematic about the existence of a binding sale and purchase agreement transaction arrangements as the object of payment of levy on acquisition of land and building rights and what factors cause the inconsistency of a binding sale and purchase agreement transaction arrangements as the object of payment of levy on acquisition of land and building rights.

2. Research Methods

The type of research used in this study is normative. The data used in this study is sourced from both primary and secondary legal materials obtained through literature studies. Primary legal materials include Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments and Government Regulation of the Republic of Indonesia Number 35 of

2023 concerning General Provisions on Regional Taxes and Regional Levies (Hafizhah et al., 2024). Secondary legal materials consist of legal journals, articles, books, related literature, as well as government and corporate documentation, and official publications.

Data analysis in this study is conducted qualitatively by systematically reviewing and comparing the relevant legal norms contained in Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments and Government Regulation Number 35 of 2023 concerning General Provisions on Regional Taxes and Regional Levies. The analysis involves examining the consistency and conformity of these regulations using the principles of statutory clarity and formulation. Norms are compared by identifying similarities and differences in the provisions regarding the timing and object of levy on acquisition of land and building rights payments, as well as by assessing whether the lower regulations (government regulations) are in accordance with and do not exceed the authority provided by the higher law (Anggraini et al., 2023). The deductive method is then used to draw conclusions from these comparisons and analyses. The findings and recommendations formulated from this process are expected to provide valuable guidance for policymakers and legal practitioners in addressing issues related to the regulation of binding sale and purchase agreement transactions as objects of levy on acquisition of land and building rights payment, and the factors causing normative inconsistencies in these regulations.

3. Results and Discussion

3.1. Existence of A Binding Sale and Purchase Agreement, A Transaction Regulation as an Object of the Levy on Acquisition of Land and Building Rights

A binding sale and purchase agreement, as a preliminary agreement made by the parties, can be made with a deed under hand or with an authentic deed made by and before a Notary. Regardless of the form in the form of an authentic deed or a deed under hand, Article 1319 of the Civil Code requires that every agreement is subject to the general provisions of Book III of the Civil Code, such as the conditions for the validity of the agreement as stipulated in Article 1320 of the Civil Code which contains the conditions for the existence of an agreement from the parties, the ability to make an engagement, a certain matter and a *halal causa* or *cause*. Through the principle of freedom of contract, the parties in the a binding sale and purchase agreement are given the freedom to determine the form and content of the agreement, although the content does not necessarily provide justice for parties whose positions are weak such as home or flat consumers, considering that in practice the binding sale and purchase agreement document has been prepared in advance by the party with a stronger position (no *bargaining power*) (Glöckner, 2017).

The authority of the Notary to make authentic deeds is regulated in the provisions of Article 15 paragraph (1) of Law of the Republic of Indonesia Number 30 of 2004 concerning the Notary Position as amended by Law Number 2 of 2014 which reads: The Notary is authorized to make authentic deeds regarding all acts, agreements, and determinations required by laws and regulations and/or desired by interested parties to be stated in authentic deeds, guarantee the certainty of the date of making the deed, keeping the deed, providing grosses, copies and quotations of the deed, all of that as

long as the making of the deed is not also assigned or exempted to other officials or other persons stipulated by law. Guided by these provisions, the notary will only make an authentic deed at the request of interested parties because the laws and regulations require it to be made by or before a Notary (Keumala, 2023).

