



Legal guarantee of building rights on sultan ground land

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Abstract

The existence of Building Rights and Use Rights in the Special Region of Yogyakarta is divided into 2 (two), namely Building Rights or Use Rights on State Land and also Building Rights or Use Rights on Sultanate Land. The implications of Sultan Ground in Yogyakarta lead to conflicts about land rights ownership. The purpose of this study is to analyze the legal guarantee of building rights on Sultan Ground land. This type of research is doctrinal legal research or normative legal research. The source of legal material used is secondary legal sources. The data collection method uses literature study with qualitative data analysis. The result of the research is that the community is allowed to use Sultan Ground land where for legal guarantees, the community must take care of the *kekancangan* fiber or other encumbering rights on Sultanate land in order to create administrative order and minimize land disputes because it can be used as legal security during the validity of the building use right.

Keywords: Building rights title, use rights, collateral

Introduction

Indonesia is an archipelago because it consists of various islands, from Sabang to Merauke, with various ethnicities, religions and cultures that characterize each Indonesian nation and characterize the Indonesian state which is not only rich in culture but also nature ^[1]. Indonesia also has several regions with special autonomy or given privileges, namely there are five provinces with autonomy privileges, namely Papua Province, West Papua, Aceh, DKI Jakarta, Special and Yogyakarta ^[2]. The Special Region of Yogyakarta as a region that has privileges in implementing its government is regulated through a separate law, namely by the birth of Law No. 13 of 2012 concerning Privileged areas by considering the history and rights of origin of Yogyakarta signed by President Susilo Bambang Yudhoyono ^[3]. Some of the special powers include procedures for filling positions, positions, duties and authorities of the Governor and Deputy Governor, institutions of the Yogyakarta Regional Government, culture, land, and spatial planning ^[4].

Among the five authorities, there are two things that are often in the spotlight, namely the procedures for appointing governors and deputy governors, which recently became a polemic raised by Ade Armando, who stated that the area that runs dynastic politics is actually the Special Region of Yogyakarta because the governor is not elected through elections, the governor is Sultan Hamengku Buwono X who became governor because of his lineage. Another aspect that is also in the spotlight is about land, where there is an issue of discrimination felt by Chinese people with an account named Risa Karmida who told that she had worked hard to buy a house but had to give up her house with Building Rights Title status because of her Chinese descent ^[5].

Land issues are specifically regulated in Chapter X of Law of the Republic of Indonesia Number 13 of 2012 on the Privileges of the Special Region of Yogyakarta (Privileges Law), so it is clear that land is an authority in the affairs of the Yogyakarta Regional Government as an autonomous region, which is certainly different from the authority

possessed by other regional governments in Indonesia. The enactment of the Privileges Law provides legal standing for the Sultanate and Duchy as landowners in Yogyakarta. Articles 32 and 33 of the Privileges Law state that, in exercising their authority in the land sector, both the Sultanate and the Duchy are declared as 'legal entities', so that they can become legal subjects that can own property rights to land, although not all land in Yogyakarta belongs to the Sultanate and Regency, only *keprabon* land and non *keprabon* land can be owned and become the authority of the Sultanate and Duchy to manage and develop.

The determination of the Sultanate and Duchy to be the subject of rights that can have property rights to land, then there are two classifications of ownership in Yogyakarta (in this case the Sultanate is also the Governor by stipulation, and the Duchy as Deputy Governor also by stipulation), namely land owned by the Sultanate called Sultan Ground (SG) and land owned by the Duchy called Pakualaman Ground (PAG) ^[6].

The emergence of the term Sultan Ground is motivated by the emergence of *Domein Verklaring* contained in Yogyakarta Rijktsblad Number 16 of 1918. Based on the provisions of Article 1 paragraph (1) of Law Number 3 of 1950 concerning the Establishment of the Special Region of Yogyakarta which states that: "The area covering the Sultanate of Yogyakarta and the Pakualaman region is designated as the Special Region of Yogyakarta". Santoso stated that in general, land rights are rights that authorize those who have the right to use and also take advantage of the land, where land rights can be interpreted as property rights, building rights, business use rights and also use rights.

