

## ANALYSIS OF GOVERNOR'S INSTRUCTION DIY NO: K.898/I/A/75 ON LAND OWNERSHIP IN YOGYAKARTA BY INDONESIAN CITIZENS OF CHINESE DESCENT FROM THE PERSPECTIVE OF JUSTICE.

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**Abstract:** The Governor's Instruction in Yogyakarta that prohibits land ownership for the Chinese community has roots in a long history of resentment that predates independence. In this context, the issuance of the Letter of Instruction by the Head of the Special Region of Yogyakarta in 1975, signed by Paku Alam VIII, becomes relevant. The instruction orders the denial of land ownership to non-indigenous citizens and is linked to Law No. 13 of 2012 on the special status of the Yogyakarta special region, which legitimizes the instruction in the field of land through Article 1 and Article 7. While general land laws apply there, the policy of standardizing land ownership in the governor's instruction states that the Chinese community, referred to as non-indigenous in the instruction, are not entitled to own land in Yogyakarta. However, since the amendment of the 1945 Constitution in 2002, there is no longer any distinction between indigenous and non-indigenous citizens. Therefore, the relevance of the instruction to current regulations is inconsistent with the principles of justice and equal rights as Indonesian citizens. The instruction clearly creates discrimination that undermines justice for Indonesian citizens of Chinese descent and contradicts the Indonesian constitution, which guarantees equal rights and justice for all citizens. Referring to the post-amendment 1945 Constitution, Article 26, paragraph (1) states, "Citizens are native Indonesians and other individuals as recognized by law as citizens." Article 26, paragraph (3) also emphasizes that, "Matters regarding citizens and residents shall be regulated by law." To uphold the constitutional mandate, Law No. 12 of 2006 on the Citizenship of the Republic of Indonesia was enacted. Despite the existence of this law, differential treatment continues to occur, especially in terms of land ownership for Indonesian citizens of Chinese descent in Yogyakarta. It seems that the law does not provide new hope for justice for Indonesian citizens of Chinese descent, even though there is a guarantee of property rights stipulated in Article 28H, paragraph (4) of the 1945 Constitution.

*Keywords:* Prohibition of Ownership, Yogyakarta Land, Chinese-Indonesian Descendant, Justice Perspective

### I. INTRODUCTION

Yogyakarta Special Region (DIY) is one of the provinces in Indonesia that has special privileges compared to other provinces. These privileges are regulated and administered based on the 1945 Constitution of the Republic of Indonesia (UUD 1945) to govern special authorities. Through Law Number 13 of 2012 concerning the Special Privileges of Yogyakarta Special Region (UU No. 13 of 2012), DIY has autonomous authority in regional governance and special affairs. These special affairs include the procedures for filling positions, positions, duties, and authorities of the Governor and Deputy Governor, the institutional framework of the DIY Regional Government, culture, land, and spatial planning. A notable aspect of DIY's special privileges is related to its land regulations. From the beginning, land in DIY was under the authority of the Sultanate known as the Sultan Ground and Paku Alaman Ground, with their rules established by the Sultanate. Subsequently, a Governor's Instruction was issued, prohibiting Indonesian citizens of Chinese descent from owning land in Yogyakarta. They are only allowed to have the Right to Use or Right to Build (Hak Pakai or Hak Guna Bangunan, HGB). This rule still applies in DIY today and is one of its special privileges. This history stems from resentment that arose in 1948 during the struggle for Indonesian independence. The Chinese community chose to support the Dutch forces seeking to re-colonize Indonesia rather than fighting alongside the Indonesian people. This is recorded as the Dutch Military Aggression II in December 1948. At that time, the Chinese community in Yogyakarta supported the Dutch, who had previously colonized Indonesia for 350 years. Since then, Sultan HB IX revoked the land ownership rights of

Chinese descendants in Yogyakarta. In 1950, when the Republic of Indonesia was firmly established and successfully defended, the Chinese community in Yogyakarta chose to move elsewhere. However, Sultan HB IX allowed them to stay in Yogyakarta while revoking their rights to own land. Another factor influencing this policy is the significant number of Yogyakarta residents who sold their land to non-indigenous-led companies during the Dutch colonial period under the governance of Governor Meester in de Rechten Herman William Daendels. The sale of land to these companies resulted in forced cultivation after Daendels' rule. Eventually, a regulation called "groundvervreemdings-verbod" was issued, which prohibited the sale of land to foreigners for indigenous people. The purpose of this regulation was to promote the welfare of indigenous people and prevent the oppression of foreigners, which led to economic disparities in Yogyakarta (Markus Yuwono, 2018).