In practice, there are two types of binding sale and purchase agreements, namely a binding sale and purchase agreement with full payment (a sale and purchase agreement in full) and a binding sale and purchase agreement with non-payment (in installments). The difference between the two is that in a binding sale and purchase agreement with full payment, there is a clause granting power of attorney from the prospective seller to the prospective buyer, so that at the time of signing the Deed of Sale and Purchase, the seller no longer needs to come to the PPAT to sign the Deed of Sale and Purchase. The inclusion of the clause on the power of attorney is intended to protect the prospective buyer because the prospective buyer has paid off the payment, and the power of attorney is an absolute power of attorney that cannot be terminated for any reason. Such a power of attorney is not available in a binding sale and purchase agreement in installments. The next difference is the inclusion of a clause stating that a binding sale and purchase agreement will not be void due to the death of one of the parties but can also be binding on the heirs of the parties who agreed. In a binding Sale and Purchase Agreement with non-payment or installments, there is usually a clause regarding the conditions if the sale and purchase are canceled in the middle of the road (Gundogdu, 2023). This is related to payments where, after the first stage of payment, for example, the payment is the right of the prospective seller or must be returned to the prospective buyer.

The provisions of Article 22H paragraph (3) of Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Residential Areas state that if a prospective buyer cancels the purchase of a house or flat not due to the fault or negligence of the development actor, then the development actor must return the payment he has received and deduct at least 20% (twenty percent) of the payment that has been received plus the tax fee that has been taken into account. Furthermore, Article 22H paragraph (4) of Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Residential Areas states that for the purchase of a house made in installments, if the home ownership credit submitted by the prospective buyer is rejected by the bank or financing company, then the development actor is obliged to return the payment that has been received and deduct 10% (ten percent) of the payment that has been received plus tax fees that have been taken into account.

Departing from the provisions of Article 22H paragraphs (3) and (4) of Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Residential Areas, related to the imposition of levy on acquisition of land and building rights, it is implied that at the time of a binding sale and purchase agreement, prospective buyers are required to pay taxes, including levy on acquisition of land and building rights. This can be seen from the phrase "tax costs that have been calculated".

The arrangement of a binding sale and purchase agreement as an object of levy on the acquisition of land and building rights consists of:

- 1) Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and the Regional Government.

This Law comes into effect on January 5, 2022, by repealing the previously applicable Law, namely Law of the Republic of Indonesia Number 28 of 2009 concerning Regional Taxes and Regional Levies (hereinafter referred to as the "Law No. 28 of

2009"). A levy on the acquisition of land and building rights is included in the Regional Tax, which is a tax collected by the Regional Government. Regional taxes and regional levies are important sources of regional revenue to finance regional development. To improve services to the community, the government, through Law No. 28 of 2009, has expanded the objects of regional taxes and regional levies, as well as provided discretion in determining the rates. Optimizing regional revenues derived from regional taxes and regional levies is a hope and, at the same time, a solution to one of the regional financial problems (Sudeska et al., 2023).

Based on the provisions of Article 1 number 21 of Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments, the meaning of Regional Tax is "a mandatory contribution to the Region that is owed by an individual or entity that is coercive based on the Law, by not getting a direct reward and is used for Regional purposes for the maximum prosperity of the people".

The main components of a region's revenue come from Regional Original Revenue and Central Government Transfer Revenue. Regional Original Revenue consists of Regional Taxes, Regional Levies, Results of Segregated Regional Wealth Management, and other valid Regional Original Revenue. Meanwhile, the Central Government's Transfer Revenue comes from the Tax Revenue Sharing Fund, the Natural Resources Revenue Sharing Fund, the General Allocation Fund, and the Special Allocation Fund (Utami et al., 2023).

According to the 2022 Macroeconomic Framework and Fiscal Policy Principles (hereinafter referred to as KEM-PPKF 2022) document, Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments is intended to develop the regional tax system, minimize vertical and horizontal inequality through transfer policies to the regions, encourage the improvement of the quality of regional spending and maintain fiscal sustainability promptly. Joint between the Central Government and the Regional Government (Wibowo et al., 2022).

Changes to regional tax policies in Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments are carried out with a top-down approach in the context of fiscal decentralization. This means that the regional tax policy confirms the policy narrative and is developed to maintain national economic stability and efficient resource allocation by the government (Purnomo et al., 2022).

