

LEGAL PLURALISM IN THE SPECIAL DISTRICT PROVINCE OF YOGYAKARTA, INDONESIA

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ABSTRACT

This study analyses the implementation of legal pluralism theory in a unitary state, such as the Republic of Indonesia, for historical and political purposes. The Special District Province of Yogyakarta, formally known as Ngayogyakarta Hadiningrat Sultanate, is one of the provinces whose territory and government have existed before Indonesia's independence. When Sultan Hamengku Buwono led this province as the king, it significantly enjoyed many privileges within the Unitary State of the Republic of Indonesia, which apply to date. However, it is still possible to find discriminatory policies, especially in the agrarian sector, aimed explicitly at the Indonesian Chinese community due to the implementation of the Governor Instruction of 1975. As a result of this policy, the Indonesian Chinese are not entitled to land ownership rights in this region. This discriminatory policy serves as a window to explain how

the social, cultural, political, and historical structures of Yogyakarta impact the implementation of the legal pluralism concept within the Republic of Indonesia. Historical and legal approaches within the socio-legal framework are used in this research.

Keywords: Legal pluralism, unitary state, federal state, constitution, socio-legal

INTRODUCTION

The Head of Yogyakarta District Instruction No. K. 898/I/A/1975 (1975 Instruction) prohibits the Indonesian Chinese from land ownership rights in the Special District Province of Yogyakarta (Yogyakarta). The implementation of the instruction reflects the manifestation of legal pluralism concept within the unitary structure of the Republic of Indonesia. This article examines the recognition of legal pluralism in Indonesia by referring to the 1975 Instruction as the part of self-local land regulation in Yogyakarta and how it contradicts the Constitution and National Land Law of the Republic of Indonesia.

Pluralism does not only cover issues of race, ethnicity, religion, social class, demography, and culture; it also includes the legal sector, an interactive process between two lawful systems in a certain social field (von Benda-Beckmann and Turner 2018). In the Indonesian context, it is viewed from the practice of local autonomy in Nangroe Aceh Darussalam Province (Aceh), The Special District Province of Yogyakarta (Yogyakarta), and the Special Autonomous District of Papua and West Papua Province (Papua).¹ These provinces have special historical and political frameworks in the Republic of Indonesia. Therefore, Aceh and Yogyakarta are respectively referred to as Special District Provinces while Papua is referred to as Special Autonomous District.

The Special District and Autonomy statuses are a form of division of power in the government, theoretically referred to as the decentralisation concept (Raharusun 2009). In theoretical and practical terms, this notion has received various criticisms because it does not agree with the ideas of a unitary state, which should be state-centric and autonomous (Abdullah Sani 2020). The implementation of the decentralisation concept emphasises the importance of exploring various political, economic, social, and cultural aspects. The issue of diversity causes decentralisation to be more inclined towards federalism, which preserves the rights of various states within a country (Strong 1963).

The Special District status of Yogyakarta is regulated under Law No. 13 of 2012 concerning the Privileges of the Special District Province of Yogyakarta (Special District Law). Under this Law, Yogyakarta is authorised to implement self-local land regulation. One of the implementations of self-local land regulation is the enforcement of the 1975 Instruction. However, the enforcement of the 1975 Instruction has violated Article 21 Paragraph (1) National Land Law 1960. According to this Article, *all* Indonesian citizens, including the Indonesian Chinese, are entitled to get land ownership rights.

The prohibition of land ownership rights is a discriminative policy that violates the general principle of the Universal Declaration of Human Rights and the United Nations International Convention on The Elimination of All Forms of Racial Discrimination. According to Article 7 of the Universal Declaration of Human Rights, everyone should be equally protected against any form of discriminatory practices. The Republic of Indonesia also ratified this principle in accordance with Law No. 39 year 1999 concerning human rights and Law No. 40 year 2008 concerning the elimination of race and ethnic discrimination. These policies mandate that both the central and local governments protect their citizens from discriminative treatment, especially those in the public service sector, including the entitlement of land ownership rights.

In 2001, 2015, and 2017, the Supreme Court issued three landmark court decisions that reinforced the prohibition of land ownership rights for the Indonesian Chinese in Yogyakarta. The 2001 Supreme Court decision was the first product of the judicial organ recognised the discriminative prohibition. In 2015, the panel of judges rejected the Judicial Review regarding the enforcement of the 1975 Instruction, which indirectly strengthened the discriminative policy. According to the panel of judge's consideration, Yogyakarta has its own land law policy based on the laws of the Ngayogyakarta Hadiningrat Sultanate. One of the examples of Sultanate land law policy is the 1743 Agreement between Sri Sultan Hamengku Buwono II of Ngayogyakarta Hadiningrat and the Chinese who carried out the rebellion in Ponorogo. According to the agreement, Sri Sultan Hamengku Buwono II agreed to protect the Chinese rebels and allowed them to stay and develop the economy of Yogyakarta; however, they were prohibited from owning land.² During the formation of the Republic of Indonesia, the Sultanate was a royal territory that had its own sovereignty. This led to the linkage of two legal systems, which are the law of the Republic of Indonesia and the law of the Sultanate (von Benda-Beckmann and von Benda-Beckmann 2006). After the Republic of Indonesia gained independence, the sovereignty of the Sultanate

was reinforced by the recognition of Yogyakarta as a Special Region, and one of its special authorities involved the land sector as can be seen in the 1975 Instruction.

