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FAKULTAS HUKUM UNIVERSITAS LAMPUNG

International Conference on Fundamental Rights (I-COFFEES)

Bandar Lampung, 7 September 2018



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FAKULTAS HUKUM - UNIVERSITAS LAMPUNG

“International Conference on Fundamental Rights (I-COFFEES)”

2018

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Welcoming Address
The First International Conference on Fundamental Rights

I heartily welcome you for the prestigious occasion of our Faculty. The idea of putting the researchers, academics and practitioners of an educational institution is so inspiring: what was once planted as a sapling is now all grown into a large tree. Here I can see a blend of extraordinary and educated people who have made this day arrive; they have come to us from each and every corner of the city.

This year, I find it to be my pleasure to address you people who are the minds of today and the responsible citizens of tomorrow. I and whole of our dedicated Committee team appreciate the efforts put in by researchers, academics and practitioners to come and presented each of paper that will be published. So, here I feel privileged to extend my warm welcome to all who are constantly extending their support and love to fulfil I-COFFEES.

The committee have received 146 paper proposals and we accepted 128 papers, but unfortunately only 63 papers will be presented during the conference, encompassing 12 themes relating with fundamental rights.

Taking further, I on the behalf of everyone present here, heartily welcome all the presenter and participant, the guest of honour, and all the keynote speaker. I am especially thankful to Prof. Yushiro Kusano, Dr. Kyaw Nyi Nyi, Ph. D., MHRD, MSc., Prof. Dr. M. Idriss Fassasi, LL.M., Prof. Hikmahanto Juwana, S.H., LL.M., Ph.D., and Prof. Muhammad Akib for accepted our request and readily agreed when he looked at today's event and its program. So, I hope for everyone to have an endeavors and life experiences from I-COFFEES.

Bandar Lampung, 7 September 2018
Chef Committee,


Dr. Rudi Natamiharja, S.H., DEA.

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PROCEEDING

THE FIRST INTERNATIONAL CONFERENCE ON FUNDAMENTAL RIGHTS FACULTY OF LAW UNIVERSITY OF LAMPUNG



September 7th , 2018
LAMPUNG - INDONESIA

**Prohibition of Land Ownership for Citizens of Non Indigenous
in The Special Region of Yogyakarta**

Shandi Patria Airlangga, F.X. Sumarja, and Sri Sulastuti

Abstract

The development of land regulations in Indonesia is very diverse, one of which is in The Special Region of Yogyakarta (DIY). DIY was once a kingdom called the Ngayogyakarta Hadiningrat Sultanate and the Kadipaten Pakualaman (Keraton). Keraton Palace is the center of DIY government led by Sri Sultan Hamengku Buwono as Governor, and Adipati Paku Alam as its deputy. Land regulations in DIY are subject to Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA). But there is a difference, namely the specialty of DIY which is regulated in Law Number 13 of 2012 concerning the Privileges of The Special Region of Yogyakarta, that Sultan has the right to regulate its own territory. Based on the history of DIY, there were frequent disputes between indigenous Indonesian citizens, with Chinese people who came to Indonesia. The research method used in this paper uses normative research methods, using journals, books, and legislation relating to the specialty of Yogyakarta. After reviewing the results of research from other researchers, found the facts that the dispute was caused by various factors which led to the stipulation of the Instruction of the Deputy Regional Head of DIY Number K.898/I/A/1975 concerning the Uniformity of the Policy for the Granting of Rights to Land to a Non-Native Indonesian Citizen. The instruction contained the prohibition for Indonesian citizens of Chinese descent to have a Property Rights Certificate (SHM) on land in DIY. This caused a reaction from Indonesian citizens of Chinese descent, many of them who sued but never succeeded. The Sultan has reason not to revoke the instruction. The legal politics behind these policies is an effort to increase local revenue (PAD), maintain the economic natures of indigenous people, and protect land which is an important asset for DIY.

Keywords: Politics, Law, Non Indigenous, Yogyakarta, Instructions, Chinese

A. Introduction

Land is essentially the top layer of the earth which is a place where humans live. Initially the land was communally owned by a group of people who lived together. But over time, some people agree to make rules that land can be owned and transferred by individuals with certain limits.

The Republic of Indonesia has long regulated land rights, especially land rights. Article 9 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA) regulates that only Indonesian citizens (WNI) have the right to own land rights in Indonesia.