The next aspect is the significant role of Sri Sultan HB IX in the independence of the Republic of Indonesia and his efforts to maintain that independence. Alongside Bung Karno, he initiated the relocation of the capital to Yogyakarta to safeguard the stability of independence. He also built the Presidential Palace in Yogyakarta, which still stands today, located near Malioboro, across from Vredeburg Fortress. The prohibition on land ownership by the Chinese ethnic group in the Yogyakarta Special Region (DIY) has a strong legal basis, namely Law No. 13 of 2012 concerning the Special Privileges of DIY. This prohibition is further reinforced by an Instruction Letter issued by Paku Alam VIII in 1975 to regents and mayors, prohibiting the granting of land ownership rights to non-indigenous citizens. This instruction letter is still in effect. Governor's Instruction No. K.898/I/A/75 states that non-indigenous citizens, especially those of Chinese descent, are not allowed to have land ownership rights in Yogyakarta. Vice Governor's Instruction No. K.898/I/A/1975 states that Chinese descent Indonesian citizens cannot have land ownership with full rights. For Indonesian citizens of Chinese descent who already have ownership rights before the issuance of Vice Governor's Instruction No. K.898/I/A/1975, they are required to transfer their ownership rights to the state and convert them into other forms of land rights. Vice Governor's Instruction No. K.898/I/A/1975 is considered discriminatory against non-indigenous Indonesian citizens. This contradicts the principle of justice as Indonesian citizens who have equal rights with other citizens. Article 3 paragraph (2) of Law No. 39 of 1999 on Human Rights states that every person has the right to recognition, protection guarantees, fair treatment, legal certainty, and equal treatment before the law. Therefore, every citizen has the right to land ownership regardless of religion, race, ethnicity, or other differences, as regulated in Article 16 paragraph (1) of the Agrarian Law. The instruction letter allows individuals of Chinese descent to have land with the status of Right to Build (Hak Guna Bangunan, HGB), not full ownership rights (Hak Milik, HM). If the land was previously owned by indigenous people and later bought by individuals of Chinese descent, after a certain period of time, the ownership of the land is transferred to the state.

Another recorded history states that based on customary law, the Yogyakarta Sultanate and Pakualaman Duchy would provide land to indigenous people based on their individual needs since all land in Yogyakarta belongs to the Sultanate and Duchy. Customary law also regulates the following: Indigenous residents X and Z live in different areas with different laws. If resident X comes or lives in the area of Z, it is not prohibited. However, this does not mean that resident X has the same rights as resident Z (Afan Husni Maulana, 2021). With this customary law, the indigenous party within the realm of Sri Sultan, especially land ownership being a right from the beginning for the indigenous people, means that those who are not part of the indigenous community have no right to own that land, especially if they are individuals of Chinese descent or non-indigenous citizens.

From the historical explanation regarding the origin of the prohibition on land ownership, such as the 1975 Instruction, Vice Governor's Instruction 1975, or Instruction 898/1975, these instructions remain controversial to this day. The instruction letter issued by Paku Alam VIII ordered that land ownership rights not be granted to non-indigenous citizens, including "Europeanen" (Europeans/white-skinned people) and "Vreemde Oosterlingen" (Foreign Easterners) such as the Chinese, Arabs, Indians, and other non-Europeans in Yogyakarta. They are only allowed to have land use rights. The implementation of this instruction has resulted in racial and ethnic discrimination against Indonesian citizens of Chinese descent, as they are not allowed to have land ownership rights with full ownership status in the Yogyakarta region. However, Article 20 paragraph (1) of Law No. 5 of 1960 concerning Basic Agrarian Principles states that ownership rights are the strongest, most complete, and inheritable rights that can be held by individuals over land. Furthermore, Article 21 paragraph (1) of Law No. 5 of 1960 states that ownership rights can only be held by Indonesian citizens (WNI). Therefore, this prohibition is contrary to the regulation that states land ownership rights can only be held by Indonesian citizens.

From the explanation, it can be concluded that Chinese-descendant individuals who are Indonesian citizens (WNI) have the right to own land with ownership status. However, unfortunately, with the existence of instructions prohibiting land ownership in Yogyakarta, there is a contradiction to the Agrarian Law (UUPA) for Chinese-descendant WNI in Yogyakarta. The DIY government has issued a Letter of Explanation that outlines several reasons why Chinese residents cannot obtain ownership rights over land in DIY, including:

1. Instruction Number K.898/I/A/1975, issued on March 5, 1975, is still in effect and is an affirmative policy aimed at protecting land ownership by native citizens from being transferred to individuals with stronger financial capabilities.
2. The philosophy behind the issuance of Instruction Number K.898/I/A/1975 is as follows: a. The majority of land owned by residents in Yogyakarta comes from grants by the Yogyakarta Sultanate; b. During the independence struggle, residents of Chinese descent sought protection from Sri Sultan Hamengkubuwono IX, as reflected in inscriptions signed by the Chinese community, as well as the presence of the "ngejaman" monument as a gift from the Chinese community.
3. The Supreme Court of the Republic of Indonesia's Decision Number 281 K/TUN/2001 rejected the cassation appeal filed by H. Budi Styagraha against Instruction Number K.898/I/A/1975. Based on this decision, Instruction Number K.898/I/A/1975 has definite legal force, and therefore, from a formal legal perspective, the instruction is still valid.

