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PREVENTIF STATE ASSET MANAGEMENT VS SULTAN GROUND: A STUDY CASE IN SPECIAL REGION OF YOGYAKARTA

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Abstract

This research uses principal negotiation theory to identify further a dispute emerging between the state asset manager, the central government, and the special local government, the sultanate government. This study examines the dispute resolution and the implementation of the dispute resolution between applying the Yogyakarta Privileges Act to the management of State Property. This research uses study literature, secondary data and then is analyzed qualitatively. This study explains that dispute resolution outside the court is more effective and efficient in managing state property. The costs incurred are enormous, and the time required is extensive. Therefore, it is better to immediately design policies, breakthroughs, and arrangements for resolving disputes between state property and sultanate ground. This study was conducted in the Indonesian context. However, the study's findings may not be generalizable to State Asset Management in other countries, especially the Western ones. These findings are likely to have significant implications for State Asset Management in designing and implementing how to resolve dispute problems in asset management in the unique region of Yogyakarta.

***Keyword**:* State Asset Management, Sultanate Ground, Dispute Resolution, State Asset Management policy

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INTRODUCTION

The authority of the Special Region of Yogyakarta, referred to like DIY, as an autonomous region encompasses authority in the affairs of Regional Government and the affairs of Privileges. Privileged affairs have the authority to include rules for stuffing commissions, standpoints, and authority of the Governor and Deputy Governor, DIY Regional Government institutions, culture, land, and spatial planning. It provides a broader understanding of terms that are commonly known without making new definitions. The Special Region of Yogyakarta has a more comprehensive specialty stated in Act Number 13 of 2012.

The Land Special Privileges of the Special Region of Yogyakarta are very broad and connected with regulations regarding the Management of State Property. Land disputes are protracted and expensive. Management of state property is the smallest part of State Finance Management. From the point of view of the State Finance, only court decisions that have permanent legal force are recognized and implemented. On the other hand, there are procedures outside the court line regulated in Law Number 30 of 1999 relating Arbitration and Alternative Dispute Resolution. Although there is a legal basis for resolving cases in the land sector through Law Number 30 of 1999 relating Arbitration and Alternative Dispute Resolution, it does not provide legal certainty for the executor of the agreement on arbitration and alternative dispute resolution. In the context of DIY Specialties in terms of land, it connects to state property. In the context of resolving disputes that are fast, simple, inexpensive, providing legal certainty, maintaining the authority of the state and the legal entity Privileges of the Special Region of Yogyakarta, alternative disputes settlement in the land sector is needed.

LITERATURE BACKGROUND

A. Pure Theory of Law according to Hans Kelsen

The Pure Law Theory is a theory that aims to notice and explain its goal. This theory seeks to answer what law is and how it exists, not how it should exist. It is named pure legal theory since it merely describes the law and investigates to refine the object of its explanation of everything that has less linked with the law. The purpose is to clear jurisprudence from unknown elements (Kelsen, 1967:1).

Hans Kelsen also stated that in the process of legislation formation, the theory of the level of law (*Stufentheorie*). In this theory, Hans Kelsen says that legal regulations are layered in a hierarchy. Higher regulations are applied, originate, and are based on higher regulations, and arrive at regulations that cannot be traced further are hypothetical and fictitious, called the basic regulation (Grundnorm). Basic Norms are the paramount regulations in a system of regulations no longer formed by higher regulations, but the basic regulations are determined in advance by the society as the basic norms, which are the source of

the following norms. Therefore, a Basic Norm is said to be pre-supposed (Farida, 2010).

Hans Nawiasky, a colleague of Hans Kelsen, developed the theory of the level of law. Regulations that are leveled and at several levels, the legal regulations of a country are also organized, and the organization of legal regulations in a country consists of four main groups, among others:

a) First association: Staatsfundamentalnorm (Basic Regulations of the State);
b) Second association: Staatsgrundgesetz (Basic Rules / Basic Rules of the State);
c) Third association: Formell Gesetz ("formal" law);
d) Fourth association: Verordnung & Autonome Satzung (Implementation of norms/autonomous norms).

Staatsfundamentalnorm is norms that underlie the formation of a constitution or a country's constitution (*Staatsverfassung*), including the norms for its changes. The legal nature of a *Staatsfundamentalnorm* is a condition for the validity of a constitution. It was available before the constitution (Farida, ibid). Furthermore, Hans Nawiasky argues that the highest norm, which Kelsen calls the fundamental norm in a country, should not be called staatsgrundnorm but staatsfundamentalnorm or the state's fundamental norm. *Grundnorm* tends not to change or be permanent, whereas, in a country, the country's fundamental norms can change at any time due to rebellions, coups, and so on (Sihombing, 2016).