There are several types of land rights, including property rights as the primary right and several rights as secondary rights. These types of rights can be interrelated rights such as Building Use Rights, Business Use Rights and Use Rights. The position of land rights, especially Building Rights Title and Use Rights, has a direct relationship between the property rights of the Sultanate Land (SG). One

of the privileges of the Special Region of Yogyakarta is that it has the authority to regulate land administration as stipulated in Article 7 paragraph (2) letter d of the UUK, considering that the Sultanate of Yogyakarta can and has owned land property rights.

The issue of property rights and building use rights is a dualism of agrarian law that has not been resolved until now. The legal recognition of the two has led to rivalry and contestation between the two. The pattern of claiming land status between the two is a source of problems. Other problems in the dualism of legal principles make the position of land status in Yogyakarta in an uncertain position. Another problem is the pattern of overlapping and unilateral claims. This creates conflict between the Palace/Paku Alaman and the community regarding the status of the land they have occupied.

The existence of Building Rights Title and Use Rights in the Special Region of Yogyakarta is divided into 2 (two), namely Building Rights Title or Use Rights on State Land and also Building Rights Title or Use Rights on Sultanate Land. The difference in the position of land rights is because there is no regulation in positive law that accommodates the rights on Sultanate Land (SG) directly, so that Building Rights Title and Use Rights in the Special Region of Yogyakarta before the enactment and implementation of the UUK could not be implemented.

The existence of veto rights related to the regulation of land issues is what makes the land policy in D.I. Yogyakarta not in accordance with the substance contained in the UUPA, especially in land ownership and control carried out by the Sultanate and Pakualaman Duchy with its status as a legal entity, where ownership and control of land is not far away or even follows the feudalism system based on the substance contained in the provisions of Rijksblad Kasultanan in 1918 Number 16 and Rijksblad Pakualaman in 1918 Number 18. If this happens, it will only place the community as tenants of the lands owned and controlled by the Yogyakarta Sultanate and Pakualaman Duchy and of course this is very tangent to the mandate contained in the UUPA.

The implications of Sultan Ground in Yogyakarta have also led to conflicts over land ownership, where it circulated on a number of social media that a number of ethnic Chinese people were protesting and demanding about land ownership rights in the Special Region of Yogyakarta (DIY) Province. The video went viral on social media Facebook and Twitter, where a number of ethnic Chinese people came to the Yogyakarta Land Office about the revocation of land ownership rights, where Chinese citizens could not have land ownership rights in the Yogyakarta area. Non-indigenous citizens, especially citizens of Chinese descent, cannot have land ownership rights. This rule is stated in the DIY Governor Instruction No. K.898/I/A/75: K.898/I/A/75 signed by the Deputy Head of the Special Region of Yogyakarta, Paku Alam VIII on March 5, 1975, although it was only an instruction addressed to regents and mayors in Yogyakarta, it had a big impact, this is because other institutions such as the National Land Agency (BPN) complied with the instruction, where a number of cases of BPN refusal to process the transfer of land status to property rights for citizens of Chinese descent.

Instruction No. K.898/I/A/75 is considered to violate human rights, this according to Komnas HAM is contrary to a number of laws, including Article 28 paragraph (2) of the 1945 Constitution, Article 9 and Article 21 of Law No. 5 of

1960 concerning Basic Agrarian Regulations, Article 5 of Law No. 39 of 1999 concerning Human Rights, Article 6 and Article 7 of Law No. 40 concerning the Elimination of Discrimination, so that based on the description above, the researcher is interested in discussing it in the form of a thesis entitled: "Juridical Review of Building Rights on Sultan Ground Land in order to realize justice".

