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Discourse on the Land of the Wewengkon Sultanate of Kasepuhan Cirebon: Perspective of the Right to State Control

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The status of Kingdom/Sultanate lands in Indonesia which was conceptualized as *swapraja* land or former *swapraja*, in the political development of these lands was abolished and taken by the State through Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles or Agrarian Law. Cirebon City Government has a different view from the Kasepuhan Cirebon Sultanate on the right to control the state with the issuance of a letter of recognition of the authority of the land to become a former land of self-government. While the Kasepuhan Cirebon Sultanate insisted that the land of wewengkon was a hereditary land belonging to the Sultan. Different understanding of the same object has implications for the position of authority land. The purpose of this research is to reveal the understanding of the parties and jurisprudence related to the position of authority land, and examine the perspective of the state's right to control using the Socio-relief methodology, which is to look at the contextual law or represent the relationship between the context or social conditions in which the law originates and examine the social and legal realities. which applies to a gap. The results of the study indicate that there is a Supreme Court Decree related to the land that is identified with the Sultan's grant. The right to state control over the lands controlled by the Kasepuhan Sultanate over the wewengkon land, in this case the Cirebon City Government was given regulatory authority and policy making. So that the Cirebon City Government has the right to provide a policy of control of the lands of authority of the Sultanate of Kasepuhan as land owned by the Sultan.

Key words: *Authority Land, National Law, The Right to State Control*

Introduction

The founders of the Republic of Indonesia realized the importance of land, so that they paid special attention to drafting a constitution of the land, which then used the term agrarian. The State Constitution of the Republic of Indonesia grants the authority to regulate land to the State as the highest power organization to implement it. This authority is formulated in Article 33 paragraph (3) Indonesian Constitution 1945, this Article explains that everything in the territory of Indonesia starting from the surface of the land, water and wealth contained on the face of the earth or in it without exception, those are controlled by the state and used as much as- great for people's prosperity. The principles of people's prosperity are then contained in Article 2 of the Agrarian Law, containing a very basic constitutional mandate that the use and use of land must bring maximum prosperity to all Indonesians.

Before independence, the existence of lands in Indonesian territory was known as feudal law, which occupied the land as the king's property while the people could only be granted use rights or lease rights. The Dutch East Indies period regarding land which was originally regulated under local customary law or the King or as an indigenous Sultan was considered to be the property of the Dutch State based on the 'domeinverklaring' theory. real ownership is the local population as well as the heads and local kings or sultans. Until the arrangement and management of land owned by the State/Netherlands in the Swapraja region produced an Agrarian Law that was specific to the Swapraja area. (Kurniawati, Nia et all, 2012)

After independence and the formation of the Unitary State of the Republic of Indonesia in 1945, it affected the existing land issues, especially with the enactment of the Agrarian Law in 1960. The former colonial lands in the development of legal politics were nationalized or converted and regulated directly in the Agrarian Law. Regarding to the status of royal lands which are then conceptualized as swapraja or ex swapraja land in political development, these lands were abolished and taken by the state because of the Law, confirmed in the Agrarian Law Dictum fourth (a).

After the enactment of the Agrarian Law 1960 in the territory of Indonesia, the Kasepuhan Cirebon Sultanate, West Java was no exception. In 1961 the Cirebon Municipality was led directly by Mayor Prabowo to form a landreform committee to carry out the purpose of landreform, which was to realize social justice in the distribution of land for Indonesian citizens including the wewengkon land that was controlled by the Kasepuhan Sultanate of Cirebon. The existence and position of the wewengkon land of the authority multi-interpretation wewengkon land that is captured by everyone in interpreting or reading can be different or not at all. These characteristics as long as the different perceptions regarding the concept of land swapraja there is no clarity from the government, the legal certainty in the community will be difficult to achieve.

Differences in understanding of opinions regarding the position of wewengkon land between the Cirebon City government, the State Defense Agency /Agrarian and Spatial Planning of Cirebon City, the Court/Supreme Court and the Kasepuhan Sultanate of Cirebon, and the people of Cirebon. Until the issuance of a letter of Recognition of the swapraja or ex swapraja lands by the government. The government does not recognize the concept of wewengkon land in the community, while in reality the community recognizes wewengkon land as ownership of land. This existence is recognized by the existence of an execution decree which gives an indication of the status of the existence of wewengkon land in several decisions of the Supreme Court.