The definition of acquisition according to the Great Dictionary of Indonesian is something that is obtained; income; yield, while the definition of "acquisition of land and/or building rights is a legal act or event that results in the acquisition of land and/or building rights by an individual or entity." What is the object of the levy on the acquisition of land and building rights is the Acquisition of Rights to Land and/or Buildings and what is included in the acquisition of rights to land and/or buildings, one of which is due to the transfer of rights in the form of buying and selling (Diany et al., 2024). When levy on acquisition of land and building rights is payable in Article 49 letter a of Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments, it is stipulated that the legal act of buying and selling is on the date of making and signing a binding sale and purchase agreement for buying and selling (Ali et al., 2021).

2) Government Regulation of the Republic of Indonesia Number 35 of 2023 Concerning Provisions of General Regional Taxes and Regional Levies.

From June 16, 2023, the Government Regulation of the Republic comes into force Indonesia Number 35 of 2023 concerning General Provisions for Regional Taxes and Levies Regional as the implementing regulation of the Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and the Government Regions that will be the basis and guideline for Regional Governments in issuing Regional Regulations, Regional Regulation, and/or other implementing regulations in the context of Tax and Levy Collection, including collection systems and procedures, while still considering the conditions and needs of each Region (Kanosue, 2015).

The basic provisions for the imposition of levy on acquisition of land and building rights regulated in Article 18 (1) of Government Regulation of the Republic of Indonesia Number 35 of 2023 concerning General Provisions on Regional Taxes and Regional Levies are the same as those regulated in the provisions of Article 46 paragraph (1) of Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments is based on the value of the acquisition of tax objects. However, when levy on acquisition of land and building rights is payable in Government Regulation of the Republic of Indonesia Number 35 of 2023 concerning General Provisions for Regional Taxes and Regional Levies, it is regulated differently from that regulated in Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments, where in Government Regulation of the Republic of Indonesia Number 35 of 2023 concerning General Provisions for Regional Taxes and Regional Levies, it is stipulated that when levy on acquisition of land and building rights is payable is stipulated at when the acquisition of land and/or buildings occurs with the provisions on the date of making and signing a binding sale and purchase agreement for Sale and Purchase. And if the sale and purchase of land and/or buildings does not use the binding agreement as intended in paragraph (2) letter a, when a levy on the acquisition of land and building rights is payable for the sale and purchase is at the time of signing the sale and purchase deed.

Table 1. Regulatory Norms Problems When Owning Levy on Acquisition of Land and Building Rights for Buying and Selling.

Problems	Law Number 1 of 2022	Government Regulation Number 35 of 2023
A levy on the acquisition of land and building RIGHTS is owed for buying and selling.	On the date of the conclusion and signing of the binding agreement for sale and purchase (Article 49 letter a).	- On the date of the conclusion and signing of the binding agreement for sale and purchase (Article 18, paragraph (2) letter a) - If the sale and purchase of land and/or buildings does not use the binding sale and purchase agreement as referred to in paragraph (2) letter a, the time when levy on acquisition of land and building RIGHTS is payable for sale and purchase is at the time of signing the sale and purchase deed (Article 18, paragraph 3).

The Table 1 shows normative problems related to when the levy on the acquisition of

land and building rights becomes payable in land and building purchase and sale transactions, based on two main regulations: Law Number 1 of 2022 and Government Regulation Number 35 of 2023. According to Article 49, letter a of Law No. 1 of 2022, the levy on the acquisition of land and building rights is payable on the date of creation and signing of the Binding Sale and Purchase Agreement. This provision is also adopted in Article 18, paragraph (2), letter a of Government Regulation No. 35 of 2023. This means that these two regulations basically agree that the levy on the acquisition of land and building rights has become an obligation since the existence of a binding sale and purchase agreement. However, Government Regulation No. 35 of 2023 adds further provisions in Article 18 paragraph (3), namely that if the transaction of buying and selling land and/or buildings does not use a binding sale and purchase agreement, levy on acquisition of land and building rights will be payable at the time of signing the Deed of Sale and Purchase in front of PPAT. This additional provision is not explicitly regulated in Law No. 1 of 2022, thus causing potential disharmony and confusion in the field. This difference in arrangement shows that there is a lack of synchronization between laws and government regulations, especially related to the flexibility of the levy on the acquisition of land and building rights payment mechanism in transactions that do not always begin with a binding sale and purchase agreement. This is one of the sources of debate and emphasizes the need for regulatory harmonization in order to create legal certainty for the parties to the transaction (Rosalia, 2025).

