

LEGAL CERTAINTY OF LAND CERTIFICATION OF SULTAN GROUND IN YOGYAKARTA

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ABSTRACT

*The purpose of this research is to examine whether the mechanism for issuing land rights certificates on sultan ground land after the Regulation of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency Number 2 of 2022 has legal certainty. The normative legal research employing the statutory approach in this research. The primary and secondary legal material uses as the sources type of data for legal content. Prescriptive analysis from deduction employed in the legal material analysis technique. The result shows the development of land law in Yogyakarta can be taken to mean that in the principle of using the principle of *lex specialis derogat legi generali* where special regulations override more general regulations even though basic agrarian principles is in a higher position than legislation made by and/or for the sultanate, but the Specialty Law was formed specifically for the Special Region of Yogyakarta. The certification process has also been explained in the law, so it can be interpreted that this certification has legal certainty. However, because the certificates are only granted as Right to build, Right to Cultivate, Right to Use the sultanate can take the certificates back if the sultanate needs them because the Regulation of the Ministry of Agrarian Affairs and Spatial Planning of the Head of the National Land Agency Number 2 of 2022 can be retroactive.*

Keywords: Certification, Sultan Ground, Legal Certainty

INTRODUCTION

Benefits were granted to the Special Region of Yogyakarta since the area was under the sovereignty of a kingdom until independence, when the sultan of the Yogyakarta kingdom merged with the state of Indonesia. Due to the region's privileges, rules pertaining to the granting of sultan ground and pakualaman ground in DIY emerged. These regulations have continued to grow until the sultanate and kadipaten were granted legal status in Article 32 of Law Number 13 of 2012 concerning the Privileges of the Special Region of Yogyakarta. This legal status grants the sultanate and kadipaten the ability to organize land in their own territory. In 2015, Sultan Hamengku Buwono X said that there was no state land in Yogyakarta, which resulted in the state land rights changing to sultanate land rights. (*Sultan HB X: Tak Ada Tanah Negara Di Yogya - Nasional Tempo.Co*, 2015).

The land in the Special Region of Yogyakarta is grouped into 3 (three) namely; sultanate land, kadipaten land and village land, the land area is 290,339,152 m² which is divided into 3 where the sultanate land area that has not been identified is 78,653.235 m², as a result, the Palace works with the Ministry of Agrarian Affairs and Spatial Planning / National Land Agency of Yogyakarta to register land on uncertified Sultanate land in accordance with the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency Regulation No. 2 of 2022 concerning the Registration of Sultanate and Kadipaten Land in Yogyakarta. (*INTANTARUBERINFO*, 2023).

As a result, the sultanate, as a legal body with the authority to administer and make use of sultanate territory, registers land in the Yogyakarta Special Region. Since the publication of Yogyakarta Special Region Regulation No. 1/2017 on the Management and Utilization of Sultanate Land and Kadipaten Land, which is stated in Article 14 and states the following:

1. Land registration is submitted by the sultanate for sultanate land to the land agency in the jurisdiction where the sultanate land is located.
2. Registrations made by other parties who wish to manage sultanate land must obtain written approval from the sultanate.

The registration sultanate land process in DIY is governed in Articles 6 and 7 of the Agrarian and Spatial Planning Minister regulation or the National Land Agency Head in No.2 of 2022 as the control process registration. It explained that the prior sultanate land registered as conducted inventory, identifying and verifying sultanate land. Then the property rights determination on sultanate land is converted. Also the property of sultanese right could be granted to build right on sultanate property rights made before and by the Deed Land Official. However, the right granting to build and use the right on sultanate property right must obtain permission in *serat kancingan* form. As a result, a new regulation known as the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 2 of 2022 on the Registration of Sultanate and Kadipaten Land in Yogyakarta is used to register the sultanate's land. However, it has not been examined whether the process for issuing certificates has legal certainty.