Law Number 12, 2011, concerning Formation of Regulations (Law on the Establishment of Regulations). In Article 7 paragraph (1) of the Law, Establishment of Law regulates the hierarchy of laws and regulations as follows:

1. The 1945 State Constitution.
2. Decree of the People's Consultative Assembly;
3. Government Act / Regulation in Lieu of Law;
4. Government Regulations;
5. Presidential Regulation;
6. Provincial Regulations; and
7. Regency / City Regional Regulations.

In addition to Article 7 paragraph (1) of the Law on the Establishment of Laws, also regulated in Article 8 paragraph (1) includes regulations stipulated by the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Supreme Audit Board Judicial Commission, Central Bank, Ministers, agencies, institutions, or commissions of the same level formed by Law or Government by order of the Law, Provincial Regional Representative Council, Governor, Regency / City Regional Representative Council, Regent / Mayor Village head or equivalent. The provisions mentioned above are recognized and

have binding legal force insofar as they are ordered by higher Regulations or are formed based on authority.

The contents of the lower material must be following the content of the laws upper degree. Otherwise, the legislation does not have binding legal force.

B. Previous Researches

No	Author	Theme	Research Gap
1.	M Syamsudin	Procedural and Substantive Justice in *Magersari* Land Dispute Decisions	In the study done by M Syamsudin, the object of research is a court decision regarding the *Magersari* land dispute, while the object of this study is the substance of the regulation itself.
2.	Diaswati Mardiasmo and Paul Barnes	A Pandora Box Effect to State Asset Management in DIY Yogyakarta	In the research conducted by Diaswati Mardiasmo and Paul Barnes, the emphasis is more on the process of managing state asset management, while this research emphasizes alternative dispute resolution beyond those previously set.

RESEARCH METHOD

The main issues in this study are reviewed in a juridical-normative manner, namely by studying or analyzing primary data in the form of primary legal materials by understanding the law as a set of rules or positive norms in the legislative system governing the issues in this study. Hence, this research is understood as library research, namely research on secondary data. The paradigm used in this study is the legal positivism paradigm based on Guba and Lincoln (1994).

This study using the legal meaning is interpreted as a product of the ruling. *Law* is defined as a set of written regulations made by the government under its authority. In addition, the legal approach used in this study is that law is assumed to be natural moral values of justice and universal (law as what ought to be). The approach used in this study is the statutory approach and the historical approach.

This study carried out a literature search with secondary data as information, both in the form of primary legal materials and secondary legal materials. Primary legal material consists of the 1945 Constitution, which has been fourth amended. Law Number 1 of 2004 concerning the State Treasury, Law Number 13 of 2012 concerning Privileges of the Special Region of Yogyakarta,

Law Number 12 of 2011 concerning Formation of Legislation, HIR (*Het Herziene Indonesisch Reglement*) / Indonesian Regulations that are renewed: S. 1848 no. 16, S. 1941 no. 44, Rbg (*Rechtsreglement Buitengewesten*) / Regional regulation opposite: S. 1927 no. 227, Rv (*Reglement op de Burgerlijke rechtsvordering*): S. 1847 no. 52, S. 1849 no. 63, RO (*Reglement op de Rechterlijke Organisatie in hed beleid der Justitie in Indonesie*) / Regulations on Judicial Organizations: S. 1847 no. 23, Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Law Number 20 of 1947 of the Trial Court, Law Number 14 of 1970 concerning Basic Provisions of Judicial Power joucto Law Number 48 of 2009 concerning Judicial Power, Law Number 14 of 1985 concerning the Supreme Court joucto Law Number 3 of 2009, Law Number 2 of 1986 concerning General Judgment joucto Law Number 49 of 2009.

FINDINGS AND DISCUSSION

A. Outstanding Land Location of the Special Region of Yogyakarta

Yogyakarta has been a special region since its establishment in 1950 and since its recognition was in 1945. In the law on DIY formation, DIY has a legal status as a provincial-level special area. The specialty lies in appointing special regional heads and deputy heads of special regions for Sultan and Paku Alam, who are on the throne. However, the specialties of DIY are not included in the training law but only in local government laws that govern the entire territory of Indonesia in general. In 1965, the legal status of do-it-yourself was reduced to an ordinary provincial territory, and finally, in 1999 and 2004, the right of do-it-yourself entered the territory without law.

