Implementation of a Negative Stelsel with a Positive Tender in Land Registration in Indonesia

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Abstract
Based on Law No. 5 of 1960 regarding Basic Agrarian Regulations (UPA), Article 19 states that on the manner to create felony truth on land, the authorities shall carry out land registration. The purpose of this paper is to investigate the utility of a horrible device with a fantastic tendency in land registration in Indonesia. For this cause, the writing method uses a consistent with-statutory technique that is normative juridical. This is explained through Government Regulation No. 10 of 1961 that the land registration gadget followed is a poor system. This gadget is perfected or superior with the useful resource of Government Regulation. No. 24 of 1997 is a negative principle that incorporates a pleasant element, ensuing in a letter of evidence of rights that applies as a sturdy approach of proof.

I. Introduction

Law and Number 5 of 1960 regarding the Basic Agrarian Regulations (hereinafter known as the UUPA) in Article 19 paragraph (1) it is stated that with the intention to make sure criminal truth by using the use of the government, land registration is accomplished all through the territory of the Republic of Indonesia in line with the provisions governed through government policies. From those provisions, Government Regulation Number 10 years have become born in 1961 which grow to be enacted in Jakarta on March 23, 1961 authorities regulation has a totally strategic and decisive feature, no longer simplest as an implementer of the provisions of Article 19 of the UUPA, but extra than that it turns into the spine of the spine that supports the running of land management and land law in Indonesia. This provision has clearly long beyond pretty a protracted way in explaining severa political standards of our land regulation, in order that thru this law it is hoped that legal fact can be found out in society.

There is the number one factor on this Government Regulation is that every switch of rights, granting of new rights, loan of rights, and provide of collateral, ought to be tested through a deed drawn up by and in advance than an respectable appointed with the aid of the agrarian minister (hereinafter known as Official in this Government Regulation). The form of the deed is decided via the Minister of Agrarian Affairs (Article 19 of Government Regulation Number 10 of 1960).

Government Regulation in sporting out its duties has not yielded excellent consequences, as can be seen from the Speech of the Minister of State /Head of BPN at the commemoration of the XXXIII Anniversary of the Basic Agrarian Law on 24 September 1993, it became stated that because the enactment of the Basic Agrarian Law of 1961 So a protracted manner, greater than were posted fifteen million certificate, a large sum. However, while in assessment to the quantity of plots or parcels of land during Indonesia, that's anticipated to be five twenty - six million overall parcels of land, which have been licensed simplest approximately a 5th. If in a duration of extra than three two decades, we are able to best cease one-fifth of it. So to finish it all, it takes greater or much less a hundred and twenty years.

Therefore, so as to accelerate land registration all through Indonesia, then get out Government Regulation No. 24 of 1997 which changed PP No. 10 of 1960.Government Regulation Number 24 of 1997, in lieu of PP Number 10 of 1960 which changed into promulgated in Jakarta on July eight, 1997, got here into effect on October 8, 1997, as said in Article 66 particularly this authorities law came into stress 3 months after its promulgation. This PP consists of ten chapters and 6 twenty-six articles.

Government Regulation Number 10 of 1960 the implementation of land registration consistent with Government Regulation Number 24 of 1997 is also a Rechtscadaster (land registration) which objectives to guarantee legal reality. Article 3 letter a.The fundamental motive for making Government Regulation Number 24 of 1997, as contained inside the fashionable clarification, specifically:

1. Regulation of land for success of numerous goals, each for housing and organization sports in lengthy-time period development will growth, and the need for guide for legal fact guarantees in the land quarter has additionally elevated.
2. Registration land which became held primarily based on Government Regulation Number 10 of 1960 for extra than 35 years has now not been sufficient to provide high-quality effects. There are round fifty five million plots of land with rights that meet the requirements to be registered, most effective about 16.Three million had been registered.
3. Obstacles in the implementation of land registration lie within the loss of price variety, equipment, and personnel, land parcels which are large in variety and unfold over a giant territory, and most of its manage is not supported by

means of evidence which can be smooth to acquire and the fact can be relied on.

4. It is felt that the criminal provisions for the concept of its implementation aren't sufficient to offer the opportunity for the implementation of land registration in a brief time with more high-quality effects. One of the targets of putting in the UUPA is to position the rules to provide certainty and protection regulation concerning land rights for all Indonesian people.