Research method

qualitative analysis.

hat this doctrinal legal research is used to examine the application of rules or norms in positive law using deductive logic using a statutory approach and case approach. The source of legal material used is secondary legal sources of positive law including legal materials, both primary legal materials, secondary legal materials, and tertiary legal materials. The data collection method in this research is done by literature study. The data analysis method uses qualitative analysis.

Result and discussion

The Special Region of Yogyakarta has a special status or autonomy that includes the former Sultanate of Yogyakarta and Pakualaman. Law No. 13/2012 on the Privileges of the Special Region of Yogyakarta authorizes the Special Region of Yogyakarta as an autonomous region to manage land. Specifically, the Land authority regulated in Law Number 13/2012 in Articles 32 and 33 of this regulation, which essentially states that the Sultanate of Yogyakarta Hadiningrat and the Puro Pakualaman Duchy to organize land authority is declared as a Legal Entity which is the subject of property rights on Sultanate and Duchy land. The Kraton gives hereditary land to the people to be used by the people. This land is known as Sultan Ground.

One of the special arrangements owned by the DIY government is contained in Article 7 paragraph (2) of Law No. 13/2012, namely the special authority to regulate land affairs. Although the basis of regulations regarding land affairs in DIY has only existed since 2012, in 1975 an Instruction Letter of the Deputy Governor of DIY No. K.898/I/A/1975 was issued regarding the Prohibition of Ownership of Land Rights for Non-Natives. The Deputy Governor's Instruction Letter, if drawn to higher regulations, will refer to Article 11 paragraph (2) of the UUPA which states that differences in legal rules are allowed as long as they are necessary to support the socio-economic welfare of the weak. The Instruction Letter is still in use today. The Instruction Letter gave orders to Non-Natives who owned land to relinquish their rights by surrendering them to the state and could then request other rights to replace them.

Sultan Ground is Kraton Land that has not been given to the population or to the village government, it still belongs to the palace so that anyone who will use it must ask permission from the palace. Land in Yogyakarta with Sultan Ground status is a continuity between the past and the present to honor the Sultanate of Yogyakarta. Arrangements related to land owned by the sultanate in the pre-independence period were already contained in the Sultanate Rijksblad No. 16 of 1918 and Pakualaman Rijksblad No. 18 of 1918 which stated that all land without proof of ownership by people who have eigendom (ownership) rights, then the land then belongs to the kingdom. The clash of land tenure rights arrangements also occurred between

the laws of the former swaprja government and the Basic Agrarian Law.

One of the privileges of the Special Region of Yogyakarta is that it has the authority to regulate land administration as stipulated in Article 7 paragraph (2) letter d of the UUK, considering that the Sultanate of Yogyakarta can and has owned land property rights. Based on the provisions stated in the Decree of Kawedanan Ageng Punakawan Wahana Sarta Kriya No. 29/W & K/81, sultan ground can be used with four rights, one of which is about building rights. Hak Guna Bangunan is the right to build and own a building on the sultan ground for a maximum period of 20 years and can be renewed. Building use rights can be granted to ordinary people or legal entities/agencies.

The Privileges Law Number 13 of 2012 has clear rules regarding the procedures for applying for Building Rights of Use on Sultanate-owned land which are regulated by further regulations with the Yogyakarta Special Region Regulation Number 1 of 2017 concerning Management and Utilization of Sultanate and Duchy Land, Governor Regulation of Yogyakarta Special Region Province Number 33 of 2017 concerning Procedures for Management and Utilization of Sultanate and Duchy Land and Governor Regulation of Yogyakarta Special Region Province Number 49 of 2018 concerning Procedures for Application for Utilization of Sultanate and Duchy Land.

The community can have building rights with the status of borrowing the use of Sultan Ground land for a certain period of time, including when the community owner of the building rights wants to build, the profits and losses are borne by the right holder. The rights and obligations for land rights holders must maintain, keep the building to be potential and profitable in accordance with the times. The building use right is utilized in accordance with the agreement between the community and the keratorn, and the community is not allowed to use it for other purposes outside the agreement.

