

Yogyakarta sultanate concept as a subject of land ownership right

Monica Gainifer^{1*}, Lego Karjoko²

^{1,2} Master Program of Notary, Sebelas Maret University Surakarta, Indonesia

Abstract

This article aims to analyze the concept of Yogyakarta sultanate as the subject of land ownership right. This was categorized into normative legal research. Statute approach was employed in the study. The legal materials used in the study were primary, secondary, and tertiary legal material. The data were analyzed deductively.

The discussion result shows that the legal system of Yogyakarta Sultan ground is regulated in Act no 13 of 2012. It states that Kasultanan is declared as legal entities. As a legal entity, Kasultanan is the subject of the right of ownership over Sultan Ground. Although there is a contradictory regulation, Act on Specialty, as a higher regulation compared to Governmental Regulation and Presidential Decision, has prevailed in Yogyakarta. It stipulates that Kasultanan is authorized to manage and use the lands to develop culture, social interest, and people prosperity. For other parties, in order to manage Sultan ground.

Keywords: Sultan ground, land law, subject of land ownership right

1. Introduction

Land in Special Region of Yogyakarta is classified into the land of the autonomous region. Its land law covers all land-relating regulations that specifically prevails in an autonomous region. In Special Region of Yogyakarta, Sultan is the owner of keraton's (palace) land. People only hold right to lease or right to use, which is known as Magersari (Fachrudin, 2012) ^[3]. Due to this specialty, land law in Special Region of Yogyakarta could not only be regulated using Basic Agrarian Law (BAL), it should also be translated into Regional Regulation (Perda).

In general, the government and people in Special Region of Yogyakarta recognize the existence of Sultan ground. This recognition is shown when a person intends to use the Sultan ground, they ask for a permission to the Keraton. It is admitted that the land law in Special Region of Yogyakarta cannot be fully implemented under BAL, accordingly, Keraton Yogyakarta, through Penghageng Kawedanan Hageng Punokawan Wahono Sarto Kriyo as the appointed official for land affairs, grants land rights (Soetarto, 2009) ^[13].

Yogyakarta's ownership status cannot be separated from Nagari Ngayogyakarta's decision to join the Republic of Indonesia. However, before joining the Republic of Indonesia, there was a reunification process between Kasultanan and Pakualaman. This reunification makes Yogyakarta becomes a kingdom and makes Sri Sultan Hamengku Buwono IX and Sri Pakualaman VIII as duumvirate (Huda, 2013) ^[4].

The land that is directly held by the king is called as maosan/pamahosan dalem ground. In addition to maosan dalem, there is also kejawean ground, or lungguh ground, or gaduhan ground (appanage), a land used for satisfying the king's family needs or for paying the abdi dalem. The king's family or abdi dalem who receives the land is called patuh, or lurah patuh, whose rights and obligation is stated in pranata patuh from 1863 (Soedarisman, 1984) ^[12].

Rejection against Sultan Ground and Pakualaman Ground was done by people in Kulon Progo Coastal area, who were

affected by iron sand mining process. They claimed that they have work on the land stipulated as Sultan ground for thirty years and it shows that the owner has abandoned the land, they claimed that if a land is abandoned for so long by the owner, the land status becomes free and can be transferred to the cultivator (Pribadi & Agustin, 2012).

Due to the issuance of Act no. 13 of 2012 on the Specialty of Yogyakarta, Kasultanan becomes a lawful legal entity and possesses rights, including land rights. Matters regarding autonomous region land had been legally annulled in chapter IV of BAL 1960 regarding transfer stipulation, which reads (A) "Rights and authorities on the earth and water of autonomous region or former autonomous regions existing at the of the coming into force of this Act are annulled and transferred to the State.". (B)"Matters relating to the provision in letter A as mentioned above shall be further regulated by Government Regulation.

This authority overlap indicates susceptibility of policy. There is something imbalance and disharmonious. Viewed from legal and practical perspectives, Sultan ground possesses two different standing. People who do not understand these policies and can only work or reside in the land from generation to generation, without having clear status regarding the land ownership. There is no clear explanation about it, however, there is law that unmistakably prevails when these people violate something they do not understand.

2. Methods

This was normative or doctrinal legal study. Doctrinal study provides a systematic explanation of certain legal categories, analyzes the relationship among the regulations, explains the difficulties, and probably predicts the future development (Marzuki, 2011) ^[9]. This study was prescriptive in nature, aiming at presenting argumentation regarding the result of the study. Statute approach and case approach were employed in the study (Marzuki, 2011) ^[9]

The legal materials used in the study were primary, secondary, and tertiary legal material. The data were

collected from literature study (Marzuki, 2011) ^[9]. Literature study is helpful in obtaining theoretical foundation by reviewing literature, legislation, documents, reports, archive, and other results of studies, both printed and electronic version, which is relevant to the legal status of Sultan Ground in the national land legal system.

The data were analyzed using deductive reasoning, it explains general issues, interprets them, and draws a more specific conclusion.