The term land registration comes from the phrase " Cadastre" in Dutch that is a technical time period for something that indicates the location, price, and possession (or specific basis of rights) of a plot of land. While the word " Cadastre " comes from the Latin " Capistrum " this means that a register or capita or unit made for Roman land taxes (Capotatio Terrens). The definition of land registration is contained in Government Regulation Number 24 of 1997 in Article 1 no 1:

Land registration is a sequence of sports done via the government continuously, constantly and frequently, which include collection, processing, bookkeeping, and presentation and renovation of bodily statistics and juridical statistics, inside the shape of maps and lists, concerning land parcels and rental gadgets, which include granting of certificates as proof of rights for parcels of land that have already got rights and possession rights to condominium units further to positive rights that burden them.

The above information indicates that there are various varieties of activities within the implementation of sequential land registration, which are related to every different and form a unit to gain what's called a certificates. Land registration sports activities are not only held as quickly as but for the subsequent time if there may be a trade to the land or the proper holder in order that it is in accordance with the ultra-modern fact based totally on present prison rules.

According to Effendi, the motive of the outstanding ebook tool is what is within the land registration e-book and the certificate of perceive issued is an absolute way of proof. Third events (in appropriate religion) who act on the premise of such proof get preserve of absolute protection, although it later appears that the information contained therein is unfaithful. Aggrieved activities reap repayment in distinctive sorts . Meanwhile, in keeping with Arie S. Hutagalung stated that inside the first-rate land registration system is the land office After receiving the submitted registration papers, then actively examines the veracity of the submitted papers, in order that the effects can be seemed with reality that the certificates issued through the land registration workplace is absolute and the land registration workplace may be held responsible if there is every other birthday party (plaintiff).

The tendencies of a brilliant ebook device in land registration are:

1. System land registration the usage of a tool of registration of rights (registration of titles

2. Certificates issued as evidence of rights are absolute, that is, the bodily facts and juridical information contained within the certificates can't be contested and supply absolute confidence to the land book.
3. The kingdom as the registrar guarantees that the physical records and juridical data in land registration are correct.
4. Third occasions who gather land in good religion get absolute legal protection.
5. Other parties who're disadvantaged through the issuance of certificates obtain compensation in different kinds.
6. Inland registration takes a long term, land registration officers perform their duties with remarkable care and relatively massive prices.

Meanwhile, regular with the Negative device, the entirety stated inside the land certificate is taken into consideration genuine until it could be verified in any other case. The precept of transferring land rights according to this device is the principle of "Nemo plus yuris". The precept of Nemo plus juris This way that human beings can not transfer rights beyond the rights they have. So the switch of rights with the aid of unauthorized males and females is void. This principle ambitions to defend the actual rights holder. He can continuously declare again his registered rights in the call of some other character.

The important feature of this bad gadget is that land registration/registration of land rights does now not guarantee that the names registered in the land e-book can not be disputed if the names registered aren't the real proprietors. The rights of the registered call are determined by the rights of the previous rights giver, the purchase of these rights is a hyperlink in the chain of prison actions in the registration of land rights. Another key characteristic of this system is that the decent performs a passive function, this means that that the professional concerned isn't obliged to research the truth of the files submitted to him.

Land registration structures each have their benefits and lacks. The super advantage of the machine lies in the assure of actuality regulation, however the vulnerable factor is that it closes the opportunity for landowners who simply to sue for the rights which have been registered inside the call of some other character. While the bad system is the other. In a bad device, there are opportunities for the real land owner to sue the call of the registered proprietor, the susceptible factor is that there may be no assure of crook fact, and it can be contested at any time.

The description above becomes the basis for the writer in formulating the trouble that is the focus of writing or the purpose of writing scientific paintings, in particular the way to observe awful systems with superb inclinations in land registration in Indonesia.

2. Research Method

The writing system on this clinical work is normative juridical via using secondary and number one substances from resources which includes libraries and data. This writing became also achieved the use of a statutory approach method for you to attain an evaluation of the application of a negative device with a high-quality tendency in land registration in Indonesia.

3. Results and Discussion

The implementation of land registration includes initial land registration sports, that means registration sports done on land registration gadgets that have now not been registered based totally on Government Regulation Number 10 of 1961 and this Government Regulation. Land registration for the first time become achieved through systematic land registration and sporadic land registration.

And upkeep of land registration information (maintenance) That is, land registration sports to finish bodily facts and juridical records in registration maps, land registers, call lists, measuring letters, land books, and certificates with adjustments that arise later.

As it's far known that land registration is geared toward acquiring a shape of criminal actuality and certainty of rights for holders of land rights. With this land registration, it's far expected that a person conserving land rights will feel safe, and there might be no interference with the rights they have over a chunk of land. This felony action and land registration is a form of felony occasion that is very a great deal owned through someone. These civil rights, while reviewed extensive, are a form of embodiment of the sizeable Human Rights (HAM) possessed by way of a person which need to be upheld and respected by way of others.