It is not appropriate for Article 49 letter a of Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments to stipulate that levy on acquisition of land and building rights is payable at the date of making and signing the binding sale and purchase agreement, rather than at the time of making and signing the purchase deed before the authorized PPAT. Does this mean that every land sale and purchase must always be preceded by the making and signing of a binding sale and purchase agreement before a Notary? Such a provision could create legal uncertainty in practice.

The ambiguity in the formulation of Article 49 letter a of Law of the Republic of Indonesia Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments creates legal uncertainty, while legal certainty can be obtained through clear and specific legal texts. The principle of legality in civil law is interpreted as the basis for ensuring proper justice (Saputa & Luthviati, 2020). Starting from its history, the idea of legality that is claimed to be able to provide legal certainty was born from the teachings of legism in the 19th Century. Quoting the opinion of a Dutch jurist, L.J. van Apeldoorn, the doctrine of legism is a movement that places the law as a logical system that can be applied to every case (Jansen, 2023). Therefore, to provide legal certainty, every law and regulation must contain clear and firm rules.

According to the perspective of adherents of analytical positivism, the measure of legal certainty is seen from the provisions in the law because, in the view of its adherents, such as John Austin, the law comes from positive law in the form of a law. One of the guidelines for ensuring the legal certainty of a regulation is the legal principles contained in it. According to Ariyanti (2019), legal principles are the "heart" of legal regulations, so to be able to understand a regulation, it is very necessary to have a legal principle. In another opinion, Julyano & Sulistyawan (2019) said that legal principles are measures of ethical law that can provide direction in the formation of laws. From these ethical demands, the function of the legal principle is as a bridge

between legal regulations, social ideals, and the ethical views of society.

In the political dynamics in Indonesia, the issue of legal certainty is found in Article 28I paragraph (1) of the Second Amendment of the 1945 Constitution which reads: "...The right not to be prosecuted based on retroactive law is a human right that cannot be reduced under any circumstances", although the idea of legal certainty already exists in the Criminal Code. Legal certainty requires that the law can function as a regulation that must be obeyed. Of course, not only must the regulation be implemented, but the norms or content materials in the norms in the regulation must contain the basic principles of law. In the context of the Indonesian state of law, laws and regulations, as written legal norms, are the basis for state administration (Wandi, 2023; Gafuraningtyas et al., 2024).

Certainty refers to definite conditions and clear conditions. The law must be clear and fair in essence. Both of these things are important because the law, as a guide to behavior, must support an order that is considered reasonable. Only with this justice and certainty can the legal function run properly. Legal certainty is a question that can only be answered normatively, not sociologically. Certainty includes several concepts, such as clarity, absence of multiple interpretations, consistency, and the ability to be implemented (Numaningsih et al., 2024). The law must be applied firmly in society in a way that is easy to understand, so that it can be understood by anyone. The laws must not contradict each other so as not to cause doubt among the public. Legal certainty refers to the clear, consistent, and consequential application of the law, which is not influenced by subjective factors. The importance of legal certainty is by Article 28D, paragraph (1) of the 1945 Constitution Third Amendment, which states that every individual has the right to fair legal recognition, protection, and certainty, as well as equal treatment in the eyes of the law (Mirza et al., 2023). Furthermore, eight principles that must be fulfilled by the law to meet legal certainty (Nur, 2023).

