

Juridical analysis of the implementation of the negative stelsel principle with a positive tendency in legal arrangements for land registration in Indonesia

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Abstract

The land registration system used in Indonesia is a Negative system that contains Positive elements which refers to Article 32 paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration. The aim of holding land registration is still to provide legal certainty and protection for land rights. However, If we look at it from a legal juridical aspect, errors in physical data and juridical data in land registration will eliminate the element of legal certainty of land rights. Thus, the government's negligence in carrying out land registration can cause the certificates issued to be null and void. However, the government's responsibility for negligence is the cancellation of the certificate.

This research aims to examine the application and weaknesses of the negative stelsel principle with a positive tendency in the land registration system in Indonesia. This research also aims to examine the concept of punishment in the land registration system which can provide legal certainty. The research method used in this thesis is normative juridical research. Normative juridical research is library legal research carried out by examining library materials or mere secondary data. The data used is in the form of theories, concepts, legal principles, and legal regulations related to the subject matter.

Based on research results, the application of the negative stelsel principle has a positive tendency in the land registration system. The land registration system in Indonesia does not reflect the principle of legal certainty. The application of the negative stelsel principle with a positive tendency still has weaknesses because the state cannot guarantee the data contained in land certificates. If viewed from a criminal aspect, the only elements of unlawful acts that are punished are falsification of documents and land grabbing.

From the research results, it is recommended that the government be responsible for errors in land registration. The government is also expected to apply the concept of special penalties for land registration to provide legal certainty to land rights holders.

Keywords: Land registration, negative stelsel principle with positive tendencies, legal certainty

Introduction

Indonesia is a country that protects the rights of each of its citizens in the nation and state society. This is stated in the provisions of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia) which reads "The State of Indonesia is a state of law". From these provisions, it can be understood that in life, nation, and state, one cannot be arbitrary in doing anything, especially the government in carrying out its functions, duties, and obligations as an important part of the state. Based on the authority possessed by the state, to help the public obtain services to obtain certificates of land rights to ensure legal certainty, the government is holding Land Registration throughout the territory of the Republic of Indonesia. In the process of implementing land registration activities, the Land Deed Drafting Officer (PPAT) has a very important role in land registration activities to achieve state goals. PPAT is one of the general office holders appointed by the state to carry out the land registration process before the registration is forwarded to the Land Office ^[1].

Legal actions carried out by PPAT include making deeds of sale and purchase, exchange, grants, income into the company (inbred), distribution of joint rights, granting Building Use Rights/Use Rights over Ownership Land, granting Mortgage Rights and deeds granting power of attorney to encumber Rights. Dependents. [2] PPAT, which is tasked with government regulations, has a major

responsibility for implementing the Basic Agrarian Law (UUPA) in Indonesia. This is because PPAT has a role in the field of land registration, which is one of the main tasks of UUPA.

In the context of administering land, the government wants to provide legal certainty to the community by providing a basis for land rights made in the form of an authentic deed by PPAT. This is the aim and ideal of the UUPA which was prepared to provide legal justice for the community regarding land matters. However, in carrying out land registration, Indonesia adheres to the principle of a negative cell system with a positive tendency. This means that in carrying out land registration the government does not guarantee legal certainty regarding the land certificates issued ^[3].

The government is also not responsible for the data and information contained in land title certificates. The meaning of the negative system is that if the information contained in the land certificate/book is incorrect, it can be changed, therefore, every person who feels entitled has the opportunity to file a lawsuit in court claiming their rights as long as they are able to prove otherwise in accordance with the law of evidence. This can only be done before 5 years after the certificate is issued. Meanwhile, having a positive tendency means that there is an active role in the implementation of land registration.

If we look at it from a legal juridical aspect, errors in physical data and juridical data in land registration will

eliminate the element of legal certainty of land rights. Thus, the government's negligence in carrying out land registration can cause the certificates issued to be null and void. However, the government's responsibility for negligence is the cancellation of the certificate. We can see this from the provisions of the UUPA and also Government Regulation No. 24 of 1997 concerning Land Registration.