3. Discussion

Special Region of Yogyakarta is an example that dualism in Indonesia land law is a political policy to grant traditional political institutions a statehood nature. The principle of *Domeinverklaring* in Yogyakarta can be seen from the Sultanate's political contract with Dutch East Indies in 1940 and the issuance of *Rijksblad* of Yogyakarta Sultanate in 1918/16. This political contract confirms that Yogyakarta was the Dutch colony (Suyitno, 2006) ^[14]. This is similar to Boone, who states, "colonial and post-colonial authority have purposefully designed and reproduced the rural land regime since these institutions support their governance, and to maintain political order in other regions" (Lund & Boone, 2013) ^[7]. Meanwhile, Lund states that in the majority of the post-colonial community, there is no institution that self-determine its content, border, or nationality. Accordingly, in practice, there is no institution that transforms into a state; "State" is the quality of an institution that can define and enforce binding decisions collectively towards its people (Lund, 2011) ^[6].

The status of Sultan Ground and Pakualam ground is customary land and is not protected by BAL, to date, its ownership status is proven by a letter issued by Keraton. Accordingly, the central government needs to clarify the legal certainty of the land using law.

Ideally, BAL 1960 alters the evidencing system of ownership of colonial land obtained through customary law by state land registration and land certification. However, in fact, the state does not provide complete ownership proof, and the land court still accepts the colonial land certificate, which is based on customary land (Bedner, 2016) ^[1].

The term Sultan Ground in Special Region of Yogyakarta emerges from *Domein Verklaring* stated in *Rijksblad* Yogyakarta No.16 of 1918 (Santoso, 2006) ^[11]. The recognition of Sultan Ground and the Sultanate as the authorized holder of customary land leads to uncertainty regarding land rights in Yogyakarta. The existence of Sultan Ground allows readjustment of the implementation of land right in Special Region of Yogyakarta. People who live or reside on a land considered Sultan Ground should file permission to the Sultanate. When they fail to do so, they do not have right to utilize Sultan Ground. This land right uncertainty also results in two dimensions of conflict, land status and identity. Regarding the land status, uncertainty arises on the land parcels that are previously held by the state, which turns into Sultan Ground. Such a case can be seen from the iron sand mine in Kulon Progo (Yanuary, 2012) ^[16]; and eviction for sand dunes preservation in Parangkusumo (Pranoto, 2017) ^[10]. Thus, Yogyakarta sultanate plays roles that are similar to the state in regulating and granting land status.

The land status is only proven by Keraton Letter, whereas Yogyakarta is a Special Region that shall adhere to the Law of the Republic of Indonesia. Accordingly, such a letter can

no longer become a strong legal basis since keraton has no legal foundation. This condition makes the status of Sultan Ground has no clear legal umbrella (Darmawan, 2010).

Following the positive law, Sultan ground is lawful king's land under article 20 paragraph (1) of BAL and the field fact (Kadriah, 2014) ^[5]. The fourth dictum of BAL 1960 letter A states "Rights and authorities on the earth and water of autonomous region and ex-autonomous region existing at the of the coming into force of this Act are annulled and transferred to the State" (Luthfi, Salim, and Soetarto 2009) ^[13].

Act no. 13 of 2012 on The Specialty of Yogyakarta does not only provide a clear legal status for Yogyakarta Sultanate but also claim and authority over sultan grounds. Sultan ground could be divided into two types, *keprabon land*- a land with sultanate building or that is used for Sultanate's cultural activity and that cannot be used for common people, and *dede keprabon land*- Land that is possessed by Sultanate and can be used by the people. To utilize *dede keprabon land*, people should obtain *Kekancingan* letter issued by *Panitikismo*. *Kekancingan* letter is a letter stating that the letter holder possesses *magersari*, a right to reside, and use Sultan Ground. This is issued by *Pantikismo*, a sultanate's bureau whose duties are to make data, to organize, and to grant permission for Yogyakarta citizen to utilize Sultan Ground. This manner ensures the Sultanate knows that its land is used by other people.

Since 2012, Act on Yogyakarta Specialty is in force. One of its primary stipulations is about land, especially Sultan Ground and Pakualaman Ground. Act no 13 of 2012 states that in administering land authority, Kasultanan and Kadipaten are considered special legal entities. As a special legal entity, Kasultanan is the subject of the right of ownership over Sultan Ground (SG), while Kadipaten is the subject of the right of ownership over Kadipaten Ground (PAG). Kesultanan and Kadipaten are authorized to manage and use the lands to develop culture, social interest, and people's prosperity.

Meanwhile, based on Governmental Regulation no. 38 of 1963 about legal entities allowed to have right of ownership on lands, there are only four entities allowed to have right of ownership on lands, namely, the State bank, Agricultural Cooperative, Religious Entities, and Social Entities. This regulation clearly does not state about Kasultanan as one of the allowed legal entities. This attests to the contradiction in land law, especially in Yogyakarta.

De facto and *de jure*, "Special Legal Entity" that is born in Act no. 13 of 2012, is a new legal subject under Indonesia's sovereignty, which is clearly different from the Feodal Legal entities established by the colonial government. Accordingly, a Special legal entity established by Act on Specialty does not have an either legal or political relationship with the Feodal Legal Entities established by the colonial government.