In addition to strengthening the enactment of this policy using historical factors, the Yogyakarta Provincial Government also stated that the instruction was not included in the regulations used as the object of a judicial review. The supreme court's judges also agreed with the Yogyakarta Provincial Government's view. According to the judges, the 1975 Instruction falls in the category of *pseudowetgeving* or pseudo-legislation. This term is used for non-legal regulations or policies enacted by the state administration officials in implementing the legal framework. The categorisation has made the Supreme Court unable to conduct judicial review for the 1975 Instruction (Ridwan 2011). The 1975 Instruction was also classified as pseudo-legislation because in 1975, the National Land Law of Indonesia was not fully implemented in the Yogyakarta Region; this law was only enforced in Yogyakarta in 1984. Until then, the legal vacuum was satisfied by pseudo-legislation in the 1975 Instruction (Asshiddiqie 2005). Irrespective of this fact, the current implementation of the 1975 Instruction needs to follow the development of existing laws and regulations. The application of pseudo-legislation based on the discretion principle need not conflict with the existing laws and regulations. Moreover, when related to the current context, the 1975 Instruction contradicts the principle of land ownership in the National Land Law of Indonesia. Lastly, in 2017 the Supreme Court issued a decision that implicitly “agreed” with the implementation of the 1975 Instruction irrespective of the fact that it was not included as a State Administrative product (*beschikking*).³

The enforcement of the 1975 Instruction is the manifestation of the legal pluralism concept within the unitary structure of the Republic of Indonesia. This concept recognises the relationship between international, national, and locally implemented norms in a certain state (von Benda-Beckmann and von Benda-Beckmann 2006; Irianto 2009). The legitimacy of the norms is empirically prone to contestation and negotiation (Bakker and Moniaga 2010). In this situation, strong interaction, contestation, and adoption between those norms are irresistible. The recognition of the legal pluralism concept has led to potential conflict within the Republic of Indonesia, particularly in autonomous districts such as Yogyakarta. The strong interaction, adoption, and even contestation between norms are not only found in the structure of the state, but also related the enforcement of the human rights principle in the country. In the scope of legal pluralism, the dispute settlement of the agrarian conflict is commonly associated with land claims. The conflicting parties adopt

two different legal systems; however, in the end, they formulate a dispute settlement mechanism using a consensual basis (Simarmata 2013). In the global context, legal pluralism today is shifting its focus to how international law impacts the national law, particularly on humanitarian issues (Irianto et al. 2021).

LEGAL PLURALISM IN THE YOGYAKARTA REGION

Legal pluralism was made part of the local political identity to stimulate the social system (Wiratraman and Steni 2013). It is viewed from the perspective of the indigenous society, which is perceived as an opponent of state power regarding local political access. The prohibition of the Indonesian Chinese from land ownership entitlement is inseparable from the special status of Yogyakarta. Based on this situation, the Government of the Republic of Indonesia also authorised the Yogyakarta region to regulate its land policy. This led to the emergence of local and national laws regarding land. However, the local land policy enacted in Yogyakarta contradict Indonesia's National Land Law System. The relationship between these contradictory laws and policies is known as legal pluralism (von Benda-Beckmann and von Benda-Beckmann 2006).

The Head of Rights and Land Registration Division of National Land Agency of Yogyakarta also shared the dual policies granted to the Yogyakarta region for the Granting of Land Rights and the National Land Agency. According to the Head, these provisions usually contradict each other.⁶ As a state institution in charge of this sector, it is a known fact that the legal basis for granting land ownership rights is formed by national land law principles. However, the National Land Agency is also aware of a standardised local government structure in this province. Irrespective of its authorisation to grant land rights, the National Land Agency cannot optimally carry out its functions because of other institutions such as the *Paniti Kismo*, which performs similar tasks although in the local realm. The *Paniti Kismo* is a *tepas* (bureau) under the Ngayogyakarta Hadiningrat Sultanate and is responsible for managing land in the Sultanate. Interestingly, those within its domain have the status of *Sultanaat Grond*, or land belonging to the Kingdom of Yogyakarta. Meanwhile, those outside *Sultanaat Grond* and *Paku Alam Grond* are within the domain of the National Land Agency.

In line with the opinion of the National Land Agency, academics from the National Land Higher Education Institution are of the opinion that the

1975 Instruction is an example of the discretion of the regional head.⁷ They argued that the restriction of land ownership rights of the Indonesian Chinese in Yogyakarta is legal and that such a restriction is ideal as it is a protective measure to ensure that the land is not controlled by outsiders.