Criminal aspects in the field of land rights registration include forgery of documents in the form of written or printed letters which can be used as proof of information such as death certificates, genealogies of heirs, identity cards, family cards, village officials' certificates. Criminal liability for perpetrators of criminal acts of falsifying documents in the registration of land rights is held accountable by the party/person who falsifies land rights registration documents based on the principle of mistakes made by the applicant because the land registration system in Indonesia is negative in nature, but has a positive tendency^[4].

Based on the description outlined above, the author is interested in further research regarding the regulation of criminal sanctions in the land registration system in Indonesia. The author is also interested in researching legal regulations regarding sanctions arising from the government's negligence in carrying out land registration.

Research Method

This research is a juridical N formative research. The normative juridical research method is library legal research which is carried out by examining library materials or mere secondary data^[5]. This research was conducted to obtain materials in the form of theories, concepts, legal principles, and legal regulations related to the subject matter. In this research, the scope of this research will be research by drawing on legal principles, which are carried out on written and unwritten positive law^[6].

The approach method used in preparing this thesis is the statutory approach (*statue approach*). The statutory approach is an approach taken by examining all laws and regulations that are related to the legal issue being handled. From this definition, it can be briefly said that what is meant by *statute* is legislation and regulation. Thus, the legislative approach is an approach that uses legislation and regulations.

The data that has been obtained is then analyzed using a qualitative analysis approach, namely by observing the data obtained and connecting each data obtained with the legal provisions and principles related to the problem being studied. inductive logic, namely thinking from specific things to more general things, using normative tools, namely legal interpretation, and construction, and then analyzed using qualitative methods so that conclusions can be drawn using a deductive method which produces a general conclusion regarding the problems and objectives study.

Results and Discussions

In the context of administering land, the government wants to provide legal certainty to the community by providing a basis for land rights made in the form of an authentic deed by PPAT. This is the aim and ideal of the UUPA which was prepared to provide legal justice for the community regarding land matters. However, in carrying out land registration, Indonesia adheres to the principle of a negative cell system with a positive tendency. This means that in

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In the negative system of the deed registration system, the Land Deed Drafting Official (PPAT) does not test the correctness of the data contained in the deed (passive). Deeds in the land registration system function as strong evidence of events or legal actions. Every time there is a change in the land certificate, a new deed must be drawn up and the required juridical data must be looked for in the relevant deeds.

However, the basic principle regarding the aims and objectives of holding land registration remains, namely to provide guaranteed certainty and legal protection for land rights, even the system adopted in Article 32 paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration has been implemented. guarantee legal certainty of land rights because after five years the certificate has been issued by the Land Office and can no longer be the object of a lawsuit in court, this means that the certificate has changed from a negative evidence system with a positive tendency to a positive evidence system.

The positive proof system in the land registration system (*registration of titles*) is known as *the Torrens System*. In the Spatial Planning and Land Directorate System, the positive proof system is an improvement or refinement of the previous registration system. This improvement in the quality of the land registration system is demonstrated by the ease with which land owners can obtain juridical data without having to do *a title search* on existing deeds and providing legal certainty for the land being registered.

The positive proof system includes identifying one or many plots of land and determining which person or legal subject

can have rights to that plot of land, which is then recorded in the land register. Before carrying out the recording, the Land Deed Making Officer tests the correctness of the data contained in the deed before registering the rights in the Land Book (actively) and compiles all matters relating to the recording of land rights, such as liens, easements, mortgages, leases, etc. agreement. Recording land ownership includes recording the serial number, location, and boundaries of the land plot marked on the map as well as the name of the owner. From this, we can understand that changes to the land registration system in Indonesia are at an urgent stage to be implemented. Because the positive proof system can provide more legal certainty in land registration.