Act no. 13 of 2012 on Yogyakarta Specialty leads to uncertainty of land law. Besides, Government Regulation no. 38 of 1963 does not explicitly state Kasultanan as one of the legal entities authorized to hold land ownership right.

The specialty of this special legal entity is becoming the subject that is allowed to have land ownership right regulated by BAL, while this entity is not the subject that is allowed to have land ownership right stipulated in dictum IV of BAL. The stipulation of Kasultanan's and Kadipaten Pakualaman's land authority as a special legal entity is still

in force despite the debate that arises. In this case, Kasultanan Yogyakarta and Kadipaten Pakualaman are hereditary cultural heritage, who also becomes the Governor and the vice governor. The changes in land tenure in Yogyakarta, after the issuance of Act no. 13 of 2012 has radically changed the land system. The pattern leads to loss of state and communal lands, and Kasultanan and Pakualaman are the subjects of land ownership right in Yogyakarta, especially for the land categorized as SG and PAG. When Act on Yogyakarta Specialty is interpreted and implemented to serve certain interests that harm the community and the state's interest, it results in legal uncertainty because it seems impossible to have a land certificate given than all lands in Yogyakarta are possessed by Kasultanan and Pakualaman.

4. Conclusion

The legal status of the Sultan ground is regulated in Act no 13 of 2012. It states that Kasultanan and Kadipaten are declared as legal entities. As a legal entity, Kasultanan is the subject of the right of ownership over Sultan Ground, while Kadipaten is the subject of the right of ownership over Kadipaten Ground. Although there is a contradictory regulation, Act on Specialty, as a higher regulation compared to Governmental Regulation and Presidential Decision, has prevailed in Yogyakarta. It stipulates that Kasultanan and Kadipaten are authorized to manage and use the lands to develop culture, social interest, and people prosperity. For other parties, in order to manage sultan and Kadipaten grounds, they should obtain consent from the Sultanate (for Sultan Ground) and Kadipaten (for the Kadipaten Ground).

5. References

1. Bedner Adriaan. "Indonesian Land Law: Integration at Last? And for Whom?" dalam *Land and Development in Indonesia: Searching for the People's Sovereignty*. John F. McCarthy dan Kathryn Robinson (Eds.). Singapura: ISEAS Publishing, 2016.
2. Dharmawan Adhi. *Jogja Bergolak Diskursus Keistimewaan DIY Dalam Ruang Publik*, Yogyakarta: Kepel Press, 2010.
3. Fachrudin A. "Hak atas Tanah dari Surat Kekancingan Keraton Yogyakarta Menurut UUPA dan Hukum Islam" (Unpublished Thesis) Fakultas Syari'ah dan Hukum UIN Sunan Kalijaga Yogyakarta, 2012.
4. Huda N. *Daerah Istimewa Yogyakarta*. Bandung: Nusa Media, 2013, 195.
5. Kadriah. *Kajian Sultan Ground Menurut Hukum Positif dan Hukum Islam*" Skripsi, Universitas Islam Negeri Sunan Kalijaga, 2014.
6. Lund C. *Property and Citizenship: Conceptually Connecting Land Rights and Belonging in Africa*, Africa Spectrum, 2011.
7. Lund C, Boone C. *Land Politics in Africa-Constituting Authority Over Territory, Property, and Persons.*" *Journal MIAI, Africa*, 2013, 83(1).
8. Luthfi, Ahmad Nashih. *Keistimewaan Yogyakarta Yang Diingat dan Yang Dilupakan*. First Edition, Yogyakarta; STPN, 2009.
9. Marzuki PM. *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group, 2011.
10. Pranoto CB. *Rezim Penguasaan Tanah (Land Tenure Regime) dan Kewarganegaraan Subnasional di Daerah*

- Istimewa Yogyakarta: Studi Kasus Penggusuran di Pantai Parangkusumo, Desa Parangtritis, Kabupaten Bantul, Tahun 2006-2012*. (Unpublished Thesis). Depok: Universitas Indonesia, 2017.
11. Santoso U. *Hukum Agraria dan Hak-hak atas Tanah*. Jakarta:Kencana, 2006.
12. Soedarisman P. *Daerah Istimewa Yogyakarta*, Gadjah Mada University Press, Yogyakarta, 1984.
13. Soetarto E. *Keistimewaan Yogyakarta Yang di ingat dan Yang di lupakan*, Yogyakarta: STPN Press, 2009
14. Suyitno. *Hak Atas Tanah Kraton Kasultanan Yogyakarta*" Land, Edisi, 2006.
15. Wicaksono P, Rusdiana PA. *Petani Tuntut Miliki Tanah Sengketa Kertaon Yogya*, 2012. Retrieved from <https://m.tempo.co/read/news/2012/07/10/058415937/petani-tuntut-miliki-tanahsengketa-keraton-yogya>
16. Yanuardy D. *Commoning, dispossession projects and resistance: A land dispossession project for sand iron mining in Yogyakarta, Indonesia*. A Paper presented in *Global Land Grabbing II*, Universitas Cornell, 2012.