LEGAL PLURALISM IN SOUTHEAST ASIAN CONTEXT

Legal pluralism is not only specifically found in the Republic of Indonesia; it is also a common practice in Southeast Asian countries that have multi-ethnic and multi-religious populations (Hussain 2011), such as Malaysia, Singapore, and Thailand. Irrespective of the existence of legal pluralism in Southeast Asia, the effectiveness of its implementation has remained poor (Shimray 2011) due to the lack of contextual interpretation of the constitution in the respective countries. In short, the law-making process does not sufficiently consider the heterogeneous background of its society. However, legal pluralism recognises ethnic and religious diversity as the building blocks of a multicultural and multi-religious society that needs to be acknowledged and accommodated. For this reason, legal pluralism in Southeast Asia is recognised both formally and informally by various nation states.

There is no uniformity of legal pluralism practice in Southeast Asia. In Malaysia, the Sharia Courts are for Muslims while the National Civil High Courts are for non-Muslims. The jurisdiction of Sharia Courts is formally regulated under Article 121 Paragraph 1A of Malaysia's Federal Constitution, which grants the Sharia Courts judiciary power to enforce certain laws, particularly in the field of personal and family laws. Singapore, Brunei, and the Philippines each have a separate Sharia court recognised by Islamic personal law that applies only to Muslims. Due to their recognition of religious differences, Malaysia, Brunei, the Philippines, and Singapore are classified as countries that implement the concept of legal pluralism.

Legal pluralism in Indonesia and Thailand is similar. The practices of legal pluralism in both countries are based on historical aspects. As the ex-colonial territory of the Dutch, Indonesia adopted the legal system from the Dutch and implemented the civil law system since its independence. This system comprises a mixture of Dutch (Civil Law), *adat* (customary), Islamic Law, and other forms of modern statutes. The contradiction between Civil Law and *adat* can be found in the implementation of the 1975 Instruction in Yogyakarta. In Thailand, the recognition of other legal systems depends on the ruling government's political vision. After the fall of the Thaksin regime

in 2006, for instance, the new Prime Minister made a formal commitment to recognise Sharia Law as well as create more local autonomy in the Southern Province, which is dominated by the Thai Muslim community (Amin and Kate 2009).

In accordance with these experiences, the adoption of the legal pluralism concept in Southeast Asian countries is still facing certain problems, especially with regards to recognition. Legal pluralism is formally recognised in the constitution of some nations, but not all. The universalism concept of Southeast Asian countries' constitution needs to be harmonised to meet the diversity of their respective societies.

METHOD

In order to explain the reinforcement of the 1975 Instruction as the recognition of legal pluralism in Indonesia, this article is constructed using the legal research method with socio-legal approach. The legal research method refers to a systematic study of legal rules, principles, concepts, theories, doctrines, court decisions, institutions, issues, or problems and questions related to certain legal issue (Yaqin 2007). In this study, the prohibition of land ownership rights for Indonesian Chinese as regulated in the 1975 Instruction is analysed based on the inclusivity that is granted for all Indonesian citizens under the National Land Law of Indonesia and other international law instruments. As the consequence of the recognition of the 1975 Instruction, the socio-legal approach, which does not fundamentally distinguish laws enacted by the state from those implemented by society (Irianto 2009), is employed to analyse three case studies issued by the supreme court. The socio-legal approach also used to elaborate the legal and non-legal aspects regarding the correlation between the unitary structure of the Republic of Indonesia and the existence of the 1975 Instruction (Fleiner and Fleiner 2009).

The analysis is performed based on secondary data from the supreme court and also the National Land Law of Indonesia (Banakar and Travers 2005). Additionally, this study provides empirical data obtained through in-depth interviews held with various local stakeholders, such as the Head of the National Land Agency in Yogyakarta. The interviews were conducted after approval was gained from the Dean of Faculty of Law, Universitas Indonesia, and the National Agrarian Agency of Yogyakarta in August 2016. The participation was voluntary, and the participants gave consent for the data to be used in this research.

Selected Supreme Court Decision Rulings on Prohibition of Land Ownership Rights for A Local Chinese Resident in Yogyakarta

On 5 March 1975, the Head of the Special District Province of Yogyakarta, Pakualam VIII, the 1975 Instruction to prohibit the Indonesian Chinese from having access to land ownership rights in the region. The implication is that the Chinese will only be able to obtain land tenure status other than ownership rights as mandated in the 1960 Agrarian Law. Several legal efforts, such as the issuance of a lawsuit and an application for a judicial review to the State Administrative and Supreme Courts, respectively, have been carried out by the Indonesian Chinese community to obtain land ownership rights in the Yogyakarta region. The three court decisions illustrate that the 1975 Instruction is still valid, and the Chinese are not entitled to own land in Yogyakarta. Besides, the description of legal pluralism in Yogyakarta agrarian policy is presented through 1) mapping of the parties involved in the decision-making, 2) the content of the court's decision, and 3) the trial process with respect to the consideration of the panel of judges (Irianto and Cahyadi 2008).

