

Legal Analysis of the Sultan Grant Existence as Evidence of Ownership to the Land

Zaidar*, Muhammad Yamin, Chairul Bariah

Faculty of Law, University of Sumatera Utara, Medan, Indonesia

*Corresponding Author: Email: zaidarperwira@gmail.com

ABSTRACT

Before the implementation of the Basic Agrarian Law, in Indonesia, the dualism of the land law had been applied, in addition to the establishment of the Customary Land Law. On the one hand, the so-called Western Land Law was implemented (known as the old right). Many problems are related to the evidence of land ownership originating from the old rights (customary rights) on land with the status of Grant Sultan are prone to disputes/conflicts, both the disputes against individuals and group disputes with legitimate Grant Sultan holders. Grant Sultan lands owned by the indigenous peoples in the past till to date, many are controlled by the community without the support of written evidence, in a long time, even hereditary, and there have been traded by wrongful owner (Grant Sultan's holder). To avoid various problems concerning Grant Sultan's land rights and to provide legal certainty, by Law Number 5 of 1960, concerning Basic Regulations on Agrarian Principles, is mandatory for Grant Sultan holders to register their land through conversion provisions. This research used the sociological juridical method. Besides examining the positive legal aspects, and legislation that supports the conversion of land rights with the status of Grant Sultan, field research was also conducted. Research Results: 1) the law orders to carry out the conversion of lands with the status of old rights are not optimally conducted by Sultan Grant holders, 2) many of Grant Sultan's lands are controlled by illegal owners, some have even moved to other owner or being sold, 3) due to the location of Grant Sultan's land spreading over several locations, it is difficult to identify.

Keywords: *Grant Sultan, evidence of ownership*

1. INTRODUCTION

North Sumatra, which was formerly known as East Sumatra (during the colonial administration), was under the Sultanate of Deli. The Sultan of Deli, during its administration, distributed land to his followers and also relatives in the form of grants. To strengthen the existence of the land, the Sultan issued a certificate of awarding land, called "Grant Sultan".

With the establishment of Law Number 5 of 1960, concerning Basic Regulations on Agrarian Principles, in the second part of the Conversion Provisions, it is stated that all land originating from old rights (Western Rights and Customary Rights) must be converted. At present, there are still lands with the status of Grant Sultan that are not registered, and many have even switched to other parties. As a result, land conflicts / disputes cannot be avoided

Customary land rights are Indonesian land rights with a wider scope. This means that the lands with Indonesian rights are not only customary lands, but also lands owned by customary. Customary owned land is different from customary land, because customary land can be categorized as the ownership rights which are then registered. As instructed by Article II of the Conversion Provisions, it must be in accordance with applicable land

registration regulations to obtain legal certainty over the land ownership.

1.1. History of Grant Sultan

On August 1, 1950, East Sumatra joined the Republic of Indonesia. Based on the history of the Malay kingdom and its development in East Sumatra, it can be seen that agrarian issues are important issues to consider. During the sultanate in East Sumatra, there were a number of key issues relating to land issues, such as:

- a. The control of land in East Sumatra is on the Sultan
- b. The Sultan makes an agreement with a businessman on the use of land for a suitable planting business
- c. The Sultan made an agreement that the village land was not included in the given land .

Besides;

- a. In Panei, Bilah, the Sultan in question was the owner of the land
- b. Sultan Siak considered himself the owner of the land
- c. In Batubara, the land was controlled by the regional head
- d. The Sultan considered all land as his

- e. Before Western influence, the Sultan was the owner of the land
- f. The Sultan gave the concession land
- g. Malays obtained the land rights by controlling or the will of the King.

1.2. Definition of Grant Sultan

The word "Grant" comes from English, which means: grant, give, acknowledge or bear. Grant Sultan is one proof of land rights granted by the Sultan to his followers to own or control land. The presence of the Basic Agrarian Law causes lands with Grant Sultan status to be converted or re-registered to be adjusted into the provisions of the new Law.

Meanwhile, according to Mahadi, Grant Sultan is "a certificate as proof of land rights in the sultanate of East Sumatra," which was given by the Sultan to followers of Swapraja.[1]

Chapter XIV of Law Number 5 of 1960 about Conversion Provisions Section II mentions that:

The land rights which authorize or similar to the rights referred to in Article 20 paragraph (1), as referred to under the name existed when this law was established, namely Agrarian Eigendom rights, Yasan's property, Andarbeni, Right to Drue, Right to Village Drue, Pesini, Grant Sultan, Business Rights on ex-private land, and other rights of any name, which will be further confirmed by the Minister of Agrarian Affairs, since the enforcement of this law becomes the ownership right, regulated in Article 20 paragraph (1), except if the owner does not fulfill the requirements as mentioned in Article 21.