The mechanism for using building use rights originating from the Sultan Ground can be done by submitting an identity to the Land and Spatial Planning Office because here the authority of the Land and Spatial Planning Office that takes care of Sultan Ground (SG) Land to obtain the acquisition of rights to sultanate land where the next step will go through Panitikismo as a customary institution that takes care of the sultanate land and will then make a kind of Certificate containing a use right agreement issued by the sultanate or commonly called Serat Kekancangan which is used by the sultanate community. The next step will be through Panitikismo as a customary institution that deals with sultanate land and will be checked and surveyed by the abdi dalem and then a kind of Certificate containing a right of use agreement issued by the sultanate or what is commonly called Serat Kekancangan which is used by the community as a right to inhabit land owned by the sultanate. The obligation of the community as the holder of the right to use the building is obliged to pay rent per year. The first time the right to borrow is valid for 10 years, if extended it can be up to 20 years. Specifically, the length of the right to use for building can first be for 30 years and then extended for 20 years.

The purpose of the registration of building use rights is to provide legal certainty, administrative order, to provide information to interested parties in conducting legal actions regarding land parcels and to ensure accountability in the

management and utilization of Sultanate Land. The land registration mechanism is through sporadic land registration, after the Sultanate has conducted inventory, identification, verification, mapping and land registration facilitated by the Land and Spatial Planning Office. Land registration is a requirement to achieve legal certainty and legal protection of land rights ^[7]. The guarantee of legal certainty to be realized in land registration includes certainty of the status of registered rights, certainty of the subject of rights, and certainty of the object of rights. Land registration produces a certificate as evidence of the right and the right to use the building can be renewed.

The holder of the land right must take care of the land and maintain the integrity of the building use right. The things that can erase the building use right are if the period expires and it turns out that it is not extended anymore, the obligations of the building use right holders are to return the land in its original state, the right holders are not allowed to ask for compensation for buildings or buildings and plants that are on the Sultan Ground, but may take back the objects in it. To harmonize with the UUPA applied in the Special Province of Yogyakarta, parties who obtain building use rights must be certified in accordance with the law by the BPN with the issuance of building use right certificates with a period of 30 years and can be extended again for 20 years. The implementation of the extension of Building Use Rights (HGB) that have expired in Yogyakarta after the enactment of Law Number 13 of 2012 concerning the Privileges of Yogyakarta on Sultan Ground land, the extension process is based on the Special Region Governor Regulation Number 49 of 2018, Article 13 paragraph (1) states that the application for the extension of the utilization of Sultanate Land and Duchy Land as referred to in Article 12 paragraph (1) is submitted no later than 3 (three) months before the land utilization period ends, but there is no legal guarantee at all for the building use rights used by the community because their status is still owned by the Sultanate. The legal guarantee of the right to use the Sultan Ground land used by the community itself is the right to use the land owned by the sultanate but is a right to use the building according to the time period, so based on this, there is no legal guarantee of the right to use the building on the Sultan Ground land because the community only owns the building but not the land which will one day be taken by the authorities, namely the sultanate, the community cannot defend it because they have no rights to the land after the time period expires.

Conclusion

Yogyakarta has the privilege of taking care of governance and land assets. People cannot just use empty land, because it could be Sultan Ground (SG) land. People are allowed to use Sultan Ground land for business, gardening or for living, provided that they follow the requirements set by the Palace. Legalization of Sultanate land to provide legal certainty of land rights, certainty of the subject of the right, certainty of the object of the right and the legal relationship between the subject and object and legal protection to the right holder so that he can easily prove himself as the holder of the right in question by taking care of the kekancangan fiber or other encumbering rights on Sultanate land so as to create an orderly land administration and minimize land disputes because it can be used as legal security during the validity of the building use right.

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