- a. A legal system consisting of regulations, not based on heretical judgments for certain matters;
- b. The regulation is announced to the public;
- c. It does not apply retroactively because it will damage the integrity of the system;
- d. Made in a formula that is understood by the public;
- e. There should be no conflicting rules.
- f. It is not permissible to demand an action that exceeds what can be done;
- g. It should not be changed frequently;
- h. There must be consistency between the regulations and the day-to-day implementation.

Both Law Number 1 of 2022 and Government Regulation Number 35 of 2023 do not provide an explanation about a binding sale and purchase agreement, which is subject to levy on acquisition of land and building rights collection, considering that in practice, there are 2 types of a binding sale and purchase agreements, namely, a sale and purchase agreement with full payment and a binding sale and purchase agreement with payment in installments or installments. If what happens is a binding sale and purchase agreement with installment payments, how do you pay the levy on the acquisition of land and building rights? Does it follow each stage of payment from the buyer to the seller, or does a levy on the acquisition of land and building rights have to be paid in full at the beginning of the first time a binding sale and purchase agreement is made and

signed? These things can bring legal uncertainty for the parties, as no arrangements are made in writing.

3.2. Factors Causing the Non-Conformity of a Binding Sale and Purchase Agreement: Regulatory Norms as an Object of Levy on Acquisition of Land and Building Rights

Lawmakers must always be committed to the country's goals in making laws. This is to ensure justice, benefits, and legal certainty for the community, which is always an inseparable part of every legal product produced. The legal system is influenced by the prevailing political system (although it is also heavily influenced by historical traditions). The government of a country determines the legal framework within which the company does business, and often, the laws governing business reflect the dominant political ideology of the ruler. For example, totalitarian countries that tend to be collectivist tend to enact laws that severely restrict private companies, while laws enacted by governments in democracies where individualism is the dominant political philosophy tend to be pro-corporate and private consumers (Bryan et al., 2024).

Legal politics that produce good legal products must be supported by effective law enforcement, as legal politics cannot stand alone. Legal products are expected not only to resolve existing disputes but also to function as instruments of social engineering that shape and guide societal behavior (Setiyono et al., 2024). In Indonesia, the formal structure of legal policy is hierarchical, meaning that higher-level regulations with binding authority take precedence over lower-level regulations. This ensures that the legal system remains orderly and consistent in its application. In terms of substance, Indonesia's legal policies are generally structured according to the main sectors of life or the scope of authority of ministries and sectoral institutions (Purnomo & Gunadi, 2023). This sectoral approach allows each ministry or institution to regulate specific areas under its responsibility, ensuring that legal norms are tailored to the unique needs and challenges of each sector. However, it also highlights the importance of harmonization between different levels and sectors of regulation to prevent inconsistencies and overlaps that can undermine legal certainty and effectiveness.

The laws and regulations that are made must meet the principles of the formation of laws and regulations as stipulated in Articles 5 and 6 of Law of the Republic of Indonesia Number 12 of 2011 concerning the Establishment of Laws and Regulations. In the provisions of Article 5 of the Law, it is stated that 7 (seven) principles must be complied with in the formation of laws and regulations, namely:

- a. Principle of clarity of purpose
Laws and regulations must have a clear goal to be achieved. This purpose must be explained in the consideration and explanation of the regulation so that every interested party can understand the purpose of the regulation.
- b. Institutional basis or properly constituted office
The formation of regulations must be carried out by authorized institutions or officials by the provisions of higher laws and regulations. This ensures that every regulation is made by a party that has the competence and authority to do so.
- c. Principle of conformity between types, hierarchy, and content material
Each type of law and regulation may only contain material that is appropriate to its

type. For example, materials that contain general rules should be regulated in the law, not in the ministerial regulation.

d. Principles can be implemented

Laws and regulations must be enforceable by paying attention to effectiveness and efficiency. The regulations must be realistic and applicable in real life with existing facilities and infrastructure.