Some examples of lawsuits filed with the Supreme Court regarding land ownership in Yogyakarta by Chinese-descendant Indonesian citizens (WNI) are as follows:

1. Handoko, an Indonesian citizen of Chinese descent, once filed a lawsuit against the Instruction of the Deputy Head of the Special Region of Yogyakarta Number K.898/I/A/1975 regarding the Standardization Policy for Granting Land Rights to a Non-Native Indonesian Citizen at the Yogyakarta Administrative Court (PTUN). However, in the verdict Number 179K/TUN/2017, the PTUN Yogyakarta stated that they couldn't adjudicate the case because the instruction was not a discretionary act. Handoko also submitted a request for a constitutional review of the instruction to the Supreme Court in case Number 13 P/HUM/2015. However, the Supreme Court rejected the request because the instruction was not a statutory regulation under the law according to the hierarchy of legal regulations stipulated in Law No. 12 of 2011 on the Formation of Legal Regulations in conjunction with Article 1, paragraph (1) of Supreme Court Regulation Number 1 of 2011 concerning Material Testing Rights.
2. Felix Juanardo Winata, an Indonesian citizen of Chinese descent, filed a lawsuit against Law Number 13 of 2012 on the Special Status of the Special Region of Yogyakarta to the Constitutional Court (MK). Felix claimed that he was unable to own land in Yogyakarta and considered the law discriminatory and in violation of the 1945 Constitution. Felix challenged Article 7, paragraph 2, letter d of the Special Status Law of Yogyakarta concerning authority in special matters, including land affairs.
3. Verdict Number 92/Pdt.G/2018/PN.Yyk resolved a dispute over the division of inheritance between the heirs of KAJ (an Indonesian citizen of Chinese descent) and the heirs of SU (one of KAJ's biological children) (Afifah Khairunnisa, 2023). The case originated when, between 1986 and 1995, KAJ purchased 11 plots of land located in the Special Region of Yogyakarta. The Panel of Judges ruled that the defendants, who are legitimate children and descendants of KAJ and Indonesian citizens of Chinese descent residing in the Yogyakarta region, must comply with the provisions of Instruction No. K.898/I/A/1975. If the provisions are not complied with, the right to file a lawsuit lies not with the plaintiff but with the DIY Government.

## II. METHODE

This research employs a normative juridical approach using the case approach and statute approach methods. The normative juridical approach is used to analyze and interpret the applicable legal regulations related to the research problem. The case approach method, in this case, is utilized to analyze relevant legal cases pertaining to the researched issue. In this approach, similar legal cases are used as references to understand the application of related laws. Additionally, this research also utilizes the statute approach method, which involves analyzing legal statutes that serve as the foundation for the research. The researcher will analyze various laws, government regulations, and instructions related to the researched issue. The aim of the statute approach method is to comprehend and interpret the content and substance of the relevant legal regulations related to this research.

By employing the normative juridical approach, case approach method, and statute approach method, this research aims to obtain a comprehensive understanding of the legal aspects related to the researched problem.

Through analyzing relevant legal cases and examining the applicable legal regulations, it is expected to contribute to a deeper and more detailed understanding and interpretation of the legal regulations concerning the research topic.

### III. RESULT AND DISCUSSION

Indonesia is known as a multicultural country with diverse cultures within it. However, with such differences, it is difficult to avoid the influence of discrimination. Discrimination refers to the differential treatment between parties, whether by individuals or groups (Shofa, 2016). Discrimination is usually based on categorizations such as religion, ethnicity, culture, and even social class. Discrimination is often triggered by negative prejudices that one party holds towards another. Additionally, having rigid attitudes towards other groups or cultures without delving deeper into whether the elements within those groups have unacceptable practices or teachings is a form of discrimination. However, discrimination seems to manifest in the context of land ownership restrictions in Yogyakarta imposed by Sri Sultan Hamengkubuwono IX. These restrictions create discrimination against land ownership rights based on individuals' Indonesian citizenship and the distinction between "native" and "non-native" status. These instructions are influenced, among other factors, by negative stereotypes against the Chinese community (Chong, W. 2018). The Chinese community is perceived as being more inclined to form their own groups, avoiding social interaction, and tending to reside within their own community. They are seen as prioritizing trade and business, lacking strong loyalty towards Indonesia, being opportunistic, dominating the national economy, and impeding national progress. These stereotypes are deeply ingrained in society, resulting in ongoing "resentment" that persists to this day.

The changing regimes in Indonesia did not significantly impact the condition and position of the Chinese community (Yeni Wijayanti, 2012). The negative image that has been formed against the Chinese community is so strong that it lingers to this day. Their social condition has been marginalized due to domestic and international policies implemented by the government (Kristiono, 2016). The long history of the Chinese community has created a sense of resentment towards policies, including the land ownership restrictions in Yogyakarta issued through the governor's instructions. These restrictions still apply to Chinese-Indonesian citizens, even though they are also Indonesian citizens. The restrictions are reinforced by Article 7 paragraph (2) letter d of Law No. 13 of 2012 concerning the Special Status of Yogyakarta, which regulates land ownership. The enforcement of this article has led to Chinese-Indonesian citizens not being able to have land ownership rights with full ownership status in the DIY region. The implementation of this article provides legitimacy to the Special Region of Yogyakarta to continue implementing the Deputy Governor's Instruction No. K.898/I/A/1975 regarding the Standardization of Land Ownership Policies for non-native Indonesian citizens. However, the existence of this instruction not only creates discrimination but also concerns aspects of justice. From a legal perspective, justice is a goal in forming a nation to achieve the welfare of all its people. Therefore, Sri Sultan Hamengkubuwono IX decided to issue Governor's Instruction No. K.898/I/A/75 in order to maintain stability in the economic sector by taking over assets previously owned by foreign companies. This action also involves the application of cooperative principles in every company, such as malls, factories, or hotels. All of these measures were taken by Sri Sultan HB IX due to his role as both a king and a regional leader in maintaining stability in the economic sector.