LAND CERTIFICATION OF SULTAN GROUND IN YOGYAKARTA

Land certification in Yogyakarta is not easy to do, there have been many regulations that are continuously updated to provide legal certainty to the people in DIY because the land in Yogyakarta belongs to the sultanate and kadipaten within the scope of its history which began during the colonial era, where the power of the sultan (king) is considered the representative of God in the world, which requires the king to protect his people and his people serve him (Sukarno, 2020). The Rijkswald Kasultanan Number 16 of 1918 published the first land regulation, which included a domein statement in article 1 designating as property owned by the palace any land that lacked ownership documentation or was not subject to the colonial government's eigendom (property) rights. The sultan became the owner of the kraton's land and the people only had customary rights (*anggaduh*), rental rights, or usage rights (*magersari*) and when the sultan wanted his land back then he could revoke the rights given to his people and historically

the sultan had divided up his land for village use called tanah kas desa and the sultan had given some of his land to people who worked for him as gifts. The sultan allowed his subjects to rent his land by applying for permission from the palace. Thus, it is evident that the kraton owns all of the land in Yogyakarta; state land has never existed there, although the Special Region of Yogyakarta has seen a number of developments.

Yogyakarta Special Region Regulation Number 5 of 1954 was established in 1954 to regulate land located within the Special Region of Yogyakarta; however, it did not regulate land rights located in the big city/praja Yogyakarta due to the lack of regulations. Until new rules were established, the sultanate's Rijktsblad number 23 of 1925 was used. Meanwhile until the 1984, when the UUPA completely applied in DIY where the government made no new legislation, continuing to abide by the 1925 Rijktsblad. Following the enactment of Basic Agrarian Law Number 5 of 1960 (henceforth referred to as UUPA), which was created with the intention of unifying land law throughout Indonesia, DIY became dualism in agrarian law which caused legal uncertainty even though it had been declared fully applicable in DIY but dualism still occurred when there were problems such as those said by (Pravitasari, 2020) the occurrence of land occupation carried out by the DIY Government which was carried out from the 1960s to 2012 so that many lands were registered with the status of state land use rights because the sultanate had not yet obtained legal power to certify land at State Land Agency.

Law No. 13/2012 was passed in 2012, granting the sultanate and pakualaman the authority to independently manage the land in the Yogyakarta special region. This law also gave them the authority to certify their land and impose land regulations in DIY. Law No. 13/2012, among other regulations, was issued to assist in the management of sultanate and pakualaman land:

1. Special Regional Regulation No. 1/2017 on the Management and Utilization of Sultanate and Kadipaten Land;
2. Regulation of the Governor of Yogyakarta Number 33 of 2017 concerning Procedures for the Management and Utilization of Sultanate Land
3. Governor of Yogyakarta Special Region Regulation No. 49/2018 on Application Procedures for Utilization of Sultanate Land and Kadipaten Land;
4. Regulation of the Minister of Agrarian and Spatial Planning/Head of the Land Agency Number 2 Year 2022 on the Registration of Sultanate Land and Kadipaten Land in Yogyakarta.

In order to help the sultanate and kadipaten become legitimate entities with the ability to govern their homes, including their land in DIY, the following regulations have been put in place. The author wishes to investigate sultanate land certification because the most recent rule controlling sultanate land registration was issued by the Minister of Agrarian Affairs and Spatial Planning / Head of the Land Agency Number 2 in 2022.

Land certification involves four stages: land registration, which includes measurement, mapping, and land bookkeeping; registration of land rights and their transfer; and providing proof of rights, which is used as a strong proof base based on article 19 of the Basic Agrarian Law. Land registration varies from land registration in that it necessitates the collection and maintenance of physical data first. Measuring and mapping are physical data collection and management activities associated with a village / sub-district unit area.