However, there was an instruction from the deputy regional head in a swapraja area, namely The Special Region of Yogyakarta (DIY) which was considered contradictory to the UUPA. That is the Instruction of Deputy Regional Head of DIY Number K.898/I/A/1975 concerning Uniformity of Policy on the Granting of Rights to Land to a Non-Indigenous Indonesian Citizen. In the instruction, it is stipulated that non-native Indonesians, especially ethnic Chinese, are forbidden to own land with the status of ownership rights in DIY, but only to be given rights to land other than property rights.

Juridically, the privilege of Yogyakarta has been recognized in the country of Indonesia, as stipulated in Article 18B paragraph (1) of the 1945 Constitution that the state recognizes and respects regional governments that are specific or special. As a mandate from the article, Law Number 13 of 2012 concerning the Privileges of Special Region of Yogyakarta is stipulated. On that basis, the Sultan has the right to claim and have authority over his land or called the *Sultan Ground* (SG). In Article 1 number 4, regulates that the Ngayogyakarta Hadiningrat Sultanate is a valuable Indonesian cultural heritage. This is what distinguishes DIY from other provinces, that foreigner may not take control more than to damage the culture of the Keraton Royal Palace.

Based on the above background, this paper will discuss about the legal politics behind the prohibition of land ownership for non-native Indonesians in Yogyakarta, especially Chinese ethnicity, so that the problem can be formulated as follows: Why does the DIY local government apply the prohibition on ownership of land to non-native Indonesians, especially ethnic Chinese?

B. Methods

The research method used in this paper uses normative research methods, using books on land law, scientific journals written by other researchers relating to this paper as secondary data, and laws and regulations relating to the special features of The Special Region of Yogyakarta.

C. Discussion

1. Kasultanan Ngayogyakarta Hadiningrat

The Special Region of Yogyakarta (DIY) is a provincial level in Indonesia, precisely in the southern part of Java Island which is a fusion of the Yogyakarta Sultanate and the Paku Alaman Duchy. Before the State of the Republic of Indonesia became independent, DIY already had its own system of government, namely the Kasultanan which was commonly called the autonomous region. The Sultanate was named the Ngayogyakarta Hadiningrat Sultanate and the Kadipaten Pakualaman which was founded by Pangeran Mangkubumi entitled Sri Sultan Hamengku Buwono I (1755) and Prince Notokusumo entitled Adipati Paku Alam I (1813). The Dutch East Indies Government recognized the existence of the sultanate, and made political contracts listed in Staatsblaad Number 47 of 1942.

According to Djuaendah Hasan was supported by Ter Haar¹, Land law in the UUPA rests on customary law. This proves that DIY which has a strong customary law, still obeys the land regulations contained in the UUPA. Most autonomous regions are agrarian, land is a valuable thing for their people. The king is the only landowner in the royal area, so that only the king has ownership rights to the land, while the people are only loaned out.²

Indonesian Proclamation on August 17, 1945, opened a new sheet for Indonesian legal life (*clean state*). After independence, there were approximately 250 autonomous regions in Indonesia whose existence was abolished. Then all the land controlled by the swapraja party changed its name to swapraja land. On September 23, 1960, the Indonesian government enacted Law Number 5 of 1960 concerning the Basic Principles of Agrarian Principles (UUPA), so that all land was controlled by the state.³

¹ Supriadi, *Op.Cit.*, p. 6.

² Hendro Prabowo, *Pluralisme Hukum dan Penguasaan Tanah di DIY*, 2.

³ *Ibid.*

DIY was the only swapraja region that managed to survive during the colonial era to the present, so the Ngayogyakarta Hadiningrat Sultanate still had territory and palace namely the Ngayogyakarta Hadiningrat Palace (Keraton Kingdom), the people and the government bureaucracy which was confirmed as a special area by the center.

Indonesian citizens are native Indonesians and other nationals who are legalized by law as Indonesian citizens. Indonesian citizens have been given privileges, one of which is the property rights (property rights). Since the issuance of the Instruction of the Deputy Regional Head of DIY Number K.898 / I / A / 1975 concerning Uniformity of Policy on the Granting of Rights to Land to a Non-Indigenous Indonesian Citizen, they are not allowed to have a Certificate of Ownership (SHM) on land, but only may be granted land use rights. This was condemned by non-native Indonesians, especially Chinese. Sri Sultan Hamengku Buwono IX argued that the regulation was in accordance with the 1945 Constitution.

Some Indonesian citizens from ethnic Chinese, sued the instructions of the deputy regional head with the following legislation:

- 1) Article 28H paragraph (4) of the 1945 Constitution;
- 2) Law Number 5 of 1960 concerning UUPA;
- 3) Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia; and
- 4) Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination.

Some even sued the President of the Republic of Indonesia No. 26 of 1998 concerning Stopping the Use of Indigenous and Non-Indigenous Terms.

