

# Juridical Study of Uniform Policy for Granting Land Rights to Non-Indigenous Indonesian Citizens in the Special Region of Yogyakarta

Darwati<sup>1</sup>, Pramu Hestiono<sup>2</sup>

{[darwati1060@gmail.com](mailto:darwati1060@gmail.com)<sup>1</sup>, [pramu.utama@gmail.com](mailto:pramu.utama@gmail.com)<sup>2</sup>}

Universitas Borobudur<sup>1,2</sup>

**Abstract.** As a country with a horticultural foundation, land has a vital significance for the existences of individuals in Indonesia, particularly ranchers in rustic regions. Land capabilities as a spot where local area individuals reside and the land likewise gives a business to them. in the form of a name-borrowing agreement, also known as an agreement regarding the actual matter, between a native Indonesian citizen who is willing to borrow his or her name from the title certificate and a non-prisoner Indonesian citizen who wants to own land in the Special Region of Yogyakarta with property rights status. It is an act that is not by Article 20 passage (1) of the Fundamental Agrarian Regulation which expresses that: " Property privileges are genetic, most grounded and satisfied freedoms that individuals can have over land, remembering the arrangements of Article 6. In light of the outcomes information examination presumed that: 1) The arrangements for giving area privileges to a non-native Indonesian resident in Do-It-Yourself in light of Do-It-Yourself Territorial Head Guidance Number K.898/I/A/1975 are not allowed to claim land, whether agricultural or non-agricultural land with land ownership status. If a non-indigenous Indonesian citizen obtains land with ownership rights, he is obliged to relinquish his rights and apply for land rights to the Regional Head of DIY to be granted Building Use Rights (HGB).

**Keywords:** Legal Status, Land Rights, Inheritance.

## 1 Introduction

The land, which is a gift from God Almighty and is a part of the earth, serves to meet basic human needs. In its turn of events, land has likewise turned into a productive speculation instrument, expanding interest for land and structures, and furthermore a contest to get them, which eventually powers individuals to make more prominent penances to get them. It makes land and structures become significant so that individuals who own property and structures will hold possession freedoms to their territory however much as could reasonably be expected.[1]

The need for land today is increasing in line with the increase in population and increasing other needs related to land. Land is not only a place to live, and a place to farm but is also used as collateral to get a loan at the bank, for buying and selling and renting. It is so important that the use of land for public purposes for individuals or legal entities requires a guarantee of legal certainty over the land.[2]

Land is something that has a basic worth in individuals' lives, this is on the grounds that land has monetary worth, as well as grandiose enchanted strict worth as per the perspectives on the Indonesian public, it likewise frequently gives vibrations in harmony and frequently additionally causes shocks in the public arena, then he is likewise the person who frequently causes obstructions in the execution of public turn of events.[3]

It is on this land that people can endlessly live or proceed with their lives, aside from that, land is restricted in region and can't be reestablished, while the quantity of people keeps on expanding which will eventually prompt contest in acquiring land. This opposition can be great rivalry or terrible rivalry, particularly assuming that it is associated with improvement advancements which influence land to have high monetary worth and its worth will keep on expanding. Land can't be isolated from people since land is a significant calculate human existence, land is a spot for settlement, for human exercises, and, surprisingly, after death they actually need land.[4]

As a country with a horticultural foundation, land has a vital importance for the existences of individuals in Indonesia, particularly ranchers in provincial areas.[5] Land capabilities as a spot where local area individuals reside and gives a job to them.[6]

Understanding the significance of land referenced over, the state has managed everything in regards to land. The decentralized government framework in Indonesia right now enables territorial states to direct land in their particular areas. The expectation is that with autonomy, local states will actually want to foster their districts as per their circumstances and requirements. In light of this, the Exceptional District of Yogyakarta possesses an extraordinary quality, particularly due to the fact that it was initially governed by Regulation No. 3 of 1950 regarding the Foundation of the Unique Locale of Yogyakarta. Following that, it underwent a number of modifications, the most recent of which was Regulation No. 9 of 1955 concerning Corrections to Regulation No. 3 jo. Number 19 of 1950 concerning the Groundwork of the Extraordinary Area of Yogyakarta, this guideline was considered lacking, so Guideline Number 13 of 2012 concerning the Outstanding Locale of Yogyakarta was outlined.

