

Registration Conflict of Sultan Grant Land in Melayu Deli

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ABSTRACT

Humans and land have a cosmic, magical, religious, and legal relationship. The Sultan Grant in the territory of the native Melayu kingdom was under the direct rule of the Sultan. Since the establishment of the Basic Agrarian Law, land rights have been changed. The Sultan's Grant is an Indigenous Melayu land issued by the Sultan, but to date it not yet registered. The problem addressed in this study was how to convert the Sultan Grant land based on the Basic Agrarian Law Number 5 of the Year 1960. This study employed normative juridical research using descriptive analysis. The results revealed that the issuance of certificates in the location of grants must fulfill land registration procedures adhering to the Government Regulation (*Peraturan Pemerintah*), Number 24 of the Year 1997. In Summary, the Sultan Grant lands must be registered through the National Land Agency in following the Government Regulations. It is suggested for the government to socialize to the Sultan Grant owners about registering their land.

Keywords: *registration, Melayu Deli, Sultan Grant land*

1. INTRODUCTION

Land rights in East Sumatra have their own characteristics due to the arrival of foreign capital. Residents in areas ruled by kings, many coming from the Middle East and Europe, which at a certain time in the history were the conquered in the regulations issued by the Indies Gebernemen, while Swapraja has the right to self-government (*zelfbestuur*), has the personnel only to residents who are classified as "the servant of the king" and thus, the European people and foreigner from the East living in the unoccupied areas as if they have proper extraterritoriality [1]

Therefore, it is not subject to the law of self-government, the land right, which is usually owned by the natives, cannot be owned by Europe or Middle Eastern people. In 1889 the Dutch governor implemented a deed. This deed is referred to as the English word "Grant", which was taken over from the Semananjung land of Malaya.

One of the customary ownership rights is land with Grant status. The grant applies in Eastern Sumatera, which is in the Sultanate of Deli. Grant rights in East Sumatera are rights to the land, which is based on the grants of the king to the Sultan for his vow, as well as to foreign nations.

The use of the term "grant: derived from English may be related to the historical background where there is a close family relationship between the Sultan

of East Sumatra and the Sultan of Malaysia, which was once a British colony.

In 1890, the sultan issued a certificate of surrendering land to someone. So, a piece of land was handed over as a gift or called *kurnia* but in reality, the land had actually been used and occupied for a long time, whereas Sultan Grant's request was only to be submitted if he intended to sell the land.

The study of the rules regarding Sultan Grant's Registration Conflict in Melayu Deli Community is due to several things, as follows.

The ongoing First Sultan Grant Holders do not register the Sultan Grant, when the first Sultan Grant holder dies, the heirs of Sultan Grant holders want to sell the land, only to be registered by the second or third heirs who do not control the land even do not know the location of the land, so Sultan Grant is claimed to be a fake. Grant cannot enroll the Sultan Grant land because the land is not mastered to get the recognition of land rights held by the owner of Sultan Grant, both public Adat Melayu Deli and Deli Sultanate. There has not been a normative solution related to the conversion of Sultan Grant's land as Sultan Grant's most entitled holder, to ensure legal certainty, so that a prolonged dispute arises and becomes the benchmarks of the position of Sultan Grant's Land in the Melayu Deli community.

Based on the background of the problems mentioned earlier, this paper discussed the implementation of the Sultan Grant Land registration in the Melayu Deli society.

2. The History Of Sultan Grant

One of the customary ownership rights is land with grant status. The grant applies in Eastern Sumatra, namely in the Deli Sultanate region. Grant rights in East Sumatra, are rights to land, which is based on the grant of the king to the Sultan to his vows, as well as to foreign nations. The use of the term "grant" derived from English may be due to the historical background, where there is a close familial relationship between the Sultan of East Sumatra and the Sultan of Malaysia, which was once a British colony.

Sultan Grant in the native Melayu kingdom territory was under the direct control of the Sultan. Thus, the Sultan Grant issued to Kuala Swaparaja was only signed and stamped directly by the Sultan. The original Melayu kingdom included "Percut, Sungai Tuan, Bedagai and Padang (now called Tebing Tinggi).