H. Budi Styagraha v. Head of Bantul Regency BPN Office (Supreme Court Decision No. 281K/TUN/2001)

Case background

The Indonesian Chinese have made several attempts to obtain land ownership rights in the Yogyakarta region, one of which is through legal remedies reflected in the Supreme Court decision No. 281K/TUN/2001. This case was motivated by the letter issued by the Land Agency Office (BPN) of Bantul Regency No. 630.1/431/2000 dated 30 May 2000, which absolutely rejected the process of changing names and the issuance of ownership rights to any plot of land purchased by a citizen of Chinese descent named Budi Styagraha. The letter further explained that Budi Styagraha was unable to carry out the name transfer process because Budi was of Chinese descent.

Budi Styagraha was not satisfied with the rejection letter and filed a lawsuit against the Yogyakarta State Administrative Court. It was stated that Budi had purchased a plot of land (certificate of ownership No. 2016) from Johannes Haryono, covering an area of 552 m² located in Ngestiharjo Village, Bantul Regency. The buying and selling process was also legally carried out through the Sale and Purchase Deed No. 251/1999, dated 29 December 1999, before a Land Deed Official, Crist Arya Minaka. As part of the Sale and Purchase transaction, Budi Styagraha then proceeded to reverse the ownership

rights from the original owner Johannes Haryono to his name. All required documents for the transfer of names, such as Land Ownership Certificate, Deed of Sale and Purchase, Identity Card, and other documents, were also fulfilled. However, the National Land Agency of Bantul Regency issued a letter rejecting the entire procedure.

Budi Styagraha argued that the rejection letter issued by the National Land Agency had violated Government Regulation No. 24 of 1997 concerning Land Registration and Regulation of the State Minister of Agrarian Affairs or Head of the National Land Agency No. 3 of 1997. Due to the violation, Budi Styagraha asked the Yogyakarta State Administrative Court panel of judges to revoke the Bantul Regency BPN letter No. 630.1/431/2000 dated 30 May 2000, as well as process the transfer of property rights from Johannes Haryono to him.

Administrative Court of Yogyakarta's decision and appeals from the parties

After receiving the lawsuit filed by Budi Styagraha, the National Land Agency of Bantul Regency answered by mentioning two points of defences. First, Yogyakarta Province is a region with a privileged status through Law No. 3 of 1950 and one of the special authorities it possesses is the regulation of land matters. Second, according to the National Land Agency of Bantul Regency, the basic agrarian principles in 1960 do not affect its privileges to regulate land issues.

However, the Yogyakarta State Administrative Court panel of judges rejected the Exception of the National Land Agency of Bantul Regency and granted Budi Styagraha's claim. In its decision, the panel of judges cancelled letter No. 630.1/451/2000, dated 30 May 2000, and ordered the National Land Agency to immediately execute the process of transferring property rights proposed by Budi Styagraha. As the losing party in this decision, The National Land Agency appealed to the Surabaya State Administrative High Court. However, with the filing of a Legal Effort Appeal, the process of transferring property rights requested by Budi Styagraha was not constitutionally executed because it was not legally binding. At this level, the panel of judges of the Surabaya State Administrative High Court revoked the initial court decision.

As the losing party at the appeal level, Budi Styagraha then filed a legal action against the Supreme Court to fight for his rights. In the Memorandum of Cassation, Budi Styagraha argued that the panel of judges of the State Administrative High Court failed to consider the suitability or objectivity of the lawsuit, i.e., letter No. 630.1/451/2000 dated 30 May 2000, and several

provisions of the existing laws and regulations in the country, especially the basic agrarian principles. Budi Satyagraha stated that as part of the Unitary State of the Republic of Indonesia, land provisions in the Yogyakarta region are in accordance with the basic agrarian principles that guarantee that the citizens have land ownership rights. In addition, it was postulated that differences between the indigenous and non-indigenous people are not recognised in the territory of the Republic of Indonesia. This is explicitly stated in the Presidential Instruction of the Republic of Indonesia Number 26 of 1998 which expressly removes the distinction between these citizens.

To convince the panel of judges at the cassation level, Budi Styagraha also presented supporting information for comparison, for instance, Supreme Court decision No. 10K/TUN/1992. This verdict legitimised land ownership rights in the Yogyakarta region for two Indonesian citizens with similar class backgrounds as Budi Styagraha. Furthermore, Budi Styagraha showed certificates of ownership to land Nos. 262 and 155, both of which were owned by Indonesian Arabs and Indonesian Chinese, respectively. With respect to this, Budi Styagraha postulated that the panel of judges of the State Administrative High Court failed to consider aspects of the general principles of good governance, especially equality.

Supreme Court decision and its considerations

Budi Styagraha's struggle to obtain land ownership rights in the Yogyakarta region also met a stalemate when the panel of judges rejected the arguments and evidence presented at the cassation level. Regarding their consideration, the object of dispute in the form of letter No. 630.1/451/2000 dated 30 May 2000, was not categorised as a State Administrative Decision (*administrative beschikking*) and this became the domain of the State Administrative Court. This led to the only consideration made by the panel of judges at the cassation level, which was to strengthen the step adopted by the National Land Agency of Bantul Regency by denying Budi Styagraha land ownership rights.