The existence of customary land is emphasized in Article 5 of the Basic Agrarian Law. The agrarian law that applies to the earth, water and space is customary law, as long as it does not conflict with national and state interests, which are based on national unity with Indonesian socialism and with other regulations, everything by respecting the elements derived from the religious law.

From this fact, it is clear that the existence of customary land, which is recognized based on the above article still exists today. One of them is the recognition of land with the status of old customary rights, with the proof of ownership in the form of Grant Sultan.

Likewise in the conversion provisions, it has been stated that "all Indonesian rights must be converted without exception, but due to the vast Indonesian legal territory, and the large number of land ownership, the conversion to customary rights cannot be completed in a short time.[2] Such is the importance of legal certainty over the ownership of Grant Sultan; it requires the awareness of the people who control Grant Sultan's lands, both juridical and physical control to register their land through the conversion provision.

1.3. Provision on the Conversion of Land Rights

The definition of conversion is: "adjustment of old rights (rights that existed before the birth of the Basic Agrarian Law) into new rights (rights that exist in the Basic Agrarian Law)". [3] Meanwhile according to the AP. Parlindungan, "conversion of land rights is how the arrangement of land rights that existed before establishment of the Basic Agrarian Law to the Basic Agrarian Law system. [4]

2. RESEARCH METHOD

This research is Empirical Juridical Research. Besides library research, field research was also conducted. Interviews were also conducted with related institutions, as supporting data.

3. DISCUSSION AND RESULT

Grant Sultan is proof of ownership of former customary land, that is recognized based on Government Regulation Number 24 of 1997, based on evidence of old rights. Proofs of old rights and customary rights are carried out through the evidence as to the existence of these rights, as referred to in Article 24 of Government Regulation Number 24 of 1997, concerning Land Registration, namely:

- (1) For the purpose of registering rights to land originating from the old rights, evidenced by documents of the existence of such rights in the form of written evidence, witness statements and or statements concerned with the level of truth by the adjudication committee in systematic land registration or by the Head the Land Office in sporadic land registration is considered sufficient to register the rights, rights holders and other rights that encumber them.
- (2) In the case that no means of proof or evidence is available directly, as referred to in paragraph (1), proof of rights can be carried out based on the reality of physical control of the relevant block of land for 20 years or more in a row, by registration applicants and their predecessors, provided that:
 - a. This control is carried out in good faith and openly by the person concerned, as entitled to the land, and is strengthened by the testimony of a trusted person;
 - b. This control either before or during the announcement referred to in Article 26 is not disputed by the community customary law or the village concerned or other parties

Paragraph (2) of this article applies to customary rights (old rights), and this provides a solution if the right-holder cannot provide proof of ownership as referred to in paragraph (1), whether in the form of written evidence or other forms that can be trusted. In such case, bookkeeping rights can be done not based on the proof of ownership, but

based on evidence of physical control that has been carried out.

Especially for the *Swapraja* region, it was under the Sultan's authority. At that time, the Sultan gave the land to his followers and to his relatives to strengthen the control of the land, the Sultan gave a certificate of land. This land certificate is hereinafter known as "Grant Sultan".

With the enforcement of the Basic Agrarian Law in 1960, owners of grants and wills must be re-registered to the Land Office through Conversion Provisions. The form of granting land is not an object of registering land, but only as a form of legal action or legal event that results in obtaining the right to use the land. However, authentic evidence is required to obtain legal certainty. In the field, there are still lands that are physically controlled by illegal Grant holders,

The conversion of Sultan Grant can be carried out:

- a. If it is registered and the owner is still alive, and directly controls the land, then "confirmation of rights" is sufficient. This means that the existing rights to the Sultan of Grant's land status in the past have been reaffirmed. The land owner of Sultan Grant who can prove his ownership on the land registration through the terms of conversion, is adjusted according to his rights to the land as referred to in Article 16 agrarian basic law. While the land certificate in the form of "Sultan Grant " is replaced by a land certificate. After first being announced in the media for two months. And if it is registered, then see who the owner is, if there is still an owner then Sultan Grant is registered. If the land has been transferred, then the name is reversed to the heirs, then the rights cannot be confirmed, but the transfer of rights
- b. If no letters are found or the letter is completely absent or lost, the registration of the conversion of rights can be done by making a physical authority statement for 20 years in a row with good intentions without objections from other parties, then it is examined by Committee A, measured, announced, then registered.
- c. Land that is not registered should be processed as usual. In the case of the Grant whose physical ownership is not controlled by the legal owner, the land acquisition that has physically taken control of the land must first be completed.

