

Legal Status of the Land of the Sultanate Special Region of Yogyakarta

Himawan Wicaksono¹, Yudho Taruno Muryanto²

^{1,2}Faculty of Law Sebelas Maret University, Surakarta, Indonesia

ABSTRACT: Land within the territory of the Republic of Indonesia is one of the main natural resources and has a very strategic function in meeting the increasingly diverse needs of the state and its people. policies for managing control, ownership, and utilization of land as stipulated in Law Number 5 of 1960 concerning Basic Agrarian Regulations. The Special Region of Yogyakarta, as one of the regions that has privileges in carrying out its administration, is regulated by law. One of the privileges of the Special Region of Yogyakarta is the issue of land. In the Special Region of Yogyakarta, not all Indonesian citizens can obtain property rights as stipulated in the law. It's as if the regional government is discriminating against Indonesian citizens, especially non-Indigenous Indonesian citizens. With the Instruction of the Deputy Governor of the Special Region of Yogyakarta No. K.898/I/A/1975, it has become increasingly clear in the land polemic in the Special Region of Yogyakarta that there have been discriminatory actions in the land sector.

KEYWORDS: Land, Legal Status, the privileges of the special region of Yogyakarta

INTRODUCTION

As the main natural resource, land within the Republic of Indonesia not only has valuable intrinsic values for its people but also has a strategic function in fulfilling the increasing needs of the country and its residents, both domestically and internationally. Due to its importance for life and human life itself, the state's intervention through the government with the order of land law is essential. The authority given to regulate every aspect related to the land has been formulated in the 1945 Constitution, which becomes the fundamental arrangement of the nation.

Conceptually, the policy of occupancy, ownership, and land exploration has been established through Indonesia Law No. 5/1960 on Fundamental Regulation of Agrarian (UUPA) as mandated in Article 133 Paragraph 3 of the 1945 Constitution (UUD 1945), which later was expanded through Article 11 UUPA and then became the fundamental of agrarian policies that aim to achieve the state's welfare. Article 11 of the UUPA claims that "land, water, space, and the natural resources within are occupied by the state and be utilized profusely for the sake of people's prosperity".

The state of Indonesia as a governing organization "regulates" in the meaning of making rules, then "organizes" which means utilizing the land, water, space, and natural resources within. In addition, the state also decides and regulates the utilizing rights.

Based on The Indonesia Law No. 9/155 and No. 3/1950 on Establishment of The Special Region of Yogyakarta (as amended with The Indonesia Law No.13/2012, Yogyakarta has specific authorities related to land. This circumstance is related to the existence of Kasultanan Hadiningrat and Pakualaman Palaces, which have established their own territory and governance long before the Indonesian Independence Day on August 17th, 1945. The existence of Yogyakarta as a special region is also nationally acknowledged, as stated on article 118 paragraph 1 of UUD 1945.

The Special Region of Yogyakarta has some privileges in its governance as mandated by its specific regulations. On August 12, 2012, the 6th President of Indonesia, Susilo Bambang Yudhoyono, in order to end the polemic over its special region's status, assigned Indonesia Law No. 13/2012 on Privileges of the Special Region of Yogyakarta. That law is established based on the profound history and origins of Yogyakarta.

One of many authorities given to the Special Region of Yogyakarta is related to land. The government of Yogyakarta has authorities to regulate the land sector, specifically about the rights of land acquisition and ownership. In Yogyakarta, non-indigenous residents are not allowed to claim for the land ownership, unlike in the other regions of Indonesia.

Within the Special Region of Yogyakarta, not all Indonesian citizens have the ownership right as mandated on UUPA. As if, the local government discriminates the non-indigenous residents. Moreover, the Vice Government of Yogyakarta Instruction No. K.898/I/A/1975 has also worsen the polemic and seemed to confirm the discrimination. Historically, the ownership limitation is inseparable with the history of land ownership in Yogyakarta. Most of the land within the region are the property of the Sultan and

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Pakualam which are given by the King to their people. Thus, people are only allowed to occupy and utilize the land by the name of “Magersari.”

According to Bambang Sadono, the land system in Indonesia is a form of legislation which frequently being politicized due to the multitudes of conflicting regulations. The right of land ownership should be a privilege for the people. Consequently, the negligence has negative impacts which oftentimes being manipulated by the local government.

Based on those descriptions, this research aims to discuss “**The Law Status of Kasultanan Land in The Special Region of Yogyakarta.**”

Research Question

Based on the theories and results of previous studies, this research aims to find the answer of this research question:

How the law status of Kasultanan Land in the Special Region of Yogyakarta after the implementation of The Indonesia Law No. 13/2012 on Privileges of the Special Region of Yogyakarta?