In this case, the lawsuit only focused on a single object, namely letter No. 630.1/451/2000 dated 30 May 2000. The 1975 Instruction as the legal basis for rejecting the process of changing the name on the documents of the land purchased by Budi Styagraha was not substantially discussed by the panel of judges. In addition, the political and discriminatory aspects of the policy were not discussed at all during the decision-making.

Handoko v. Governor of the Special District Province of Yogyakarta (Supreme Court Decision No. 13P/HUM/2015)

Case background

In 2015, an Indonesian Chinese activist named Handoko (the Appellant) submitted a request for a judicial review to the Supreme Court regarding the enforcement of the 1975 Instruction. As an Indonesian Chinese residing in Yogyakarta, he felt the recognition of the 1975 Instruction was against the 1945 Constitution and National Land Law of Indonesia. With his law school background, he applied for a judicial review before the supreme court to revoke the implementation of the 1975 Instruction in Yogyakarta.

According to Article 21 of the National Land Law of Indonesia all citizens are entitled to get land ownership rights regardless of ethnic background, race, or descent. On the contrary, Yogyakarta, as part of the Republic of Indonesia, applies conflicting regulations. Apart from being contrary to higher legal norms, the 1975 Instruction is considered discriminatory, therefore, according to the Appellant, this policy needs to be revoked.³ The application for a judicial review was ultimately rejected by the panel of judges of the Supreme Court on the basis that the Object of the Application for Judicial Review, including the 1975 Instruction, was not included in the group of policies regulated in Law No. 12 of 2011 concerning the Legislations (2011 Legislation Law).

Handoko explained that the 1975 Instruction was a discriminatory local legislation that mainly affected the Indonesian Chinese community. According to its provision, assuming a non-indigenous Indonesian citizen wants to purchase a piece of land, the individual needs to first relinquish it before applying for land entitlement rights. The indigenous people need not undergo this mechanism. They do not need to relinquish rights to be able to transfer ownership of the purchased land. This difference in treatment is one of the reasons the Appellant submitted a judicial review to the Supreme Court. Moreover, the contents of the 1975 Instruction are no longer relevant to the current social conditions in the country. This is because it does not distinguish between indigenous and non-indigenous groups (including Indonesian Chinese). Law Number 12 of 2006 concerning citizenship stipulates that the original Indonesian nation comprises those that are citizens by birth and have never received another nationality of their own free will. The use of the terms “indigenous” and “non-indigenous” at the national and state level is in fact prohibited by Presidential Regulation No. 26 of 1998 concerning the

Cessation of the Use of Indigenous and Non-indigenous Terms in Government Administration.

However, the arguments based on the 1975 Instruction, 1960 Agrarian Law, and 2006 Citizenship Law presented by Handoko were generally rejected by the Provincial Government of Yogyakarta based on the reason that the land provisions in the area were indeed different from those of other regions in the country due to the historical and political factors that had shaped the Yogyakarta region.

The decision of the Supreme Court and considerations of the panel of judges

The application for a judicial review of the 1975 Instruction submitted by Handoko was ultimately rejected by the panel of judges of the Supreme Court. They considered that the object of the Material Examination Right was not included in the group of laws and regulations enacted in Indonesia. However, because the instruction was not included in the group of statutory regulations, the panel of judges stated that the Supreme Court did not have the authority to carry out any examinations.

In general, the consideration of the panel of judges, as stipulated in decision No. 13P/HUM/2015, failed to discuss the contents of the norms in the 1975 Instruction. They were unable to consider its incompatibility with the Agrarian Law and other regulations, as argued by the Appellant. The only statement of the parties used by the panel of judges to reject the Application for Judicial Review was the Appealed's response regarding the nature of the 1975 Instruction as a non-statutory product. Theoretically, it is considered a non-statutory product in the form of pseudo-legislation. Besides, the panel of judges do not give its opinions or views on legal products in the form of pseudo-legislation.

Handoko v. Governor of the Special District Province of Yogyakarta (Supreme Court Decision No. 179K/TUN/2017)

Lawsuit background

After the Supreme Court rejected the petition for judicial review, Handoko (Appellant for judicial review in decision No. 13P/HUM/2015) filed a lawsuit against the Yogyakarta State Administrative Court in 2017. The object of the lawsuit is the enforcement of the 1975 Instruction from the State Administration's point of view.⁵ The defendant, in this case, was the Legal Bureau of the Yogyakarta Province. Regarding its considerations, Plaintiff

is of the view that the 1975 Instruction is included in the group of State Administrative Decisions. Therefore, the State Administrative Court has the authority to hear and revoke the validity of this policy. The legal efforts made by Plaintiff were finally rejected by the panel of judges of the Supreme Court on the consideration that the object of the lawsuit was not included in the State Administrative Decisions. This met the requirements stipulated in Article 1 point 9 of Law No. 51 of 2009 concerning the State Administrative Court.

Lawsuit arguments

Although the debate regarding the 1975 Instruction was reviewed in 2001 during the case of H. Budi Stygraha v. Head of the National Land Agency of Bantul Regency Office, the policy was never made the object of a lawsuit for a State Administration dispute. In this case, Handoko sued the Legal Bureau of the Special District Province of Yogyakarta over this policy which was considered discriminatory against the Indonesian Chinese.

