



## Legal Certainty of Income Tax Exemption on the Transfer of Rights to Land in the Sharing of Collective Integration Rights

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### ABSTRACT

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The transfer of property to certain heirs for the joint ownership of the object of inheritance must be transferred by way of the distribution of joint rights, which is based on the APHB. Article 4 paragraph (3) letter b of the Income Tax Law explains that the transfer due to inheritance is exempt from collecting PPh, but in its implementation it must be accompanied by a PPh SKB issued by KPP Pratama. So that in order to get the income tax exemption on the transition, the heirs must apply for the issuance of the SKB PPh to the KPP Pratama. However, the KPP Pratama often refuses the issuance of the SKB PPh, this results in the heirs having to pay PPh on the transition. This study uses a normative juridical method with a statutory approach and a conceptual approach, and legal materials are analyzed using a deductive method. The results of this study indicate that the transfer of land rights by the distribution of joint rights of inheritance should be exempted from income tax, because the distribution of joint rights is still included in the series of inheritance processes, so the transfer of income tax collection must be exempted. So that legal reform is needed to provide legal certainty in the exemption of PPh on the transition.

### Keywords:

Inheritance; Land; Tax; Income; Certainty

### I. INTRODUCTION

Inheritance is a legal event that occurs when a person dies. This incident resulted in the transfer of assets belonging to the heir to the heirs in blood relations, marriage, and wills (Zainuddin Ali, 2020). On this basis, the elements of inheritance are the presence of a person who dies, the existence of heirs who inherit, and the existence of inheritance which includes all assets and liabilities belonging to the testator. Inheritance law is closely related to the scope of human life, because every human being will experience a legal event called death. The legal consequences that then arise, with the occurrence of a legal event of a person's death, include the problem of how to manage and continue the rights and obligations of someone who dies (Mohammad Yasir Fauzi, 2016).

The individual inheritance system is an inheritance distribution based on individuals or private heirs to be owned individually. Every heir is free to use or transfer the inheritance obtained to other parties (Syahrul Mubarak Subeitan, 2021). Inheritance is open at the time of the death of the testator, which results in the law of inheritance breaking, namely the transfer of inheritance to all heirs, which results in binding joint ownership (Syahril Sofyan, 2018). So that to carry out legal actions against the object of inheritance must be carried out jointly by all heirs (Herlien Budiono, 2018). Bonded joint ownership often causes problems between heirs, especially if the object of inheritance is land, which has high economic value (Tatik Arjiati & Latifah Hanim, 2017). Therefore, to avoid disputes in the future, it is better to immediately distribute the inheritance of the object.

The transfer of inheritance in the form of land must be registered with the land office, in order to provide legal certainty over land ownership (Betrix Benni, Kurniawarman & Annisa Rahman, 2019). The registration of the transfer of land rights in the distribution of inheritance is based on Article 111 paragraph 5 PMNA/KBPN 16/2021 that the implementation of land registration must first be registered

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with all heirs together. Then the implementation of the distribution of inheritance is carried out by transferring the distribution of joint rights based on the APHB made by PPAT, which is domiciled as evidence of the agreement of all heirs in terms of the distribution of the object of inheritance (I Gusti Bagus Yoga Prawira, 2016).

Every transfer of land rights is always tax payable, both for the transferor and the party receiving the transfer. For those who transfer rights will be owed PPh, while for those who receive rights will be owed BPHTB. PPh is imposed on the basis of income received from the transfer of land rights. In the transfer due to inheritance, the receipt of the object of inheritance is an additional asset for the heirs, but Article 4 paragraph (3) letter b of the Income Tax Law explains that the transfer due to inheritance is not an object of income tax, so that the receipt of inheritance is exempted from income tax. The exemption of the PPh must be based on the existence of the SKB PPh issued by the KPP Pratama where the object of inheritance is based on Article 3 paragraph (1) letter a PDJP 30/PJ/2009. The issuance of this SKB PPh is requested by the heirs in writing to the KPP Pratama.