Article 19 of the UUPA in paragraph (1) states that: "To make certain felony reality with the aid of the authorities, land registration is achieved at some stage in the territory of the Republic of Indonesia according to the provisions stipulated by using Government Regulations". Furthermore, in paragraph (2) it affords details that the land registration stated in paragraph (1) includes:

1. Measurement, mapping and bookkeeping of land;
2. Registration of land rights and transfer of stated rights;
3. Provision of valid proof of rights as strong proof.

As the implementation of Article 19 paragraphs (1) and (2) this Government Regulation changed into issued within the discipline of Land Registration, specifically Government Regulation Number 10 of 1961 regarding Land Registration. And the land registration cited is explained by way of Government Regulation Number 10 of 1961 in Article 2 paragraph (1) because of this that it must be executed village by village or regions of the equal degree.

By searching at the theory of Article 19 paragraph (1) and (2) of the UUPA and Article 2 paragraph (1) PP Number 10 of 1961 referred to above, we can see that land registration is essential for the creation of criminal reality and truth of land rights. In sporting out this registration, the government will enforce it in a easy and smooth-to-apprehend way and in stages. The logical thought of all of that is paragraph (2) c of Article 19 of the UUPA, namely that evidence of rights can be given / letters of evidence of rights, in which the letters of evidence of rights will apply as a strong method of evidence. This is the actual fundamental function of land registration.

So it's miles clear that the reason of land registration is to provide prison truth and legal safety for land rights. Land registration is the duty and burden of the authorities, but its success is particularly depending on the energetic participation of the community, particularly the rights holders.

The land registration system used by a country relies upon on the legal standards adopted by way of that country in moving its rights. Meanwhile, in phrases of the assure provided by the issuance of a certificate of evidence of rights as a means of evidence, numerous styles of land registration systems arise, which include:

1. The Positive Publication System is a land registration machine wherein the proof issued ensures genuinely. This manner that the individual that is recorded in the public sign in (land check in, land book listing, call list, and survey certificate), is the particular proprietor. Third events ought to agree with and not worry that in the future they'll lose their rights even though later there may be an error in registering because every person who is already a right holder can not be contested (even with a decide's decision).

2. The Negative Publication System is a land registration device in which the proof issued does no longer assure absolute. In this gadget, a robust assure is given to the owner. Owners can challenge their rights to a plot of land and those who've registered beforehand. Third events are not blanketed. Protection is handiest in the arms of judges, who in disputes before the court will weigh various conflicting criminal pursuits.

In essence, it has been stipulated inside the Basic Agrarian Law (UUPA), particularly, land registration is completed so as to offer guarantees of criminal reality in the land region and that the land registration device is a bad machine, but carries wonderful factors (dispositions) as it will produce letters of evidence of rights. Which applies as a robust manner of proof as stated in Article 19 paragraph (2) letter C, Article 23 paragraph (2), Article 32 paragraph (2), and Article 38 paragraph (2) UUPA, plus the provisions of Article 32 paragraph (1) PP No. 24 of 1997.

Certificates are issued to proprietors of land rights as evidence of rights that are valid as a robust means of evidence regarding the bodily facts and juridical information contained therein, so long as the bodily facts and juridical

facts are according with the data contained within the dimension letter and land name e book worried. The meaning of a legitimate certificate statement as a sturdy manner of evidence is that as lengthy as it cannot be demonstrated otherwise (incompatible), the bodily facts and juridical records contained inside the measurement certificate and land book must be time-honored as correct records, both in carrying out each day legal movements and in litigation in Court. Thus the physical statistics and juridical information listed within the certificates should match the statistics indexed at the measurement letter and the land book worried.

A certificates of land rights is legally issued in the call of a person or felony entity that clearly controls it, then different events who experience they have rights over the land can no longer demand the implementation of said rights if inside five (5) years for the reason that issuance of the certificate does no longer record an objection in writing to the certificates holder and the Head of the Land Office concerned or not filing a lawsuit to the Court regarding the possession of the land or the issuance of the certificate (Article 32 paragraph (2) PP No. 24 of 1997). These provisions purpose, on the one hand, to paste to the poor ebook device and on the other hand, to offer felony actuality in a balanced manner to parties who in good faith manipulate a plot of land and are registered as rights holders in the land ebook with a certificate as evidence, which in line with the UUPA as a effective approach of evidence. The weak spot of the poor ebook system is that the birthday party whose name is listed because the holder of the rights within the land e-book and certificate constantly faces the opportunity of a lawsuit from every other birthday party who feels entitled to personal the land.