e. Principle of usefulness

Laws and regulations must provide the greatest benefits to the community and must be able to achieve the expected goals. This aspect emphasizes the importance of effective regulation in solving the problems it faces.

f. Principle of clarity of formulation

Laws and regulations must be formulated in clear and easy-to-understand language so as not to cause multiple interpretations or confusion among the public who must comply with them.

g. The principle of openness

The process of forming regulations must be carried out transparently and involve community participation. This is important to ensure that the regulations made reflect the aspirations and needs of the community, as well as increase the legitimacy of the regulations.

In addition to the principle of forming good laws and regulations, there is also the principle of the content of laws and regulations explained in Article 6 of the same Law. This article states that the content of laws and regulations must contain the following principles:

a. The Principle of Protection

The content of laws and regulations must protect to create public peace. This means that regulations must be able to provide a sense of security and protect the rights and interests of the community.

b. Principles of Humanity

The content of laws and regulations must reflect respect for human rights and uphold the human values and dignity of every citizen and resident of Indonesia proportionately.

c. National Foundations

The content of laws and regulations must reflect the character and interests of the Indonesian nation, as well as strengthen the unity of the nation. This aspect prioritizes the values of nationalism and national integrity.

d. Family Basics

The content of laws and regulations must prioritize deliberation and consensus in every decision-making process. This reflects the values of togetherness and cooperation that are characteristic of Indonesian culture.

e. Principles of Necessity

The content of laws and regulations must pay attention to the interests of all regions of Indonesia and must not prioritize the interests of certain regions or groups.

In addition to the principles of the formation of good laws and regulations, Article 6 of the same Law also emphasizes the importance of the material principles of the content of laws and regulations. These principles include protection, humanity, nationality, family, and justice. The principle of protection requires that every regulation provide a sense of security and protect the rights and interests of the community. The principle of humanity demands that every regulation reflect respect for human rights and uphold the

dignity of every citizen proportionately. Meanwhile, the principle of nationality emphasizes the importance of reflecting the character and interests of the Indonesian nation and strengthening national unity. In addition, the principle of kinship requires that the decision-making process in laws and regulations prioritize deliberation and consensus, reflecting the value of togetherness that is a characteristic of Indonesian culture.

The principle of justice also emphasizes that regulations must pay attention to the interests of all regions of Indonesia without taking sides with certain groups or regions. In the context of a binding sale and purchase agreement and the levy on the acquisition of land and building rights regulations, the application of these principles is very important so that the resulting regulations are not only formally valid, but also fair, protect the community, and in accordance with the noble values of the nation. Inconsistency or disharmony between higher regulations and their derivatives, such as what occurred between Law No. 1 of 2022 and Government Regulation No. 35 of 2023, shows that the application of these principles has not been optimal in the formation of laws and regulations. Regulations must reflect the spirit of unity in diversity.

- a. The Principle of Bhinneka Tunggal Ika
The content of laws and regulations must pay attention to the diversity of the population, religion, ethnicity, and culture of the Indonesian nation, as well as strengthen unity in this diversity. This is to maintain harmony and tolerance between community groups.
- b. Principles of Justice
The content of laws and regulations must reflect justice proportionately for every citizen. Regulations must provide equal treatment before the law regardless of social, economic, and other status.
- c. The Principle of Equality of Position in Law and Government
The content of laws and regulations must ensure that every citizen has the same position in law and government. This means that there is no discrimination in the application of the law.
- d. Principles of Order and Legal Certainty
The content of laws and regulations must be able to create order in society and provide legal certainty. Regulations must be clear, firm, and consistent so that they are easy to understand and apply.
- e. Principles of Balance, Compatibility, and Harmony
The content of laws and regulations must consider the balance and harmony between various interests, including individuals, communities, and the state. Regulations must be able to accommodate various interests fairly.