The application for the issuance of SKB PPh can be accepted or rejected by KPP Pratama. If accepted, there are no problems, but when KPP Pratama refuses to issue a SKB PPh, this results in the heirs having to pay PPh. PPh payments are made to obtain an SSP PPh which is then validated, and will be used as the basis for fulfilling taxation on the registration of transfer of land rights as required for the transfer of land rights as regulated in Article 103 PMNA/KBPN 16/2021. As the facts are illustrated as follows:

The heirs receive an inheritance in the form of land, and the certificate of title has previously been transferred to all heirs for joint ownership. Then all heirs agree to carry out the distribution of inheritance by giving land rights to certain heirs, so they come to the Notary Office / PPAT for make APHB which is used as the basis for inheritance distribution. In the process of fulfilling the tax requirements, the Notary/PPAT submits an application for the issuance of the SKB PPh to the KPP Pratama by attaching the necessary files. However, the KPP Pratama officer actually refused the application for the issuance of the SKB PPh for no apparent reason, so in order to further process the registration of the transfer, the heirs paid the final PPh for the transfer of land rights.

As a result of the refusal, the heirs have to pay 2 (two) taxes at once when transferring land rights, namely paying PPh and BPHTB, this is of course a double tax borne by the heirs. This causes legal uncertainty regarding the exemption of income tax for heirs, besides that the heirs do

not feel the benefits of this imposition. So that the imposition of PPh on the heirs does not meet the aspect of justice. Therefore, it is interesting to study the legal certainty of the exemption of income tax on the transfer of land rights by sharing rights with inheritance. Based on this description, the formulation of the problem to be studied is:

1. What is the legal ratio of the imposition of Income Tax on the transfer of land rights by sharing rights with inheritance?
2. Can the transfer of land rights by sharing rights with inheritance be exempt from Income Tax?

## II. LITERATURE REVIEW

### A. Tax Law Concept

Tax is the transfer of wealth from the people to the State Treasury to finance routine state expenditures and the surplus is used for public saving which is the main source for financing public investment. Taxes have a very important role for the state, especially in the implementation of development, because taxes are a source of state revenue to finance all expenditures including development expenditures (Mustaqiem, 2014).

In addition, taxes are a very important source of state revenue for the government and national development. So that the Government places tax obligations as a manifestation of state obligations which are a means of financing the state in national development in order to achieve state goals. The importance and strategic role of the taxation sector in the implementation of government can be seen in the annual State Revenue and Expenditure Budget (APBN) submitted by the government, namely the increase in the percentage of tax contributions from year to year (Enny Agustina, 2019)

Every tax collection by the state must have a legal basis. If the tax collection does not have a legal basis, the collection carried out by the State is an illegal levy (H. Bohari, 2019). The legal basis for the collection of taxes to the public by the state is regulated by a collection of laws and regulations regulated in Tax Law. Tax law is a collection of rules that regulate the legal relationship between the tax authorities and the people who are tax subjects. Tax collection by the tax authorities must be based on the law in order to ensure legal certainty for tax subjects.

Taxes function as a regular or regulated, namely taxes as a tool to regulate or implement government policies in the social and economic fields. Taxes have a function to regulate (Regular), in the sense that taxes can be used as a tool to regulate or implement state policies in the economic and social fields with a function to regulate taxes which are used as a tool to achieve certain goals that are outside the field of Finance and its regulatory function. (Enny Agustina, 2020)

Tax law must provide legal guarantees and strict justice, both for the state and society. The provisions of Article 23 paragraph (2) of the 1945 Constitution are the basis for tax

collection by the state, which explains that the imposition and collection of taxes for state purposes may only be carried out based on the law. The main purpose of the tax law is to create justice in tax collection carried out by the state to the public as taxpayers (H. Bohari, 2019). In order for this goal to be achieved, in the regulation of legislation regarding taxation, it must meet the legal certainty aspect, the provisions of the tax law must not give any doubts.

### B. Income Tax Concept

Income Tax is a tax imposed on tax subjects on income received or earned in a tax year. Income is any additional economic capacity that is obtained and adds to the wealth of the taxpayer. Thus, the income can be in the form of business profits, honorarium salaries, gifts and so on (Adrian Sutedi, 2021). Based on Article 4 paragraph (1) of the Income Tax Law, PPh is imposed on income receipts, namely any increase received by the taxpayer, both from Indonesia and abroad that can be consumed or increase the taxpayer's wealth.

