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The Influence of Cultural and Legal Factors in Decisions Regarding the Existence of Royal Customary Lands: A Study in Surakarta, Indonesia

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Abstract: The meaning of the former royal land which differed between the government and the kingdom became one of the triggers of conflict in Indonesia. Horizontal conflict involves the community, kingdom and local government. Likewise, at this time there are many conflicts related to ex-kingdom land which finally ended in a court dispute in the city of Surakarta, namely the Surakarta kingdom domain land and the Mangkunegaran domain land.T he study was conducted using the socio legal method qualitatively. It is hoped that the hidden meanings of the objects and subjects under study are expected. This approach is carried out to understand the law in the context of the community. In this study looked at the reality of the validity of the ex-Kingdom land in Surakarta. The reality of the absence of Government Regulation as instructed in Dictum IV letter B of the BALA has resulted in a prolonged conflict between the Regional Government and the royal heirs as well as the people who have an interest in the ex-royal land. Based on the results of the study, the Kingdom of Surakarta and Mangkunegaran, were customary communities, because the King as the head of customary rules still had the same territorial and descendant territory and had authority in and out of his customary area. So that the land of the former kingdom acts as customary land for the Kingdom of Surakarta.

Keywords: *legal status, ex-royal land, surakarta.*

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I. Introduction

Various conflicts that ended in disputes in court and acts of communal violence occurred in Surakarta City related to former royal lands. According to Gangga Santi (2019), horizontal conflicts involve the community, between kingdoms with citizens as well as kingdoms with local governments, in which many citizens certify ex-royal land without procedures set out in applicable regulations, as well as local government authorities (Dahrendorf, 1986). The meaning of the former royal land which differed between the government and the kingdom increasingly triggered conflicts that ended in disputes in the city of Surakarta.

A state that has power over land with the State's Right to Control is regulated in Article 2 of Law

No. 5 of 1960 concerning Basic Regulations on Agrarian Principles (BAL), should provide legal protection and legal certainty for the ownership rights of ex-Kingdom land. It has been regulated in the constitution of the 1945 Constitution Article 28 H paragraph (4), namely that every person has the right to have personal rights and property rights are not entitled to be taken arbitrarily by anyone (Gunanegara, 2008).

Reality shows that various efforts of the regional government and the National Land Agency (BPN) have made various efforts to resolve the conflict in Surakarta by holding a meeting to produce an agreement as outlined in the agreement. Agreement relating to ex-royal lands that will be released by the kingdom so that it can be used by the people who physically control the land. However, in practice it is not carried out properly by the government, so that the land becomes a status quo that results in losses for third parties, namely the people as farmers who rely on their family lives from the ex-royal land. are the reality of the policy enactment of the lands of the former Kingdom of Surakarta and the possibility of ex-royal land for legally categorized as customary land.

II. RESEARCH METHODS

The study was conducted by the socio legal method. According to Satjipto Rahardjo (2009) with social science methods and theories about law to help researchers carry out analysis. This study uses qualitative research methods which are expected to find hidden meanings behind objects and subjects to be studied. According to Zamroni (1992), the approach of qualitative research methods is carried out to understand the law in the context of societ". This approach remains in the realm of law, only the perspective is different. In this study looked at the facts of the reality of the ex-Kingdom land in Surakarta.

The data in this study were obtained through activities of observation, interviews, interpretation of documents (text), and personal experience. According to Faisal (1990), in qualitative research methods, the type and method of observation is used as a type of observation that starts from descriptive work, then observations focus and ultimately observation is selected. In accordance with the paradigm of this research, in conducting observations the researcher will take a position as a participant observer meaning that the researcher is united with what he is researching which results in the researcher being close to the object being studied. According to Nasution (1992), the researcher is the main instrument because the researcher himself directly participates in observing data collection. In-depth interviews are conducted with open ended questions, but do not rule out closed end questions, especially for informants who have a lot of information but there are obstacles in elaborating the information (Soeratno & Arsyad, 1993).

In addition to utilizing documentation and observation, data collection is mainly done through interviews with respondents. Data collection activities include, first looking for primary data and then secondary data. According to David W. Stewart (1993), secondary data is data that has been collected and systematized by other parties and is also used in this study.

Techniques for finding primary data, conducted through interviews in a free / open or unstructured manner directly with the respondents encountered, were deemed important to provide data in this study (Muhadjir, 2002). Although there are statistical data obtained through secondary data and integrated interviews, this study is more field research using a verstehen or hermeneutic approach. Based on interviews and observational findings, it is then discussed in depth both with the informants / respondents and with key informants.