Handoko postulated that the Supreme Court's inability to receive the Application for Judicial Review led to the classification of the 1975 Instruction as a Government Administration Decree or Discretion as referred to in Law No. 30 of 2014 concerning Government Administration. Moreover, Handoko's opinion is based on the considerations made by the panel of judges in the case of the previous Judicial Review, where the 1975 Instruction was considered not to be included in the product of the legislation, thereby, making it impossible to execute. Due to Handoko's lawsuit that the 1975 Instruction was included as a Government Administration Decree, this case was then registered at the Yogyakarta State Administrative Court.

Handoko tried to convince the court by stating that the 1975 Instruction was included in the Product of Government Administration Decree in accordance with Article 1 point 7 of the Government Administration Law. Based on these provisions, all written policies issued by government agencies and officials for the purpose of administering good governance are included in Government Administration Decrees. In addition to categorising the 1975 Instruction as a Government Administration Decree, Handoko also suggested the panel of judges assess it as discretion to Article 1 point 9 of the Government Administration Law. This was conveyed to avoid possible consideration of not perceiving the policy as a Government Administration Decree.

Handoko stated that the 1975 Instruction is categorised as a State Administration Decree because it is in accordance with Article 87 of the Government Administration Law. This provision mandates that the meaning

of State Administration Decisions includes verdicts that have the potential to cause legal consequences. According to Handoko, the 1975 Instruction was capable of such, in the form of limited access for people with similar physical characteristics to a certain race (Chinese race) to be entitled to land ownership rights in the Yogyakarta region.

In addition to the argument aimed at convincing the panel of judges regarding the position of the 1975 Instruction as a Government Administration Decree, Handoko also postulated that it was an abuse of authority by the Yogyakarta Provincial Government. This is in line with its prohibition as regulated in Article 17 of the Government Administration Law. Handoko further explained that the abuse of authority in this policy was reflected in its norms, thereby, contradicting the provisions of the legislation, especially the basic agrarian principles, the Citizenship Law, and the Law on the Elimination of Racial and Ethnic Discrimination.

The last point emphasised by Handoko was centred on the abuse of power by the local government of Yogyakarta for implementing the 1975 Instruction. It was further reported that the implementation of this policy was contrary to the provisions in the Yogyakarta Privileges Law, where the Governor and Deputy Governor were not allowed to make decisions that specifically discriminated against citizens or specific groups. This instruction restricting the entitlement of Indonesian Chinese to land ownership rights contradicts the principle of impartiality regulated in the Government Administration Law. This policy requires government officials not to be discriminatory in every action or decision taken.

Handoko's arguments were ended with several requests made to the State Administrative panel of judges to cancel the enforcement of the 1975 Instruction. In addition, they were also asked to instruct the Yogyakarta Provincial Government to revoke the policy, thereby, enabling Indonesian Chinese to be entitled to land ownership rights.

Yogyakarta Provincial Government responses

In response, the Yogyakarta Provincial Government filed an Exception that 1) the lawsuit was unacceptable, 2) it was vague and unclear (*obscuur libel*), and 3) expired. Subsequently, it was stated that the 1975 Instruction was not categorised as a State Administrative Decree because it does not fulfil the concrete, individual, and final elements stipulated in Article 1 point 9 of the State Administrative Court Law. Interestingly, the concrete element was not fulfilled because the object of the lawsuit filed by Handoko was only in the

form of instruction and not an order that complied with the provisions of the State Administrative Court Law. The 1975 Instruction also did not fulfil the Individual Element because it was intended for the public. According to the Yogyakarta Provincial Government, this was proven by its inclusion in the Yogyakarta Special Region Gazette No. 14 of 1975, dated 5 March 1975. This indicates the compilation of a legal product with the publicity or non-individual principle. According to the Yogyakarta Provincial Government, the final element of the 1975 Instruction was also not fulfilled because it required approval from other State Administration Officials such as the National Land Agency and other organisations.

The exceptional point stated that the Yogyakarta Provincial Government emphasised that the lawsuit filed by Handoko was vague and unclear, commonly referred to as *obscuur libel*. According to them, there was a discrepancy between the *Posita* (subject matter) and *Petitum* (claim) whereby the arguments put forward by Handoko were stated to be convoluted and unclear. In addition to *obscuur libel*, the government also responded that Handoko's lawsuit had expired. They explained that there are three kinds of expiration in filing a lawsuit against a State Administrative Decree, for instance, 1) 90 days after the 1975 Instruction was announced, 3 June 1975, 2) 90 days after the promulgation of the State Administrative Court Law, on 28 March 1987, or 3) 90 days since Handoko submitted a judicial review to the Supreme Court, 14 April 2015. In its exception, the Yogyakarta Provincial Government further explained that the three expiration dates were not met.

Administrative Court decision, Handoko's legal effort, and the Supreme Court decision

After considering Handoko's lawsuit and the exceptions raised by the Yogyakarta Provincial Government, the State Administrative Court Judges decided to accept the Government's Exception and rejected the lawsuit. This decision was numbered 8/G/2016/PTUN.YK and was later confirmed by Appeals Decision No. 265/B/2016/PT.TUN.SBY dated 15 December 2016. Handoko, who lost in the first instance, filed an appeal to the Supreme Court.