Both negative registration systems and positive registration systems have their advantages and disadvantages. The positive publication system has several advantages, such as legal certainty for certificate holders, an active role from land registration officials, and a certificate issuance mechanism that can be easily known to the public. Meanwhile, the weaknesses of the positive publication system include that the actual land owner will lose their rights because the land has been certified in the name of another party which cannot be changed, requires high costs, and the authority of the court is placed within the administration's authority^[7].

The advantages of the negative publication system include that the actual right holder will be protected from other parties who are not the true owner, there is an investigation into the history of the land before issuing the certificate and there is no time limit for the actual land owner to claim his or her rights that have been registered by another party. The weaknesses of this negative publication system include the lack of certainty regarding the validity of certificates because they can be sued or canceled at any time, the passive role of land registration officials so that they do not support the accuracy or correctness of data, and the working mechanisms of land registration officials that are less transparent.

According to Arie S. Hutagalung, in practice, these two systems have never been implemented purely. The positive system places a heavy burden on the state as a registrant. If there is a registration error, the state must bear the risk of that error, for which the state must compensate. In the end, the state charges expensive fees for registration so that there is a special fund to deal with claims for losses if errors occur in land registration^[8].

Mariam Badruzaman said that the land registration publication system adopted by UUPA is a mixed system between a negative system and a positive system. The negative stelsel aspect is manifested from legal protection for the true owner of land rights through the principle of *nemo plus juris*, while the positive stelsel aspect can be seen from the government's authority and intervention in the registration of land rights, where the PPAT (Land Deed Maker Official) and the land registration section emphasize truth. data on every transfer of land rights^[9].

In the land rights registration system in Indonesia, several objects can be linked to punishment, such as land grabbing and falsifying documents. Forgery of documents can be in the form of written or printed letters which can be used as proof of information such as death certificates, genealogies of heirs, identity cards, family cards, village officials' certificates, land sporadic, and physical data. The criminal

act of falsifying a letter is contained in Article 263 of the Criminal Code (KUHP) where the perpetrator of the criminal act can be sentenced to a maximum prison sentence of six years. However, in practice, there are still many objects in land registration that can be linked to criminal penalties, such as bad faith which can harm people and the state, tax evasion in land registration, or giving false information in land registration^[10].

Forgery of documents contains two meanings, namely the act of making a fake letter or forging a letter. Making a fake letter is making a letter whose entire or part of the contents are fake, while forging a letter is the act of changing it in any way by someone who has no right to the letter which results in part or all of the contents being different/different from the contents of the original letter. In reality, many unlawful acts in land registration can be associated with criminal penalties, such as criminal conspiracy, buying and selling disputed land, or providing false information in land registration. However, in reality, in the land registration system in Indonesia, the form of action that can be taken against such violations is only by canceling the certificate at the State Administrative Court.

Conclusion

The Indonesian state adheres to a negative land registration publication system with a positive tendency. In a negative land registration publication system with a positive tendency, land registration officers are passive, which means they only receive the deed from the Acting Land Deed Maker (PPAT) and register the deed. Negative publications have a positive tendency, meaning that the certificate is strong evidence as long as the physical data and juridical data contained in it are correct. This means that the physical power and juridical data in the certificate can be canceled by the court as long as it can be proven by the holder of the land rights. Thus, the land registration system in Indonesia does not reflect the principle of legal certainty. Apart from that, if a party loses rights to their land due to unlawful actions of another party, this becomes the entire responsibility of the land owner because the state does not provide compensation for the loss of rights to the land.

The land registration publication system that applies in Indonesia is a negative system that contains positive elements because it will produce letters of proof of land rights that act as strong evidence. However, land certificates that have been issued by the Land Office can be absolute evidence and can no longer be canceled in court if the certificate is not disputed or no one objects within 5 years after the certificate is issued. This is contained in Article 32 paragraph (2) of government regulation Number 24 of 1997 concerning Land Registration. However, in practice in the field, there are still certificates that have been issued for more than 5 years and are still the object of dispute in court. This proves that the land registration system in Indonesia does not have an element of legal certainty.

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