According to Mahfud MD⁴, if there is a discrepancy/contradiction, a legal norm with other legal norms that are higher than the Pancasila hierarchy, then there will be constitutionality and non-alignment. So that the lower legal norms are null and void.

Actually the lawsuit can be overcome with a few points. Article 11 paragraphs (1) and (2) of the UUPA have stipulated that in order to prevent control over life that goes beyond the limits, it is necessary to have policies for national interests in ensuring the protection of the interests of the weak economic group. So, the sultan automatically has a

⁴ Moh. Mahfud MD, et al, 2012, *Prosiding Kongres Pancasila IV: Strategi Pelembagaan Nilai-nilai Pancasila dalam Menegakkan Konstitusionalitas Indonesia*, Yogyakarta: Pusat Studi Pancasila UGM, p. 123.

strong foundation to protect indigenous people with a weak economy in DIY along with the prevention of over-mastery based on the law of the UUPA. Governor's instruction 898/1975 was also a product of false legislation, namely the policy of Sri Sultan Hamengkubuwono IX which was authorized by his representative in order to protect his weak people.⁵

If analogous, this prohibition has a similar value as applied by Indonesia, that foreign nationals may not own land rights in Indonesia. But only given the right to use, the right to lease the building, or the land with the status lease hold.⁶

2. A Brief History of the Government of Yogyakarta with Chinese Ethnicity in Indonesia

Basically in Indonesia there are only 2 (two) types of citizens, namely Indonesian citizens (Indonesian citizens) and foreigners (foreign nationals). Especially in DIY, people often distinguish native Indonesians from non-native Indonesians. The researcher has arrived at the fact finding behind the implementation of the 898/1975 Instruction. Based on the results of the research of other researchers, in DIY not all indigenous Indonesian economy citizens were weak, and not all non-native economy citizens were strong. It can be understood that the DIY government prioritizes indigenous Indonesians compared to non-native Indonesians. It was inseparable from the long series of Chinese ethnic history in DIY in the Dutch colonial era.

First, Chinese people have been in Yogyakarta since 1755. At that time the Chinese had good relations with the Javanese people and the Keraton Party. According to Peter Carey⁷, good relations between the Javanese people and the Chinese in DIY, began to decline around the 19th century, which was caused by the involvement of Chinese in the internal conflict of the Palace. Plus when the Chinese volunteered themselves to be instruments of the ruler of an economic policy that strangled the people. The arbitrary toll road tax collection system and the opium trade entrusted to the Chinese caused the relationship with the indigenous people to become increasingly distant. Then there was a rebellion from the Royal Palace, known as Prince Diponegoro. Since that time Prince Diponegoro forbade his troops to get in close contact with the Chinese, because they were considered as enemies of the Javanese people.

⁵ Firdausi Safitri, *Tinjauan Yuridis tentang Hak Kepemilikan Atas Tanah Bagi Masyarakat Tionghoa di Daerah Istimewa Yogyakarta*.

⁶ FX. Sumarja, *Larangan Pengasingan Tanah dan Peluang Investasi Asing di Indonesia*.

⁷ Budi Susanto, 2003, *Identitas dan Postkolonialitas di Indonesia*, Yogyakarta: Kanisius, p. 73-76.

Secondly, some of the economic fields of the Javanese people, at that time were fairly bleak. Bad conditions also hit Indonesian batik traders in Surakarta City. So in 1911 an Islamic Trade Association was formed with the aim of building joint forces to counter the strategies of Chinese traders.⁸

Third, the Ngejaman monument is a form of expression of gratitude from the Chinese people to Sri Sultan Hamengku Buwono for being given the choice to be able to live in DIY and get protection from Dutch aggression II. After the incident, the Regional Land Office in DIY could no longer make land title certificates for Indonesian citizens of Chinese descent.

3. State of Social and Economic of DIY Community

Based on empirical data from other studies, it was ascertained that Sri Sultan Hamengku Buwono IX in his position as regional head and king, took over all former Dutch companies in various agriculture based sectors, such as tobacco and sugar cane. Also several companies such as tobacco factories, Madukismo sugar factories, shopping centers, inns, and others.⁹ This was done to increase local revenue and maintain the stability of the DIY economy.

Chinese ethnicity in DIY mostly uses building rights for their homes. The grace period for the use of building rights is quite long, which is 30 years, and can still be extended. Of course the use of building rights must be in accordance with the permits of the local land office. That way, you can add local revenue from the costs of the administration of building rights.