After the issuance of Law Number 13 of 2012, DIY functions consist of (a) the techniques for filling the positions, positions, responsibilities, and government of the Governor and Deputy Governor; (b) DIY Local Government institutions; (c) culture; (d) land; and (e) spatial. Privileges with inside techniques for filling positions, positions, responsibilities, and government of the Governor and Deputy Governor consist of unique situations for the possible governor of DIY, particularly Sultan Hamengkubuwana, who has enthroned, and the deputy governor is the Duke of Paku Alam, who has enthroned. The Governor and Deputy Governor have equal position, responsibilities, and government as different Governors and Deputy Governors, plus privileged affairs. The unique functions withinside the institutional region of the Regional Government of DIY are the association and resolution of institutions, with unique nearby regulations, to acquire the effectiveness and performance of governance and public carrier primarily based totally on the ideas of responsibility, accountability, transparency, and participation through contemplating the shape and composition of the authentic government.

The specialty in culture is the care and development of creations, tastes, initiatives and works in the form of values, knowledge, norms, customs, objects, arts and noble traditions that are rooted in the DIY society and regulated by regional regulations. Privileges in the land sector, namely the Sultanate and the District, have authority to manage and utilize the land of the Sultanate and the District land intended to use the most incredible opportunity to develop culture, social interests, and community welfare. The specialty in the spatial layout is the authority of the Sultanate and District on the management and utilization of the Sultanate's land and the District's land.

The form of this privilege is the Sultan Ground (SG) which is the land owned by the Ngayogyakarta Hadiningrat Sultanate and managed to benefit the people's welfare. The Sultanate provides a sign of permission to use SG land with a letter of concern, which is the "Consequence of the Signing of the Cooperation Agreement to anyone occupying land that is categorized as the Sultan Ground as the basis for issuing building construction permits and occupying permits." Based on Article 32 paragraph 2, Law Number 13 the Year 2012 concerning the Privileges of the Special Region of Yogyakarta, the Sultanate as a legal entity is the subject of rights that have ownership rights to the Sultanate's land. Kasultanan Land includes Keprabon land and non-Keprabon land found in all regencies/cities in the DIY region. The Sultanate and the District are authorized to manage and utilize land of the Sultanate and the District intended for the maximum possible development of culture, social interests, and welfare of the community.

Based on Article 33, it is explained that the title to the Sultanate land and the Duchy land is registered with the land agency. Registration for the Sultanate's land and the Duchy's land, which another party carries out, must obtain written approval from the Sultanate for the Sultanate's land and written approval from the Duchy for the Duchy's land. The Sultanate in the period before independence was contained in *Rijksblad* Kasultanan Number 16 Year 1918 and *Rijksblad* of Pakualaman Number 18 Year 1918 which stated that "*Sakabehing bumi kang ora ana tanda yektine kadarbe ing liyan mawa wewenang eigendom, dadi bumi kagungane keraton ingsun*". That sentence means that all the illegal land without any proof of belongings (land ownership letter called *eigendom*) belongs to the Sultanate. Conflicts over land tenure arrangements also occur between the laws of the former governor of the swapraja government and the Basic Agrarian Law. This evidence in the Special Region of Yogyakarta has caused conflicts between individuals and government agencies related to the existence of the palace land.

It is known that in the fourth Dictum of the Second Book in letter (A) the Provisions for the Conversion of the Basic Agrarian Law which states that the rights and authorities over land and water from the *swapraja or ex-swapraja* regions that were still in existence at the time this Law came into effect were this Law is abolished and transferred to the State. Then, it will be further regulated in

Letter (B) matters related to the provisions in letter A above, which Government Regulation further regulates. The absence of a Government Regulation that specifically regulates swapraja and former swapraja lands raises legal uncertainty for swapraja and former swapraja lands in Indonesia, especially in the Special Region of Yogyakarta. That is also supported by the public and bureaucrats' perception in the Special Region of Yogyakarta that lands that have not been clung to individual rights/state land belong to the Palace. According to information from the special secretary of Yogyakarta in 2014 as follows:

Table 1: Land area of Sultan Ground and Pakualaman Ground in DIY

No.	Regency Location	Area (m^2)	Percentage (%)
1.	City of Yogyakarta	82.000	0.16
2.	Bantul Regency	22.767.859	44.97
3.	Sleman Regency	928.338	1.83
4.	Kulon Progo Regency	26.451.247	52.24
5.	Gunungkidul Regency	402.950	0.80
	Total amount	50.632.394	100.00

Source: Results of the Setda DIY Governance Inventory Activity, 2014

Suppose that the sum of the sultan's ground and the land area in the special area of Yogyakarta is 50,632,394 m^2 or 50,632394 km^2 compared to the province of Yogyakarta special area of 3,185.80 km^2 if presented with ± 1.58%. This description shows the potential for a considerable dispute between property in the special province of Yogyakarta with sultan ground and Pakualaman ground in special regions of Yogyakarta.