As far as land, the Extraordinary District of Yogyakarta additionally has exceptional highlights, to be specific what is known as Sultanate Land and Duchy Land. Concerning control of land privileges in the Yogyakarta Exceptional Locale, there are the terms native Indonesian residents (native Indonesian residents) and non-native Indonesian residents (non-native Indonesian residents). This term was supported again with the development of the Do-It-Yourself Lead representative's Roundabout PA.VIII/No. K.898/I/A 1975 concerning Restriction of Property Privileges for non-native Indonesian residents.

In reality, there are several legal smuggling practices in the form of name-borrowing agreements often known as agreements regarding the real thing, between non-prison citizens who want to own land in the Special Region of Yogyakarta with ownership status and native citizens who are willing to borrow their names on the property rights certificate. This is an act that is not by Article 20 "Property rights are hereditary, strongest and fulfilled rights that people can have over land, bearing in mind the provisions of article 6," reads paragraph (1) of the Basic Agrarian Law."

The problem in this paper is "How to Unify the Policy for Granting Land Rights to Non-Indigenous Indonesian Citizens in the Special Region of Yogyakarta?"

## **2 Method and Approach**

### **2.1 Metode**

The strategy utilized recorded as a hard copy this applied paper is a graphic scientific technique, in particular by utilizing information that plainly portrays issues straightforwardly in the field, then examination is finished, and ends are attracted to take care of an issue. The information assortment strategy is through perception and writing study to acquire answers for issues in setting up this paper.

In accordance with the exploration targets to be accomplished, the space of this examination is remembered for the domain of subjective exploration, consequently a subjective methodology technique will be utilized. As per Petrus Soerjowinoto et al., Qualitative methods focus on the researcher's comprehension of the problem-solving process in order to construct a complex and comprehensive legal phenomenon.[7]

### **2.2 Approach**

A standardizing legal approach that is based on specific laws or written rules and relates to the Uniform Strategy for Giving Area Privileges to Non-Native Indonesian Residents in the Extraordinary Area of Yogyakarta, in accordance with the Guidance of the Territorial Top of the Unique District of Yogyakarta Territory Number K/898/I/1975 Concerning Uniform Approach on Conceding Area Freedoms to Non-Native Indonesian Citizens.[8] This investigation shows what is.

## **3 Discussion**

### **3.1 Implementation of DIY Regional Head Instruction Number K/898/I/1975 Which Makes It Difficult for Non-Indigenous Indonesian Citizens to Obtain Ownership Rights to Land in Yogyakarta**

Many strategic lands are owned by only a small group of people in Yogyakarta, so they can make efforts to enrich themselves and there are still other groups who cannot control land, so they have difficulty making efforts to enrich themselves. Seeing this, the legislative head of Do-It-Yourself forestalled this by giving a strategy with respect to responsibility for privileges in the Extraordinary District of Yogyakarta by giving Round Letter Number K.898/I/A/1975 concerning Uniform Approach for Conceding Area Freedoms to Non-Native Indonesian Residents. This Round educates: for consistency of land privileges strategy in the Extraordinary District of Yogyakarta (Do-It-Yourself), non-native Indonesian citizens (WNI) are asked if they wish to buy people's land, then the process of transferring name through relinquishment of rights, the land will become land has a state managed by the DIY Government and then the party concerned applies to the DIY Regional Head to obtain a right. This is normal because special regions have the authority to regulate their regions. But this is contrary to the implementation of Presidential Decree no. 33 of 1984 concerning the Full Implementation of Law no. 5 of 1960 concerning Basic Regulations on Agrarian Principles in the Special Region of Yogyakarta Province, there was an upheaval