A statement from the Provincial Government of the Special Region of Yogyakarta dated May 8, 2012, Number 593/00531/RO.I/2012 explains that "The Head of the DIY Regional Instruction No. K.898/1975 is still in effect to this day and is an affirmative policy aimed at protecting native citizens so that land ownership does not shift to citizens or investors with stronger financial capabilities." Governor's Instruction No. K.898/I/A/75, signed by the Deputy Head of the Special Region of Yogyakarta, Paku Alam VIII, on March 5, 1975, states that non-native citizens, especially those of Chinese descent, are not allowed to have land ownership rights in Yogyakarta. Chinese-Indonesian citizens in Yogyakarta can only apply for Right to Build (Hak Guna Bangunan) and Right to Use (Hak Pakai), but they do not have the Right of Ownership (Hak Milik) over land in the Special Region of Yogyakarta. The differential treatment in granting land ownership rights in DIY is based on the Regional Head Instruction No. K.898/A/1975 concerning the Standardization of Land Ownership Policies in the Special Region of Yogyakarta for non-native Indonesian citizens. This instruction still applies throughout the Special Region of Yogyakarta, including Sleman, Bantul, Kulonprogo, Gunung Kidul, and the City of Yogyakarta, even though the Special Region of

Yogyakarta has implemented the Basic Agrarian Law (UUPA) since 1984 based on the 1984 Presidential Decree. This contradicts the principles of human rights as it involves elements of discrimination. In Governor's Circular Letter No. K.898/A/1975, it is stated that granting land rights to non-native Indonesian citizens must go through a process of relinquishing ownership so that the land returns to the State and is directly controlled by the DIY Regional Government. Although in reality, DIY has revoked the land regulations used prior to the UUPA and has fully implemented the UUPA since 1984 based on Presidential Decree No. 33 of 1984 and DIY Regional Regulation No. 3 of 1984, the Governor's Circular Letter No. K.898/A/1975 regarding the Standardization of Land Ownership Policies for non-native Indonesian citizens has not been revoked and still applies in DIY.

The content of the Governor's Circular Letter No. 898/A/1975 from Paku Alam VIII states: "To standardize the policy of granting land rights within the Special Region of Yogyakarta to a non-native Indonesian citizen, it is requested that: If a non-native Indonesian citizen purchases land owned by the people, it should be processed as usual, namely through the relinquishment of rights, so that the land returns to State land directly controlled by the DIY Regional Government, and those interested in relinquishing should submit an application to the Head of the DIY Region to obtain a right."

In Law No. 39 of 1999 concerning Human Rights, the protection of property is reaffirmed. Article 36 states: "(1) Everyone has the right to own property, individually or jointly with others, for their personal development, family, nation, and society in a manner that does not violate the law; (2) No one shall be arbitrarily deprived of their property or unlawfully; (3) Property rights have a social function." Indonesia has also ratified the International Covenant on Civil and Political Rights through Law No. 12 of 2005, which states that everyone has the right to equal protection without discrimination. Therefore, the state has a duty to guarantee the rights of its citizens. This is also in line with Article 1 paragraph (3) of the amended 1945 Constitution, which asserts that Indonesia is a constitutional state. One of the principles of a constitutional state is that the rights of every citizen must be protected without exception. However, the instruction clearly prohibits ownership of land under full ownership rights (SHM) for Indonesian citizens of Chinese descent, who are only granted rights to use the land for business purposes (HGU) or building rights (HGB).

The prohibition is based on the economic disparity between the non-native Indonesian citizens (Indonesians of Chinese descent) who are generally wealthier than the native population. Therefore, this policy by the Governor of DIY is intended to protect the interests of the lower-income population. Although the restriction on ownership rights to land only applies to Indonesian citizens of Chinese descent and reduces their rights as citizens, in principle, every citizen, both native and of Chinese descent, has the right to own property, including land in Indonesia. The prohibition applies to the entire Special Region of Yogyakarta, including Sleman Regency, Bantul Regency, Gunung Kidul Regency, Kulon Progo Regency, and Yogyakarta City. In practice, individuals of Chinese descent can own land under full ownership rights or apply for land ownership rights, but they must obtain a certificate of genealogy (surat kekancingan) from the palace. The certificate of genealogy serves as a lineage document that allows someone to possess land under full ownership rights. If an individual of Chinese descent does not have a certificate of genealogy from the palace, they cannot own land under full ownership rights.