Besides, there was also Sultan Grant who was not directly issued by the Sultan, but by the chief leaders. Urung is an area of the sultanate's territory, which was inhabited by the indigenous tribal community governed by the Malays. The leader was failed a leader for the non-Melayu swapraja community, which was generally Bataknese, especially those who were under the sovereignty and power of the Sultan. Around 1890, the sultan issued a certificate of surrendering a land to someone. So, the land was handed over as a gift or called *kurnia*, but in reality, the land had actually been used and occupied for a long time, whereas Sultan Grant's request was only to be submitted if he intended to sell the land.

Most customary lands are not registered because they are subject to unwritten customary land law. Thus, customary land is also Indonesian land rights. This customary land is different from customary land, because customary land can be categorized as ownership rights and then registered. For example, the land of *Swapraja* has the status of Grant, in East Sumatra, as well as in the sultanates of Yogyakarta and Surakarta.

Unap referred to as *Swapraja* land is the entire regulation on land that specifically applied in the region of *Swapraja*. In the *Swapraja* area the land law was created by the *Swapraja* Government and partly by the Dutch. The Sultanate of Deli was an area that has a separate government regarding land, implementing the swapraja land law. The land defense in the Sultanate of Deli used land ownership in East Sumatra. Therefore, Deli Sultanate is one of the *Swapraja* regions.

There are four grants in Sumatra East, namely:

- 1) *Grant Controleur* (Grant C), which is a grant given by the Sultan to a foreign nation, in which this right can be converted into use rights.
- 2) *Grant Deli Maatschappij* (Grant D), which is a grant given by the Sultan to a foreign nation, where there is no provision governing the conversion of this grant, but Boedi Harsono argued that it can be converted into usage rights because it is equal as the *Grant Controleur* (Grant C).

- 3) *Sultan's Grant*, which is a grant given by the Sultan for his vows, which is an embodiment of determining indigenous rights to land. This right can be converted into ownership right and right to build in accordance with the subject of rights and designation.

- 4) *Concessie-Agriculture*, which is a lease right with conditions. The plantation lands were rented by the plantation of the head of indigenous people in East Sumatra, as stated in the concession deed. The Sultan or head of the customary community leased the land for a period of 75 or 99 years and he acted for and on behalf of the customary law community known to the Governor-General.

In accordance with the provisions of the existing legislation, if a *bumiputera* (indigenous) who has land with the status of western rights, then they are considered to have submitted themselves to the law of *Burgerlijke Wetboek* or Civil Code, as a consequence of ex-western lands are subject to the Civil Code (Western). The Sultanate of Deli issued several forms of deeds establishing the property rights, known as Sultan Grant. Sultan Grant Deli was first published in 1909. Grant Number 1 was dated January 1st, 1909, located in Junainah Village, Deli Tua District, Deli Serdang Regency, on behalf of Tengku Redhwan and Encik Puan Nemah. For more information, see Sultan Deli Azmy Perkasa Alam Alhaj Letter Number 027.2 / IM-SD / VII / 1996, dated July 6, 1996 and Sultan Deli Otteman Mahmud Perkasa Alam's Letter Number 23 / IM-SD / 2003, dated April 28, 2003, concerning the Introduction to Circular Minutes of the Existence of Important Letters and Archives of the Sultanate of Deli (according to our statement in Belawan Polresta No. 24.6 / IM-SD / 2011 concerning the explanation of the Sultanate of Deli on the Validity of Sultan Grant dated May 19, 2011). This Sultan Grant was a form of individual land ownership and the grant was not issued on the concession land.

There are rights issued on the concession land called *eigendom verponding*. It was a right that was placed on a concession. *Eigendom verponding* was included in the category of the tail agreement whose parent was a concession agreement (as outlined in the concession deed). During the period when tobacco plantations and other plantations had been successfully established by Dutch plantation entrepreneurs, the plantation entrepreneurs wanted to establish transportation businesses, such as trains. At that time, the entrepreneurs gathered to establish a railroad transportation business unit. As the land used for the construction of the railroad transportation business was bound in the concession, the company establishing the railroad requested the plantation company to use the land.