As the legal basis for the imposition of income tax is the Income Tax Law and in accordance with the provisions of Article 16 paragraph (1) of Law no. 17 of 2000 concerning Income Tax, the definition of income tax is a tax imposed on tax subjects on income received or earned in the tax year. Income tax is a tax levied on the income of an individual, company or other legal entity. Income taxes can be applied progressively, proportionally, or regressively.

The purpose and objective of the imposition of income tax are as a function of the source of state revenue or budgetary, namely the government tries to make as much money as possible in the state treasury. Next is the function of regulating or regulated, namely taxes as a tool to regulate and implement government policies in the social and economic fields and achieve certain goals outside the financial sector (I Ketut Gede Purnayasa, Ida Ayu Putu Widiati, & Luh Putu Suryani, 2021). The subject of income tax is anything that has the potential to earn income. If the Tax Subject has fulfilled his tax obligations objectively or subjectively, he is called a Taxpayer. According to Article 2 paragraph (1) of the Income Tax Law, those categorized as tax subjects are: 1). private person; 2). Undivided inheritance as a unit; and 3). Body.

While the object of income tax is income. Based on the understanding of income above, income as an object of income tax is defined in a broad sense, namely all economic capabilities that can be consumed or increase the wealth of the taxpayer in any form (Nadia Githa Wijaya, I Putu Gede Seputra, & Luh Putu Suryani, 2021). Which has been qualified in Article 4 paragraph (1) and Article 4 paragraph (2), what income is the object of PPh. Meanwhile, an income that is not classified as a tax object is regulated in the provisions of Article 4 paragraph (3) of the Income Tax Law.

### C. The Concept of Transfer of Land Rights

The transfer of rights is a legal act that intends to transfer the rights to a movable or immovable object to

another person. In relation to land, the land is transferred from the property that transfers to the person who receives the transfer. The regulation regarding the transfer of ownership rights to land is regulated in the provisions of Article 20 paragraph (2) of Law Number 5 of 1960 concerning Basic Agrarian Regulations (hereinafter referred to as the Basic Agrarian Law) that an ownership right on land can be transferred or transferred to a third party. Next on Article 28 paragraph (3) and Article 35 paragraph (3) also stipulates the same thing that a Cultivation Right and Building Use Right can be transferred or transferred to another party.

The purpose of the transfer of land rights is to transfer land rights from one party to another which is carried out legally. It is said to be valid when a legal act of transferring land rights is carried out in accordance with existing regulations. (Rofiqah Rahmi & Sudjito, 2020) Based on PP 24/1997 every transfer of land rights must be registered at the land office. The purpose of holding land registration is, first, to provide protection and legal certainty for land rights holders. Second, to provide information to interested parties so that they can easily obtain data related to registered land. Third, for the orderly implementation of land administration.

Every registration of transfer of land rights based on Article 37 paragraph (1) PP 24/1997 stipulates that it must be accompanied by a deed made by the authorized PPAT as proof of the existence of legal action on the transfer. In connection with that, PPAT authority in assisting the community regarding legal actions against land rights based on Article 2 paragraph (1) PP 24/2016 explains that PPAT is authorized to make a deed that is used as the basis for registering changes in data due to legal actions against land rights. PPAT deed is a deed made by PPAT as evidence that certain legal actions have been carried out regarding land rights. The deed in question consists of 8 types of deeds as the basis for the following legal actions:

1. Buying and Selling;
2. Exchange;
3. Grants;
4. Entry Into the Company (Inbreng);
5. Sharing of Joint Rights;
6. Granting Power to Impose Mortgage Rights;
7. Granting Mortgage Rights; and
8. Granting of Building Use Rights/Use Rights on Land Ownership Rights

### D. Inheritance Concept

The determination of the inheritance law system that applies to the testator is an implication of the absence of legal unification regarding the regulation of inheritance law in Indonesia. Then the distribution of inheritance in inheritance is generally divided by the heirs themselves according to their own will and desires by taking into account the parts that have been determined by the civil law of inheritance which is used as a benchmark.