In 2012, the National Commission on Human Rights (Komnas HAM) stated that the 1975 Instruction contradicts human rights principles because not all Indonesian citizens of Chinese descent have strong economic backgrounds. In early February 2018, the Ombudsman of the Republic of Indonesia Representative for DIY (ORI) also stated that the enforcement of the 1975 Instruction constitutes maladministration and discriminatory treatment regarding land administration services. Land law in Indonesia is regulated by the Basic Agrarian Law (UUPA) that addresses land-related issues. Article 33 paragraph (3) of the 1945 Constitution serves as the main legal basis for Agrarian Law, stating that land, water, and the natural resources within them are controlled by the State and used for the maximum welfare of the people. The implementation of the UUPA and the values of Pancasila must be in line with each other, as the 1945 Constitution is not ordinary law but a constitutional law. Therefore, Governor's Instruction No. K.898/I/A/75 creates conflicts for non-native Indonesian citizens, especially those of Chinese descent, as it does not reflect a sense of justice for all citizens. Article 21 paragraph (1) of the UUPA explains that only Indonesian citizens have full rights to land, water, and airspace according to the provisions of articles 1 and 2. The principle of citizenship serves as the basis for determining a person's status as a citizen of a country. Article 33 paragraph (3) of the 1945 Constitution states that land, water, airspace, and the natural resources contained within them are controlled by the State. The right to control can be delegated to autonomous regions and customary law communities as long as it does not contradict national interests (Article 2 paragraph (4) of the UUPA). This delegation is supported by Law No. 23 of 2014 concerning Regional Government, which grants power to

autonomous regions to regulate and manage government affairs and the interests of the local community in accordance with legislation. In the context of the Special Region of Yogyakarta, regulations regarding its special status are stipulated in Law No. 12 of 2013. However, it should be noted that such regulations must not violate higher laws, namely the 1945 Constitution.

With the existence of DIY Law No. 13 of 2012 concerning the Special Status of the Yogyakarta Special Region, Article 1 Paragraph 2 states, "Special status is a special legal position held by DIY based on history and original rights according to the 1945 Constitution of the Republic of Indonesia to regulate and manage special authority," the prohibition against Indonesian citizens of Chinese descent cannot be separated from this law, which legitimizes the existence of the instruction from Sri Sultan HB IX to prohibit Chinese residents from owning land in Yogyakarta. Therefore, it is highly unlikely for Indonesian citizens of Chinese descent to own land in Yogyakarta because the law respects the origin and history that exist in Yogyakarta. From a legal perspective, the principle of justice for Indonesian citizens of Chinese descent is questionable because their rights as Indonesian citizens to own land in their own country are denied. However, some court precedents state that Instruction No. K.898/I/A/1975 is still applicable in DIY because there has been no court ruling declaring that the instruction is no longer valid. Some of these court precedents include:

1. Decision of the Yogyakarta State Administrative Court No. 8/G/2016/PTUN.YK dated September 1, 2016, which accepted the objection of the Defendant (Governor of DIY) stating that the disputed object is not included in the Administrative Decision subject to review by the State Administrative Court.
2. Decision of the Surabaya High Administrative Court No. 265/B/2016/PT.TUN.SBY dated December 15, 2016, which affirmed the decision of the Yogyakarta State Administrative Court No. 8/G/2016/PTUN.YK dated September 1, 2016.
3. Supreme Court Decision No. 179/K/TUN/2017 dated April 12, 2017, which rejected the cassation request of the Applicant against the Decision of the Surabaya High Administrative Court No. 265/B/2016/PT.TUN.SBY.

Therefore, normatively, Instruction No. K.898/I/A/1975 cannot be declared as still valid since it does not fall under the category of legislation as defined in Law No. 12 of 2011. However, based on court precedents, no ruling has stated that the instruction is no longer valid in DIY.

The following are two analysis outcomes regarding the prohibition of land ownership rights by Indonesian citizens of Chinese descent in this research:

1. Analysis of Equality of Citizenship Rights Based on the Hierarchy of Legislation

In principle, the differential treatment between native Indonesian citizens (pribumi) and Indonesian citizens of Chinese descent does not significantly diminish their dignity, but the existence of such prohibition certainly leads to discrimination. This can be analyzed based on Law No. 29 of 1999 on the Ratification of the International Convention on the Elimination of All Forms of Racial Discrimination 1965, Law No. 39 of 1999 on Human Rights, Law No. 23 of 2006 on Population Administration, and Law No. 40 of 2008 on the Elimination of Racial and Ethnic Discrimination. These laws can serve as a basis for Indonesian citizens of Chinese descent to have a piece of land in Yogyakarta. The use of the terms "native" and "non-native" in the governor's instruction in Yogyakarta can lead to discrimination in terms of both rights and racial/ethnic groups. However, Presidential Instruction No. 26 of 1998 on the Discontinuation of the Use of the Terms Native and Non-Native in All Policy Formulation and Implementation has ceased the use of such terms in all policies, program planning, and government activities. Therefore, the governor's instruction contradicts the presidential instruction. The provisions of Presidential Instruction 26/1998 aim to enhance equality in law and governance, equality of rights to work and livelihood, rights and obligations of citizens, as well as the protection of human rights. It also strengthens national unity, so both natives and non-natives as citizens of the Republic of Indonesia should have equal rights. These rights are protected by the 1945 Constitution as stated in Article 27, paragraph (1), which declares that all citizens have equal positions in law and governance and must respect the law and governance without exception. Therefore, discrimination should not exist because every citizen has an equal position based on the principle of justice. Despite the enactment of Law No. 12 of 2006 on Indonesian Citizenship, the policy regarding the prohibition of land ownership rights for Indonesian citizens of Chinese descent still applies in Yogyakarta. However, there is no difference in rights and obligations between native citizens and Indonesian citizens of Chinese descent.