In terms of land ownership after the promulgation of Law Number 13 of 2012 concerning Yogyakarta Privileges, the Sultan Ground belongs to the Sultanate while Pakualaman belongs to the duchy. In addition, Article 32 paragraph (1) of Law Number 13 of 2012 states that in the implementation of the authority of land affairs, the Sultanate and the Duchy are declared as legal entities. The position of the Sultanate and duchy in the land sector became dualism. The meaning of dualism is because the position of the Sultanate served as the governor of the Yogyakarta Special Region and the duchy served as the deputy governor of the Yogyakarta Special Region.

Land ownership concepts that are hereditary do not apply to Sultan Ground because the ownership rights are attached to the position of the Sultan of Yogyakarta, so if the Sultan of Yogyakarta later dies, then the Sultan Ground will not automatically descend to his heirs. However, the status of the property belongs to the king who continues to govern the palace in Yogyakarta. The Sultanate Land and the Duchy Land in development have been reduced, and this is since many ownership rights have been released to other parties, including:

1. According to domein, as stated in Article 1 Rijksblad Kasultanan Number 16 of 1918, and Duchy Rijksblad Number 18 of 1918, it appears that there have been lands that have been given to foreigners with ownership rights under western law called eigendom rights.
2. There is also the Sultanate land and the Duchy land, given to indigenous citizens, for example, those in the Township. They have been utilized by indigenous people based on the *Rijksblad* Kasultanan Number 23 of 1925 and the *Rijksblad* of the Duchy of the Republic of Indonesia Number 25 of 1925, in which they were granted the rights of andarbe or property rights under customary law.

B. Legal Perspective of State Finance

In the perspective of state finance law, it has been regulated in Law Number 1 of 2004 concerning State Treasury. The main focus of this research is related to securing state land so that the ownership is not transferred to third parties. The General Explanation of the State Treasury Law states that the point of view adopted in the regulation of state property is a view to preventing the transfer of ownership of state property, including land, to other parties.

In line with the development of state financial management needs, the importance of the treasury function is related to the context of efficiently managing limited government financial resources. The treasury function includes, in particular, good cash planning, prevention so as not to leak and deviate, finding the cheapest source of financing, and utilizing idle cash to increase the added value of financial resources. In line with the security point of view, Article 49 paragraph (1) of the State Treasury Law also regulates that any state / regional property in the form of land controlled by the Central / Regional Government must be notarized on behalf of the Government of the Republic of Indonesia / the relevant regional government. Of course, the regulation in the Article also explains that the paradigm of securing state property adhered to in the State Treasury Law is technically realized by certification, an example of asset performance is part of an asset management strategy intended to align with the expenditure strategy in achieving organizational goals (Brown and Humphrey, 2005).

The regulation of State Property appears in Government Regulation Number 27 of 2014 concerning Management of State / Regional Property as an implementing regulation for the State Treasury Law. The Government Regulation in Article 3 paragraph (2) regulates that the obligation to certify State land falls within one of the stages of the scope of management of state / regional property, namely at the security and maintenance stage. Meanwhile, Article 43 paragraph (1) of this regulation is also reaffirmed by certifying state-owned land in the security stages.

Using the point of view to prevent the transfer of ownership of state property, including land, to other parties, it removes state property from the list of goods by issuing a decision from an authorized official to free the Property Manager, Property User, and or Authorization of the User of Goods from administrative and physical responsibility for the goods under their control. However, then enacted Law Number 13 of 2012 concerning the Privileges of the Special Region of Yogyakarta has the potential to come that many disputes will occur between court-owned land, either Sultanate or duchy by Law Number 13 of 2012 with State Property in the Special Province of Yogyakarta. In a broader scope, the management of state assets has never been separated from Strategic Asset Management (SAM). The SAM approach encompasses asset management throughout the entire lifecycle, from planning to disposal (Puspitarini and Akhmadi, 2019). The disharmony between the State Treasury Law and the Yogyakarta Special Region Privilege Law on the Management of State Property does not interfere with SAM. From the considerations above, it is deemed necessary to seek the resolution of disputes in the land sector.

