THE REGULATION OF TAX IMPOSITION ON PROPERTY RIGHTS ACQUISITION FOR FOREIGN CITIZENS IN INDONESIA POST THE JOB CREATION LAW NUMBER 6 OF 2023

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ABSTRACT
This article discusses the regulation of tax imposition on property rights acquisition for foreign nationals (foreigners) in Indonesia following the enactment of Law Number 6 of 2023 regarding Job Creation. Property is an asset that holds significant economic value in the growth of a country’s economy. Foreign nationals seeking to acquire property rights in Indonesia also must pay taxes, such as Value Added Tax (VAT), Land and Building Acquisition Duty (BPHTB), and Land and Building Tax (PBB). Although the imposition of taxes on foreign nationals is similar to that for Indonesian citizens, this is done to enhance the attractiveness of investment in the Indonesian property sector. The regulation of tax imposition hasn’t changed significantly following the enactment of the Job Creation Law. The most noticeable changes can be seen in VAT/VAT on Luxury Goods. Even though the regulations regarding tax imposition for foreign nationals haven’t changed significantly after the Job Creation Law, alterations can be observed in the procedural implementation. After the Job Creation Law, foreign nationals only need a passport as a document requirement in the process of acquiring property rights in Indonesia. However, there are still obstacles in the regulation of tax imposition for foreign nationals, such as challenges in using a passport as a required document, ambiguity in the imposition of PBB on PBB objects, and validation of BPHTB payments. This diminishes the interest of foreign nationals in purchasing property in Indonesia.

KEYWORDS
Tax, Property, Foreigner, Job Creation Law, Indonesia

INTRODUCTION

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The rapid global developments have brought about significant changes. However, these changes do not alter or eliminate the human need for basic or primary needs, namely clothing, food, and shelter. The first basic need is clothing, followed by the second, which is food. The third crucial basic need is shelter or housing, often referred to as property.

The Great Indonesian Dictionary (KBBI) defines the term "property" as assets in the form of land and buildings, along with the facilities and infrastructure that are an integral part of the land and/or buildings in question. Based on this definition, the term "property" encompasses several elements, including assets, infrastructure, and land and/or buildings. In other words, a property is an asset in the form of land and/or buildings acquired not only as a basic need but also as an economically valuable asset (Permatadani & Irawan, 2021).

The economic value held by properties plays a crucial role in supporting a country's economic growth. Properties are intertwined with economic activities and development within a nation (Utami, 2023). The demand for properties increases alongside a nation's population growth, leading to sustained development in the property sector. Furthermore, property investments contribute to driving a nation's economy. In light of current developments, many countries, including Indonesia, open opportunities for investment or provide chances for Foreign Nationals (FNs) to acquire properties within their borders.

The acquisition of properties by FNs underscores the significance of regulating property matters. Property regulations aim to establish legal certainty not only for Indonesian citizens but also for FNs interested in property acquisition. Legal certainty, provided through clear property regulations, adds value to FNs seeking property in Indonesia. Several critical property regulations to be noted for property acquisition involve transactions (transfers), ownership or rights, and obligations (Lauren, 2023).

FNs seeking property rights, as outlined above, are not exempt from obligations. The obligation in question is taxation. Tax is a mandatory contribution paid to the state by taxpayers (individuals or entities) without direct compensation and is based on prevailing laws (Iswara et al., 2019). Taxes are imposed on specific objects according to the applicable law. In essence, FNs seeking property rights in Indonesia are not exempt from the obligation to pay taxes related to their acquisitions (Mohammad, 2022; Sadat, 2022).

Given the crucial nature of property-related regulations, the regulations concerning taxation obligations in property acquisition for FNs must be properly governed. Tax obligations for FNs in Indonesia have already been regulated according to the types of taxes and all associated implementing regulations (Fauzan, 2021; Prawinda & Putra, 2021). One of the taxes imposed concerning property rights acquisition is the Land and Building Acquisition Duty (BPHTB), regulated under Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments (Law No. 1/2022), which repeals Law Number 28 of 2009 concerning Regional Taxes and Regional Levies. The tax rates and imposition procedures for property rights acquisition differ based on the type of tax regulations (Sutedi, 2022).
The regulations regarding tax imposition in property rights acquisition for FNs, following ongoing developments, necessitate the establishment of new regulations to replace those that are no longer relevant or to complement existing regulations (Harjono, 2016). Therefore, on March 31, 2023, in Indonesia, Law Number 6 of 2023 concerning Job Creation, often abbreviated as the "Ciptaker Law," was enacted. The implementation of the Ciptaker Law as an Omnibus Law aims to expedite and streamline existing bureaucratic processes, with the hope of boosting investment and driving greater economic development (Vinita et al., 2023). As part of this consolidated law, regulations concerning tax imposition in property rights acquisition for FNs are among those altered. Based on this, the problem statement in this research is:

• What is the regulation of tax imposition in property rights acquisition for FNs in Indonesia post the Job Creation Law Number 6 of 2023?
• What are the obstacles in the regulation of tax imposition in property rights acquisition for FNs in Indonesia post the Job Creation Law Number 6 of 2023?