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III. LITERATURE REVIEW

Progressive legal theory that departs from empirical reality regarding the operation of law in society (Handayani & Alfin, 2020). This is because society always moves continuously throughout time, like running water that is never from the bottom up, but always from top to bottom, as well as achieving the truth that always sees the reality of society and the law. Thus, to determine a rule of law must look at the value of expediency, legal certainty and justice which is related to the meaning of ex-royal land not only from the aspect of agrarian law (land) alone, but also from the aspects of historical science, anthropology of law and customary law.

IV. RESULTS

Legal Status of Ex-Kingdom Land Becomes Customary Land

Indonesia is a constitutional state in the form of the Republic. Independence is arranged in a basic rule, namely the 1945 Constitution of the Republic of Indonesia Constitution (Gangga Santi Dewi, 2019). Everything about the legal system must be in accordance with the constitution. With regard to the Kingdom, the 1945 Constitution of the Republic of Indonesia in Article 18 stipulates that the Law governing regional government will view and remember the special rights of regional origin. The special right of origin is an area that has a structure (native government) like the Kingdom of Surakarta. The provisions of Article 18 stipulate that the future of the kingdom must be looked at given its origins.
Based on the policy of Law Number 18 of 1965 concerning the Principles of Regional Government, the legal position of the Kingdom of Surakarta is that it is a group of people bound by a family relationship chaired by Sinuhun for Kasunanan and Pangeran for Mangkunegaran, both claiming to be custom in the territory around the indigenous people in the city of Surakarta.

The kingdom of Surakarta namely Kasunanan and Mangkunegaran became one of the cultural heritages in Indonesia until now and received subsidies from the government to maintain the assets of the cultural heritage. They do not have the power to regulate land ownership rights that sustain their families and surrounding communities. For example Colomadu sugar factory which is taken arbitrarily by the government. In contrast to the Kingdom of Yogyakarta which became the Special Region of Yogyakarta, where the Kingdom of Yogyakarta in addition to receiving subsidies from the Indonesian government also got its own funds from the region. From the background of the source of these funds, it is clear that the differences in the policies provided by the state in the 2 kingdoms are still a descendant of the great kingdom of Mataram. This means that there is discrimination in the granting of special privileges in the 2 kingdoms.

The Fourth Dictum of the BAL stipulates implementing regulations, namely Government Regulations related to the abolition of ex-royal land. However, up to now there has not been a PP that has been ordered by the BAL. Moreover, the Government Regulation No. 224 of 1961 concerning the Implementation of Land Distribution and Indemnification, which in Article 4 states that lands that have been transferred to the state, partly for the benefit of the government, some for those who are directly disadvantaged due to the abolition of self-governmental rights over the land, and partly for distributed to the people according to the provisions of land reforms regulated according to this government regulation. In practice for the ex-royal land almost did not get compensation from the government.

Many conflicts regarding the ownership of royal land and former royal land between the Government and the Surakarta Kingdom have caused unrest in the community, especially those who have certified the land. Based on data in the

Surakarta District Court there were 18 land disputes related to royal land between 2016 -2019 at the District Court. Conflicts occur because of differences in interpretation of the meaning of the ex-royal land between the Regional Government of Surakarta and the Kingdom of Surakarta (Kasunanan and Mangkunegaran). The Surakarta Regional Government considers that ex-royal land of Surakarta is included in the category of ex-royal land referred to in Dictum IV letter A of the BAL, so that its legal status becomes state land. While the kingdom considers that the land is customary land which is customary land. Customary land is clearly not the object of Dictum IV letter A of the BAL. Customary land has its own legal protection and cannot be taken away by the state without the reasons set out in the legislation. Any revocation or removal of land, based on the 1945 Constitution of the Republic of Indonesia and Pancasila, should not be taken arbitrarily without proper and fair compensation.

The main problem is to eliminate the habit of immediately applying formal rules with a legalistic approach, because this approach can result in denial of the law that lives in society (William & Seidman, 1971). The number of conflicts related to the ex-royal land in Surakarta City shows that the Policy on ex-royal land has not been implemented well. This is caused by several factors.