The estate then sought permission from the Sultan Deli (and other sultans in East Sumatra) to use the land for the railroad and the construction of employee homes as well as stations. The Deli Sultanate then permitted the railroad company, Deli Spoorweg Maatschappij (DSM), to use the land bound to the plantation concession. For example, in the Sultan's letter, dated 30 September 1882, addressed to Deli Spoorweg Maatschappij at his request for the use of Sultan Deli's land which was

consecrated to Deli Maatschappij as stipulated in the Mabar Deli Toewa Contract, dated 11 June 1870 or 11 Rabiul Awal 1287, between the Deli Sultanate and Deli Maatschappij, made and signed in front of the WJM Notary Michielsen, dated November 17, 1870. In his letter Sultan Deli said, "it has no objection to the use of the land in the interests of the construction of railroad facilities and infrastructure and of land that is no longer in use by Deli Maatschappij must be returned to the Sultanate of Deli". The lands concerned by the Sultanate of Deli and Dutch plantation companies were free from private ownership. Although later, this became an increasingly disruptive problem because of the large number of Sultan grants issued on the concession lands. This happened because the Sultan grants registered at the Deli Sultanate was handed over to the Medan City Land Office, consisting of 14 books but they were no longer available in the Land Office, the registered grants were difficult to trace.

Moreover, not all Sultan grants are listed in the book. After the Social Revolution of 1946, the Deli Sultanate family left the Maimoon Palace and some stayed in the palace. Sultan blank grants were still in the palace, which were then widely used by other parties to claim the land in the Sultanate of Deli. Unfortunately, the claim was at the actual location of the concession land where there was no Sultan grant. In other words, it was on the concession land without Sultan grant as the proof of private ownership. A.P. Parlindungan also affirmed this issues stating that no Sultan grant was issued on the concession land as the proof of private ownership (this opinion was conveyed by A.P. Parlindungan when providing expert testimony in the trial of the Civil Lawsuit lawsuit between Sultan Deli against the Polonia developer).[2]

3. Registration Sultan Land Grant

No uniform law of the land registration is found, even though there were multiple registrations, they were simple and incomplete, like Sultan Grant Deli, old grant, trades leading grant, land registration of Lingga, Riau, in the regions of Yogyakarta and Surakarta and other areas that have developed and imitated the cadastre registration system. [3]

Sultan Grant in the native Melayu kingdom territory was under the direct control of the Sultan. Thus, the Sultan Grant issued to the Swapraja subjects was only signed and stamped directly by the Sultan. The native Melayu kingdom includes "Percut Sungai Tuan, Bedagai and tebing Tinggi. [4]

Besides, there was also Sultan Grant, which was not directly issued by the Sultan, but by the Chiefs of Urung (*Kepala Urung*). Urung was an area of the sultanate's territory, which was inhabited by the *Swapraja* community outside the Malays. The leader was failed as a leader for the community of non-Malay people.

At first the leader concerned gave the certificate to the desired working on the land, which is called the *datuk* of the grant or village. [5] Grant registration was

first conducted at the Swapraja Government Office at the time.

" Sultan Grant land certificate is not a legal right. The certificate only states that the land was formerly the right of Sultan Grant. The Sultan Grant Certificate is a guide for the national Land Agency to see the basis for the land ownership. Based on the Agraria Basic Law (UUPA), Number 5 of the Year 1960, the land certified by Sultan Grant will be converted into the land as a right, whether direct or indirect conversion, further consideration and assessment are needed. To convert Sultan Grant certified land, the certificate holder must also physically own land as the certificate only is not adequate to obtain the recognition and affirmation as a right. To convert a former right into a right, the certificate holder must also physically control the land according to the certificate. Because, in issuing land rights, National Land Institution (BPN) states that the nature of his conduct clear and clean. " [6]

Before the Basic Agrarian Law was enforced, land law in Indonesia was influenced by conditions in the colonial era, which were dualistic in nature, where the legal status of land was controlled by European law (*Burgerlijk Weetboek*) and some were ruled by customary law. [7]

Concerning the instruction to the Government to resist the land to ensure legal certainty, the question that arises is why the Government concerned to provide legal certainty over the rights to land. Land rights include determining who has the right to a certain land, the location, the boundaries and the area of the land and the type of rights. [8]

By registering land rights or granting land rights to all rights subjects, the authority is also given the right to use the land in accordance with its purpose. Thus, a legal certainty guarantee will be created as the subject of these rights in the ownership and use of the land. [9]

Indonesia adheres to negative system in the land registration. Concerning the conversion of rights, the proper method that is meticulous, safe, inexpensive, simple and understandable to a broader community can be conducted when all formal conditions are met, a block of land that can be occupied by the property according to Indonesian customary law, is certified, because it is adhered to by a negative principle. It is possible to disqualify a person right if there are other parties who are more entitled to it. [10]