Because we are in the Special Region of Yogyakarta, land conversions must be completed prior to land registration in order to determine where the original land came from and adjust the old land rights into new rights. Yogyakarta's land law is evolving, necessitating changes. There are three sorts of conversion in the form of conversion of land rights originating from western land rights and originating from Indonesian rights, originating from erstwhile Swaraja land. Given that our land ownership system is based on custom and does not adhere to written evidence, the principle of caution is required to carry out land registration. This is due to the formation of a separate law to register kasultanan land due to the dualism of land in the Special Region of Yogyakarta, where the origin of the land is different. In this development, it can be seen that the law used adapts the principle of *lex specialis derogat legi generali*, which states that special regulations take precedence over more general regulations, despite the fact that UUPA has a higher standing than legislation made by and/or for the Sultanate, but the Specialty Law was created specifically for the Special Region of Yogyakarta. The process of registering sultanate land can be carried out by two parties, namely the palace itself and the public who wish to apply for the use of palace land.

Land registration can not only be registered by the palace, but also by people who want to manage or occupy the land by making a request to the National Land Agency in the area closest to the location. If the land has never been registered or never used, then the National Land Agency will check the history of the land to see if it has been registered by someone else or if it belongs to the sultanate. In applying to manage sultanate land, people are required to obtain a "serat kekancingan" first to prove that the sultanate gives its permission to use and manage the land. However, in reality, applying to the sultanate is not as easy as one might think. The time it takes to research whether the land is sultanate land is also not quick, which requires accuracy in researching where the land came from. It is not enough to get there, if the land does belong to the sultanate the issuance of the "serat kekancingan" is also not short process, that the conditions that must be completed are required, among others, based on (Article 6 of The Special Region of Yogyakarta Governor Regulation Number 49 of 2018 concerning Procedures for Application for Utilization of Sultanate Land and Kadipaten Land):

1. Individual applicants;

- a. Legalized copies of ID card and family card,
- b. Photo pass
- c. If authorized, attach a power of attorney along with a stamp duty accompanied by a photocopy of the ID card and family card of the authorized party and legalized
- d. Plan of the site along with a sketch of the land describing the shape and boundaries of the land made by the applicant
- e. Land certificate from:
 - 1) The village head and acknowledged by the sub-district head for sultanate land explaining that the land being applied for is indeed sultanate land and is not in dispute;
 - 2) The land office for kasultanan land located in the city which explains that the land applied for is indeed kasultanan land;

- f. Recommendation on the suitability of land utilization with the spatial plan from the regional spatial planning coordination team or the district/city spatial planning coordination team;
- g. Recommendation on the utilization of sultanate land from the district or city government's regional apparatus organization in charge of land and spatial planning which at least contains;
 - 1) Purpose of the utilization of sultanate land
 - 2) A Statement of the existence of land certification from the village head as referred to above
 - 3) A Statement that the proposed utilization of sultanate land is in accordance with the spatial plan
 - 4) A Statement that the building on the sultanate land has or has not been established and if it has been established, the year of establishment of the building is stated
 - 5) A Statement that the building on kasultanan land was built before this governor regulation came into effect.

2. Applicant of legal entity, business entity, etc.

- a. Legalized copy of ID card of the leader/director/head
- b. Photo pass
- c. Power of attorney if authorized accompanied by a photocopy of ID card that has been legalized
- d. Proposal that contains;
 - 1) Profile of the legal entity/business entity/institution involved
 - 2) Purpose and objectives of land utilization
 - 3) The land information including the parcel, the location of the land which includes the name of the hamlet, village, sub-district and regency.
 - 4) Land location plan along with a sketch of the land plot describing the shape and boundaries of the land made by the applicant.
- e. Copy of the memorandum of association of the institution which has been legalized by a public official or a copy of the basic regulations concerning the establishment of the institution concerned.
- f. Land statement letter from:
 - 1) Village head and acknowledged by the sub-district head for sultanate land located in the regency explaining that the land applied for is indeed sultanate land
 - 2) Land office for sultanate land located in the city explaining that the land is indeed sultanate land.
- g. The recommendation on the suitability of land utilization with the spatial plan from the regional spatial planning coordination team/regency/city spatial planning coordination agency;
- h. The recommendation as referred to above is not required in the application for the utilization of existing sultanate land that is recorded as an asset of a business entity and replaced by a statement issued by the business entity/legal entity as the applicant:
 - 1) Purpose of utilization of sultanate land
 - 2) A Statement of the existence of a land certificate from the village head/land certificate from the land office
 - 3) A Statement that the proposed utilization of sultanate land or duchy land is in accordance with the recommendations issued by the district or city spatial planning coordination team.
 - 4) A Statement that the building on the sultanate's land has not been built or has been built and the year of the building's construction is stated.
 - 5) A Statement that the building on sultanate land was established before this governor regulation came into effect.