Cirebon City Government, as if ignoring what has been decided by the Supreme Court, the difference of opinion between the Sultanate and the government of the same object, namely the land occupied by the Sultanate of Kasepuhan. State of the Delegation of power or authority to exercise state control rights over the swapraja or ex swapraja land part of the earth and water and natural resources contained therein controlled by the state set out in Article 2 paragraph 2 of the Agrarian Law, giving the state to: (a) regulate and carry out the designation, use, supply and maintenance of Indonesia's earth, water and space; (b) determine who regulates legal relations between people and the earth, water and space, (c) determines and regulates legal relations between people and legal actions concerning the earth, water, and the space. Then in the Constitutional Court Decision No. 22 / PUU-I/2003, the notion of "controlled by the state" is not interpreted as ownership in the sense of private by the state, the decision gives a mandate to the State and Regional Government related to the authority in the state's right to control. Because the state is not the owner but only becomes the highest holder with public obligations, the state only has the right to administer and regulate diagrammatic relationships or the Dutch term dominium utilet-Lat. (Carel, Asser's P. Scholten, 1945)

Results and Discussion

Understanding of the Parties and Jurisprudence Related to the Status of the Land of the Sultanate of Kasepuhan authority

Cirebon people are familiar with the term authority of the Sultanate of Kasepuhan Cirebon, since before the independence of the Republic of Indonesia. As the land of the king only passed down to the king who was inherited by the previous king. The lands which are privately controlled, in essence are private lands such as private lands in other regions, namely when Sunan, Sultan or Raja died, the land was inherited by his successor. Wewengkon land can be leased to the public by receiving a permit to use issued by the sultanate. If the land is owned by the community, there must be a release letter from the palace.

The understanding of wewengkon land owned by the Sultanate of Kasepuhan Cirebon by the Sultanate and the people of Cirebon, which is a hereditary land owned by the Sultan, has

changed into a swapraja or ex swapraja land by the Government. These changes occurred after Indonesian independence and the issuance of the Agrarian Law. Differences in understanding of the land controlled by the Kasepuhan Cirebon Sultanate make uncertainty or unclear position of the wewengkon land until now. The difference in understanding, can be seen in the table below:

Table 1. Understanding of wewengkon land the Sultanate of Kasepuhan Cirebon

No	Side	Comprehension
1	Cirebon City Government	The wewengkon land controlled by the Sultanate of Kasepuhan Cirebon is a exs swapraja land of self-government. Based on Dictum Fourt (a) in the Agrarian Law. The government does not recognize the existence of authority land in the city of Cirebon. With the argument of land, the authority does not include the list of recognition of land rights in the Agrarian Law.
2	Sultanate Palace in Cirebon	Wewengkon land is a land passed down from king to next king. According to Prince Raja Roeslan that the land of wewengkon or the heirloom of the Sultan's Kagungan is the right to customary land belonging to the sultan with limited area.
3	State Land Agency / Agrarian and Spatial Planning of Cirebon City	Not familiar with the term wewengkon land, the existing land controlled by the Sultanate of Kasepuhan Cirebon is a swapraja or ex swapraja lands. With the issuance of: 1) letter number 179 / Agr / 8/61 dated December 14, 1961 and; (2) announcement Number 01 / Peng / 61 dated December 28, 1961; (3) The National Land Agency with letter number 400-1581 on June 24, 2003 which contains lands controlled by the Kasepuhan Palace of Cirebon are exs swaparaja lands which later became state land.
4	Court / Supreme Court	There are several decisions related to wewengkon land: - Supreme Court Decision No. 1825 K / Pdt / 2002 which is the core of the decision states that the plaintiff is the holder of the inheritance of customary land from Keraton Kasepuhan, the wewengkon land that was identified with Grant Sultan. - Republic of Indonesia Supreme Court Decree No. Reg.558/K/Pdt/1997 year 1997 and Establishment of the Supreme Court of the Republic of Indonesia No.02 / PEN.EKS / 2003/PTNU-BDG, which states that these lands are hereditary rights (wewengkon) of the Keraton Kesepuhan Cirebon as a hereditary right is recognized as a right to land.
5	Cirebon City Community	- Understanding the land controlled by the Sultanate of Kasepuhan Cirebon is the Sultan's land.

The table above shows that there is a different understanding of wewengkon land, both from the government, the State Defense Agency/Agrarian and Spatial Planning of Cirebon City, the Court/Supreme Court and the people of Cirebon. Each maintains and has its own argument. Wewengkon land is Kasultanan Kasepuhan Cirebon land with an area of around 367,1400 hectares spread in area III of Cirebon. The existence of wewengkon land until now still exists and is recognized by the people of the City of Cirebon, as evidenced by the still circulating land lease agreement between the Sultanate and the people of the City of Cirebon. The status of the Kasepuhan Cirebon Sultanate land is partly in authority and partly controlled by the Cirebon City Government. (Citra Delima, Syafira, Sudaryatmi, Sri, Triyono, 2016)

The concept of swapraja land is a positive legal concept or ius constitutum in Indonesia. When implemented in the city of Cirebon, this presence led to a prolonged land conflict. De facto and de jure of wewengkon lands are categorized as ex swapraja land by the Cirebon City Government, land distributed in the context of implementing land reform has become state-owned land. The dominance of the state in analyzing a single concept made by the government regarding self-governing swapraja land universally applies without considering that each kingdom/Sultanate in various regions in Indonesia has a different history, jurisdiction and politics so that it has its own uniqueness and uniqueness, one of which is the implementation of political contracts in the form of agreements including therein about land with the Dutch East Indies.

Self-governing or swapraja or ex swapraja territories must submit to those who authorize or govern themselves through agreements. The Dutch divided the position of the Kingdom in two political contracts, namely: (1) the Dutch East Indies government agreement with the local kingdom through contract lange and (2) the local kingdom with the Dutch East Indies government to run a short agreement or verklaring contract. (M. Fauzi, Razif, Fauzi Rachman, Noer, Farid, Humal, 2017) The verklaring contract agreement in the swapraja power was an absolute condition, namely a short statement of the recognition of the king or the indigenous ruler of the Dutch colonial power, which was continued by establishing military posts or fortifications. (Reid, Anthony,1979)

As stated by Boedi Harsono regarding the concept or understanding of self-government and to be a doctrine or reference to the existence of self-government, where Swapraja is a government territory that is part of the Dutch East Indies, whose head of the region (as: Sultan, Sunan, Raja or other customary names), based on an agreement with the Government of the Netherlands East Indies organizing self-government (in Indische Staatsregeling 1855 Article 21 called: Zelfbestuur) in the relevant region, each based on the agreement and the customs of their respective regions. (Harsono, Boedi, 2003) Furthermore G.J. Resink gave an explanation of the contractual agreement that the treaty relationship between the Dutch Government and the Sultan and the Indigenous King was an international relationship between countries. The principle of

international treaty relations, and applies to all kings in the Indonesian archipelago, including on the island of Java, is recognized as a subject of international law. (Reid, Anthony, 1979)

Based on the description above, historically the position of the kingdoms was governed by a political contract with the verklaring contract which contained the statement that the kingdoms recognized Dutch authority and obeyed all regulations that had been established. Unlike the Yogyakarta Sultanate and the Pakualam Duchy, Surakarta and Mangkunegara, historically the position of the kingdoms was governed by political contrac with the verklaring contrac. (Arnidya Sari, Putri, Silvana, Ana, Basuki Prasetyo, Agus, 2016) Cirebon has never entered into a political contractual agreement with the Dutch East Indies. The truth about what was conveyed by Sultan Sepuh XI was confirmed by the actions taken by the Governor General Raffles through Statements Resolution on July 20, 1813 and the deed of Transfer of Rights to the Sepuh Sultan of Cirebon VII Prince Djoharuddin and his heirs dated October 19, 1815 as proof that land owned by Sultan Sepuh is still recognized as the property of the King. The Sultanate of Kesepuhan Cirebon was no status swapraja again longer independent before the birth of the Republic of Indonesia.

The Cirebon City Government, the State Land Agency/Agrarian and Spatial Planning of Cirebon City still think that the wewengkon the swaparaj or ex swapraja land. Even though there has been a judge's decision, it can still be postponed by the hegemony of the authorities. In this case the Cirebon City Government, disobeying the reality of the Supreme Court's ruling regarding the land of Keraton Kesepuhan, shows that politics has more influence than law. With the reality of the difficulty of the Keraton Kesepuhan party in obtaining ownership rights to the authority of land that is ancestral land. (Amal, Bakhrul, 2016)

The Supreme Court's decision related to wewengkon land identified with Grant Sultan in the provisions of the conversion of Article II of the Agrarian Law, old rights to new rights, such as customary/ ex customary land such as gogol land, kasikepan land, foundation land, sultan's grant. Grant Sultan's position becomes the right of ownership, so it can be said that the position wewengkon land is the property of Sultan Kasepuhan Cirebon. Related to property rights according to John Locke, who hold a liberal view that property rights as one of the institutions that are naturally inherent in every human individual. Regarding the land rights created by the Swapraja Government such as Grant Sultan, lands with customary rights and the Dutch Indies Government's creation rights and the swapraja can be said as customary land rights granted by the swapraja government, land in Indonesian law has status or the status of the law itself regardless of the legal status of the subjects who have it. (Harsono, Boedi, 1997)

The status of the authority of the Sultanate of Kasepuhan Cirebon authority in the perspective of the Right State Control

John Locke postulates that all individuals are endowed with a natural inherent right to life, freedom and property which is their own and cannot be transferred or revoked by the state. (Locke, John, 1960) This confirms that ownership of land is a natural right and every individual has the freedom to own it and transfer it. Observing the right to control the state over swapraja lor ex-swapraja lands abolished then become land under state control by the Agrarian Law, of course it cannot be separated from the formulation of Article 33 paragraph (3) of the Indonesian Constitution 1945, concerning the earth and water and natural wealth in Indonesia and those contained in the bowels of the earth controlled by the State, and used for the greatest prosperity of the people of Indonesia. But in the body as well as the explanation of the Constitution Indonesian 1945, there is no implied explanation regarding the nature and scope of control of the state. Explanation of the Indonesian Constitution 1945 explains that only the earth and water and natural resources contained in the earth of Indonesia are the main points of people's prosperity, so they need to be controlled by the state and used as much as possible the people's prosperity. If it is associated with the concept of the welfare state and the function of the state, as a regulator in the sense that the state has the power to regulate, as ruler and referee. (Zulkifli, Makmud, 2009)

As formulated in Article 33 paragraph 3 of the Indonesian Constitution 1945. The principle of Domeinverklaring (domein statement) contained in Article 1 "Agrarische Belsuit" (S.1870-118) which explains as follows: Behouden opvolging van de rwede en derde bepaling der voormelde wet, blijft het beginsel gehandhaafd, dat alle grond, waarop neit door anderen regt van eigendom wordt bewezen domien van de Staat is "(does not reduce the enactment of the provisions in paragraphs two and three of the Agrairiche Wet, so that the principle is maintained, that all lands that the other party can prove, that the land is the eigendom land, it is the state domein. "(Harsono, Boedi, 1997) According to Lamaire, Article 33 paragraph (3) of the Indonesian Constitution 1945 is a" deze bepalingen geven vorm aan eigen Indonesich "or provisions that are uniquely Indonesian, namely as provisions only found in Indonesia which gives such authority to the country."(WLG Lemaire, 1955)

Formally the right to control the state is then re-spelled out in Article 2 paragraph (2) of the Agrarian Law, giving the State the authority to regulate and administer the designation, use. The supply and maintenance then determines and regulates the legal relations between people and legal actions that are entirely related to matters concerning earth, water and space. So that sociologically the right to control the state gives such broad authority to the government in terms of land acquisition for the welfare of the people. Furthermore, in the formulation of Article 2 paragraph (4) of the Agrarian Law : "The controlling right of the State can be enforced to the autonomous regions (local government) and the customary law community, merely

necessary and not in conflict with national interests according to the provisions of Government Regulation. " So that in the provisions of Article 2 paragraph (4) of the Agrarian Law, the basic authority of the government in the land sector can be delegated by the Government to the Regional Government.

The authority of the regional government in the land sector becomes the basis for the holder of the right to control the land to use the land according to its purpose and designation. The status of land that can be controlled by the regional government is the right to use and management, the right to use and management as part of the right to control the land in it contains the authority, obligations and prohibitions for the regional government. both rights. (Santoso, Urip, 2013)

Cirebon City Government through the sub-section of land in the state's right to control the lands controlled by Kasultuhan Sultanate wewengkon of land that is conceptualized as ex swapraja land constitutes the authority exercised by the land sub-sector in terms of regulation and policy making conducted the government by formulating and implementing policies on control, provision, use of land and other natural resources. So that the Cirebon City Government has the right to provide a policy to control the lands of authority of the Kasepuhan Sultanate. If it is related to the interpretation of the state's right to control the land it is established in the Constitutional Court Decision No. 22 / PUU-I / 2003 which gives a mandate to the state to the government and regional government, with the granting of authority in the field of land in carrying out this authority to regulate (regelendaad), management (beheersdaad), policy (belied), management (bestuursdaad) and supervision (toezichthoudensdaad) to land for the purpose of the maximum prosperity of the people. (Arizona, Yance, 2014)

The relationship between the right of control in the hands of the state and the rights of the population of the country such as the Sultanate of Kasepuhan Cirebon the right to control the state in the Indonesian Constitution 1945 is that the State is the holder of 'ownership', to regulate the relationship between the people or citizens of Indonesia for the prosperity of the people. The Republic of Indonesia is the master (empu), not the owner (owner) of the land within the jurisdiction of the state. As the master and holder of the highest state sovereignty rights, the state has power and full authority in controlling land with public legal obligations to regulate, manage, guarantee and maintain the use and use of land by all people as Indonesian citizens. (Kurniatiwati, Nia, et. Al, 2012)

Property rights basically cannot be disturbed, but state control has the authority to revoke a person's private rights against his will, in the public interest or granted to another party. (Ardiwilaga, R. Roesandi, 1962) In accordance with the philosophy of the Nation and the State based on Pancasila and the Indonesian Constitution 1945, analogy with the theory of ownership of 'property rights' (domain) Roman law and Indonesian Traditional Land Law

(beschikkingsrecht), the nature of the meaning and meaning of property rights in relation with 'the right to control the state', 'state land', and the rights of the nation are the same as 'jus possessionis'. Then the legal force is 'belongs' (passessio) so that the holders of their rights are called 'the owner' (passessor) while the civil rights are called 'ownership rights' or jus possesionis. The Republic of Indonesia is not a 'land owner' (dominus) with the legal position as the holder of 'highest absolute property rights' (dominium eminens) accompanied by power and authority as the 'true land owner'. (Kurniawati, Nia, et, all, 2012)

As is known that the land sector is placed as a concurrent matter so that the division of authority between the Government, the Provincial Government and the City Government of Cirebon in the authority of the ownership of the Kasepuhan Cirebon Sultanate is proportionally based on externality, accountability, efficiency. Furthermore, it is explained about the right to control the state in Article 2 paragraph (4) of the Agrarian Law which is the basis of the Cirebon City Government in controlling the authority of the wewengkon land that is conceived of as a swapraja or ex swapraja land. Regarding the authority, it gives space for interaction to convey explanations as input for the Central Government, such as consideration of the status of authority land. Kewengkon land is different from the lands controlled by the Sultanate/ Kingdom in Java.

Conclusions

Diversified understanding of the parties related to the position of authority according to the Cirebon City Government, the National Land/Agrarian Land Agency of the City of Cirebon, states that the land of authority is a land that is categorized as land of ex swapraja land such as what is contained in the fourth dictum (a) of the Agrarian Law abolished and taken over by the state to become state land. On the other hand, the Sultanate of Kasepuhan Cirebon and the people of the City of Cirebon understand that the land of wewengkon is a hereditary land from the king to the next king. For the people of Cirebon, the wewengkon land is understood as the land owned by the Sultan, as land that is privately controlled by Sultan Sepuh, which is then categorized as the land of former autonomous land by the Cirebon City government. The Supreme Court's decision related to authority land identified with the Sultan's grant in the provisions of the conversion of Article II of the Agrarian Law, old rights to new rights, such as customary/former customary land such as Gogol land, Kasikepan land, Foundation land, Grant Sultan. Grant Sultan's position becomes the right of ownership, so it can be said that the position of authority of the wewengkon land is the property of Sultan Kasepuhan Cirebon.

The provisions of Article 2 paragraph (4) of the Agrarian Law, the basis of government authority in the land sector can be delegated by the Government to Regional Governments. Cirebon City Government through the sub-section of land in the state's right to control the wewengkon land that has been conceptualized as ex-autonomous land. The authority is

regulation (regelendaad) and policy making (beleid), by formulating and implementing policies regarding the control, supply, utilization of land and other natural resources. So that the City Government of Cirebon has the right to regulate through the making of policies related to the wewengkon land of the Sultanate of Kasepuhan. The authority provides an interks room for the Cirebon City Government to provide input for the Central Government, with views from various aspects of history, jurisdiction and politics. By placing that the land sector is placed as a concurrent matter so that the division of authority between the Government, the Provincial Government and the City Government of Cirebon in the authority of the ownership of the Kasepuhan Cirebon Sultanate is proportionally based on externality, accountability, efficiency.

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