In the Memorandum of Cassation, Handoko re-emphasised that the 1975 Instruction was included in the State Administrative Decision categorised in the discretionary group, thereby ensuring that the State Administrative Court was authorised to carry out the trial process. Handoko argued that the first and appeal judges had narrowed the notion of discretion to *beleids beschikking*, even though the Government Administration Law failed to recognise the

classification of and *beleidsregel* and *beleids beschikking*. Furthermore, Handoko also tried to convince the Supreme Court that the 1975 Instruction was in accordance with the discretion categorisation regulated in Article 1 point 9 of the Government Administration Law. He also cited to the consideration of the Administrative High Court of Surabaya, who failed to give detailed reasons for its decision.

The Supreme Court ultimately rejected the appeal filed by Handoko. The panel of judges at the cassation level still considers that the 1975 Instruction is not included in the State Administrative Decision as referred to in the court of law. In addition to the categorisation, they also felt that the reasons stated by Handoko were not justified because in principle the examination of the cassation was only related to the non-execution or error in the implementation of the law by the court of first instance and appeal.

In Decision No. 179K/TUN/2017, the panel of judges did not give any in-depth consideration to the main case. From the onset, they had only emphasised the 1975 Instruction, which was not included as the State Administrative Decree. With respect to this decision, the panel of judges at the appeal and cassation levels were consistent with the considerations and decisions at the first instance, which accepted the exception from the Yogyakarta Provincial Government. However, with this acceptance, procedurally, the subject matter in Handoko's Lawsuit was not further discussed.

The Implementation of Legal Pluralism in Yogyakarta from the perspectives of Budi Styagraha and Handoko's Case Studies

Budi Styagraha and Handoko's cases implicitly show that the national law enforcement agencies in the country cannot make judgments regarding the enactment of the 1975 Instruction, perceived as a local legal norm in Yogyakarta. Based on the considerations in Budi Styagraha and Handoko's cases, the panel of judges did not take any legal action regarding the contradiction between the 1975 Instruction and the national land law of Indonesia. They only made considerations regarding the technical procedural law and formalities of the object of the lawsuit. Of the three decisions, the panel of judges tended to make considerations that focus on the categorisation of the 1975 Instruction in the Indonesian legal system.

In addition to agreeing with the legal pluralism concept in Yogyakarta, all facts in Budi Styagraha and Handoko's cases also indicate the existence of a semi-autonomous social field. Moore (1973) stated that semi-autonomous social field can formulate the rules, encourage and force subjects to obey the

regulations. The semi-autonomous social field is simultaneously governed by a larger social matrix. Hence the prohibition of land ownership for Indonesian Chinese in Yogyakarta is considered the semi-autonomous social field due to the fact that, in practice, the prohibition mentioned in the 1975 Instruction is also regulated by a broader national land law system. Consequently, because of its nature, the legal system in Indonesia, especially in the Yogyakarta region, is categorised as multi-levelled (Pospisil 1967).

Legal Pluralism and the Organisation of the Unitary State of the Republic of Indonesia

The prohibition of local Indonesian Chinese from land ownership rights or entitlement shows a deviation in implementing the unitary state structure of the Republic of Indonesia. The supremacy of the central parliament in determining national policies and the absence of a subsidiary sovereign body that serves as a benchmark for the unitary state have distorted relations with the central and local government of Yogyakarta (Strong 1963). On the other hand, the accommodation of legal pluralism through the Special Law of Yogyakarta illustrates the application of a multicultural federal state structure. This is in line with Lindsey and Pausacker's (2016) opinion that one of the biggest challenges encountered in Indonesia is the choice to maintain its centralistic (unitarian) style or face the difficulties associated with identity-based divisions such as religion, ethnicity, and race, given the constellation between customary, state, and national laws (Irianto 2017).

The dynamic state structure of the Republic of Indonesia is the key factor in its asymmetrical practice. The term "asymmetry" is used to define cases where certain provinces or districts of a state enjoy autonomy while others do not (McGarry 2007). Article 1 Paragraph (1) of the 1945 Constitution states that Indonesia is classified as a unitary state. Besides its constitutional declaration, the country still recognises the existence of customary law implemented by the indigenous society in various special regions (von Benda-Beckmann and von Benda-Beckmann 2013). The recognition was formally regulated before the amendment of the 1945 Constitution.