**RESEARCH METHOD**

The method used in this study is normative research method or using legal research method. The normative research method used uses a statutory approach, which means that the problem formulation will be examined based on all relevant laws and regulations (Marzuki, 2017). Based on secondary data, the legal materials used are primary, secondary and tertiary legal materials. The primary legal material used focuses on regulations governing taxation in Indonesia and the Ciptaker Law (Solikin, 2021).

**RESULT AND DISCUSSION**

**A. Regulation of Imposition of Tax in the Acquisition of Property Rights for Foreigners in Indonesia After Law Number 6 of 2023 concerning Job Creation**

Changes in tax imposition arrangements in the acquisition of property rights for foreigners in Indonesia after the Ciptaker Law can be seen and divided from the types of taxes related to the acquisition of property rights for foreigners. The types of taxes related to the explanation include the following:

1. **Land and Building Acquisition Duty (BPHTB)**

   The BPHTB (Land and Building Acquisition Duty) is imposed on property transactions. The property transactions referred to entail the acquisition related to property rights, which are the subject of the BPHTB, as regulated in Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments (Law No. 1/2022). Article 45 of Law No. 1/2022 specifies that individuals or entities acquiring rights to property (land and/or buildings) performed by regional governments are subjects liable to pay BPHTB. Both Indonesian citizens (WNI) and foreign nationals (WNA) are subjects of BPHTB,
even though not explicitly mentioned, because the focus of this regulation is based on property rights acquisition.

BPHTB is one of the taxation regulations in property rights acquisition in Indonesia since the regulations governing acquisition include property acquisition as stipulated in Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA). Property rights acquisition includes transfers of rights such as sales, gifts, testamentary gifts, or inheritance. Additionally, property rights are explicitly governed in Article 44, Paragraph (3) of Law No. 1/2022, encompassing ownership rights, rights to utilize, rights to buildings, rights to use, ownership rights over condominium units, and management rights. For property rights acquisition by both Indonesian citizens and foreign nationals, the highest rate set is 5% (five percent). However, the BPHTB rate may vary depending on regional property regulations.

The regulations regarding BPHTB have undergone quite significant changes. These alterations aim to simplify the collection process for efficiency and to refine previous regulations. The BPHTB governed by Law No. 1/2022 is the most recent after the Job Creation Law in 2020. Post the 2023 Job Creation Law, there have been no changes in the BPHTB regulations.

2. Value Added Tax / Luxury Goods Sales Tax (VAT / VAT on Luxury Goods)

VAT is an abbreviation for Value Added Tax. VAT is imposed on services and taxable goods in the customs territory, as stipulated in Law Number 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods, in conjunction with Law Number 6 of 2023 concerning Job Creation (VAT Law). The imposition of VAT occurs only once when a foreign national (WNA) acquires property in Indonesia, at a rate of 11% (eleven percent) of the property's value.

Slightly different from the usual VAT, properties acquired by FNs may be subject to Luxury Goods Sales Tax (VAT BM) if the property is not a primary necessity, such as luxury apartments, for example. The VAT BM rate, according to the Ministry of Finance Regulation Number 15/PMK.03/2023 of 2023 concerning the Designation of Taxable Goods Other than Motor Vehicles Subject to Sales Tax on Luxury Goods and Procedures for Exemption from the Imposition of Sales Tax on Luxury Goods (PMK No. 15/PMK.03/2023), is set at 20% (twenty percent). VAT BM is imposed on property acquisitions priced at Rp. 30,000,000,000 (thirty billion Indonesian Rupiah) or more, in the luxury housing category specified in PMK No. 15/PMK.03/2023, including:

- Luxury houses
- Apartments
- Condominiums
- Townhouses, and similar properties.

The VAT and VAT BM regulations are closely related to the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Decree Number 1241/SH-HK.02/IX/2022 concerning Acquisition and Prices of Residential Houses/Dwellings for Foreigners (Ministerial Decree ATR/BPN No. 1241/SH-HK.02/IX/2022), which establishes the minimum price limit for FNs acquiring property in Indonesia based on the location.
The VAT Law, as refined through the Job Creation Law, accommodates changes in tax imposition regarding property acquisition for FNs. This regulation is seen in Article 13 Paragraph (5) Letter (b) concerning the identity of the VAT/VAT BM subject (buyer) for FNs who do not have a Taxpayer Identification Number (NPWP) and are allowed to use their passport number. The use of a passport number has been employed by the Indonesian government to attract the interest of FNs in acquiring property in Indonesia.