expressed by non-indigenous Indonesian citizens. It made citizens of Chinese ancestry feel discriminated against, so they filed a lawsuit at the Supreme Court and reported it to Komnas HAM. Komnas HAM responded to this report stating that the 1975 instructions issued by the Governor of DIY violated human rights and were discriminatory. Komnas HAM recommends that there be no terms indigenous and non-indigenous. Apart from Komnas HAM, the Ombudsman of the Republic of Indonesia (ORI) also issued a recommendation dated 8 July 2020 stating that the National Land Agency (BPN) must use national laws that regulate the transfer of land rights, namely UUPA Number 5 of 1960 concerning Basic Regulations. Agrarian Principles. ORI also issued a statement stating that the BPN offices from Bantul, Kulon Progo, Gunungkidul, Sleman, and Yogyakarta City had carried out maladministration in the form of discrimination in providing services and irregularities in procedures. Apart from that, ORI's instructions in its recommendations also ordered each head of the BPN Land Office in Bantul, Kulon Progo, Gunungkidul, Sleman, and Yogyakarta City to issue the Certificate of Ownership (SHM) requested by the complainants, who unexpectedly are Indonesian residents of Chinese drop. The battle of Indonesian residents of Chinese plummet in battling for land freedoms in the Extraordinary Locale of Yogyakarta frequently falls flat. This is because the Yogyakarta region, which is a Special Region, has the authority to regulate its region, including regarding ownership of land by its citizens.[9]

Western common regulation with respect to land regulation beginnings from focusing on private interests (individualistic/liberalistic), so the premise and focus of guideline lies in eigendom-recht (eigendom freedoms), specifically complete and outright individual proprietorship, notwithstanding the verklaring (space proclamation) of land possession by the state. The most significant component of customary law is customary land law, which begins with the collection of community interests and always takes into account both the public interest and individual interests. In standard regulation, there are ulayat freedoms, and that implies lawful local area privileges to land.

Thus, the philosophical premise connected with land freedoms is unique in relation to Western common regulation as follows:[10]

a) Land rights according to Western Civil Law.

Western rights, which are governed and subject to Western civil law (Burgerlijk Wetboek) and are referred to as western land (European land), include Eigendom land rights ownership, and were enforced during the Dutch colonial era. Western land rights that have not been canceled by the parties in accordance with the provisions of the UUPA remain valid after its enactment; however, in order for them to become ownership rights to land, they must be installed, and erpacht rights and other rights follow the system that has been regulated. in the UUPA which should initially be changed over as per its carrying out guidelines.

b) Land rights according to Customary Law.

Residency of land with the freedoms of native individuals (bumi putera) which is dependent upon standard regulation where unwritten regulation applies so there is no composed proof of the land being referred to. Kinds of land freedoms as per standard regulation incorporate standard land, Yasan land, customary land, and gogolan land.

At the hour of autonomy, in view of the Law laying out Do-It-Yourself (UURI No.3/1950 jo. UURI No.19/1950) Do-It-Yourself had the right and position to deal with its family, including land matters. The Special Region of Yogyakarta has established a Regional Regulation on land matters based on this authority while waiting for the Republic of Indonesia to adopt a Basic Law on Land Law.

Guidelines that were framed before the sanctioning of the UUPA in Do-It-Yourself were Local Guidelines, Rijksblad, and Territorial Head Directions. These Territorial Guidelines incorporate Do-It-Yourself Local Guideline No. 5 of 1954 concerning Area Freedoms in the Extraordinary District of Yogyakarta which in light of Article 1 discovers that: Land Privileges in the Extraordinary Locale of Yogyakarta are managed by Provincial Guidelines. This article confirms that all matters connecting with land freedoms in Do-It-Yourself will be managed by local guidelines, this is on the grounds that a public regulation in regards to land has not yet been shaped.

Do-It-Yourself Territorial Guideline No.5 of 1954 in view of Article 4 manages property freedoms. The first freedoms were "genetic anganggo privileges"; ( the option to utilize which can be acquired "erfelijk Individueel gebruiksrecht") transforms into property freedoms since this right is done following the genuine circumstance on the grounds that the privileges of inhabitants to their territory are not just restricted to "one side to utilize it"; just, however can move their freedoms to different gatherings as long as they focus on the standard regulation guidelines that apply in their space.

Article 8 establishes that the exchange of land privileges and the arrangement of arrangements planned to rent or furnish the valuable chance to utilize land with possession freedoms for little agrarian organizations straightforwardly or by implication to non-residents of the Republic of Indonesia are invalid. So it very well may be reasoned that Do-It-Yourself Provincial Guideline No. 5 of 1954 just awards property privileges to Indonesian residents without recognizing Native Indonesian residents and non-Native Indonesian residents. Territorial Guideline Number 5 of 1954 is an exceptionally stupendous thing on the grounds that the Extraordinary Locale of Yogyakarta has arranged a guideline Ashore when the Focal Government around then had not yet made a guideline on Public Land.