First, factors causing the City Government who think that with the issuance of Government Decree No. 16 of 1946 on July 15, 1946, abolished the court's power and at the same time abolished the provisions on control of land in the Surakarta Royal region; that by basing on the Fourth Dictum letter A of the BAL, the status of the ex-royal land has become state land. Based on the Landreform provisions, the allotment and ownership arrangement of former royal lands is divided in part for the interests of the Government, partly for those who are directly disadvantaged due to the abolition of royal rights over the land and partly for distribution to people in need. In practice, the Surakarta Kingdom has never received compensation as regulated in the Landreform provisions.

Second, the causal factors of the palace or its heirs who assume that Government Decree No. 16 of 1946 dated July 15, 1946 was a freezing of the Royal Government, while assets in the form of land rights and buildings were still owned by Royal in this case the court or his heirs. Based on the telegram of the Minister of Home Affairs on September 25, 1967 the contents of which included the prohibition on handling Royal lands, so that the status of the ex-Royal land was stated in the status quo.

Third, factors of legal regulations that there is a difference in interpretation of the definition of state land or land which is directly controlled by the state; that the BAL cannot accommodate the subject of ownership rights to former royal lands, because the King or the Kraton institution is not the subject of land rights. Implementation regulations for ex-royal lands have not yet been made, which can overcome conflicts in former Royal lands. In fact the conflict occurred not between the palace and the people, but the conflict between the palace and the state.

According to Tauchid (1952), since ancient times Indonesia consisted of many kingdoms. In 1870 the Dutch colonial government passed the Agrarian Law for its political interests and was enacted by the Dutch and foreign private individuals. On the idea of the colonial government an overhaul was carried out over the pattern of land ownership and control in the Surakarta area or known as land reorganization / agrarian reorganization. With agrarian reorganization the community can own land with ownership rights, provided that it meets the specified conditions. As a result of the political

policy of the colonial government, Indonesian land law has a dualistic nature, namely the enactment of customary law regulations in addition to those based on western civil law. The dualism of land law in Indonesia shows that the agrarian politics of the Dutch colonial government aimed to guarantee the greatness of foreign private capital as giant capital at the expense of the people. Instead the law of the land for the people of Indonesia is allowed to run according to custom, with the reason to respect customs and customs that apply. This will cause problems between groups and conflict with the interests of the people and the State, because the colonial land law does not guarantee legal certainty. With the enactment of the BAL on September 24, 1960, the Indonesian people have a single national land law structure. BAL as a National Land Law is enforced throughout Indonesia. Likewise in Surakarta, the BAL also applies to ex-Kingdom lands in Surakarta. For the former Surakarta Kingdom land, the provisions of the Fourth Dictum letter A of the BAL. With the existence of the kingdom in Surakarta, both Kasunanan and Mangkunegaran which still functions cause problems in terms of land tenure and ownership either by the people, local government or by the palace.

According to Setiady (2008), customary law is a behavior that is continuously carried out by individuals giving rise to 'personal habits. Then if all members of the community perform the habit of behavior earlier then the habit will gradually become the 'custom' of the community. Custom of the community and community groups gradually make the custom as a custom that should apply to all members of the community with sanctions, so that it becomes customary law.
Alting (2010) stated that in the opinion of Ter Haar, customary law communities are organized community groups, settling in a certain area, have their own power, and have their own wealth in the form of visible and invisible objects, where members each unity experiences life in society as natural according to the nature of nature and none of the members has the mind or tendency to dissolve the bond that has grown or leave it in the sense of breaking away from that bond forever and ever.

Recognition of the existence and rights of indigenous and tribal peoples in Indonesia is contained in the 1945 Constitution of the Republic of Indonesia, other laws and regulations. This shows that the existence and rights of indigenous and tribal peoples have been accepted within the applicable legal framework in Indonesia. There are three main provisions in the 1945 Constitution of the Republic of Indonesia which can be the basis for the existence and rights of indigenous and tribal peoples. The three provisions are Article 18B paragraph (2), Article 28I paragraph (3) and Article 32 paragraph (1) and paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Article 18B paragraph (2) The State recognizes and respects the customary law community units as well as his traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which is regulated in law. Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia also requires the existence and rights of indigenous and tribal peoples as long as they are in accordance with the times.

F.D. Hollenmann constructs 4 common characteristics of indigenous peoples, namely magical, religious, communal, concrete and cash. Judging from the historical background, the customary law community in the Indonesian archipelago has a historical and cultural background that is very old and much older than the formation of a kingdom or state. Historically, indigenous and tribal peoples in Indonesia and the ethnic groups that surround them, are actually migrants from

other regions in Southeast Asia. Culturally they are included in the Austronesian cultural area, namely the culture of wet-rice farmers, with community arrangements and ownership rights arranged collectively, specifically the ownership rights to customary land. According to Bahar (2005), in political life, several ethnic groups succeeded in dominating other ethnic groups and their territories, and formed traditional kingdoms, both local and regional sized (Soimin, 2004).