Inheritance is a legal event that occurs when a person dies, resulting in the transfer of assets that originally belonged to the testator to become the property of the heirs left behind. Settlement of rights and obligations from the legal event of a person's death is regulated in inheritance law (Erman Suparman, 2018). Inheritance law is a series of legal provisions to regulate the status of assets left behind by someone who dies and regulates the transfer of assets left by someone who dies (Surini Ahlan Sjarif & Nurul Elmiyah, 2006). The distribution of inheritance to the heirs is regulated by the inheritance law that applies to the heir. Inheritance Law is one of the private laws, as well as inheritance law is part of family law which plays a very important role, even defining and reflecting systems and forms laws that apply in a society, because the law of inheritance is a law that is closely related with the scope of human life socialize (Mohamad Aminuddin, 2018).

Inheritance has elements that must be met in order to be called an inheritance event. Inheritance must-have elements of heir, inheritance, and heirs. The heir is the person who inherits the inheritance. Inheritance property is a property that is inherited. Meanwhile, the heir is the person who receives the inheritance. However, if at the time the testator dies, the heirs are present and can act freely on their property, but have not made details of the inheritance, and then changes that occur in the condition of the inheritance make it impossible to comply with statutory regulations. In detailing the inheritance, the separation of the inheritance must be started by making an accurate report regarding the inheritance as left by the testator, regarding the changes that have occurred in this regard since that time, and regarding the situation at that time. To confirm the truth of the report, before a notary, an oath must be sworn in by the person or persons who retain control of the undivided inheritance.

Bonded joint ownership of the object of inheritance if it is in the form of land, which has a high economic value. In order to avoid disputes over the object of inheritance, the distribution of inheritance must be carried out immediately. The distribution of inheritance in the form of land, and the transfer of rights must be carried out by registering the transfer of land rights. The registration of the transfer of land rights must be accompanied by a deed made by PPAT, namely the Deed of Sharing of Joint Rights. APHB is domiciled as proof of the agreement between joint rights holders regarding the distribution of joint rights, which results in the transfer of the status of joint ownership of land to the individual rights of one of the heirs.

### III. RESEARCH METHOD

The methodology type of research used is normative juridical, with a statutory approach and a conceptual approach. The legal materials used are primary legal materials, secondary legal materials and non-legal materials, which are

collected by the literature study method and analyzed by deductive analysis method.

## IV. DISCUSSION

### A. Ratio Legis Transfer of Land Rights in the Distribution of Shared Inheritance Rights Subject to Income Tax

Every country must have principles that are used as guidelines in implementing the government system, Indonesia holds the principle as a state of law (*rechtstaat*), as stated in Article 1 paragraph (3) of the 1945 Constitution. As a consequence, everything that applies and will apply must comply with the rule of law, and must be regulated in laws and regulations. The formation of these laws and regulations is through a process of political communication between the government and the people, so legislators must understand the general principles related to regulatory norms in the laws that are formed to provide legal certainty for the community.

The expected legal certainty is the regulation of norms clearly so as not to cause multiple interpretations, therefore every law formation must have clear legal considerations. In line with Bagir Manan's thought that legal considerations (*ratio legis*) is a legal thought that contains the reasons and objectives of the birth of a legal regulation. So it can be concluded that the formation of legislation must be in accordance with the philosophical values of its formation, which will be included in the preamble of the law, so that the preamble is the spirit of the formation of the law.

The importance of the preamble is because the philosophical values in it will be described in the norms contained in the articles of the law. So that a well-constructed law will not cause a conflict of norms, a vacuum of norms, or a vagueness of norms, and will not create a gap between *das sein* and *das sollen*. The gap between the two is one of the sources of legal problems. In connection with the imposition of income tax on the transfer of land rights by sharing joint rights, the imposition of this income tax is very burdensome for the heirs. In order to understand the legal considerations for the imposition of taxes, it is necessary to first know the legal basis for the imposition of the tax.

