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FROM AFFIRMATIVE INTO DISCRIMINATIVE: THE MISERABLE CONDITION OF THE INDIANS AND CHINESE LAND RIGHTS IN SPECIAL REGION OF INDONESIA

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This paper traces the historical concept and its implementation of land ownership policy in the only special region of Indonesia, namely Yogyakarta. The concept of Uniformity of Giving the Right on Land Policy merely to indigenous and banning the non-indigenous from the land ownership rights was intended as affirmative action to pressing the gap of poverty in Yogyakarta. The legacy of the past when the colonial era placed the indigenous in the lowest class became the main reason that was used as the root for causing social gap with non-indigenous. Land as a key capital in human life is used as an instrument to reduce and press the social gap from poverty. A concept taken from the inheritance of past policies with local and colonial influences was issued by the government which later became known as the 1975 Instruction. The results of the study showed that there were inconsistencies in the implementation of the land ownership policy in Yogyakarta. The ban on land ownership only targets Indians and Chinese, while other non-natives (i.e. Arabs) still hold land ownership title in Yogyakarta. Actions intended as affirmative instead turn into discriminative. Therefore, the Indians and Chinese are victims of human rights violations by the Yogyakarta government because they are only allowed to own the Right of Building, and are prohibited from owning land property rights. In response to such circumstances, there is a unique pattern that shows a perfect contradiction because there are differences between Indians and Chinese facing discriminatory actions and violations of human rights to them. The Chinese people chose to carry out resistance by taking legal action; on the other hand, the Indian people seem to have come to terms with the situation.

Keywords: land rights, Yogyakarta, Indonesia, Non-Indigenous, Indians, Chinese, Discrimination

Introduction

Indonesian administrative system divided into 38 regions, there are five regions that have the status of special regions, namely the Special Capital Region of Jakarta, Aceh, West Papua, Papua, and the Special Region of Yogyakarta. Regions with such status have their own characteristics in their own governing arrangements under the central government. Status as a special or special region is usually obtained based on a certain importance of an area whether based on events or its functionality. Of the five regions, Yogyakarta became the first area to have a special position or status since the proclamation of independence was carried out by Indonesia and still survives today.

The privilege of Yogyakarta is an legacy that has existed since before Indonesia's independence [Baskoro and Sunaryo 2010, 3; Santosa 2016, 1]. In the historical records Yogyakarta as a *swaprja* region had an unusual position, during the Dutch colonial rule it became an area with *Vorstenlanden* status, while under Japanese occupation it had the status of *Kooti*. After the proclamation of independence by the Indonesian nation, it immediately

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and accompanied by careful consideration of Yogyakarta (formerly the Sultanate of Yogyakarta and the Duchy of Pakualaman) on September 5, 1945 announced its integration with the Republic of Indonesia with a proclamation that emphasized the existence of a special position with its direct relationship with the central government in Jakarta.

Yogyakarta's position as a special region has been guaranteed through laws and regulations. Law No. 13 of 2012 became the most recent foundation regarding the privileges of Yogyakarta. As a region that has a special status, there are some autonomies or authorities given by the central government to Yogyakarta that are not given to other regions. The authorities possessed by Yogyakarta as stated in the official law as juridical rules of a constitution reflect the existence of rights and duties accompanied by obligations that must be carried out. Judging from the current context of privileges, there are at least three things that are referred to as the characteristics of Yogyakarta that make it special, that is politics, culture, as well as land and spatial planning [Luthfi et al. 2009, 9].

The three elements that characterize the privileges of Yogyakarta compared to other regions or provinces above are additional authority or separate authorities that Yogyakarta only has as a province part of Indonesia. The existence of these differences does not make Yogyakarta separated from the dynamics that are also experienced by other regions; in fact sometimes these privileges can be a trigger for their own problems in the implementation of government for the people of Yogyakarta. Of the three elements, land is the issue that arises most often compared to others. The results of research conducted by [Faihaan 2015, 183] reported that the perception of the people of Yogyakarta, especially the youth in responding to the privileges of their region, showed a lack of views that were only about land affairs compared to other indicators of privileges.

In its historical frame, although it is a special region with a special status, but in fact it cannot make Yogyakarta be spared from these land problems. Local newspaper *Bernas* on August 30, 2017 reported that there was a conflict regarding the *Pakualaman Ground* land with farmers related to the land for Yogyakarta International Airport or often referred to as the NYIA Project. On the other hand, Hieronymus Purwanta (2007) stated that there are also efforts to commercialize the use of *Sultanaat Ground* by the palace which can trigger conflicts because it directly intersects with the use of the user community. And the problem of land ownership rights in Yogyakarta most often arises to the central government. The matter was even brought to the realm of the Indonesian National Constitutional Court [Kusuma 2019; Hadi 2019].

The social phenomena above are some snippets of the many problems in the land sector that occur in the Special Region of Yogyakarta. It seems that there are frictions that take place in people's daily lives which are feared to trigger social conflicts. Moreover, the issue of land ownership rights in Yogyakarta is often being problematic for the central government in Jakarta. As a province that has a special status, everything that is feared to lead to social conflicts that occur in society must be sought to be avoided and handled properly. Moreover, the meaning of privileges is important for society so as not to be immersed in the course of future historical currents [Suryo et al. 2008]. So that the privileges of Yogyakarta are not only based on the legacy of the past but can also be maintained in the present, which is able to become a good history also in the future without the meaningful problems.

The issue of land is very important and crucial to discuss because it often causes social frictions in the society. Land is a basic human need, as long as human life always interacts and relates to land [Hidayat and Lukitaningsih 2022, 161]. The many uses, benefits and functions of land in supporting the activities of human life make human relations with land very complex, magical, influencing ways of thinking, economic activities and the meaning of land. Land has an important position in life so there are often struggles regarding land rights which lead to conflicts in the community. Land rights became indispensable for formalization. Formality through the issuance of land title certificates is the strongest basis in Indonesia's agrarian system. There is a lot of hope to eradicate poverty through formalization [Sjaastad and Cousins 2009, 1].

Efforts to eradicate poverty through land formalization were pursued by the special region of Yogyakarta through the 1975 Instruction. The 1975 Instruction was intended to be an affirmative action as a way to cut the existing poverty gap. The principle of affirmative action is to promote societal equality through the preferential treatment of socio-economically disadvantaged people. Often, these people are disadvantaged for historical reasons, such as oppression or slavery [Jaffrelot 2003, 321]. Land as a key capital is organized to eradicate capitalism and land tenure by a small percentage of capital holders in power. Through its privilege as the only region that has the authority to regulate its own land in Indonesia with its various dynamics.

The description above can be briefly narrated that there is a dynamic in land regulation in Yogyakarta as a region that has a special status in the Republic of Indonesia. So that related to land problems or issues in Yogyakarta need to continue to be read again [Luthfi et al. 2009, 5]. The prime objectives of this paper are to trace the historical concept of land ownership policy and its implementation in Yogyakarta as the special region of Indonesia, also the non-indigenous responses to injustice.

Methodology

The research method used is a descriptive qualitative and sociohistorical approach. The use of a qualitative approach is intended to understand and analyze the phenomena that occur in the concept and implementation of land rights arrangements in Yogyakarta through relevant reports and documents. The data are obtained from both primary and secondary sources. Primary sources such as archives from news reports were used to collect data related to implementation. In addition, books and journals have also been collected to make this research informative and authentic regarding the concept and expansion of interpretation of the implementation of land ownership rights in Yogyakarta.

Historical Concept of Land Ownership Policy in the Special Region of Indonesia

Land regulation in Yogyakarta as a special region has differences compared to other regions in Indonesia, especially regarding land authority. Yogyakarta only grants land ownership to indigenous, while non-indigenous are not allowed to get property rights and only get building use rights. The concept of land ownership authority in Yogyakarta is contained in “Instruction of the Head of the Special Region of Yogyakarta Number K.898 / I / A / 1975” or usually often referred to as the 1975 Instruction. Basically the concept is interpreted as “The Uniformity Policy of Land Ownership for Non-Indigenous” [Purnomo 2020, 136]. The instruction stated that, as of 1975, the Yogyakarta Government had yet to issue ownership certificates to non-indigenous and would continue not doing so [Tania and Satriawan 2021, 10]. The non-indigenous who bought land from the indigenous were expected to release ownership to the Yogyakarta Government, and then ask for land rights other than land ownership title (generally rights to building). Under the rights of building, for instance, non-indigenous could hold certificates for thirty years, which could be extended for another twenty years. The classification of indigenous and non-indigenous is based on the ethnic status of the descendants of an Indonesian citizen. The 1975 Instruction which became the basis for the regulation in the land ownership rules in Yogyakarta can be interpreted as an inheritance that is influenced by two factors related to its historical record that is local and colonial factors.

The local as internal factor that influences Yogyakarta is an internal concept taken from the memory of the Islamic Mataram era which has a traditional pattern. In the Mataram concept, the Sultan as the leader or king has full power over all the lands in the area he leads [Soemardjan 1962, 215]. The traditional pattern makes there a pattern of feudalism of land ownership in it. Absolute land ownership made the Sultan a king closely related to the authority in the management and regulation of rights by occupying the

highest position in the land hierarchy. The Sultanate of Yogyakarta and the Duchy of Pakualaman as the forerunners of Yogyakarta are currently the successors of Islamic Mataram and also adhere to such a concept.

The colonial as external factor takes the concept from the *vreemdingsverbod* that existed during the Dutch colonial era. The concept states the existence of a ban on land exile applied through the Staatsblad 1875 No. 179. It's the right not to be alienated from their ancestral land. Popularly known as the Prohibition of Transfer (*Vervreemdingsverbod*), the regulation prohibits the permanent transfer of land from indigenous to non-indigenous peoples, namely Chinese, Arab, Indo-European, and European residents [Djalins 2015, 232]. This is related to concerns about the fall of productive lands owned by the indigenous Dutch East Indies into the hands of non-Dutch foreign entrepreneurs with a strong capital foundation. Furthermore, there is a division of social classes embodied in stratification in the Dutch colonial era. Colonial policy in the mid-nineteenth century made the hierarchy of population classified into Europeans, called foreign orientals (*vreemde oosterlingen*) and indigenous (*inlanders*) [Slama 2012, 315]. Along with the Chinese and Indian diaspora trading communities, Arabs belong to the middle category (*vreemde oosterlingen*), on the other hand indigenous Indonesians, which at that time were referred to as bumiputera, were placed in the last class under foreign immigrants such as Europeans and foreign orientals. Yogyakarta as part of Javanese society, its relationship with Chinese were so complex [Ricklefs 2008, 121]. Considering that Chinese position has been rooted in the historical mindset of the people as landlords [Vickers 2013, 67–68].

The Implementation of Affirmative Land Ownership Policy

In the historical record, the implementation of the 1975 Instruction was carried out in two procedures that is refusal and release, although both led to the granting of Building Use Rights as the final solution. First, the refusal procedure is carried out if there is a purchase of indigenous land by a non-native to then an attempt to change the name, then automatically the application to transfer property rights with a legal name will be rejected and cannot be processed properly as the transfer of the name of existing property rights. Second, the release procedure is carried out if a non-native who already has ownership rights to land is then indicated either through an effort to change the name or the resolution of ownership rights to the land, then the application intended for this purpose will automatically turn into the release of his rights which were forcibly aborted and then given rights in accordance with the 1975 Instruction, namely the right to use the building.

The implementation of the rules regarding land ownership in Yogyakarta, which was realized in the form of the 1975 Instruction, in fact only targeted the communities of Chinese and Indian descendants [Tania and Satriawan 2021, 1], while other descendant communities (in this case the Arabs) were still granted property rights to land without any historical reports of rejection. Such circumstances indicate an inconsistency in the implementation of the 1975 Instruction. Hence, there was social jealousy that led to more than 25 years of land conflict in Yogyakarta.

Indians and Chinese Response to the Discriminative Land Ownership Policy

The Indian and Chinese communities as victims of discrimination whose human rights have been violated in responding to this have a unique pattern. Ethnic Chinese tend to try to do resistance to the rules that are considered unfair. Meanwhile, ethnic Indians are calmer and accepting without significant rejection in response to the circumstances they are experiencing. The difference in response that occurs even though they feel the same thing is based on a different mindset.

Ethnic Chinese do resistance through formal efforts by taking legal action. Various legal efforts have been tried [Bevins 2017; Varagur 2018], starting from a subpoena that was sent to the Leader of the Special Region of Yogyakarta, letters addressed to two Presidents

of Indonesia (Susilo Bambang Yudhoyono & Joko Widodo), and even a legal submission through a Regional Court which was rejected, also a request for a review of the 1975 Instruction at the level of the National Indonesian Constitutional Court who also died before being tried. The hope of the Chinese people in Yogyakarta to be able to own land in Yogyakarta is very high even though they always fail in their efforts because the economic perspective is the main mindset.

On the other hand, the Indians are quieter and obey in responding to restrictions on land ownership rights for them. There has never been a historical record of any Indians in Yogyakarta who resisted the 1975 Instruction targeting them. Indian society feels that there is no need to make a fuss, especially those who lean towards a conflict and choose to maintain peace [Utama 2018]. This is interpreted from a mindset that has been grateful for the acceptance of the Indians in Yogyakarta as immigrants by the local natives (indigenous) with a warm and friendly welcome.

Conclusion and Recommendation

Yogyakarta as a Special Region of Indonesia is granted the special rights about land authority. The regulation regarding land ownership in Yogyakarta is realized in the 1975 Instruction which limits land ownership by non-indigenous as an affirmative action to press the gaps in the society's economy. The concept in the 1975 Instruction was taken from the legacy of the past, related to the history of the internal and external sides. Contrary to its concept and purpose, the 1975 Instruction was carried out inconsistently so that it became a regulation that violated the human rights of some non-indigenous groups in Yogyakarta, namely Indians and Chinese. Chinese chose to do resistance, while Indians chose to handle it with grace.

However, this paper ultimately recommends that the 1975 Instruction as a basic regulation in land ownership rights in Yogyakarta as a feature of the privileges granted by the Indonesian central government should be consistently enforced so that the objectives of affirmative action in accordance with the concept can be implemented properly. Otherwise the 1975 Instruction should be immediately revoked, if consistency in implementation cannot be carried out, so as not to violate non-indigenous human rights. In the end, social conflicts in society can be prevented.

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I. Мустажаб

Від підтвердження до дискримінації: недостатні права власності на землю для китайців та індійців в особливому регіоні Індонезії

У цій статті досліджується реалізація політики землеволодіння в особливому регіоні Індонезії, а саме в Джок'якарті. Концепція надання права на володіння землею лише корінним народам та заборони прав власності на землю некорінним народам мала на меті зменшення бідності в Джок'якарті. Ця концепція, запозичена урядом зі спадщини політики минулого з локальними та колоніальними впливами, пізніше стала відома як Директива 1975 року. Результати дослідження показали наявність невідповідностей у реалізації політики землеволодіння в цьому регіоні. Заборона на володіння землею стосується лише індійців та китайців, тоді як інші некорінні жителі, як і раніше, володіють землею в Джок'якарті. Політика, спрямована на підтримку населення, натомість перетворюється на дискримінаційну. Отже, індійці та китайці є жертвами порушень прав людини з боку уряду Джок'якарти, тому що їм дозволено володіти лише правом на будівництво, проте заборонено мати право власності на землю. У відповідь на такі обставини спостерігається унікальна закономірність, оскільки існують відмінності між індійською та китайською громадами, які стикаються з дискримінаційними діями та порушенням прав людини. Китайська громада вирішила чинити опір, звертаючись до суду, натомість індійська, схоже, змирилася з обставинами.

Ключові слова: право власності на землю, Джок'якарта, Індонезія, некорінні народи, індійці, китайці, дискримінація

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