In the occasion that the rights worried switch to any other party within five (5) years of the issuance of the certificate which is evidence, the provisions of Article 32 paragraph (2) PP Number 24 of 1997 additionally follow to the recipient of the rights in query, for the reason that issuance of the certificates.In the event that once the 5 (5) yr period there may be a transfer of rights, the recipient of the rights can not be contested through other parties who since the five (five) year duration have lost their rights primarily based on Article 32 paragraph (2) PP Number 24 of 1997.Subsequent land tenure is likewise blanketed via regulation against claims through parties other than those who've misplaced their rights, if the criminal act of shifting the rights in query is done in exact religion, in accordance with relevant felony provisions based totally on a certificate that's a strong means of proof and is recognized with the aid of its registration. In addition to suitable religion having a high assessment weight in law, specifically normal regulation that's the idea of country wide land law, the recipient of the right who controls the land can still continually argue that the rechtsverwerking organization is in effect as an institution. Customary regulation remains legitimate in addition to Article 32 paragraph (2) PP Number 24 1997.

In concrete cases, it's miles the decide who is obliged to weigh the weight of the pursuits of the litigating parties. The provisions of Article 32 paragraph (2)

PP Number 24 of 1997 primarily based at the provisions of Article sixty four, additionally observe to instances whose certificate are issued based on PP Number 10 of 1961. The five (5) yr duration also applies from the issuance of the certificate of rights involved.

Certainty concerning the challenge and item of rights may be very lots needed in prison traffic concerning land rights so the Government in maximum international locations organizes a system of disclosure or statement regarding land rights that's known as a publicity machine. Publicity way a principle wherein each person can know all rights to land and all criminal actions regarding land. With the publicity system, a public sign in is organized inside the form of maps and lists, namely land registers, lists of measuring files, lists of names, and lists of land books. Regarding land as an object of rights, the principle of specialization is adhered to, specifically, a manner of setting barriers, in order that the identification of a chunk of land turns into clear, concerning its place, limitations, and extent.

The predominant problem in land registration is how land registration can guarantee felony fact for right holders. The assure of legal actuality for containing land rights may be very depending on what device is utilized in carrying out land registration. The land registration machine used by the UUPA and PP No. 24 of 1997 is a bad system that contains superb elements (generally tend).The system isn't always simply bad, this has consequences, and the Government because the organizer of land registration must make every effort in order that as far as feasible an appropriate statistics can be presented in the land e book and registration map. But nonetheless, the machine is also no longer wonderful. In a high quality device, the information presented is assured to be actual, and no longer most effective used as a robust way of evidence.

The implementation of land registration can guarantee legal truth if the land registration fulfills three (3) necessities, namely:

a. Cadastral maps can be used for reconstruction in the area and depict felony obstacles.

b. The public register proves the right holders registered therein as lawful right holders.

c. Every right and transfer thereof must be registered.

The bad device consists of elements of a wonderful gadget, or a negative system with a tremendous tendency, that means that the kingdom does now not guarantee the absolute correctness of the records offered in the certificates, as long as no other individual documents a lawsuit in court docket who feels greater entitled. The statistics contained within the certificates is strong evidence as primarily based on UUPA, Government Regulation Number 10 of 1961, and Government Regulation Number 24 of 1997.These effective traits can be visible, among others, via the life of a soil inspection committee whose process is to perform the checking out.As for the studies, it may be concluded that the land or

plots of land are eligible to be registered which ambitions to assure prison actuality for land registered in accordance with Article 19 of the UUPA then in accordance with PP No. 24 of 1997, among others, the PPAT is given the challenge of materially examining documents can be submitted and has the right to refuse to sign in if the owner isn't authorized to switch his rights.

The bad man or woman form is expressly said in the clarification of Article 32 PP Number 24 of 1997 which states that land registration isn't executed the use of a fantastic machine but a negative system, this terrible character arises due to the fact there may be no compensation given via the State if an error or mistake occurs in issuing a certificate. Rights to the land.In resolving land disputes in Indonesia. Various judges' decisions both on the Supreme Court and at the High Court suggest the lifestyles of a rechtsverwerking institution and how it's far implemented, specifically:

1. Supreme Court Decision Number 329 K/Sip/1957.

2. Supreme Court Decision dated January 10, 1957 Number 210/K/Sip/1955. This case happened in Pangdeglang Regency, West Java. The lawsuit turned into declared now not widespread, because the plaintiffs, by means of remaining silent on the matter for up to 25 years, ought to be deemed to have forfeited their rights

3. Supreme Court Decision dated 27 March 1975 Number 1192 K/Sip/1973. The case befell in Padang Sidempuan, in which in line with nearby customs rules someone's right to his enterprise land is invalidated if he hasn't labored on his land for a long time, then he is given a warning through the Head of Village Association/Village Head to work on it but the caution is overlooked, in this situation, the land is allowed with the aid of the Head of the Village Fellowship. The village head is given to different folks that need it.