The mechanism of the implementation of the conversion of lands of Sultan Grant carried out at the Land Office in Medan city:

- a. Applicants are required to make a conversion registration request by attaching their Sultan Grant;
- b. Land object of Sultan Grant was then recommended in the field to examine the physical data of Sultan Grant land
- c. After measuring physical data, the applicant is charged a measurement fee;
- d. Applicants are also required to pay a registration fee.
- e. Against the lands of Registered Sultan Grant, if the direct owner still lives, the implementation of the

effort is carried out by means of the direct owner Sultan Grant making a request to the land office on behalf of the owner

Overall, the land of Sultan Grant in Medan cannot be ascertained. However, the Land Office has recorded that there are around 4505 registered Sultan Grants, recorded in eight books, namely Book I to VIII, and scattered in several regions in Medan, including; Tanjung Mulia region, Labuhan, Mabar Rengas pulau, East Medan. Table 1 shows the 4505 Grants consisting of several types of Grants[5]

Table 1. Type of Sultan Grant Registered In The Register

No	Types of Grant	Total of Sultan Grant
1	Old Grant	977
2	Grant Sultan	950
3	Grant Decree	998
4	Grant VB	830
5	Grant V	750
	Total	4505

The total number of Grants registered in Medan is included in the *Verklaring* (V), i.e. Certificate (Sultan Grant). The total number of registered *Verklaring* is 998, from no. 1 to no. 701. *Verklaring* is written in Latin in Dutch. This *Verklaring* is a publication of *Gementee*. *Verklaring* No. 702 to No. 998 were written in Latin, in Indonesian, published by Praja City.

Next, the author tried to analyze the data obtained in the field from 38 respondents. Table 2 presents the origin of land tenure of Sultan Grant.

Table 2 The Origin of Land Tenure of Grant Sultan

No	Type of Deed	Total	Percentage
1	Inheritance	16	42 %
2	Releasing rights and compensation	19	50 %
3	Other	3	7 %
	Total	38	99 %

Source: data analysis

Table 2 shows that 16 (42%) of the respondents obtained land by inheritance and 19 (50%) from the relinquishment of rights or sale and purchase. If the land of the Sultan Grant transferred to heirs automatically, and if the holder of Sultan Grant has died, then the inheritance should be accompanied by a certificate of heirs. Concerning the Sultan Grant originating from the relinquishment of rights and compensation, the deed is usually made by a notary. Meanwhile, the notary uses this method, namely by creating a deed of relinquishing the right and compensation for the land of Sultan Grant, because for the Notary, "it was assumed that the land was state land"). If this case viewed from the institution *Recht Verwerking*, it is understandable.

Because in fact, although Sultan Grant is recognized as written evidence, it is based on juridical control, whereas in general the land is controlled by the cultivators. Thus, the customary law, that is familiar with the *Rechts Verwerking* institution conditions, that the passage of time can cause of the loss of land rights and the land can be re-considered as the state land. For the owner of Sultan Grant, they naturally face an endless dilemma. On the one hand, the owner of Sultan Grant is recognized as the holder of the land rights of Sultan Grant. If Sultan Grant land is converted, of course, the examination of physical and juridical data on the objects of land rights will be examined first.[6]

This *Rechtverwerking* Institution was implicitly adopted by Article 32 of Government Regulation Number 24 of 1997, which states:

In the case of a block of land that a certificate has been issued in the name of the person or legal entity who obtained the land in good faith, and controls it. Other parties who think they have the right can no longer claim their rights, if within a period of five years since the certificate was issued, no file of a written objection is submitted to the Land Office or a lawsuit is not filed to the Court regarding land acquisition or issuance of the certificate.