Law No. 12 of 2006 concerning the Citizenship of the Republic of Indonesia states in Article 4 that Indonesian citizens are:

- a. Any person who, based on legislation and/or based on an agreement between the Government of the Republic of Indonesia and another country before this Law comes into effect, has become an Indonesian citizen;
- b. Children born from a legal marriage between a father and mother who are Indonesian citizens;
- c. Children born from a legal marriage between an Indonesian citizen father and a foreign citizen mother;
- d. Children born from a legal marriage between a foreign citizen father and an Indonesian citizen mother;
- e. Children born from a legal marriage between an Indonesian citizen mother, but the father does not have citizenship or the law of the father's country of origin does not grant citizenship to the child;
- f. Children born within 300 (three hundred) days after the death of their father from a legal marriage, and the father is an Indonesian citizen;
- g. Children born out of wedlock from an Indonesian citizen mother;
- h. Children born out of wedlock from a foreign citizen mother recognized by an Indonesian citizen father as their child, and the recognition is made before the child reaches 18 (eighteen) years old or gets married;
- i. Children born within the territory of the Republic of Indonesia whose parents' citizenship status is unknown at the time of their birth;
- j. Newly born children found within the territory of the Republic of Indonesia when their parents are unknown;
- k. Children born within the territory of the Republic of Indonesia if their parents are stateless or their whereabouts are unknown;
- l. Children born outside the territory of the Republic of Indonesia from an Indonesian citizen father and mother who, based on the regulations of the country where the child is born, grant citizenship to the child;
- m. Children of a father or mother whose citizenship application has been granted, but the father or mother dies before taking the oath or making a pledge of allegiance.

Therefore, if a person meets the requirements mentioned in the article, it can be confirmed that the person is a citizen of the Republic of Indonesia and has equal rights and obligations. This is also affirmed in Article 28H paragraph (4) of the 1945 Constitution, which states that every individual has the right to personal property that cannot be arbitrarily taken away by anyone. Additionally, this is also regulated in Law No. 5 of 1960 concerning Basic Agrarian Principles ("UUPA"). Article 9 of the UUPA states:

- I. Only Indonesian citizens can have full rights over land, water, and airspace within the limits stipulated in Articles 1 and 2.
- II. Every Indonesian citizen, both male and female, has an equal opportunity to acquire land rights and benefit from its results, both for themselves and their families.

It is also emphasized in Article 21, paragraph (1) of the Basic Agrarian Law that only Indonesian citizens have the right of land ownership. Based on the explanations of these articles, it clearly confirms that ethnic Chinese residents, as long as they have the status of Indonesian citizens, have the right to land ownership in Yogyakarta. This is the conclusion drawn from the author's analysis.

According to the author, the existence of the governor's instruction in the hierarchy of legal regulations can be explained by the principle of *lex superior derogat legi inferiori*, which means that higher regulations prevail over or override lower regulations. Thus, in accordance with the hierarchy of legal regulations, the governor's instruction has a lower position compared to higher legal regulations. Additionally, based on the analysis of the hierarchy of legal regulations as regulated in Article 7 of Law No. 12 of 2011 on the Formation of Legal Regulations ("Law 12/2011"):

- (1) Types and Hierarchy of Legislation consist of:
  - a. The Constitution of the Republic of Indonesia Year 1945;
  - b. Decisions of the People's Consultative Assembly;
  - c. Laws/Regulations in Lieu of Law;
  - d. Government Regulations;
  - e. Presidential Regulations;
  - f. Provincial Regional Regulations; and

g. District/City Regional Regulations.

(2) The legal force of Legislation is in accordance with the hierarchy as mentioned in paragraph (1).

In Article 8 paragraph (1) of Law 12/2011, it is explained that types of legislation, in addition to those mentioned in Article 7 paragraph (1), include regulations established by various institutions, bodies, or commissions that have a level of authority equivalent to that stipulated in the law. This includes regulations established by the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Supreme Audit Agency, the Judicial Commission, Bank Indonesia, the Minister, as well as the Provincial Regional Representative Council, the Governor, the District/City Regional Representative Council, the Regent/Mayor, the Village Head, or institutions with equivalent levels of authority.

Thus, the position of the Law is higher than the Regional Head Instruction, including the Governor's and Vice Governor's instructions in the region, including in the Special Region of Yogyakarta. However, the issue is that the instruction prohibiting land ownership in Yogyakarta is protected by Law No. 13 of 2012 concerning the Special Status of the Special Region of Yogyakarta. Article 1 of this Law states: "In this Law, the following shall mean: 1. Special Region of Yogyakarta, hereinafter referred to as DIY, is a provincial region that has privileges in the implementation of government affairs within the framework of the Unitary State of the Republic of Indonesia. 2. Privilege is the special legal position held by DIY based on history and ancestral rights according to the 1945 Constitution of the Republic of Indonesia to regulate and manage special authorities. 3. Special Authority is a specific additional authority held by DIY in addition to the authority specified in the law on regional government in Article 1 paragraph 1. 2 and 3 are emphasized in Chapter IV Authority, Article 6, where DIY's special authority is within the province. Article 7 (1) DIY's authority as an autonomous region includes authority in DIY regional government affairs as stipulated in the law on regional government and matters of privilege stipulated in this Law. (2) Authority in matters of privilege as referred to in paragraph (1) includes: a. procedures for filling positions, positions, duties, and authorities of the Governor and Vice Governor; b. DIY regional government institutions; c. culture; d. land; and e. spatial planning.