The UUPA was established in 1984 by Presidential Decree No. regarding the full implementation of Law No. 33 of 1984 5 of 1960 in Do-It-Yourself Area and Do-It-Yourself Local Guideline No. 3 of 1984 concerning the Full Execution of Regulation No. 5 in DIY Province in 1960. Even though autonomous authority has essentially shifted to decentralized authority, a DIY Province definition of autonomous authority in the agrarian sector based on:

- a. Law No.3 of 1950 concerning the Underpinning of the Extraordinary District of Yogyakarta, Article 4 section (4) which establishes that family undertakings and different commitments than those referenced in passage (1) are completed by the Exceptional Locale of Jogjakarta prior to being framed by the Law this, so there is
- b. Provisions for Giving Area Freedoms to a Non-Native Indonesian Resident in the Unique Locale of Yogyakarta

Apart from historical reasons, there are also economic reasons. Ownership rights cannot be given to non-indigenous Indonesian citizens because non-indigenous citizens, especially those of Chinese descent, are considered to have a strong economy, so it is feared that non-indigenous citizens will control land in Yogyakarta, while it is feared that non-indigenous citizens who are economically weak will not be able to own

property rights in DIY. Then this DIY Regional Head's Instruction was born for policy uniformity with the stipulation that non-Indigenous Indonesian citizens cannot be given ownership rights to land in DIY. In light of the Guidance of the Provincial Head of Do-It-Yourself Number K.898/I/A/1975 concerning the Uniform Strategy for giving area privileges to a non-Native Indonesian resident which was given on Walk 5, 1975, which essentially contains the following: If a non-Indigenous Indonesian citizen buys People's land rights should be processed as usual, this is by relinquishing rights, so that the land returns to being State land which is controlled directly by the DIY Regional Government and then those who are interested/relinquishing must apply for the DIY Regional Head to obtain a right.

In essence, this instruction regulates that Indonesian citizens who are non-native citizens cannot be given ownership rights to land in the Special Area of Yogyakarta. The provisions in the DIY Regional Head's Instruction Number K.898/I/A/75 certainly raise questions because the UUPA regulates the rights of every Indonesian citizen to obtain land rights and the UUPA has also been fully implemented in DIY based on Presidential Decree No. 33 of 1984 but this provision remains in effect today without any renewal or review.

The reason the DIY Regional Head's Instruction remains in effect to this day is because to date this instruction has not been revoked even though it has been challenged several times in court and even at the cassation level. Even though various reasons have been explained regarding the enactment of DIY Regional Head Instruction Number K.898/I/A/1975, according to the author, the enactment of this instruction conflicts with the nation's values, including the values in the UUPA and other regulations which conflict with these instructions. DIY Regional Head Instruction Number K.898/I/A/1975 conflicts with several regulations, namely:

1. Pancasila 3rd principle
2. Article 26 paragraph (1) of the 1945 Constitution
3. Article 9 of Law no. 5 of 1960 concerning Basic Agrarian Principles Regulations
4. Article 3 paragraph (2) Law no. 39 of 1999 concerning Human Rights
5. Article 2 of Law No.12 of 2006 concerning Citizenship
6. Article 5 letter an of Regulation no. 40 of 2008 concerning the Disposal of Racial and Ethnic Segregation

The agrarian constitution is a constitution that contains the reason for the connection between the state and residents in regards to land and other normal assets, the agrarian constitution is to perceive how the constitution in a nation forms agrarian equity and agrarian relations in regards to control, possession, use and usage and the board of land and other normal assets in its established documents.[11] The rule of legitimate relations with people responsible for typical resources contained in Article 33 of the 1945 Constitution of the Republic of Indonesia is generally called the choice to control the state as a control capacity for the state to coordinate customary resources for the best thriving individuals.[12] The option to control the state is the main material right unequivocally conceded by the constitution to the Indonesian state.[13]