This article shows a firm attitude and provides an opportunity for parties with good credentials to submit objections, but it is limited to five years from the time the certificate issued. It is terminated after more than five years

Table 3. Community Knowledge about the Conversion of Land

No	Knowledge of Sultan Grant	Total	Percentage
1	Knowing	11	28.9%
2	Not Knowing	27	71.1%
	Total	38	100%

Source: Analysis of primary data

Twenty-seven respondents (71.1%) admitted they did not know about the obligation to conduct the conversion of Sultan Grant land, while 11 (28.9%) said they know. To give an understanding to the holder of the Sultan Grant, it was requested that the State Supervision Institution conduct the socialization program, as some respondents responding did not know there was an obligation to register their land through the conversion provision. The implementation of the conversion registration of customary land rights (Sultan Grant), namely proving the former old rights and customary ownership rights carried out through evidence of the rights in the form of written evidence or witness statements. With the conversion of the land, there is an opportunity for the owner of Sultan Grant to improve his land status, i.e. by way of being converted into property rights. Even though customary ownership rights are still recognized, they are considered as former customary rights, that must be adjusted through the conversion provision based on the terms of the conversion of land rights, as stipulated in the agrarian law.

Table 4 Evidence of Land Tenure

No	Type of Letter	Total	Percentage
1	Certificate	24	63%
2	Letter of sale and purchase / compensation	6	15%
3	Decree of the Chief District	8	21%
	Total	38	99%

Table 4 illustrates that 24 (63%) respondents had the rights in the form of certificates of ownership, most certificates were obtained through the PRONA program, 6 (15%) respondents had the rights in the form of compensation letters, while 8 (21%) respondents held the Decree of chief district. Of the 14 respondents who did not have a certificate, budget constraint was the reason.

Besides, there were many Sultan Grant had no accurate boundaries. Although in the Grant, it was mentioned the area of the land and its boundaries. In general, the area mentioned in Sultan Grant had no measurement ties. The land of Sultan Grant also had no boundary marking.

On the Sultan Grant land, no cadastral measurements were made because at the time the Grant was issued, people were not too concerned about the boundaries and size of the land they owned. The population at that time was still scarce and there were large areas of land that were not utilized. In addition, village-by-village measurements had not yet been carried out as designated by the State Minister for Agrarian Affairs or the Head of the National Land Agency.

4. Conclusion

1. The number of lands that have not been registered in Medan related to evidence of land tenure originating from old rights to land, with the status of Sultan Grant, are prone to disputes/ conflicts, both the disputes against individuals and group disputes with the legal holder of Grant Sultan. The lands of Grant Sultan owned by indigenous peoples in the past up to now, some are controlled by the community without the support of written evidence, and some have been traded by non-legal owners (Sultan Grant holders). To avoid various problems concerning the Sultan Grant land rights, and to provide legal certainty to the valid Sultan Grant holder, by Law Number 5 of 1960, concerning Basic Rules on Agrarian Principles, was instructed to the old right holder to register his land through the terms of conversion based on the basic agrarian law.
2. It is difficult to identify the lands with Sultan Grant status because the land is physically controlled by illegal rights holders, but controlled by heirs and the community who are not registered at the Land Office. Besides, the location of the Sultan Grant land, that is

scattered in several locations, is an obstacle to maximize the conversion of land rights.

3. Although the existence of the old right (Grant Sultan) is recognized to date, to avoid many problems regarding the land with the status of old rights (customary land), including Sultan Grant land, it is recommended for the government to immediately establish laws and regulations related to the deadline for the conversion of land with the status of an old right derived from Customary Rights. As the case of Western Rights, since 1980 (since the issuance of Presidential Decree Number 32 of 1979) has expired in Indonesia.

ACKNOWLEDGMENT

We gratefully thank University of North Sumatera for financial support in accordance with TALENTA Universitas North Sumatera Research Contract Year of Fiscal 2019/UN5.1.R/PPM/2019

REFERENCES

- [1] Mahadi, 1987 *Sedikit Sejarah Perkembangan Hak-Hak Suku Melayu di Sumatera Timur (Tahun 1800-1975)*, Alumni, Bandung.
- [2] John Salindeho, 1999, *Humans, Land, Rights and Law*, Sinar Grafika Jakarta.
- [3] Ali Achmad Chomzah, *Agrarian Law*, Prestasi Pustaka Publisher, Jakarta, 2008.
- [4] AP. Parlindungan, *Conversion of Land Rights*, Mandar Maju, 1996
- [5] Interview with Mr. Asrar, Head of Medan City Land Office Dispute Resolution, September 13th 2019
- [6] Emri, 2009, Implementation of the Land Conversion of Grant Sultan, Thesis of Bachelor Program, University of North Sumatra,