From the explanation of the Law, it is clear that the governor's instruction in Governor's Letter No. K. 898/1/A/1975 concerning the Standardization of Policies for Granting Land Rights to Non-native Indonesian Citizens is part of the legitimate authority of the regional head granted by Law No. 13 of 2012 concerning the Special Region of Yogyakarta. Therefore, according to the author, a revision of the Law is necessary, especially regarding the authority of land ownership by Indonesian citizens of Chinese descent. This is because the broad authority of the DIY regional head, in this case, the Governor of Yogyakarta, is fully protected by Law No. 13 of 2012. However, this is contradictory to Law No. 39 of 1999 concerning Human Rights, Law No. 12 of 2006 concerning the Citizenship of the Republic of Indonesia, Presidential Instruction No. 26 of 1998 concerning the Termination of the Use of the Terms "Native" and "Non-native," Law No. 5 of 1960 concerning Basic Agrarian Principles, and Law No. 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination.

## 2. Analysis of Equality of Citizenship Rights Based on the Theory of Justice

In understanding the concept of justice, it is necessary to interpret it in the context of Pancasila and relate it to the interests of the Indonesian nation, which must experience that justice. In the legal framework based on the concept of Pancasila justice, the aim is to protect individuals passively (negatively) by preventing arbitrary actions and actively (positively) by creating a humane societal condition that allows for fair social processes. From a human perspective, the equality of rights is seen as a shared unit or container. This means that all individuals, including every citizen, have equality before the law. Proportional equality grants each individual their rightful rights, thereby providing every human being with ample opportunities to fully develop their potential (Bahder Johan Nasution, 2014). The purpose of creating laws, in this case, legislative regulations, is to achieve progress and happiness for society. Therefore, any action aimed at producing and maintaining societal happiness is considered just. Thus, the understanding of the Pancasila concept of justice and the legal framework that protects the Indonesian nation should be oriented towards achieving progress and societal happiness in a fair manner. The principles of justice should be translated into policies and regulations that ensure every individual, regardless of social status, family background, race, or ethnicity, has an equal opportunity to develop themselves and experience justice in society.



According to Rawls (John Rawls, 1999), justice essentially means fairness, or what he refers to as pure procedural justice. From this idea, Rawls' theory of justice emphasizes the importance of a fair and impartial procedure that allows political decisions born from such a process to safeguard the interests of all individuals. Furthermore, Rawls' notion of fairness addresses two main aspects. First, it concerns how each of us can be subject to obligations by willingly undertaking them because these obligations are seen as an extension of natural obligations (natural law concept) to act justly. Second, it pertains to the conditions under which existing institutions (in this case, the state) should be fair. This means that the obligations demanded of institutions only arise if the underlying conditions (constitution, laws, regulations) are fulfilled. According to Rawls, the principles of justice should be based on the principle of rights, not benefits. If the principle of benefits serves as the basis, it would disregard fair procedures. The primary consideration would be the end result that benefits as many people as possible without regard for the means and procedures (the greatest good for the greatest number). Conversely, a principle of justice based on the principle of rights will generate fair procedures because it is grounded in the inviolable rights of individuals. Aristotle, in his thinking on justice, stated that justice is an action that lies between giving too much and giving too little. This can be interpreted as giving each person what is rightfully theirs. Frans Magnis Suseno also states that justice is a state among humans where they are treated equally according to their rights and obligations. From the perspectives of these legal philosophers, it can be concluded that justice belongs to all human beings. It does not matter if one is rich or poor, regardless of social status, position, family background, race, or ethnicity. The basic principle of "equality before the law" asserts equality without any legal distinctions for every human being. Justice is one of the important principles of law, along with utility and legal certainty.

There are several forms of justice, including:

- a. Moral justice is achieved when each individual performs their functions according to their abilities.
- b. Distributive justice is achieved when similar things are treated in the same manner.
- c. Commutative justice aims to maintain order or well-being.
- d. Social justice is achieved when every individual receives fair treatment in terms of law, politics, economy, culture, and equitable prosperity.