Research Methodology

The methodology used in this research is juridical formative, which is done by reviewing literature or other secondary data. Statute approach is also conducted by reviewing statues and regulations related to the issues such as The 1945 Constitution, The Indonesia Law No. 5/1960 on Fundamental Regulation of Agrarian, and The Indonesia Law No. 9/1955 and No. 3/1950 on Establishment of The Special Region of Yogyakarta (as amended with The Indonesia Law No.13/2012).

Within this strategy, the sources of data and legal materials are derived from primary data such as statues, legal papers, minutes, and verdicts related to the topic, and secondary sources which provides the explanation of the primary sources.

The data are collected through library research by reviewing some literatures and legal materials which are relevant with the research object. This method also based on related e-books, journals, papers, previous studies, and other relevant materials.

DISCUSSION

The Law Status of Kasultanan Land in The Special Region of Yogyakarta after the Implementation of The Indonesia Law No.13/2022 on Privileges of the Special Region of Yogyakarta

Yogyakarta was a kingdom which has its own authority in administrating its internal affairs prior to be a part of Indonesian Republic. The existence of Yogyakarta as an autonomous region cannot be separated from its long history due to the political treaty between Sri Sultan Hamengkubuwono IX and VOC Governor General Tjarja Van Strerkenborgh which resulted in the special autonomic authority in ruling over its land.

Before joining the Republic, Yogyakarta has had specific rules on land which was listed on these Rijksblad:

1. The Sultanate Rijksblad No.16/1918 as amaended with The Pakualaman Rijksblad No.18/1918.
2. The Sultanate Rijksblad No.11/1925 juncto No.2/1932.
3. The Sultanate Rijksblad No.23/1925¹².

According to the Sultanate Rijksblad No.16/198 article 1 which contains domein statements, all lands in Yogyakarta which have not been laden with the rights of *eigendom*, are the property of the palace. Therefore, Yogyakarta does not recognize them as state’s lands. All lands belong to the Sultanat, which were given to the local government. In addition, there are lands belong to the Yogyakarta Palace and Puro Paku Alam.

The Indonesia Law No.22/1948 on Local Government and No. 3/1950 then became the fundamentals of Yogyakarta’s privileges, alongside with The President Chapter in August 19th 1945.

In addition, the Indonesia Law No.5/1960 was intended to equalize the diverse agrarian laws and put an end to laws which were originated from customs or west laws. The status of lands belong to Yogyakarta Palace are “*ulayat*” or customary land, and are not guaranteed by UUPA dictum 4 which states “the rights and authorities of land, water, autonomic region and former autonomic region, starting with the effectuation of this law, are erased and transferred to the state”.

In the other words, the law status of lands belong to Yogyakarta Palace are terminated with the regulation of UUPA and then transferred to the state. Whereas, by the establishment of Special Region of Yogyakarta as stated in The Indonesia Law No. 22/1948 on Local Government, and by the time Yogyakarta was established as a special region, Yogyakarta had special authority in agrarian field.

This situation results in the law status of lands belong to Yogyakarta Palace which do not have legal certainty even though the UUPA had been enforced comprehensively. According to the law, the lands are not belonged to Yogyakarta Palace, but in practice, the citizens and the palace insist to acknowledge the lands as the property of Yogyakarta Palace.

Those problems lasted until the effectuation of The President Decree No.33/1984, which mandated the comprehensive implementation of UUPA in Yogyakarta and revoked some agrarian regulations. The contradiction between UAPA and The Indonesia Law No.3/1950 is clearly visible, hierarchically, UAPA surpasses the law since the newer regulation cancels the previous law but UUPA is also invalid due to the presence of The Indonesia Law No.3/1950 which regulates the privileges of Yogyakarta in the field of agrarian.

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Moreover, as stated in Government Regulation No.38/1963 on Designation of Law Bodies Allowed to Possess Ownership Right of Land, Yogyakarta Palace cannot be classified as an individual or law body that allowed to possess a land. On the other words, the land cannot be claimed by Yogyakarta Palace for its ownership right, thus, the occupation right belongs to the state.

Despite the historical records of lands belong to Yogyakarta Palace are vast and spread across the region even in the wider areas, the status uncertainty has triggered certain fidgetiness on some parties which raised the urgencies of issuing new regulation that acknowledge the existence of Yogyakarta's privileges. Years after, the government finally released The Indonesia Law No.13/2012 which amplified the specialties of Yogyakarta. This law specifically regulates some aspects such as lands in Yogyakarta, including the properties belong to Yogyakarta Palace or within its area, which would be recorded and registered to National Land Agency as the authorized institution.

Article 1 paragraph 2 The Indonesia Law No.13/2012 states that:

“The specialties are privileges in law status given to Special Region if Yogyakarta based on history and origin rights according to the 1945 Constitution in order to organize and manage its special authorities.”