Allowing Area Freedoms as expected in Article 1 section (8) of Priest of Agrarian Guideline No. 9/1999 is an Administration Pronouncement that awards privileges to state land, expansion of the term of freedoms, restoration of freedoms, changes to privileges, including giving privileges to land with The executives Freedoms. Legacy regulation as contained in Article 171 (a) of the Gathering of Islamic Regulation is the

law that manages the exchange of proprietorship privileges to acquired property (tirkah) of main beneficiaries, figuring out who has the option to be a main successor and how much every individual will share. As found in instances of move of land privileges because of legacy which makes land freedoms declarations the object of debate, endorsements can be deciphered as confirmation of freedoms.[14]

The implementation of the inheritance law system in Indonesia is as follows:[15]

- a. Islamic Inheritance Law applies to Indonesian products that are Muslim;
- b. Western Inheritance Law (BW) applies to residents who adhere to the Western legal system;
- c. Meanwhile, Customary Inheritance Law applies to people who adhere to Customary Law. This is adhered to by the majority of Indonesian people who live far from urban areas.

Allowing Area Freedoms as planned in Article 1 section (8) of Clergyman of Agrarian Guideline No. 9/1999 is an Administration Declaration that awards freedoms to state land, an expansion of the term of privileges, its restoration, and changes, including giving freedoms to land with The executives Privileges. Legacy regulation as contained in Article 171 (a) of the Gathering of Islamic Regulation is the law that manages the exchange of possession privileges to acquired property (tirkah) of main beneficiaries, figuring out who has the option to be a main beneficiary and how much every individual will share. As found in instances of move of land privileges because of legacy which makes land freedoms declarations the object of question, testaments can be deciphered as evidence of privileges. This is contained in Article 1 number 20 of Unofficial law Number 24 of 1997 concerning Area Enrollment (hereinafter alluded to as the PP Ashore Enlistment). The issuance of a land title testament should go through a few cycles to get legitimate privileges. Subsequently, if the most common way of getting a land title testament isn't by relevant systems, it tends to be known as a legitimately inadequate endorsement.[16]

Legacy of land privileges should be founded on the arrangements of the Fundamental Agrarian Regulation and its Executing Guidelines. The successors to the exchange of land possession freedoms or the new land privileges holders should be Indonesian occupants by the arrangements of Article 9 of the Fundamental Agrarian Regulation and Article 21 section (1) of the UUPA that main Indonesian inhabitants can have property privileges, without qualifications such as openness among people who have equal opportunities to obtain options on land and to obtain benefits and returns, both for themselves and their families.

The exchange of freedoms through legacy can happen consequently when the deceased benefactor kicks the bucket. This will bring about changes to the juridical information connected with the premise of freedoms that are objects of legacy. Changes in the exchange of land privileges should be enrolled and should be done assuming there are changes to the actual information and juridical information. This is to give lawful assurance to main beneficiaries and for precise land enlistment organization.

Records that demonstrate the presence of land privileges in legacy as expressed in Article 39 passage (1) of the PP Ashore Enrollment. This should be given since enlistment of the exchange of privileges must be completed after the primary enrollment of the freedoms being referred to is done for the sake of the inheritor. Assuming that the beneficiary of legacy comprises of one individual, enlistment of the exchange of privileges is completed to that individual in view of a letter of confirmation as the successor concerned, however assuming more than one individual

is getting the legacy and the exchange of freedoms is enrolled joined by a deed of dispersion of legacy containing data ashore privileges.

The idea of legitimate security for land privileges holders can't be isolated from the issue of equity in the execution of the actual law. According to Gustav Radbruch, the values of legal justice, legal certainty, and legal benefits must be pursued and given serious consideration by law implementers. so that with the choice of negative publicity systems (with positive elements) the three basic values themselves will not be possible to achieve. The aim of the land law policy in the choice of a negative publicity system (with positive elements) is closely related to the aim of the land law system is the creation of a just, prosperous, and profitable society, therefore the choice of using the land law system in the negative publicity system (with positive elements) should be oriented towards basic legal values, namely realizing order and regularity, peace and justice.[17]

#### 4 Conclusion

In light of the exploration results, the accompanying ends can be drawn:

1. The arrangements for giving area privileges to a non-native Indonesian resident in DIY considering DIY Regional Head Direction Number K.898/I/A/1975 are not permitted to guarantee land, whether farming or non-rural land with land possession status. Non-indigenous Indonesian citizens who acquire ownership rights to land must surrender those rights and apply to the Regional Head of DIY for Building Use Rights (HGB).
2. Game plans for yielding area opportunities to a non-Local Indonesian occupant in DIY rely upon DIY Commonplace Head Direction Number K.898/I/A/1975 whenever saw in light of the rule of Equivalent Privileges in the UUPA that this arrangement isn't in accordance with or as opposed to the standard of equivalent freedoms in the UUPA that there is segregation and class qualifications and is in opposition to existing regulations and guidelines

#### References

- [1] Siahaan, M. P. *Bea Perolehan Hak atas Tanah dan Bangunan*. Jakarta: RajaGrafindo Persada, 2003.
- [2] Florianus, S. S. *Tata Cara Mengurus Sertifikat Tanah*. Jakarta: Visi Media, 2008.
- [3] Salindeho, J. *Masalah Tanah Dalam Pembangunan*. Jakarta: Sinar Grafika, 1998.
- [4] Chulaemi, A. *Pengadaan Tanah Untuk Keperluan Tertentu Dalam Rangka Pembangunan, Majalah Masalah-Masalah Hukum*. Semarang: Undip Press, 1992.
- [5] Varren, F., Shantika Afny; Andraini, "Aspek Hukum Hak Penguasaan Dan Pendaftaran Tanah Timbul Di Desa Kramat Kecamatan Kramat Kabupaten Tegal," *Din. Huk.*, vol. 17.2, no. 2, pp. 50–57, 2016.
- [6] Soekanto, S. *Pokok-Pokok Hukum Adat*. Bandung: Alumni, 1978.
- [7] Soerjowinoto, D. Petrus. *Buku Panduan Metode Penulisan Karya Hukum (MPKH) dan Skripsi*. Semarang: Fakultas Hukum, UNIKA Soegijapranata, 2006.
- [8] Soemitro, R. H. *Metodologi Penelitian Hukum dan Jurimetri*. Jakarta: Ghalia Indonesia, 1988.



- [9] Raharja, J. A. "ANALISIS IMPLEMENTASI KEBIJAKAN TENTANG KEPEMILIKAN HAK ATAS TANAH WARGA NEGARA INDONESIA NONPRIBUMI DI DAERAH ISTIMEWA YOGYAKARTA," *IPDN*, no. 1, pp. 1–14, 2019.
- [10] Hasanah, U. "Status Kepemilikan Tanah Hasil Konversi Hak Barat Berdasarkan UU No. 5 Tahun 1960 Tentang Peraturan Dasar Pokok-pokok Agraria Dihilubungkan Dengan PP No. 24 Tahun 1997 Tentang Pendaftaran Tanah," *Ilmu Huk.*, vol. 2, no. 1, 2017.
- [11] Arizona, Y. *Konstitusionalisme agraria*. Yogyakarta: STPN Press, 2014.
- [12] Mujiburohman, D. A. "Legalisasi Tanah-Tanah Bekas Hak Eigendom," *J. Yudisial*, vol. 14, no. 1, pp. 117–137, 2021, doi: 10.29123/jy.v14i1.443.
- [13] Kusumadara, A. "Perkembangan Hak Negara Atas Tanah," *J. Media Huk.*, vol. 20, no. 3, pp. 262–276, 2013.
- [14] Ruchiyat, Eddy. *Politik Pertanahan Sebelum Dan Sesudah Berlakunya UUPA UU No.5 Tahun 1960*. Bandung: Alumni, 1960.
- [15] Ramulyo, M. I. *Perbandingan Pelaksanaan Hukum Kewarisan Islam Dengan Kewarisan Menurut Kitab Undang-Undang Hukum Perdata (BW)*. Jakarta: Sinar Grafika, 2001.
- [16] Ruchiyat, E. *Politik Pertanahan Sebelum Dan Sesudah Berlakunya UUPA UU No.5 Tahun 1960*. Bandung: Alumni, 1995.
- [17] Handoko, Widhi. *Kebijakan Hukum Pertanahan Sebuah Refleksi Keadilan Hukum Progresif*. Yogyakarta: Thafa Media, 2014.