Justice in the perspective of national law, according to the author's assumption, is a policy created by legal experts and obtains its legitimacy from the state. Law is seen as a human-made product that emerges in response to the desires and interests of society, including interests related to justice that arise from the principles and purposes of the law. Subsequently, regulations within the law can formulate policies that are just in legal matters. Legal justice, or often referred to as legal justice (legal justice), is justice that has been formulated by law in the form of rights and obligations. Violations of this justice will be addressed through legal processes (Fuady, 2007). Law, as a bearer of the value of justice, according to Radbruch, becomes the measure for assessing whether legal order is just or not. The value of justice also serves as the foundation of law itself. Thus, justice has a normative and constitutive nature for law. Justice serves as the basis for every positive law that has dignity (Yovita A. Mangesti & Bernard L., 2014). Additionally, there is an important discourse on fairness and social justice. Fairness and justice involve the recognition and balanced treatment of rights and obligations. When there is recognition and balanced treatment of rights and obligations, social justice is embraced by the Indonesian nation, clearly stated in Pancasila as the fifth principle and the 1945 Constitution.

Justice here is a judgment by giving to everyone what is rightfully theirs, by acting proportionally and not violating the law. Justice cannot be separated from obligations. The term "social" here refers to the broader society. Thus, social justice implies a hierarchy, that justice for the broader society is more important than for specific groups or individuals. Meanwhile, the phrase "the entire people of Indonesia" means that social justice must apply to all the people of Indonesia, wherever they are, without exception. There should be no discrimination against anyone. Because every human being has the right to be treated justly and to act justly by balancing rights and obligations. So, the social justice found in the fifth principle of Pancasila is a balance between the fulfillment of physical and spiritual needs, a balance between humans as individual beings and social beings, and a balance between the fulfillment of civil and political rights with economic, social, and cultural rights. From this analysis, it is clear that the interpretation of justice in the law refers to the rights and obligations of the citizens of the Republic of Indonesia, which includes all the people of Indonesia who are citizens without exception. Therefore, the prohibition on land ownership rights in Yogyakarta for Indonesian citizens of Chinese descent, who are, *nota bene*, Indonesian citizens, undermines the sense of justice regarding rights and obligations. The DIY

regulation and governor's instruction become legal instruments that, according to the author's analysis, limit the rights of every Indonesian citizen of Chinese descent to have the same rights as other Indonesian citizens regarding land in Yogyakarta.

From the perspective of justice, it is clear that the concept of land ownership rights in Yogyakarta does not align with the principles of justice expressed by philosophers. Equal rights to land ownership in Yogyakarta are not applied to Indonesian citizens of Chinese descent (WNI keturunan Tionghoa), even though the concept of Indonesian citizenship refers to equal citizenship status for individuals of various backgrounds in accordance with laws and regulations. The principle of equality before the law, known as "equality before the law" in foreign languages, is an internationally recognized principle, including in the Universal Declaration of Human Rights of 1948. The principle of equality before the law is a principle that must be upheld to ensure justice that can be experienced by society. In Indonesia, this principle is reflected in Article 27, Clause 1 of the 1945 Constitution, which states that "All citizens are equal before the law and government and shall uphold the law and government without exception." This article serves as the basis for the protection of citizens to be treated equally before the law and government (Walukow, 2013). In this context, it is important to note that the article does not consider a specific ethnicity, race, or tribe. The concept of justice expressed by philosophers lies in equal treatment, equal rights, and obligations for every individual or human being in society. These rights should be granted fairly, whether to those who have few rights or more, as long as these rights are their absolute rights and in the spirit of justice (fairness).

Based on these theories, it is evident that the existence of the instruction from the Governor of Yogyakarta is contradictory to the concept of justice as proposed by John Rawls, Aristotle, and Frans Magnis Suseno. Therefore, according to the author's assumption, it is necessary to re-examine the legislation in DIY Regulation No. 13 of 2012, which grants special privileges, especially in the field of land, leading to discrimination and a sense of injustice towards the rights of Indonesian citizens concerning the Instruction from the Head of the Special Region of Yogyakarta No. K.898/I/A/1975 regarding the Standardization of Policies for Granting Land Rights to Non-Pribumi Indonesian Citizens. This instruction appears to further restrict the rights of Indonesian citizens of Chinese descent within that scope.

#### **IV. CONCLUSION**

The Special Region of Yogyakarta (DIY) has its own uniqueness in various aspects, including regulations related to land ownership. One of the exceptional rules in the region is the prohibition for ethnic Chinese residents to have ownership rights over their land and they are only allowed to possess land with building rights (HGB) status. Instruction No. K/898/I/1975 stipulates that until now, Indonesian citizens of Chinese descent or non-native Indonesians are not able to have land ownership rights in DIY. This is a form of discrimination. However, Presidential Instruction No. 26 of 1998 has discontinued the use of the terms "native" and "non-native" in all policy formulations, program planning, and implementation of government activities. This means that the terms "native" and "non-native" are no longer used for ethnic Chinese residents because they are, in fact, Indonesian citizens with the same rights and obligations as other Indonesian citizens, including land rights. Until now, the 1975 DIY Governor's Instruction should no longer be valid because it contradicts the Basic Agrarian Law (UUPA), Citizenship Law No. 12 of 2006, and Human Rights Law No. 39 of 1999. According to the author, the historical actions of the native Chinese during the independence era should not be passed on as a mistake to Chinese residents who have chosen to become Indonesian citizens. Such prohibition only creates discrimination and injustice in the perspective of a rule of law country that upholds the principle of justice in equal rights and obligations as citizens. Therefore, the existence of the DIY instruction not only contradicts other legal regulations but also disregards the aspect of legal justice.

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