Every tax collection by the state must have a legal basis, in order to provide protection to taxpayers in carrying out their tax obligations. The constitutional basis for tax collection in Indonesia is contained in Article 23 paragraph (2) of the 1945 Constitution which explains that the collection of taxes or other levies that are coercive for the needs of the state must be based on law. The goal is to fulfill the legal certainty aspect of the tax law, because tax regulations must not provide doubts that cause multiple interpretations. So that tax collection is expected to be able to realize justice for taxpayers. Due to the large role of the tax, it encourages the government to explore further the potential for taxes that can be received from the community (Niru Anita Sinaga, 2016). One source of tax that has a big role in state revenue is Income Tax (PPh).

PPh is a tax imposed on income received by the tax subject in any name or form in one tax year. Based on this understanding, it is known that the object of income tax collection is income, in Article 4 paragraph (1) of the Income Tax Law it is explained that income is any increase in economic ability received or obtained by taxpayers, both from Indonesia and outside Indonesia, which can be used for consumption. or to increase the wealth of the taxpayer concerned, by name or in any form.

The meaning of income adheres to the meaning of income in a broad sense, because the tax imposed on an income does not take into account the existence of an income from a particular source, but the meaning is broader, namely on any additional economic capacity. This meaning is considered to be the most relevant indicator to measure the ability of taxpayers to participate directly in assisting the income of the government. Income that is the object of PPh consists of 2 types, namely, final income tax which is the imposition of taxes at a certain rate on the income received, and the imposition when the taxpayer receives income (Waluyo, 2018). Meanwhile, non-final income tax is a tax with a general rate and the imposition is accumulated at the end of the tax year together with all income received in one tax year (Waluyo, 2018). In addition, there is also income that is not classified as an object of income tax, so the income received is not subject to income tax.

One of the non-tax objects is inheritance. Inheritance is an acquisition of property and wealth left by someone who has died, and whose ownership is continued by his heirs. The transfer of inheritance occurs right at the time the testator dies, beginning with the opening of the inheritance and an inheritance split occurs, that is, the inheritance is transferred by law to the heirs. This results in joint ownership.

Joint ownership is a condition where a property right is owned by more than one person, and has an impact on the authority to act on the property rights owned (Herlien Budiono, 2018). Ownership of the inheritance left by the testator is joint ownership which is bound. Joint ownership of inherited assets should immediately be carried out in the distribution of inheritance, in order to clarify the ownership of the rights to the object, especially if the object is land. The transfer of assets as a result of this inheritance will not be subject to income tax as stipulated in Article 4 paragraph (3) letter b of the Income Tax Law, because inheritance is not an object of income tax. So that the transfer due to inheritance in any form will not be subject to income tax. If the object of inheritance is land, it is further regulated in PP 34/2016 regarding the imposition of income tax on income on the transfer of land rights.

In PP 34/2016 it is explained that any income receipts from the transfer of land rights will definitely be subject to a final income tax of 2.5% from NPOP. This income tax is imposed on the party who transfers the rights, on the basis of receipt of income from the transfer. If the land rights

transferred are inheritance, then this transfer is excluded from collecting income tax based on Article 6 letter d of PP 34/2016, referring to Article 4 paragraph (3) letter b of the Income Tax Law which explains that inheritance receipts are not tax objects. However, in order for the heirs to be exempted from income tax on the transfer of land rights due to the inheritance, it must be accompanied by a PPh SKB issued by KPP Pratama. In order to get the SKB PPh, the heirs must apply for its issuance to the KPP Pratama.

For this application, KPP Pratama conducts formal research on the completeness of the file and the suitability of the application with the type of transition that is exempted from PPh as regulated in Article 6 PP 34/2016. Based on this research, KPP Pratama can accept or reject the application for issuance of SKB PPh. If the application is accepted, the Head of KPP Pratama will issue an SKB PPh. However, if the application is rejected, the heirs will not have a PPh SKB as the basis for the exemption of PPh on the transfer of land rights.

There are 3 (three) types of registration processes for the transfer of land rights due to inheritance at the land office, namely:

1. Transfer to joint heirs (Article 111 paragraph (4) PMNA/KBPN 16/2021),
2. Sharing shared rights (Article 111 paragraph (5) PMNA/KBPN 16/2021), and
3. Will grant (Article 112 PMNA/KBPN 16/2021).

In the transfer of rights due to inheritance, registration of the transfer of land rights to all heirs must be carried out jointly first, this has implications for the inclusion of the names of all heirs on the certificate of rights. Then if you want to carry out the distribution of inheritance, testamentary grants or other legal actions, it must be carried out jointly by all heirs.