After the form completed and submitted the document requirements, the districts or city Land Office conducts the verification and clarification. The team responsible as the team from the governor. Subsequently. The detailing minutes of verification and clarification outcomes are the issues, served as the basis recommendation on the sultanate land utilization. Based on this, the sultanate either approves or rejects the proposed utilization based on the several recommendations. Then, usage is determined in the form of construction use rights or use rights on sultanate property. The sultanate may require tariffs or support for the granting of building or use rights in this granting, although the statute does not specify the amount of tariffs demanded. Thus, the tools created by the sultanate to certify sultan ground land demonstrate that a legal system has been established and is operational. According to (Athanasia Dian Santi, 2011), *pisungsung* for building use rights based on Government Regulation No. 13 of 2010 Types and Rates of Non-Tax State Revenues Applicable to the National Land Agency which consists of a compensation fee of 30-40% X land area X sales value of taxable object land and building tax but according to information from Mr. Suyitno from the Yogyakarta legal bureau in 2016 in the Sultan Ground Letter Book, the value of *pisungsung* is Rp. 150,000 to Rp. 200,000 (Muhsin et al., 2019) However, in the Regulation of the Minister of Agrarian Affairs and Spatial Planning of the Head of the National Land Agency Number 2 of 2022 concerning Registration of Sultanate Land and Duchy Land in the Special Region of Yogyakarta, it is only stated that the determination of "pisungsung" for the granting of building use rights on the Sultan's land is carried out on the basis of convenience and does not burden prospective holders of building use rights.

Based on the explanation above related to the mechanism of certifying sultan ground land based on Lon Fuller's legal certainty that is not appropriate is only the third point where the law is retroactive, this is the problem, making it necessary to return the certificate and re-registration into building use rights. However, the number of people who return the certificate to the sultanate (antaranews.com, 2022) shows that the people in the Special Region of Yogyakarta really consider the existence of the sultanate and obey the rules of the sultanate formed, therefore the theory of legal culture in Special Region of Yogyakarta is still very thick because community compliance with new laws does not make it a problem. People return the certificates stemmed from the data recollection palace to the identify lands deemed as the property of sultanate. Some parcels, in previous issued Ownership Certificates were reclassified as the sultanate-owned. Consequently, the member of community voluntari surrendered the Ownership Letters to the sultanate, instead for the Build Right permits on sultanate land. However, for some other communities, this has become a source of concern, such as some village lands where the background is that the land was given by the sultanate and asked to be returned to change the certificate (Media, 2021).

CONCLUSION

Land certification of the palace land is undertaken out to establish legal certainty over the land, but because the land in DIY historically belonged to the sultan and kadipaten completely before being allocated to villages, individuals, legal entities, and colonies. So, before land registration can be completed, the land must be converted so that the original land can be identified, and then the land must be adjusted into new rights, which requires vigilance. The *lex specialis derogat legi* principle generally applied in the land law evolution of Yogyakarta. Despite the fact that UUPA stands a higher position than the legislation made by or for the Sultanate, the Speciality Law, made specifically for the DIY takes precedence. It ensures that special regulations supersede more general ones, reflecting the unique needs and region circumstances. The certification process has also been stated in the law, therefore it can be assumed that this certification is legally binding. However, because the certificates are only granted as Right to Build, Right to Cultivate, and Right to Use, the Sultanate has the authority to revoke them if necessary, as the Regulation of the Minister of Agrarian Affairs and Spatial Planning of the Head of the National Land Agency Number 2 of 2022 is retroactive.

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