3. Land and Building Tax (PBB)

True to its name, the taxable objects for this tax are land and/or buildings. While the Land and Building Acquisition Duty (BPHTB) focuses on the transaction of property acquisition, the Land and Building Tax (PBB) differs as it is linked directly to the property itself. The imposition of PBB on properties is a local tax collected by local governments, known as the PBB P2 (Rural and Urban) tax, applicable to properties such as houses, shops, offices, and others. The tax rate imposed is 0.5% (zero point five percent) of the Tax Object Selling Value (NJOP).

PBB imposition is done regularly. Local governments, as authorized by Law No. 1/2022, collect the PBB from the taxable subjects once a year. Regarding the PBB's taxable subjects, they are individuals or entities who openly hold rights, benefits, and/or control over the property. These regulations are stipulated in Law Number 12 of 1995 in conjunction with Law Number 12 of 1994 concerning Land and Building Tax (PBB Law).

The aforementioned PBB law remains in effect. Only the PBB Law hasn't experienced any changes post the Job Creation Law. The refinement in regulations is found in Law No. 1/2022, governing the procedures for PBB collection from the taxable subjects. Similar to BPHTB, the regulation does not explicitly mention FNs in its imposition.

Based on the above discussion, the regulations regarding tax imposition in property rights acquisition for FNs in Indonesia post the Job Creation Law have not significantly changed. The BPHTB Law had modifications related to its collection mechanism after the Job Creation Law in 2020, but it experienced no changes post the Job Creation Law in 2023. Similarly, the PBB Law, although sharing some similarities, did not undergo any changes after the Job Creation Law. The notable change post the Job Creation Law is evident in the VAT Law, where FNs are clearly subject to property objects acquired, allowing the use of a passport for identification. The simplification outlined in the VAT Law has been used by the Indonesian government to boost FNs' interest in acquiring property in Indonesia as an investment.

The purpose of enacting the Job Creation Law is to significantly enhance the appeal for FNs in the property sector, particularly by streamlining the steps necessary in property acquisition or providing legal certainty amidst unclear regulations, especially in property and property tax fields. The consistency in tax imposition, the same as for Indonesian citizens, serves as an attraction to bolster investments in the property sector. However, despite the Job Creation Law, the actual interest of FNs in acquiring property remains relatively low, and the implementation of tax imposition on FNs still faces hindrances, lacking the certainty of the law.
B. Challenges in Tax Imposition Regulations for Foreign Nationals Acquiring Property in Indonesia Post Job Creation Law Number 6 of 2023

The acquisition of property rights for foreigners in Indonesia is not new. By regulation either of ownership or rights, legal relations and liabilities i.e. taxes from the acquisition of property rights have been regulated. Moreover, to open investment opportunities by foreigners in the property sector, it has been better equipped with the Ciptaker Law and its implementing regulations. This is to make it attractive for foreigners to acquire property in Indonesia that there is a legal certainty in carrying out the acquisition process. However, the Ciptaker Law still cannot provide legal certainty and there are obstacles in regulating the imposition of taxes in obtaining property rights for foreigners in Indonesia, namely as follows:

- The use of passports in the process of paying taxes in the acquisition of property rights for foreigners.
  In its implementation, foreigners still have problems using passports as documents needed to make tax payments. This obstacle occurs if it is related to the imposition of taxes carried out by the Regional Government.

- Compliance with UN payments by foreigners due to unclear imposition of taxes on their objects
  So far the level of compliance or clarity related to the calculation, collection and payment of UN for foreigners who acquire property rights is not clear. This lack of clarity is what makes UN tax revenue has not been maximized. This happens

- BPHTB payment validation
  The implementation of BPHTB payments by foreigners still poses obstacles in the field. BPHTB payment validation is still needed, while foreigners no longer require the use of NPWP but only need a passport. This obstacle occurs in almost all regions because BPHTB is a tax collected by the Regional Government because existing regulations have not been synchronized.

CONCLUSION

Based on the research conducted, it can be concluded that the regulation of imposing taxes in the acquisition of property rights for foreigners in Indonesia after the Ciptaker Law has undergone significant changes. The change was but not so significant. The imposition of taxes for foreigners and Indonesian citizens has not been changed. This is to provide an attraction for foreigners to obtain property rights in Indonesia. The change in settings focuses more on the implementation arrangements. However, changes after the Ciptaker Law still do not provide legal certainty because there are obstacles in its implementation.

Some obstacles in the implementation of tax arrangements for foreigners occur due to the discontinuity of central and regional government arrangements or regulations that still do not provide legal certainty. These obstacles are in the form of new implementation regulated by the Ciptaker Law such as the use of passports, compliance with UN payments by foreigners who are lacking due to unclear tax imposition on their objects and the implementation of BPHTB validation.
The advice that can be given through this research is to pay more attention to the continuity between the latest and old regulations. Not only the regulations, these arrangements must be implemented and supported by relevant government agencies, both central and regional. Likewise, Indonesia must clarify existing regulations so as to provide legal certainty for foreigners in obtaining property rights in Indonesia to achieve maximum economic development.

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