In the transition due to the distribution of inheritance, based on Article 111 paragraph (3) PMNA/KBPN 16/2021 Jo. Article 42 paragraph (5) of PP 24/1997 explains that after the transfer of all heirs is carried out, then the distribution of joint rights is carried out based on the PPAT deed which contains an agreement between all heirs regarding the distribution of joint rights. Therefore, after the opening of the inheritance and the distribution of joint rights to the object of inheritance, the transfer of land rights must be carried out 2 (two) times. The first is the transfer of rights from the name of the heir to all the names of the heirs together. Then the transfer is carried out in the distribution of joint rights to certain appointed heirs.

However, the norm in Article 4 paragraph (3) of the Income Tax Law and its explanation jo. Article 6 letter d of PP 34/2016 along with its explanation only stipulates that income that is excluded from collecting income tax is a transition due to "inheritance", but explains further about the qualifications of a transfer due to inheritance. This resulted in the Head of KPP Pratama being able to interpret differently the meaning of inheritance in the article, which had implications for the rejection of the application for the SKB

PPh on the transfer of land rights by sharing joint rights. If the application for the issuance of the SKB PPh is rejected, the heirs in order to fulfill the tax requirements in the registration of the transfer of land rights must pay PPh of 2.5% on the NPOP, to obtain the SSP PPh which is then validated by the KPP Pratama which is used as the basis for fulfilling the tax requirements. . On this basis, the implementers of the law impose income tax on the heirs of the transition.

Then in order to understand the intent and purpose of the legislator to collect the tax, it is necessary to review the legal considerations of the relevant laws. The formation of a law cannot be separated from the preamble contained therein, this is because the legislators express the philosophical idea of the application of a rule in the preamble. So the preamble plays a role as a spirit in the formation of the law. The philosophical values contained in the preamble will be described in the norms set forth in the articles of the law. The philosophical element is defined as the aims and objectives that describe the regulation taking into account the legal ideals which include the philosophy of the Indonesian nation which is sourced from Pancasila and the Preamble to the 1945 Constitution.

With regard to income tax, the philosophical value of the Income Tax Law that underlies the collection of income tax on taxpayers is to create welfare for its people, as mandated by the Preamble of the 1945 Constitution, namely to promote the general welfare. In order to achieve a prosperous community life requires substantial financing, therefore the state must carry out tax collection. Tax collection is already a condition *qua non* (absolute requirement) for the addition of state finances in several developed countries (H. Bohari, 2019).

With regard to inheritance, the receipt of inheritance by the heirs is indeed an additional economic capability that increases the wealth of the heirs as taxpayers, so the transfer of assets is logical to be subject to income tax. This imposition serves to support state financial income in securing increasing state revenues which are used to finance state general expenditures and national development, with the aim of achieving general welfare.

However, the imposition of income tax on the transfer of land rights in the distribution of shared inheritance rights is very burdensome for the heirs, because they will be burdened with double taxes. Because basically they have been levied BPHTB on the basis of receiving their land rights, then the state should be sufficient in collecting the additional economic capacity of the heirs. However, with the collection of PPh also at the transition, it certainly does not provide benefits to the community, especially for people with middle to lower economic class. Therefore, although the state has logical considerations in collecting income tax from heirs, it must also pay attention to aspects of the benefits felt by the heirs.

## **B. Exemption of Income Tax on the Transfer of Land Rights by Sharing of Joint Inheritance Rights**

The collection of PPh on the transfer of land rights in the distribution of shared inheritance rights is due to the rejection of the application for the issuance of the PPh SKB, so that in order to process the transfer of land rights at the land office, the heirs pay PPh in order to obtain a validated SSP PPh as proof of fulfilling their tax obligations. So this causes the heirs to be burdened with double taxes on the transfer of land rights by sharing rights with inheritance. Basically, the distribution of joint rights is a condition of ending undivided matters involving two or more people over joint ownership of objects. The purpose of the implementation of the separation or distribution of joint rights is to end the undivided situation (Herlien Budiono, 2018). This results in the person who is distributed a material right will get full authority over the object to carry out legal actions, both management and ownership.