The description is explained further on article 7 paragraph 2 and 3 of the law

(1) The authority of Special Region of Yogyakarta as an autonomous region includes internal affairs as stated in statutes on local region and special affairs as stated in this statute.

(2) The authority mentioned in article 1 includes:

- a. procedures of Governor and Vice Governor's incumbency;
- b. the institution of local government in Special Region of Yogyakarta;
- c. culture;
- d. land; and
- e. spatial planning

those description reflect the situation of land regulation in Yogyakarta before the implementation of unified agrarian law.

The purposes of regional autonomy are: a) improving public services, b) developing democratic life, c) national justice, d) territorial distribution for maintaining harmonic relationship between central and local government and for the integrity of Indonesia, e) promoting people's empowerment, f) emerging initiatives and creativity, improving people's participation, developing roles and function of regional council.

The effectuation of the Indonesia Law No.3/2012 seemed to prosper the palace as the land owner of Yogyakarta since it gives legal certainty to the Sultanate's status. The Sultanate is appointed as a legal entity which acts by subject rights and has an ownership right of lands in the area of Sultanate. This also converts the status of legal relationship between the Sultanate with lands under its occupancy. Based on theory developed by ADicey related to *The Rule of Law*, the stipulation demonstrates the willingness of central government to institute a law which can be obeyed by its regions. According to the writer of *Supremacy of Law*, as a part of *The Rule of Law*, a central government tends to limit the broad power of its regional government. Principally, the status of Sultanate before being appointed as a legal entity is similar with a kingdom which has the authority to distribute its lands to the people independently. The implementation of the Indonesia Law No.13/2012 has made the Sultanate no longer able to distribute its lands independently, but it needs remapping and reregistering process which involves National Land Agency through Yogyakarta Land Office. This limitation is not a precipitant process but mainly aims to fulfil the elements of *equality before the law* and *due process of law*.

Formerly, the Sultanate was the government entity of the kingdom so that every aspect related to land ownership, as stated in Rijktsblad 1918, are managed by the kingdom. The kingdom acted similar with a country that able to distribute its lands to the people (public legal entity). This concept has made the Sultanate possessed such a strong influence in deciding land management policies. The Sultanate could regulate legal relationship between the land and people or legal entity, and arranged the legal action. The authority was administered by an institution called “Panitikismo” under the control of “Pepatih Dalem.”

Until the establishment of Sultanate as a legal entity by the statute, the property rights subject of land was applied as if the Sultanate institution existed before joining the republic. After being appointed as a legal entity, the institutional status of the Sultanate will be converted since the status is equal to the other private legal entities in the matter of land ownership. The change has impact on the rights and obligation attached to the private land owners.

By establishing the Sultanate as a legal entity which capable of giving and taking the rights of land as stated in UUPA, the Sultanate will have a legal status as other private legal entity. According to Suhartono, financial audit is essential for a private legal entity, alongside with an independent financial management.

Legal certainty is an essential principle of legal action administered by the state and law enforcers. The statutes provide a higher level of legal certainty compared to the customs and jurisprudences, that also ensure the stability of the people. The development of public policies should be based on law which has been institutionalized to guarantee the stability.

The implication of policy concepts in land management in Special Region of Yogyakarta is the emergence of synergy between National Land Agency with the Sultanate which previously hampered by a legal vacuum. In the description section of UUPA is

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clearly stated the status of this law as the legal conception of national land has accommodated the history of Sultanate's land ownership within the Republic of Indonesia. As stated in the general explanation section, the main purposes of UUPA are:

- a. laying the fundamentals of national agrarian law construction as an instrument that will bring the prosperity, blissfulness, and justice to the state and people, mainly for the farmers;
- b. laying the fundamentals of unity and simplicity on land law;
- c. laying the fundamentals of legal certainty on land rights for the people.

The formulation of national land law is based on the customs conception, therefore, the regulation mandated on the Special Law is derived from the purposes of unifying land laws which is also based on the customs. UUPA as the front guard has provided the fundamentals of land law, but still, the management of customary lands refers to the existing customs, as long as aligned with national urgencies. A positive legal basis has been given to the Special Region of Yogyakarta by the central government due to its long history. As a result, the management of Sultanate's lands that administered by the Special Law and involved National Land Agency reflects the combination of local wisdom and legal unification on land management in Indonesia.

CONCLUSION

The effectuation of the Indonesia Law No.3/2012 seemed to prosper the palace as the land owner of Yogyakarta since it gives legal certainty to the Sultanate's status. The Sultanate is appointed as a legal entity which acts by subject rights and has an ownership right of lands in the area of Sultanate. This also converts the status of legal relationship between the Sultanate with lands under its occupancy. Based on theory developed by ADicey related to *The Rule of Law*, the stipulation demonstrates the willingness of central government to institute a law which can be obeyed by its regions.

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