Customary law theory which confirms that individual rights expand, so communal rights diminish in an evolutionary or natural way can hardly be maintained anymore. The position and role of the dominant and super state (through its policies and structure) and led to the diminishing and extinction of the land rights owned by the indigenous Melayu Deli community groups. [11]

Before the establishment of the Basic Agrarian Law, land law in Indonesia was influenced by conditions in the colonial era, which were dualistic in nature, where the legal status of land was controlled by European law (*Burgerlijk Weetboek*) and customary law [12]

Besides, there was also Sultan Grant, who was not directly issued by the sultan, but was carried out by the Chiefs of Urung. Urung is an area that is part of the sultanate's territory, which is inhabited by the swapula community outside the Malays. The existence of a failed leader is as a leader for the community of autonomous people outside the Malays.

At first the head of the person concerned gives the desired certificate to provide the desired certificate by the person who is working on the land which is called a datuk grant or village letter .

Grant registration conducted at the Swapraja Government Office at the time it is given for the first time and so on when the transfer or *hezaward* is more convincing makes the rights.

The legal and sociological consequences of the asynchronous values and legal norms held by the institutions and forums and the domain of legal values adopted by the official government (included in the judiciary demonstratively) reduced the power and authority of the Deli community groups over their communal lands. Customary law theory which confirms that in individual rights expand, so communal rights diminish in an evolutionary or natural way can hardly be maintained anymore. The position and role of the dominant and super-state (through its policies and structure) and led to the diminishing and extinction of the land rights owned by the indigenous Melayu Deli community groups.

The purposes of land registration are stipulated in Article 3 and 4 of government regulation, Number 24 of the Year 1997, namely:

- 1) To provide legal certainty and legal protection to holders of rights in a land, apartment units and other registered rights. For this reason, the relevant rights holders are given certificates of land rights.
- 2) To provide information to interested parties, including the government, to easily obtain the data needed to conduct legal proceedings regarding the land and apartment units that have been registered.
- 3) For the implementation of orderly administration of land.

Land registration as a process of the issuance of a certificate by the district or city land office and benefits the parties concerned.

4. CONCLUSION

Sultan Grant Land is the land issued by the Sultan. Based on the Agraria Basic Law, Number 5 of the Year 1960, the land that was certified by Sultan Grant will be converted as ownership rights. However, there are still Sultan Grant holders who do not register the Grant land . Based on Government Regulation, Number 24 of the Year 1997, to ensure the legal certainty of Sultan Grant, holders must register Sultan Grant Land. [12]

REFERENCES

- [1] Mahadi, Sedikit, 1976, Sejarah Perkembangan hak-hak suku Melayu atas tanah di Sumatera Timur (tahun 1800-1975), Alumni, p.238
- [2] Interview with OK. Saidin, 16th September 2019, Faculty Of Law, USU
- [2] A.P.Parlindungan, 1994, Pendaftaran tanah Tanah di Indonesia, Mandar Maju Bandung, p. 1
- [3] Gerard Jansen, *1925 Grantrechten In Deli, Oostkust Van Sumatera Institut* p. 37
- [4] Hatunggal Siregar, 1971, Hukum Tanah Menurut Hukum Adat, Fakultas Hukum USU, p. 41
- [5] Damargalih Widihasta Kepala Bidang Pengkajian dan Penanganan Sengketa dan Konflik Pertanahan Kantor
- [6] Badan Pertanahan Nasional (BPN) Wilayah Sumut Pada Medan Bisnis Daily pada tanggal 4 Maret 2014.
- [7] Ahmad Fauzi Ridwan, 1982, Hukum Tanah Adat, Dewarucci Press, Jakarta, p. 11
- [8] M.Yamin Lubis, Abdul Rahim Lubis, 2010, Hukum Pendaftaran Tanah, Mandar Maju, p. 170
- [9] Undang-undang Pokok Agraria Nomor 5 Tahun 1960
- [10] John Salindeho, 1994, Manusia, Tanah, Hak dan Hukum, Sinar Grafika, Jakarta, p. 14
- [11] Edy Ikhsan, 2015, Konflik Tanah Ulayat dan Pluralisme Hukum Hilangnya Ruang Hidup Orang Melayu Deli, Yayasan Pustaka Obor Indonesia, 2015, p. Xxvi
- [12] Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah