

## AGRARIAN LAW POLITIC THE PRIVILEGE OF SPECIAL REGENCY OF YOGYAKARTA IN THE FULFILLMENT OF THE RIGHTS OF LAND FOR THE COMMUNITY

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The purpose of this research is to examine and analyze the Privileges of Special Region of Yogyakarta in the Regulation of Agrarian Relevant Legislation, and the politics of agrarian law of the privilege of Special Region of Yogyakarta (DIY) in the fulfillment of land rights for the people. This research approach method used empirical juridical. Types of data used were primary and secondary data. Data collection techniques were done by using literature study and field study. Further, the data were analyzed analytically descriptive analysis. The result of the research shows that Yogyakarta Special Region has *lex spesialis derogat lex generalis* on land arrangement in Province of Special Region of Yogyakarta. The implication of *lex spesialis derogat lex generalis* from the abolition of Law Number 13 of 2012 on Privileges of Special Region of Yogyakarta is the establishment of Keraton and Kadipaten as Legal Entity (Article 32 paragraph (1)) and can have Land Rights (Article 32 paragraph (2) and (3)). The legal politics of DIY is still not able to meet the values of justice. This is due to the rights of Sultan and Kadipaten cannot be fulfilled, and there are rights of people who are still chained by discriminatory policies.

**Keywords:** Political Law, Privileges of Yogyakarta, land rights

### A. INTRODUCTION

Padmo Wahyono argues that the politics of law as the policy of the state organizers is about what is used as criteria to punish something. The policy may be related to the establishment of law, the application of law, law enforcement agencies and their own enforcement.<sup>1</sup> Legal politics can also be defined as the basic policy that determines the direction, form and content of the law to be established.<sup>2</sup> The old order government up to now continuously makes an effort to synchronize and synergize the ideal form of governance. Synchronization and synergistic of legislation is not easy to do as the dynamics of democracy change in Indonesia. Nevertheless, the Government seeks to create an ideal role model on the relationship between the central government and local government, especially the Special Region of Yogyakarta in bending NKRI which begins with the birth of Law No. 3 of 1950 on the Establishment of the Special Region of Yogyakarta until the birth of Law No. 13 of 2012 on Privileges Special Region of Yogyakarta.

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In the democratic state of law, Bryan Z. Tamanaha<sup>3</sup> presented two versions of the developing legal state: the formal and substantive versions, each growing and developing in three forms. The concept of a formal state of law begins with the concept of rule of law in which law is interpreted as an instrument of government action. It then develops in the form of formal legality, where the concept of law is defined as a general norm, clear, prospective and definite. On the other hand, the latest development of the concept of a legal state version of the formal is democracy and legality, where the agreement determines the content or substance of the law. The substantive version of the concept of the rule of law developed from individual rights, where privacy and individual autonomy and contract as the most basic foundation. It then develops on the principle of the right to personal and or dignity of man and evolves into a social welfare concept that contains substantive principles, equality, welfare, and community survival. Old Order government established governance in product of legislation with democracy and legality. Implementation of democracy is through the agreement between the central government and DIY. The result of this agreement is finally realized in legality with the beginning of the birth of Law No. 3 of 1950 on the Establishment of the Special Region of Jogjakarta and the last legalization of Law No. 13 of 2012 on Privileges Special Region of Yogyakarta. With the existence of such legality, the social concepts of welfare that contain substantive principles, equality, welfare, and community sustainability can be fulfilled in a system of NKRI governance.

According to Friedman, the legal system has a wide range of laws. The word "law" often refers only to rules and regulations. Whereas according to Friedman legal system distinguish between rules and regulations, structures, and institutions and processes that exist within the system. The work of law in a system is determined by three elements, namely legal structure, legal substance, and legal culture.<sup>4</sup> Legal structure in governance law is by the formation of government organs. The main organ of government in the concept of NKRI is the establishment of the Central Government, First Level Region, Second Level Region and a Special Region or Special Region under the Central Government. Thus, in every period of government, one of the main policies to do is the establishment of legal structure, namely by arranging the relationship of central government with Yogyakarta. This Legal structure can be seen from the birth of the formation of Special Region of Jogjakarta through Act Number 3 Year 1950 and now reaffirmed by Law Number 13 Year 2012 about Special Privileges of Special Region of Yogyakarta.

Gustav Radbruch saw that Sein and Sollen, 'material' and 'form', as two sides of a single currency. 'Material' fills 'form', and 'form' protects 'material'. That's roughly the right phrase to describe Radbruch's theory of law and justice. The value of justice is the 'material' that should be the content of the rule of law. On the other hand, the rule of law is the 'form' that must protect the value of justice.

The law as the bearer of the value of justice becomes the measure for fair unfairness of the rule of law. Not only that, the value of justice becomes the basis of law as law. Thus, justice has both normative and constitutive properties for law. It is normative, because it serves as a traumatic prerequisite underlying every positive law of dignity. It becomes the moral basis of the law as well as the benchmark of the positive legal system. To justice, positive law stems. Contrary, constitutive, justice must be an absolute element for the law as a law. Without justice, a rule does not deserve to be law.<sup>5</sup> The establishment of the Special Region of Jogjakarta with the enactment of Law No. 3 of 1950 and reaffirmed by Law No. 13 of 2012 on Privileges of Special Region of Yogyakarta by the central government is to realize the value of justice. For the level of government under the central government, there are two options: Level II Region, Special Region or Special Region. To fulfill the sense of justice in Yogyakarta, it was decided that the form of local government in Yogyakarta is a Special Region named Yogyakarta Special Region. This decision was taken by considering the historical aspects of Yogyakarta and its relationship with Indonesia during the struggle for independence of the Republic of Indonesia.

## **B. RESEARCH METHODS**

This research approach method is empirical juridical. Types The data used are primary and secondary data. Data collection techniques were done by using literature study and field study. Further, the data were analyzed analytically descriptive analysis.

## **C. RESULTS AND DISCUSSIONS**

### **1. Privileges of Special Region of Yogyakarta In Laws Related to Agrarian Law**

Referring to Law Number 12 Year 2011 concerning the Establishment of Laws and Regulations, the laws and regulations related to the specialties of the Special Region of Yogyakarta, as follows:

- a) The 1945 Constitution (Article 33 paragraph 3)
- b) MPR RI Decree:
  - 1) The Decree of the People's Consultative Assembly of the Republic of Indonesia Number XV / MPR / 1998 on the Implementation of Regional Autonomy; Settings; Distribution, And Utilization of National Resources, Fairness, and Central and Regional Financial Balance In the Framework of the Unitary State of the Republic of Indonesia;
  - 2) Decree of the People's Consultative Assembly of the Republic of Indonesia Number IV / MPR / 1999 on the Guidelines of the State Policy of 1999-2004;

- 3) The Decree of the People's Consultative Assembly of the Republic of Indonesia Number IX / MPR / 2001 on Agrarian Reform and Natural Resource Management.
- c) Law / Government Regulation in Lieu of Law:
- 1) Law Number 5 Year 1960 on Basic Regulation of Agrarian Principles
  - 2) Law Number 3 of 1950 concerning the Establishment of Special Region of Jogjakarta;
  - 3) Law Number 13 Year 2012 on Special Feature of Special Region of Yogyakarta.
- d) Government regulations:
- 1) Government Regulation in Lieu of Law Number 56 Year 1960 on Determination of Maximum Area And Minimum of Agricultural Land;
  - 2) Government Regulation No. 224 of 1961 on the Implementation of Land Distribution and Indemnification;
  - 3) Government Regulation No. 41 of 1964 concerning Amendment and Supplement of Government Regulation Number 224 of 1961 concerning Implementation of Land Distribution and Provision of Indemnification;
  - 4) Government Regulation Number 24 of 1997 concerning Land Registration.
- e) Local regulation:
- 1) Special Region of Yogyakarta Regulation Number 3 / Pert. / Pem.D / 50 Year 1950 on Land of Lungguh for Pamong Kalurahan and Its Aid And In The Head Of village In Special Region of Yogyakarta;
  - 2) Special Region of Yogyakarta Regulation Number 4 Year 1954 on Completion of Used Land of Lori Street Used by Foreign Agricultural Company whose Status Includes Free Government Land;
  - 3) Special Region of Yogyakarta Regulation Number 5 Year 1954 on Land Rights in Jogjakarta Special Region ;
  - 4) Special Region of Yogyakarta Regulation No. 10/1954 on the Implementation of the "Verdict" of the Village Concerning the Transition of Right of Andarbe (*Eferlijk Individueel Bezitsrecht*) from Kalurahan and Anganggo Right to Derived Land (*Eferlijk Individueel Gebruiksrecht*) And Changes in Soil Type in Special Region of Yogyakarta;
  - 5) Special Region of Yogyakarta Regulation Number 11 of 1954 on the Transfer of Private Property Derived by Land (*Eferlijk Individueel Bezitsrecht*);

- 6) Special Region of Yogyakarta Regulation No. 12/1954 on on Legal Marks for Individual Ownership Down to Land (*Eferlijk Individueel Bezitsrecht*);
- 7) Special Region of Yogyakarta Regulation No. 3/1956 on the Implementation of Regional Regulation No. 10/1954 on the Implementation of the “Verdict” of the Village Concerning the Transition of Right of Andarbe (*Eferlijk Individueel Bezitsrecht*) from Kalurahan and Anganggo Right to Landed Down (*Eferlijk Individueel Gebruiksrecht*) and Changes Type of Land in Special Region of Yogyakarta;
- 8) Special Region of Yogyakarta Regulation No. 3/1956 on the Amendment of Regional Regulation No. 10/1954 on the Implementation of the “Verdict” of the Village Concerning the Transition of Right of Andarbe (*Eferlijk Individueel Bezitsrecht*) from Kalurahan and Anganggo Right to Descendant (*Eferlijk Individueel Gebruiksrecht*) Land in the Special Region of Yogyakarta;
- 9) Special Region of Yogyakarta Regulation Number 11 Year 1956 concerning Prohibition and Settlement of Land of Yogyakarta Special Government;
- 10) Special Region of Yogyakarta Regulation Number 18 of 1956 concerning Revocation of Rule in *Rijksblad* Yogyakarta Number 5 Year 1925 / Pakualaman Number 5 Year 1925 Giving Right of Option on Land Owned by Government of DIY To Not Indonesian native (Nicht Inlanders) Which Less And Able And Giving Permit to Use of Land Owned by DIY Government to poor Indonesia Non native Individual (*Envermogen*);
- 11) Special Region of Yogyakarta Regulation Number 18 of 1956 concerning the Granting of Rights to the Land of Free DIY Government;
- 12) Special Region of Yogyakarta Regulation No. 26/1956 on the Granting of Rights or Transfer of Rights (*Vervesanden*) Override Overrides by Inheritance Andarbe (*Inlandech Braitacht*) Above Land In DIY To Indigenous Indonesian Citizens;
- 13) of Yogyakarta Special District Regulation Number 29 of 1956 concerning Revocation of Rule contained in *Rijksblad* Yogyakarta Year 1916 Number 15 Renting Land Owned by DIY Government To Nist Inlamders (not Indigenous) For Housing;
- 14) Special Region of Yogyakarta Regulation No. 5/1998 on Amending and Adding Articles 1 and 6 of the DIY Regulation No. 4/1954 on the Settlement of Used Lori Forests Used by Foreign Agricultural Enterprises whose Status Includes Land of Free Government;
- 15) Special Region of Yogyakarta Regulation No. 15/1958 on the Completion of Land Used by Railways Formerly used NIS whose Status Includes Free Government Land;

- 16) Special Region of Yogyakarta Regulation No. 10 of 1959 concerning Changes in Optional Compensation and Rent on Land Owned by Local Government of DIY;
- 17) Special Region of Yogyakarta Regulation No. 8/1960 on the Taking Over of Verponding Tax Affairs;
- 18) Special Region of Yogyakarta Regulation No. 8 of 1961 on Implementation of Secondary Forests (*Afgeschrevenbasgonden*) of DIY;
- 19) Special Region of Yogyakarta Regulation No. 3/1965 on the Right to Land in Special Region of Yogyakarta;
- 20) Special Region of Yogyakarta Regulation Number 5 of 1969 concerning the Amount of Currency (mandatory money) for Land granted with Right to Build or Use Right;
- 21) Special Region of Yogyakarta Regulation Number 3 of 1984 concerning the Completion of Law No. 5/1960 on Basic Agrarian Basic Regulations in the Special Province of Yogyakarta;
- 22) Special Region of Yogyakarta Regulation No. 2/2010 concerning Spatial Planning for the Province of Yogyakarta Special Province Year 2009-2029;
- 23) Special Region of Yogyakarta Regulation No. 1 of 2013 on Procedures for the Establishment of Special Regulations;
- 24) Special Region of Yogyakarta Regulation No. 2 of 2015 concerning Amendment to Regional Regulation Number 1 Year 2013 concerning Procedures for the Establishment of Special Regulation of Daerah Istimewa;
- 25) Special Region of Yogyakarta Regulation No. 1 of 2017 on Management and Utilization of Land of Kasultanan and Kadipaten Land.

In the legal system of Indonesia with the issuance of Law No. 13 of 2012 on Privileges of Special Region of Yogyakarta, mentioned in Article 1, that:

- a) Special Region of Yogyakarta, hereinafter referred to as DIY, is a provincial region which has privileges in administering government affairs within the framework of the Unitary State of the Republic of Indonesia;
- b) Privileges are privileges of legal standing held by DIY based on history and origin rights under the 1945 Constitution of the State of the Republic of Indonesia to regulate and administer special powers;
- c) Privileged Authority is a certain additional authority owned by DIY other than the authority as defined in the law on regional government.

Then in Article 7 paragraph (2), it is further explained that the special authority referred to in Article 1 point 3, is the authority which includes:

- 1) The procedures for filling the position, position, duties, and authority of the Governor and Vice Governor;
- 2) Local Government Institutions of DIY;
- 3) Culture;
- 4) Land; and
- 5) Spatial.

Given the explicit explanation in Article 7 paragraph (2) of Law Number 13 of 2012 on Special Privileges of Special Region of Yogyakarta that one of the special authorities granted to the Special Region of Yogyakarta is the land (authority of the fourth privilege). Thus the Special Region of Yogyakarta has *lex specialis derogat lex generalis* principle on land management in the Province of Yogyakarta Special Region. The *lex specialis derogat lex generalis* is from the abolition of Law Number 13 of 2012 on Special Privileges of Special Region of Yogyakarta is the establishment of Keraton and Kadipaten as Legal Entity (Article 32 paragraph (1)) and can have Land Rights (Article 32 paragraph (2) and (3)).

As the standard of norms in the exercise of such authority, in paragraph (3), it is further explained that: "The exercise of authority in special affairs as referred to in paragraph (2) shall be based on the values of local wisdom and partisanship to the people". This norm standard becomes community control over government.

Subsequently, in Article 42 Paragraphs (1) and (3), it is explained that in order to carry out special powers granted by the Act, an additional Special Fund is granted excluding the existing Budget of Revenue and Expenditure (APBD). The privileged funds that have been allocated are then one in the Yogyakarta Provincial Revenue and Expenditure Budget.

As a constitutional foundation for exercising special powers, in accordance with Article 7 paragraph (4) of Law Number 13 of 2012 on Special Privileges of Special Region of Yogyakarta, everything must be regulated in a regulation called the Special Regulation (Perdais) DIY. Thus in the Province of Special Region of Yogyakarta there is a new norm of legislation, namely Special Region Regulation (Perdais) apart from the Regional Regulations and Governor Regulations that have been existed.

At the time of the reform order until now, several laws and regulations issued by the government as the implementation of the policy of agrarian/land related to the Special Region of Yogyakarta.

## **2. Political Law of Agrarian Privileges of Special Region of Yogyakarta In Fulfillment of Land Rights to the People**

Satjipto Rahardjo argued that Political Law is an activity of choosing and the means to be used to achieve a social goal with certain laws in society<sup>6</sup>. Meanwhile,

according to Soedarto (Chairman of the Designer of the Criminal Code), legal politics is the policy of the state through the state bodies authorized to establish the desired rules, which are expected to be used to express what is contained in society and to achieve what the dream.<sup>7</sup> Another book entitled “Law and Criminal Law” is explained, legal politics is an attempt to realize good rules according to circumstances and situations at a time<sup>8</sup>. In every period of government in NKRI, the central government actively provides more space to the government in DIY to regulate its own agrarian issues according to local cultural peculiarities. The agrarian legal policy of the central government was welcomed by the DIY government by issuing regional regulations and other technical policies as the agrarian legal politics of the privilege. Agrarian law politics carried out by the government of DIY is in line with the opinion of Satjipto Rahardjo that the politics of law is a form of an activity of choosing and the means to be used to achieve a social objective (ie the welfare of the people of Yogyakarta) with certain laws in society (ie customary law in DIY).

According to Friedman, the legal system has a wide range of laws. The word “law” often refers only to rules and regulations. Whereas according to Friedman legal system distinguish between rules and regulations, structures, and institutions and processes that exist within the system. The work of law in a system is determined by three elements, namely legal structure, legal substance, and legal culture. Legal culture (legal culture) is a human attitude towards law and the legal system. The attitude of this society includes the beliefs, values, ideas and expectations of society against the law and the legal system.<sup>9</sup> The legal culture is also a social force that determines how the law is abused. The legal culture has a big role in the legal system, without legal culture, the legal system will lose its power, such as dead fish stranded in their baskets, not live fish swimming in the ocean (without legal culture, the legal system is meet-as dead fish lying in a basket, not a living fish swimming in its sea)<sup>10</sup>. The establishment of a legal system through local regulations issued by the DIY government shows that legal culture is the main concern of the government of agrarian law politics in Yogyakarta. The politics of agrarian law taken is presumably appropriate, because the people in Yogyakarta are a very strong society with Javanese Mataram culture. The legal culture approach to agrarian law politics will make effective the adoption of perda (Local Regulation) and the later adopted agrarian policies. Seen from not so many problems appear agrarian in DIY region until now.

John Rawls in proposing the theory of justice conveys the importance of achieving public conception. The formation of public conception with the existence of well ordered society (roles by public conception of justice) and the moral person both of are bridged by the original position. For Rawls everyone is the moral of the subject, free to initiate the principle of goodness, but it can be contradictory and if left unsound. In order for the community to be well ordered



it must see the original position. For Rawls public conception of justice can be obtained with original position. In the politics of agrarian law in DIY, privilege is formed by considering that every people in Yogyakarta is good and has a common good purpose for the welfare of Yogyakarta. This is manifested by the making of the DIY law which considers the original position of each stake holder in DIY. Regulations related to agrarian policies issued during this period are transitional and arranged to ensure the value of justice for all parties.

Agrarian regulatory policy became one of the policies implemented by the government of Yogyakarta Special Region in this period, as seen in the following legislation:

- 1) Law Number 13 Year 2012 on Special Feature of Special Region of Yogyakarta;
- 2) of Yogyakarta Special Region Regulation No. 2/2010 concerning Spatial Planning of the Province of Yogyakarta Special Region Year 2009-2029;
- 3) Special Regulation of Yogyakarta Number 1 Year 2013 on Procedures for the Establishment of Special Regulations;
- 4) Special Regulation of Yogyakarta Number 2 Year 2015 concerning Amendment to Regional Regulation Number 1 Year 2013 concerning Procedures for the Establishment of Special Regulation of Daerah Istimewa;
- 5) Special Regulation of Special Region of Yogyakarta Number 1 Year 2017 on Management and Utilization of Land of Kasultanan and Kadipaten Land.

Moh. Mahfud MD expressed his opinion on the legal politics which he concluded as legal policy or the official (policy) line of law which will be applied either by the creation of new law and with the replacement of the old law in order to achieve the state goal<sup>11</sup>. The law cannot be viewed only as imperative articles or solitary dasties, but must be seen as a sub-system which in reality (*das sein*) is not impossible to be determined by politics, both in the formulation of the material and the articles as well as in its implementation and enforcement.<sup>12</sup> National agrarian law policy is taken on the basis of democratic change and constitutional paradigm in NKRI. Thus, legal policy provides an increasingly widespread space given to DIY as part of an aspiration democracy. This space is also confronted with the legitimacy of the privileges possessed or granted to DIY, one of which is the privilege of authority in the field of land.

At the level of the State of the Law of Democracy, one of the elements, Arend Lijphart mentioned was that in the formulation of a government policy must accommodate the wishes of the people. This indicates that the public has the right

to propose its aspirations to any decision-making, so there is a guarantee that the decision will have a will.<sup>13</sup> Then Juergen Habermas also stated that the need for an autonomous public space outside of the state domain as a prerequisite for the involvement of community activities that are not as easy as getting legitimacy to the political system.<sup>14</sup> Juergen Habermas's opinion is also in line with Burkens's opinion as quoted by Tisnanta H.S. who argued that the minimum requirement that must be met in democracy, among others is *openbaarheids van besluitvorming* (openness in decision-making). Therefore, during the reign of the reforms era, the democratic legal state is in the peak period. This is demonstrated by the accommodating aspirations of Yogyakarta in the privilege of land affairs. Where the impact is that the Sultanate and the Kadipaten can be the subject of property rights to the land it owns and can register its land in the land registration system in Indonesia. So far it still cannot be done.

It has been described above regarding the various regulations related to the special privileges of the Special Region of Yogyakarta and particularly related to the facts. From these descriptions, it can be observed the policies related to the aggregation carried out by the government (central government and the government of DIY). The following will present a summary in the form of a table to explain and describe the political development of the agrarian law from the regulatory review described above, as follows:

TABLE: POLITICAL LAW AGRARIAN PRIVILEGES DIY AND POLITICS OF NATIONAL AGRARIAN LAW

<i>No. Period (Year)</i>	<i>Main Points of Agrarian Policy DIY Privileges</i>	<i>Politics of Agrarian Law DIY Privileges</i>	<i>Politics of National Agrarian Law</i>
1. Old Order 1945-1965	1. Statement becomes part of NKRI with consequence subject to Indonesian legal system which one of them is the Law of National Land; 2. Ratification of Yogyakarta as the Special Province of Yogyakarta; 3. Arrangement of administrative area of the Province of Yogyakarta Special Province (Division of district, city, sub-district and village);	1. Laying the groundwork of agrarian law Privileges with the delay of enactment of national agrarian law; 2. Transitional, sectoralized primordialism and exclusivism.	1. Laying the groundwork of national agrarian law, based on customary law (legal unification with negative system); 2. Transitional, democratic, responsive, holistic and participative;

*Contd. table*

<i>No. Period (Year)</i>	<i>Main Points of Agrarian Policy DIY Privileges</i>	<i>Politics of Agrarian Law DIY Privileges</i>	<i>Politics of National Agrarian Law</i>
	<p>4. The LoGA has not yet been implemented in DIY Province;</p> <p>5. The Land of Sultan Ground and Paku Alaman Ground can not be granted a land title certificate;</p> <p>6. Control and change of land use, Arrangement and Arrangement of Land Rights fills the legal void before the birth of LoGA, among others:</p> <p>a. Land controlled by western rights is converted into the right of ownership, right to use of building or right of use in the BAL;</p> <p>b. Land within the controlled city of Yogyakarta is granted andarbe rights in accordance with Rijktsblaad 1925 Number 23 and 25;</p> <p>c. Public-controlled land derived from hereditary rights shall be granted hereditary property rights;</p> <p>d. Land, Lily, Pengarem-ngarem land, village treasury land is village land and belongs to the village;</p> <p>7. Tanah Sultan Ground and Paku Alaman Ground are managed by the Local Government with the permission of Kraton and Paku Paku Alaman;</p>		

*Contd. table*

<i>No. Period (Year)</i>	<i>Main Points of Agrarian Policy DIY Privileges</i>	<i>Politics of Agrarian Law DIY Privileges</i>	<i>Politics of National Agrarian Law</i>
2. New Orde 1966-1998	<ol style="list-style-type: none"> <li>1. Non-indigenous citizens have not granted the right to property;</li> <li>2. The full enactment of BAL;</li> <li>3. All existing land rights, converted in accordance with the provisions of the LoGA;</li> <li>4. The land of Sultan Ground and Paku Alaman Ground remains controlled and owned by Kasultanan and Paku Alaman, but can not yet be granted the right to the land.</li> </ol>	<ol style="list-style-type: none"> <li>1. Complete enactment of national agrarian law with restrictions on land ownership rights for non-indigenous citizens;</li> <li>2. Primordialism, discriminative, exclusivism.</li> </ol>	<ol style="list-style-type: none"> <li>1. Arrangement of pre-existing national agrarian legal system with negative system with positive tendency;</li> <li>2. Democratic, conservative, and centralistic.</li> </ol>
3. Orde Reformasi 1999 s/d Sekarang	<ol style="list-style-type: none"> <li>1. Proposal on the Bill of Privileges of DIY including the privilege of land affairs;</li> <li>2. The birth of the privilege of land affairs;</li> <li>3. Kasultanan and Kadipaten become legal entities and can obtain property rights;</li> <li>4. Land registration / issuance of land certificate of Sultan Ground on behalf of Kasultanan and Paku alaman Ground on behalf of Kadipaten Pakualaman;</li> <li>5. Effort to revive domein verklaring principle;</li> <li>6. Transfer of certified village assets to the property of the sultanate / kadipaten;</li> </ol>	<ol style="list-style-type: none"> <li>1. Constitutionalism of the cultural system of agrarianistic agrarian law;</li> <li>2. A democratic cultural and constitutional monarchy.</li> </ol>	<ol style="list-style-type: none"> <li>1. Synergy of national agrarian law reform with reform of government system;</li> <li>2. Be democratic, accommodative, responsive, participative and decentralized.</li> </ol>

*Contd. table*

<i>No. Period (Year)</i>	<i>Main Points of Agrarian Policy DIY Privileges</i>	<i>Politics of Agrarian Law DIY Privileges</i>	<i>Politics of National Agrarian Law</i>
	<p>7. Non-indigenous Indonesians still can not be granted land ownership rights in DIY;</p> <p>8. In relation to the privileges of privileges in land affairs, special funds are used to finance the Pensananpikatan land of Sultanate (Sultan Ground) and Kadipaten (Paku Alaman Ground).</p>		

According to Friedman, the legal system has a wide range of laws. The word “law” often refers only to rules and regulations. Whereas according to Friedman legal system distinguish between rules and regulations, structures, and institutions and processes that exist within the system. The work of law in a system is determined by three elements, namely legal structure, legal substance, and legal culture.<sup>15</sup>

The legal system is a collection of all sub-systems most of them are tailored to general agreements that are part of the legal system. They have in common in that they are systems that operate with norms or rules connected to the state and have a structure of authority that can be analogous to the behavior of the state. It is about how the state governs its children. It is part of the legal system that does not matter.<sup>16</sup>

Components of the legal system include law society, legal culture, legal philosophy, legal concepts, legal science, law formation, legal form, law application and legal evaluation. This will be described as follows:<sup>17</sup>

- a) Legal society is a set of unity of law related to each other in a regular relationship.
- b) The legal culture in this regard is used to designate the legal tradition used to govern the life of a legal society.
- c) Legal philosophy in a system is a reflection of the cultural law of society where philosophy is triggered.
- d) The concept of law in this case is a basic legal policy established by the legal community.
- e) Legal science is the elaboration, testing and development of legal theory derived from components of legal philosophy.

- f) The formation of law in the legal system is determined by the legal concept adopted by the legal community and its quality of formation.
- g) Legal form is the result of the process of law formation that is generally classified into two groups namely the form of written law and the form of unwritten law.
- h) The application of the law includes three things: the legal component to be applied, the institution to be implemented and the personnel of the organizing institution which includes administrative institutions and judicial institutions.
- i) The evaluation of the law in the legal system is a consequence of the utilitarianism view of jurisprudence which states that the quality of the new law will be known after the law is adopted; the bad law will lead to badness and vice versa.

The legal politics of the special privileges of the Special Region of Yogyakarta, judging by the existing regulations during the reform period has not yet shown a clear legal concept. Unclear legal concept is seen from the beginning of the legal system in Indonesia formulated and led to the formation of law becomes problematic. This is evident when Law No. 5 of 1960 on Basic Agrarian Basic Rules can only be applied in DIY 24 years later with the enactment of Local Regulation No. 3 of 1984 on the Enactment of Law No. 5 of 1960 on Basic Regulation of Agrarian Principles at Province of Special Region of Yogyakarta.

Unclear legal concept became clearer when the issuance of Law No. 13 of 2012 on Privileges of Special Region of Yogyakarta. The enactment of this Law makes the concept of agrarian legal policy more ambiguous and confusing. Beginning of independence, the old order government drafted a fairly clear concept of agrarian law. The concept of agrarian law at that time, among others:

- a) Unification of the land law system;
- b) Restrict absolute land tenure;
- c) Absente ground setting;
- d) Management of abandoned land.

However, its development, new order and continued reform order resulted in law products that were not in line with the initial concept, particularly related to DIY privileges in terms of land. Some things that are not in line, among others:

- a) Article 32 (paragraphs 1 and 2) makes it clear that the Sultanate and the Kadipaten are declared as Legal Entities and are therefore subject to the right of ownership. Then the rule of derivation is Perdais, Perdais No. 1 Year 2017 on Management and Utilization of the land of Kasultanan and Duchy, article 5 paragraph (1) explains that the Sultanate and the Kadipaten are defined as

legal entities based on the Act. Meanwhile, the regulation on the exemption of property rights in the agrarian legal system that Article 21 paragraph (2) point b UUPA stating that the Government establishes legal entities with ownership rights and the requirements are further elaborated in Article 1 of Government Regulation Number 38 Year 1963 Appointment of Legal Entities That Ownership of Land Ownership, whereby Legal Entities that may own title to land are:

- (1) Banks established by the State;
- (2) Association of Agricultural Cooperatives established on the basis of Law 79/1958;
- (3) Religious bodies;
- (4) Social bodies.

Then PP No. 24 of 1997 on Land Registry is not described explicitly on the subject of which can be granted Land Ownership. However, derivative rules under it namely the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency (PNMA / KBPN) No. 9 of 1999 regulates this. In PMNA / KBPN Number 9 of 1999, Article 8 paragraph (1) point b explains that Property Right may be granted to Government Bodies established by the Government, namely: Government Banks, Religious Bodies and Social Bodies appointed by the Government. From the description above, it appears that there is certainty of the form of the legal entity in question. The form of legal entity of the Sultanate and the Kadipaten will determine the suitability of the subject of property rights and may be granted property rights in the national agrarian law system.

- b) Perdas Number 1 Year 2017 on Management and Utilization of Kasultanan and Kadipaten soils, Article 38 point c explains that the village land which has been certified with the right of use status, must be adjusted the status of use rights above the Kasultanan land or Kadipaten. Meanwhile, in Law No. 6 of 2014 on Village, Article 76 paragraph (1) explains that the Village Cash Land is one of Village Assets. Subsequently, Article 76 Paragraph (5) states "Village property that has been taken over by the Regency/City Government is returned to the Village, except those already used as a public facility" and Article 76 paragraph (4) stated "Wealth belonging to the Village in the form of land certified on behalf of the Village Government ". If we see the explanation of the village is in Article 1 point 1, then the Village is part of the government of NKRI. Policies taken by the central government and the government of DIY are out of sync and collide with each other. The central government seeks to give more space to the Village, while the DIY government seeks to limit it. Furthermore, the origin of granting of land rights to village-owned lands by the central government is derived from state land, whereas in the perspective

of the DIY government its origins from the land belonging to the Sultanate or the Duchy, there is even a policy in Perdais No. 1 of 2017 commanding a status change for land already certified to belong to the Village to be transferred to the Sultanate and the Kadipaten.

- c) In relation to the land of Sultan Ground and Paku alaman Ground, inconsistency in the agrarian legal system continues. This is apparent when there is still no ownership rights to a non indigenous Indonesian citizen who needs the land with the enactment of the Special Head of Yogyakarta Instruction Number K.898 / I / A / 1975 dated March 5, 1975.

In relation to legal justice in the Qur'an, the Islamic constitution regulates rights and obligations based on justice. The concepts of justice are as follows:

- a) Everyone is entitled to the protection of his personal freedom;
- b) Everyone is entitled to food, housing, marriage, education, and medical care;
- c) Everyone has the right to have thoughts, express opinions and beliefs as long as he is within the limits set by law;
- d) All men are equal in Islam;
- e) All persons of equal capacity shall be entitled to equal opportunity, and equal incomes, regardless of religion, ethnicity, origin and so forth;
- f) Anyone deemed innocent until finally convicted by the court, and some rights and obligations that welcome some social, political, economic, defense, security and so on.<sup>18</sup>

Then according to Ziauddin sardar, there are four meanings of justice revealed by the Qur'an:<sup>19</sup>

- a) Fair in the same sense or equality of equality in rights, as revealed in Surah al-Nisa: 58. This verse guides the judge to place the conflicting parties in the same position, rather than equating what they receive from decision of the judge;
- b) Fair of a balanced meaning. The balance is found in a group in which there are various parts that go to a particular destination, as long as certain conditions and levels are met by each part. With the compilation of such conditions, the group may survive and meet its purpose of presence, as indicated by QS al-Infithar (82): 6-7;
- c) Fair is the concern for the rights of the individual and grants those rights to each owner. This understanding is defined by "putting things in their place" or "giving the other party their right through the nearest path";
- d) Justice attributed to the divine. Fairly here means to maintain reasonableness for the continuity of existence, not to prevent the



continuation of existence and the acquisition of mercy when there are many possibilities for it.<sup>20</sup>

The concept of justice in Indonesia is based on social justice as stated in the Fifth Precept of Pancasila.<sup>21</sup>

Thus, based on the above description regarding the political law of agrarian specialties of Yogyakarta Special Region DIY still cannot meet the values of justice. This is due to the rights of Sultanate and Kadipaten cannot be fulfilled, and there are rights of people who are still chained by discriminatory policies.

#### **D. CONCLUSION**

1. Privileges of Special Region of Yogyakarta In the Regulations Related to Agrarian Law, explicitly stipulated in the provisions of Article 7 paragraph (2) of Law Number 13 of 2012 concerning Privileges of Special Region of Yogyakarta that one of the special authorities granted to the Special Region of Yogyakarta is the land (the authority of the fourth privilege). Thus the Special Region of Yogyakarta has *lex specialis derogat lex generalis* principle on land management in the Province of Yogyakarta Special Region. The *lex specialis derogat lex generalis* is from the abolition of Law Number 13 of 2012 on Special Privileges of Yogyakarta Special Region is the establishment of Keraton and Kadipaten as Legal Entity (Article 32 paragraph (1)) and can have Land Rights (Article 32 paragraph (2) and (3).) As the constitutional basis for exercising special powers, in accordance with Article 7 paragraph (4) of Law Number 13 of 2012 on Special Privileges of Special Region of Yogyakarta, everything must be arranged in advance in a regulation-the so-called invitations Special Regulation (Perdais) of DIY. Thus in the Province of Special Region of Yogyakarta there is a new norm of legislation, namely Special Region Regulation (Perdais) apart from the Regional Regulations and Governor Regulations that have been there.
2. Political Laws of Agrarian Privileges of Special District of Yogyakarta In Compliance with Land Rights for Communities, The legal politics of the special privileges of the Special Region of Yogyakarta, judging by the existing regulations during the Reformation period, have not yet shown a clear legal concept. Unclear legal concept is seen from the beginning of the legal system in Indonesia formulated and led to the formation of law becomes problematic. This is evident when Law No. 5 of 1960 on Basic Agrarian Basic Regulations can only be applied in DIY 24 years later with the enactment of Local Regulation No. 3 of 1984 on the Enactment of Law No. 5 of 1960 on the Basic Regulation of Agrarian Principles in Province of Special Region of Yogyakarta. Unclear legal concept becomes clearer when the issuance of Law Number 13 Year 2012 about Special Privileges of Special Region of Yogyakarta. The

enactment of this Law makes the concept of agrarian legal policy more ambiguous and confusing. Early on in independence, the old order government drafted the concept of agrarian law quite clearly in its direction.

### *Notes*

1. Padmo Wahyono, *Menyelidik Proses Terbentuknya Perundang-undangan*, Forum Keadilan, Jakarta, 1992, p. 65.
2. Padmo Wahjono, *Indonesia Negara Berdasarkan Atas Hukum*, Second edition, Ghalia Indonesia, Jakarta, 1996, p.160.
3. Brian Z Tamanaha, *On The Rule of Law, History, Politics, Theory*, Cambridge University Press, Edisi Keempat, 2006, p. 91.
4. *Ibid*, p. 4.
5. Bernard L. Tanya, Yoan N. Simanjuntak, dan Markus Y. Hage, *Teori Hukum, Strategi Tertib Manusia Lintas Ruang dan Generasi*, III edition, Genta Publishing, Yogyakarta, 2010, p. 129-130.
6. Satjipto Rahardjo, *Ilmu Hukum*, Cetakan III, Citra Aditya Bakti, Bandung, 1991, p. 352-353.
7. Soedarto, *Hukum Pidana dan Perkembangan Masyarakat Dalam Kajian Hukum Pidana*, Sinar Baru, Bandung, 1983, p. 20.
8. Soedarto, *Hukum dan Hukum Pidana*, Alumni, Bandung, 1986, p. 151.
9. *Ibid*, p. 4.
10. *Ibid*.
11. Moh.Mahfud MD, *Politik Hukum di Indonesia*, revision edition, cetakan IV, PT. Raja Grafindo Persada, Jakarta, 2009, p. 1.
12. Moh. Mahfud MD, *Politik Hukum Di Indonesia*, Pustaka LP3ES Indonesia, Jakarta, 1998, p.2.
13. *Ibid*, p. 7.
14. Tisnanta, H.S, *Meniti Partisipasi Publik*, KBH, Lampung, 2003.
15. *Ibid*, p. 4.
16. Lawrence M. Friedman, *Sistem Hukum Perspektif Ilmu Sosial*, Cetakan I, Nusa Media, Bandung, 2009, p. 12.
17. Prof. Dr. Lili Rasjidi, S. H., S. SOS., LL.M dan I. B WYASA PUTR ,S.H, *Hukum Sebagai Suatu Sistem*, cetakan I, PT. Remaja Rosda karya, Bandung, 1993.
18. Ziauddin Sardar, *Islamic Futures: The Shape of Ideas to Come*. Translated by Rahman Astuti with *Masa Depan Islam*, Bandung, Pustaka, 1987, p. 385-386.
19. *Ibid*.
20. *Ibid*, h 114 - 116.
21. Agus Budi Susilo, *Penegakan Hukum yang Berkeadilan dalam Perspektif Filsafat Hermeneutika Hukum: Suatu Alternatif Solusi Terhadap Problematika Penegakan Hukum di Indonesia*, Jurnal Perspektif, Volume XVI No. 4 Tahun 2011 Edisi September, p. 10.

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