The main objective of Instruction 898/1975 is also of course to maintain economic equality for indigenous people whose economies are weak compared to Chinese people who are famous for their foresight in determining the place and strategy of doing business. This rule is also useful to keep DIY land assets from being controlled by foreigners, because some studies have also proven that there are still many violations from internal and external parties. These violations include, among other things, the existence of ethnic Chinese who have certificates of ownership of land in DIY, and the existence of falsification of names on ID cards by bribing a notary who is not responsible for changing the data of the Chinese ethnic so that they can trick land officials.

⁸ Sutrisno Kutoyo, 1997, *Sejarah Daerah Daerah Istimewa Yogyakarta*, Jakarta: Direktorat Jenderal Kebudayaan, p. 277.

⁹ Suryanto, Ahmad Djunaedi, dan Sudaryono, *Aspek Budaya dalam Keistimewaan Tata Ruang Kota Yogyakarta*.

D. Conclusion

Based on the above discussion, it can be concluded that the Instruction of the Deputy Regional Head of DIY Number K.898 / I / A / 1975 concerning Uniformity of Policy on the Granting of Rights to Land to a Non-Indigenous Indonesian Citizen cannot be sued. Article 11 paragraph (1) and (2) of the UUPA, regulates the limitation of control over land and regulates the interests of the weak economic class.

A long history of disputes between indigenous people and Chinese descent has taken place, which has implications for land policy in DIY. Until now Sri Sultan Hamengku Buwono X did not revoke Instruction 898/1975 because it was in accordance with the UUPA and the 1945 Constitution.

Legal politics that occur behind the Instruction, is influenced by juridical, historical, and socio-economic factors. Where the Sultan is worried that there will be economic disparity between indigenous people and ethnic Chinese, so that it has the potential to trigger a split. Residents of Chinese descent are considered experts in business, because from the beginning of their arrival to Indonesia the aim was to trade. Indigenous people's economy must be prioritized, then instructions for Instruction 898/1975 were made to limit the movement of Chinese citizens in doing business in DIY, and to increase local revenue from land loans by non-native Indonesians in Yogyakarta. The regulation was also issued to keep land assets in DIY from being controlled by foreigners.

References

Books:

- Kutoyo, Sutrisno, 1997, *Sejarah Daerah Daerah Istimewa Yogyakarta*, Jakarta: Direktorat Jenderal Kebudayaan.
- Mahfud MD, Moh, et al, 2012, *Prosiding Kongres Pancasila IV: Strategi Pelembagaan Nilai-nilai Pancasila dalam Menegakkan Konstitusionalitas Indonesia*, Yogyakarta: Pusat Studi Pancasila UGM.
- Susanto, Budi, 2003, *Identitas dan Postkolonialitas di Indonesia*, Yogyakarta: Kanisius.

Journals:

- Alfiandri Hasim, Rangga, *Politik Pengaturan Sultan Ground dalam Undang-Undang No. 13 Tahun 2013 Tentang Keistimewaan Yogyakarta dan Hukum Tanah Nasional*, Arena Hukum, Vol 9, No 2 (2016), pp. 207-224.
- Bregas Pranoto, Carolus, *Pembangunan Negara, Hukum Pertanahan Indonesia, dan Kembalinya Tanah Kasultanan di Yogyakarta*, Jurnal Politik, Vol. 3, No. 1, Agustus 2017.
- Firdausi, Safitri, *Tinjauan Yuridis tentang Hak Kepemilikan Atas Tanah Bagi Masyarakat Tionghoa di Daerah Istimewa Yogyakarta*, (Yogyakarta: Universitas Islam Sunan Kalijaga, 2016).
- Prabowo, Hendro, *Pluralisme Hukum dan Penguasaan Tanah di DIY*, (Yogyakarta: Universitas Gadjah Mada, 2004).
- Sumarja, FX., *Larangan Pengasingan Tanah dan Peluang Investasi Asing di Indonesi*, Jurnal Media Hukum, Vol. 21 No.1 Juni 2014.
- Suryanto, et al, *Aspek Budaya dalam Keistimewaan Tata Ruang Kota Yogyakarta*, Jurnal Perencanaan Wilayah dan Kota, Vol. 26, No. 3, hlm. 230-252, Desember 2015.
- Yana, Syarifa, *The Judicial Review Property Rights Citizens Who Marry Foreigners in Indonesia Based on Law Number 5 of 1960 on the Basic Regulation of Agrarian*, Petita, Vol 3 No. 2 Desember 2016.

Regulations:

- Undang-undang Dasar Republik Indonesia Tahun 1945.
- Undang-undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-pokok Agraria.
- Undang-undang Nomor 13 Tahun 2012 tentang Keistimewaan Daerah Istimewa Yogyakarta.



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