Good regulations must reflect the spirit of unity in diversity (Bhinneka Tunggal Ika), by paying attention to the diversity of Indonesia's population, religion, ethnicity, and culture in order to maintain harmony and tolerance between community groups. In addition, the principle of justice demands that every regulation provides fair and equal treatment for all citizens regardless of social or economic status. The principle of equality before the law and government ensures that there is no discrimination in the application of the law. On the other hand, the principles of order and legal certainty require regulations to be made clearly, firmly, and consistently so that they are easy to understand and apply. Finally, the principles of balance, harmony, and harmony require that regulations be able to accommodate the various interests of individuals, communities, and the state in a fair

manner. The application of these principles is very important so that the resulting laws and regulations are truly able to create justice, order, and unity in a pluralistic society (Sanders et al., 2024).

Regarding the problem of differences in a binding sale and purchase agreement regulatory norms, there are differences in regulations when levy on acquisition of land and building rights is payable, where Article 49 letter a of Law Number 1 of 2022 stipulates on the date of making and signing a binding sale and purchase agreement for buying and selling, while Article 18 paragraph (2) letter a of Government Regulation Number 35 of 2023 stipulates on the date of making and signing a binding sale and purchase agreement for buying and selling and in Article 18 paragraph (3) of Government Regulation Number 35 of 2023 stipulates in terms of buying and selling land and/or the building does not use a binding sale and purchase agreement as referred to in paragraph (2) letter a, when levy on acquisition of land and building rights is payable for sale and purchase is at the time of signing the sale and purchase deed, it violates several principles of the content of laws and regulations. These violations include the principle of conformity between types, hierarchies, and content materials, as well as the principles of order and legal certainty.

The principle of conformity between types, hierarchies, and content materials requires that the content of laws and regulations must be determined by the type and hierarchy of the regulation. Government regulations should only regulate technical matters that are the implementation of the provisions of the Law. Article 18, Paragraph (3) of Government Regulation Number 35 of 2023 adds additional rules that are not regulated in Law Number 1 of 2022. It provides rules regarding situations where a binding sale and purchase agreement is not used and stipulates that the time when the levy on the acquisition of land and building rights is payable is when the sale and purchase deed is signed. This provision is an expansion of the regulation that goes beyond the provisions in the law, thus violating the principle of hierarchy and suitability of the content material.

Meanwhile, the principle of Legal Order and Certainty requires that a regulation must be clear, firm, and consistent. The goal is for the public to easily understand the regulations so that they can be applied. Differences in the regulation of when a levy on the acquisition of land and building rights is payable between laws and government regulations can cause confusion and legal uncertainty for people who must comply with this provision. Inconsistencies between laws and government regulations can reduce legal protection for people who carry out land and/or building purchase and sale transactions because they may not know when exactly they have to pay the levy on the acquisition of land and building rights.

4. Conclusion

The difference in normative arrangements regarding when the levy on the acquisition of land and building rights becomes payable in sale and purchase transactions, as regulated in Law Number 1 of 2022 and Government Regulation Number 35 of 2023, occurs because the lawmakers did not fully adhere to the principles of good legislative drafting. This inconsistency is primarily caused by a lack of hierarchical conformity and clarity of formulation between the higher law and its implementing regulation. Specifically, Law Number 1 of 2022 stipulates that levy on acquisition of land and building rights is due at the time of making and signing the binding sale and purchase agreement, while

Government Regulation Number 35 of 2023 provides additional provisions for cases where the binding Sale and Purchase Agreement is not made, leading to confusion and legal uncertainty. Based on these conclusions, it is recommended that the relevant regulations be harmonized. Lawmakers should clarify and align the provisions regarding when the levy on the acquisition of land and building rights is payable in both Law Number 1 of 2022 and Government Regulation Number 35 of 2023. This harmonization is essential to ensure legal certainty, protect the interests of the parties involved in land and building transactions, and uphold the principles of good legislative drafting.

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