4. Decision of the Surabaya High Court dated 27 May 1958 Number 132/1953.Pdt. The case befell in Sleman Regency, Yogyakarta.

5. Supreme Court Decision dated 9 December 1975 Number 408 K/Sip/1973. Loss of rights due to expiration. Consideration of the High Court justified through the Supreme Court. Because the plaintiffs-appeal had for greater than 30 years allowed the disputed lands to be controlled by using the late Mrs. Ratiem and later via her kids , their proper as the opposite heirs of the past due Atma to assert the land had expired (rechtverwerking).

6. Supreme Court Decision dated January 21, 1974 Number 659 K/Sip/1973. Loss of rights due to expiration. Consideration of the High Court justified through the Supreme Court.

4. Conclusion

The software of a negative device with a fine tendency in land registration in Indonesia is that land registration, both positive and negative, has the equal

juridical individual, particularly: these two models or kinds are any other time period for "registration of land rights" for the gain of person rights holders with the goal of imparting actuality of rights. And prison security for proprietors of land parcels administered with the aid of the State. As expressed via Boedi Harsono, every land registration both in the deed and rights registration system, each grant or creation of new rights as well as the switch of new rights and encumbrances with different rights later, should be tested with the aid of a deed.

This high quality registration gadget is a recording of rights, both the recording and garage of which emerge as the authority of public institutions.

As for the effective proof of land registration, it adheres to a poor system. However, the juridical gadget of nice registration is very visible. These high-quality characteristics may be seen, among others:

a. There is a committee for land inspection " barrister and conveyancer " known as committees A and B whose activity is to carry out testing and studies of " examiner of the identify ". From this studies, a test will be carried out and it is going to be concluded that at the least it contains: first, the land or land parcel for which the software for registration is submitted is in desirable and clean situation; secondly, that there's no dispute over the possession of the software; 1/3, that at the perception of the committee, the software may be granted; fourth, that against the proof used as the premise for the right to submit the registration, there is no man or woman who's prejudiced and gadgets to the possession of the applicant. The intention is to assure legal fact for registered land (article 19 UUPA). Boedi Harsono known as it a fine-poor tendency gadget.

b. The high-quality person model is visible inside the provisions of Government Regulation no. 24 of 1997, among others:

1) The PPAT is given the venture of materially inspecting the files submitted and has the right to refuse the making of the deed;

2) The legal legit (officer) has the right to refuse registration if the owner isn't always legal to switch his rights;

three) The government gives deed models to expedite the PPAT task mechanism.

c. There is a certificate of land rights issued, as a evidence and means of proving land possession rights.

Negative character forms are expressly stated within the elucidation of Article 32 PP No. 24 of 1997 which states that land registration is completed now not the usage of a tremendous publication gadget, however a terrible. The bad character arises because there may be no reimbursement given within the event of an mistakes or mistake within the issuance of a certificate of land rights.

The terrible registration system is a legacy from the past that maintains to these days. During the reign of the Dutch East Indies, land registration become accomplished for lands situation to Western (Dutch) law which turned into

finished via the so-called Cadastral Office (Kantor Pertanahan). In accordance with the obligations of the Cadastral Office in wearing out registration sports at that point, land registration was based totally on Stbl. 1824 No. 27 jo. 1947 No. 53, in which the compulsory agreement on the transfer of rights is done with all written evidence, notarial deed, or beneath the hand witnessed by using a notary and then the top of the cadastral office who's an worker for moving names (overschrijvingsambtenaar) and considered one of his personnel makes a deed of switch. It will most effective be registered at the relevant check in after charge duties are made first. New juridical adjustments after our us of a have become impartial and after the issuance of the principle agrarian law (UUPA) and it's enforcing guidelines changed or revoked the preceding statutory provisions issued with the aid of the Dutch East Indies government, particularly the ones associated with land, which includes the repeal of the provisions stipulated in e book II BW (burgelijk Wetboek) which especially regulates land. Proof of possession of land rights in the shape of a brand new certificate regarded after the ebook of the UUPA (article 19 of the UUPA) which turned into accompanied up through the PP. No. 10 of 1961 and become finally changed by means of PP. No. 24 of 1997 regarding Land Registration.

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