C. Land Dispute Resolution

Dispute resolution is a case settlement that is conducted between one party and another party. Dispute resolution consists of two ways, namely through litigation (court) and non-litigation (outside court). In the process of dispute resolution through litigation is the last option (*ultimum remidium*) for the parties to the dispute after settlement through non-litigation to no avail.

According to Article 1 number 10 of Law Number 30 of 1999 relating to Arbitration and Alternative Dispute Resolution, conflict resolution through non-litigation (out of court) consists of 5 ways, namely:

1. Consultation: an action taken between one party and another party called a consultant.
2. Negotiations: a settlement outside the court to reach a mutual agreement based on more harmonious cooperation.
3. Mediation: settlement through negotiations to achieve an agreement between the parties with the aid of the mediator
4. Conciliation: A conciliator assists dispute resolution, whose function is to mediate between parties to find solutions and reach an agreement.
5. Expert Assessment: expert opinions on matters of a technical nature and under their area of expertise.

Another form of settlement outside the court that turned out to be one of the settlement processes carried out in court (litigation) is mediation. From this article, we know that mediation is an out-of-court settlement, but mediation is carried out in court in its development. Article 1 number 1 of Law Number 30 the Year 1999 relating Arbitration and Alternative Dispute Resolution

explains that the settlement of disputes outside the court recognizes the existence of an arbitration method, namely the settlement of a civil conflict outside the court based on an arbitration agreement created in writing by the parties disputing party.

The advantages of conflict resolution outside the court, namely

1. Provide a final decision.
2. Measurable and more cost-effective than arbitration or court.
3. Flexibility in the process can help resolve disputes.

However, on the other hand, there is a lack of dispute resolution outside the court, i.e.

1. Have no tools to carry out executions of decisions.
2. It does not contribute to legal confidence for the management of state property.

On the other hand, dispute resolution through a court of law, i.e., is submitted to a general court in civil if the dispute is about settling land ownership rights or settling a dispute through a state administrative court. However, based on Law Number 51 / PRP / 1960 regarding Prohibition of Use of Land without a Right of Permit or Proxy, the central government has a stronger position than other parties. The regulation weakness is that a dispute arises between the central government and the palace or duchy as the owner of the sultan ground and Pakualaman Ground.

The drawback is that the land disputes that are resolved through the courts are less effective since these require a relatively long time and immeasurable costs. However, the advantages of dispute resolution through the court, namely

1. Provide a final solution.
2. Having the tools to carry out executions of decisions.
3. Provide legal certainty for the manager of state property.

Both of weaknesses and strengths resolved through court and non-court, it is necessary to resolve disputes outside of the two systems above, namely to draw up a draft Government Regulation or the same level that regulates agreements between the regional government and the palace or duchy. In addition, the matters that need to be regulated include procedures for settlement, compensation process according to the agreement, taking legal actions in good faith without involving other parties.

CONCLUSION

Dispute resolution both inside and outside the court has consequences, both strengths, and weaknesses. State property managers have fears of disputes and dealing with the law for an extended period.

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Undang-Undang Dasar 1945 yang telah diamandemen keempat.

Undang-Undang Nomor 1 Tahun 2004 tentang Perbendaharaan Negara

Undang-Undang Nomor 13 Tahun 2012 tentang Keistimewaan Daerah Istimewa Yogyakarta,

Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan.

Undang-Undang Nomor 30 Tahun 1999 tentang Arbitrase Dan Alternatif Penyelesaian Sengketa.

Undang-Undang Nomor 20 tahun 1947 Pengadilan Peradilan Ulangan,
Undang-Undang Nomor 14 tahun 1970 tentang Ketentuan-ketentuan Pokok Kekuasaan Kehakiman joucto Undang-Undang Nomor 48 tahun 2009 tentang perubahan kedua atas Undang-Undang Nomor 14 tahun 1970 tentang Kekuasaan Kehakiman,
Undang-Undang Nomor 14 tahun 1985 tentang Mahkamah Agung joucto Undang-Undang Nomor 3 tahun 2009 tentang perubahan kedua atas Undang-Undang Nomor 14 tahun 1985 tentang Mahkamah Agung,
Undang-Undang Nomor 2 tahun 1986 tentang Peradilan Umum joucto Undang-Undang Nomor 49 tahun 2009 tentang perubahan kedua atas Undang-Undang Nomor 2 tahun 1986 tentang Peradilan Umum

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