The division of joint ownership based on Article 573 BW explains that every division of a material right owned by more than 1 (one) person must be carried out based on the rules regarding the distribution of inheritance. In inheritance based on Article 1652 BW, it is regulated that the methods of inheritance distribution and the rights and obligations that will be issued are determined by the heirs who inherit. Therefore, the distribution of joint rights can be carried out when the parties in the joint ownership intend and agree to end the joint ownership (Herlien Budiono, 2018). So that to end the undivided state of an object, it must be based on the will and agreement of all parties, in terms of inheritance it must be agreed upon by all heirs.

The distribution of joint rights must be based on a notarial deed that explains the agreement regarding the separation and distribution of all objects. If the object is in the form of land, based on Article 51 PP 24/1997, the distribution must be based on the PPAT deed to confirm the agreement of the joint rights holders regarding the distribution of the joint rights. The deed used as the basis for the transfer is based on Article 136 paragraph (1) letter b PMNA/KBPN 16/2021 that the registration of the transfer of land rights by sharing joint rights must be based on the PPAT deed with a form of the Joint Rights Sharing Deed (APHB). APHB is domiciled as the basis for an agreement between all heirs as joint rights holders to give or surrender their rights to certain heirs who are appointed to receive rights to the land.

The agreement of all heirs to the APHB is an element of an agreement on the implementation of the transfer of land rights, so the implementation of the transfer of land rights is a legal act. Soeroso explained that a legal action is any act desired by a legal subject that gives rise to rights and obligations for them, and as a result is regulated by law (R. Soeroso, 2020). heirs as joint rights holders that give rise to rights and obligations for them. However, even though the sharing of rights with inheritance is a legal action carried out

by the heirs, this transition is still classified as a series of legal events from inheritance.

Because based on Article 1083 BW it is regulated that the heirs who receive the distribution of inheritance are considered to inherit directly from the heirs, so that the transfer of rights occurs legally at the time the inheritance is opened, namely when the heir dies. Then based on the Letter of the Minister of Agrarian Affairs/Head of the National Land Agency No. 600-1561 On April 21, 1999, it was explained that the implementation of the distribution of shared inheritance rights must be based on the APHB, but the deed did not result in the transfer of rights but only confirmed the agreement of the parties on the distribution of inheritance, while the transfer of rights occurred when the inheritance was opened. So that this emphasizes the position of the distribution of rights with inheritance is a series of inheritance events.

Therefore, the transfer of land rights by sharing rights with inheritance should be interpreted as the transfer of land rights due to inheritance, even though the Income Tax Law does not specifically regulate. As a result, any transfer of land rights by sharing rights with inheritance must be exempted from income tax as stipulated in Article 4 paragraph (3) letter b of the PPh Law jo. Article 6 letter d PP 34/2016. So for every application for issuance of SKB PPh on the transfer of land rights by sharing rights with inheritance, it must be accepted and approved by the Head of KPP Pratama with the application notes and attachments completed, and KPP Pratama issues SKB PPh which will be used by the heirs as proof of the exemption of PPh on the transfer of land rights at the registration of the transfer to the land office.

## V. Conclusion

Acceptance of the object of inheritance in the distribution of joint rights is an additional economic capability received and increases the wealth of the heirs. So that the implementers of the law in collecting income tax on the transfer of land rights by sharing rights with inheritance are considered logical. to support state financial income as much as possible aimed at achieving general welfare. However, from the heir's perspective, this is very burdensome, because they will be burdened with double taxes on the transition, namely paying PPh and BPHTB.

Whereas based on the concept of shared rights distribution, the transition process through the sharing of joint rights is still included in the series of inheritance. Although the process of sharing joint rights is a legal action for the heirs to hand over land rights to certain heirs, it is stated in the APHB. So that the transfer of land rights by sharing rights with inheritance must be interpreted as a transition that is exempt from collecting income tax as referred to in Article 4 paragraph (3) letter b of the Income Tax Law. Therefore, the heirs who request the issuance of the SKB PPh for the transfer of land rights by sharing the rights with the inheritance must be accepted, and the Head of the KPP Pratama must issue the SKB PPh.

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