Based on the results of the study, the Kingdom of Surakarta, namely the Palace and Mangkunegaran, are indigenous people, because the King as the Chief of customary still has the same territorial and ancestral territory and has authority in and out of his customary area. Indigenous peoples have customary land which is their customary land (Setiawan, 2009). This means that the land of the former kingdom of Surakarta acts as customary land.

Progressive law does not move in a positivistic legalistic direction, but rather is not absolutely driven by legislation, but rather in the sociological principle. The law is not absolutely driven by positive law or statutory law, but it moves on an informal basis. The evidence for this is an opportunity to carry out progressive law.

The thought of Satjipto Rahardjo (2005) explained that the existence of progressive law is not a legal theory that stands alone, but is interrelated with other legal theories. Thus, to determine a rule of law must look at the value of expediency, legal certainty and justice. It is related to the meaning of ex-royal land not only from the aspect of agrarian law alone, but also from the aspects of historical science, anthropology of law and customary law.

Progressive law can be a correction of the weaknesses of the modern legal system which is loaded with bureaucracy and procedures, so that it has the potential to override truth and justice. Progressive law does not argue that order only works through state institutions, but rather accepts and recognizes the contributions of institutions that are not state. Order is also supported by the workings of these non-state institutions.

From the above opinion it can be seen that the existence of the legal system in society occupies a vital and strategic position if the components of the legal system are mutually compatible. On the contrary, according to Sastrosoehardjo (1993), if the components of the legal system collide with one another and cannot function as expected, then the community will lose its endurance, with the result that there will be constant chaos and chaos. The legal ideal that is fought for in the context of legal development in Indonesia is the legal ideal of Pancasila. The Pancasila legal system requires legal certainty that justice has been upheld. The Pancasila legal system requires the enforcement of substantial justice through formal legal rules or enforces legal certainty based on formal legal rules that guarantee the fulfillment of substantial justice.

V. CONCLUSION

The results showed that the reality of the absence of Government Regulation as instructed in Dictum IV letter B of Law No. 5 of 1960 concerning Basic Rules on Agrarian Principles resulted in a prolonged conflict between the Regional Government and the heirs of the kingdom as well as the people who had an interest in the former royal land. Problems that cause prolonged conflict are related to legal, economic, social and cultural aspects. These protracted problems have an impact on the lives of the people especially those who have certified land from the ex-kingdom as the rights to their land affected by development projects. Development on the one hand has positive aspects, namely to advance the regional economy and national and international tourism. On the other hand, it creates negative aspects in the form of a prolonged conflict on the lives of people who have

occupied the land of the former kingdom for decades and some even have a certificate on their behalf. Although it has been mentioned in Dictum IV letter A of the BAL, the practice at the research location was not implemented correctly. The case where the application procedure for land rights of ex-royal land which is applied differs from one agency to another, even in one Surakarta residency. Ex-royal land is interpreted as customary land. Factors that affect differences in meaning of ex-kingdom land and often cause conflict, because some reasons. The provisions in Dictum IV letters A and B of the BAL are not implemented consistently in the field. Government policies (BPN) are still oriented towards procedural justice, which often does not reflect actual justice. The government's interpretation (BPN) of Dictum IV UUPA is positivist-legalistic (text) without considering the historical, social and cultural aspects that exist in society. It is Not clearly stipulated the meaning of the kingdom, the former kingdom as well as the lands of the former kingdom in a policy as an implementing regulation that has been mentioned in Dictum IV letter B of BAL. There is no clear regulation regarding the regulation of the form and criteria for compensation for the abolition of royal lands and ex-royal lands.

Judging from the historical background, the customary law community in the Indonesian archipelago has a historical and cultural background that is very old and much older than the formation of a kingdom or state. Likewise, the customary law community in Surakarta finally formed a Kingdom which is an indigenous community and the King as its customary chair. Based on the results of the study, the Kingdom of Surakarta and Mangkunegaran, are indigenous people, because the King as the Chief of customary still has the same territorial and ancestral territory and has authority in and out of his customary area. So that the land of the former kingdom acts as customary land for the Kingdom of Surakarta.

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