In 1945, the Unitarian structure was used to develop the nation by the Indonesian Independence Preparatory Agency (*Badan Penyelidik Usaha Kemerdekaan* [BPUPK]). The unitarian and federalist aspects debated the issue before finally agreeing on the structure of the newly born nation. In accordance with facilitating all political interests, BPUPK established a small group called the Basic Law Commission to complete the structure

determination process of the state (Kusuma 2004). On 11 July 1945, the Commission reported that a majority of the members preferably selected a unitary structure, i.e., 24 of them, while another five members selected that of the federal.⁸ In 1949, the unitary structure of the Republic of Indonesia was replaced by the confederation (federal structure) based on the intervention of the Dutch colonial government. This change was formally stipulated under the Constitution of the United States of Indonesia Year 1949 (Constitution of RIS).⁹ The federal structure was only for a short while, and on 15 August 1950, it was replaced by The Provisional Constitution of the Republic of Indonesia Year 1950. The most important replacement was changing the state structure of the Republic of Indonesia from federal to unitary. This led to the establishment of a new body called the Board of *Konstituante* whose main objective was arranging the newly implemented permanent constitution.

Fortunately, certain unitarian and federalist groups were involved in the newly implemented constitution arrangement processes. The pro-unitarian group wanted a unitary state structure to be enacted. For them, federalism is a form of betrayal of their struggle for independence.¹⁰ On the other hand, the federalists argued that the federal structure would help the country achieve prosperity. The implementation of federalism caused regions within the Republic of Indonesia to develop self-determination, thereby, adapting to their local characteristics.¹¹ The discourses regarding the structure of the nation finally came to an end after the issuance of the Presidential Decree of 1959, which was a self-executive instruction to bring back the 1945 Constitution and make it permanent. The re-enactment of the 1945 Constitution meant the return of the unitary state concept as the structure of the Republic of Indonesia.

In the circumstances associated with structural dynamics, the prohibition of the Indonesian Chinese from land ownership rights or entitlement reflects the recognition of laws other than the national policies. The national agrarian law, for instance, allows all citizens, regardless of ethnicity, to be entitled to land ownership rights. However, as stated earlier, the 1975 Instruction, that is, the Yogyakarta Regional Policy, contradicts the national policy, thereby leading to the asymmetrical land regulation in Indonesia. The prohibition of Indonesian Chinese from land ownership rights or entitlement is in line with the recognition of privileges as stipulated in the constitution. The Central Government grants special status and autonomy to several provinces considered to have specific factors, one of which is Yogyakarta. Although in line with the rights of origin and historical factors in this region, the implementation of privileges in the land sector still needs to pay attention to the rules contained in national law, thereby, ensuring that its implementation does not contradict each other.

CONCLUSION

The prohibition of Indonesian Chinese in Yogyakarta of land ownership rights or entitlement is still prevalent despite its contradiction with the national agrarian law and anti-discrimination principle. However, the enforcement of the 1975 Instruction also proves Indonesia's recognition and implementation of the legal pluralism concept. Unfortunately, as can be seen in the case studies of Budi Styagraha dan Handoko examined earlier, the Supreme Court did not make any legal action regarding the contradiction between the 1975 Instruction and National Land Law of Indonesia. Despite its contradiction, the Supreme Court still issued a verdict that accommodates both national and local land policies in Yogyakarta (Simarmata 2013).

The existence of legal pluralism within the Yogyakarta region is a deviation of the unitary state structure as formally regulated under Article 1 Paragraph (1) 1945 Constitution. The interaction between these two legal systems within a certain social field, as mentioned by von Benda-Beckmann and Turner (2018), is unavoidable since the historical, political, and cultural backgrounds of Indonesians are also plural. The interpretation of the unitary state structure needs to be further expanded by accommodating certain element from federalism. The expansion in interpreting the unitary structure may become the solution to synchronise the 1945 Constitution with its empirical practice within Republic of Indonesia.

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- ¹ Act of Governance of Aceh 2006, Act of Special Autonomy for Papua 2001, Act of Municipality of Yogyakarta 2012.
 - ² Sri Sultan Hamengku Buwono II Decree: “*Ingsun keparengake siro kaum cino mapan ing lemah-lemah kangmikolehi kanggo laku dagang nanging ora ing sun keparengake handarbe*” (I allow you Chinese to occupy lands that have high economic/strategic potential, but you are not allowed to own these lands).
 - ³ *Handoko v. The Governor of Special District Province of Yogyakarta* (Supreme Court Decision No. 179K/TUN/2017) 29. In the consideration section, the panel of judges decided that the object of the dispute, i.e., the Instruction of the Vice Governor of the Special District of Yogyakarta No. K.898/I/A/1975 is not included in the state administrative decision that meets the requirements referred to in Article 1 point 9 of Law Number 51 of 2009 concerning the State Administrative Court.
 - ⁴ *Handoko v. Governor of the Special District Province of Yogyakarta* (Supreme Court Decision No. 13P/HUM/2015) 6.
 - ⁵ *Handoko v. Governor of Special District Province of Yogyakarta* (Supreme Court Decision No. 179K/TUN/2017) 2.
 - ⁶ Interview with officials of the National Land Agency of Yogyakarta Region.
 - ⁷ Interview with the Head of the National Agrarian School of Yogyakarta on 8 August 2016.
 - ⁸ According to the Minutes of the Meeting of *Konstituante* dated 11 July 1945, cited in Kusuma (2004), voting was conducted to decide whether a unitary or federal structure should be used in the new constitution. The result showed that 19 members explicitly chose unitary structure, five members implicitly chose unitary structure, and five members chose the federal structure.
 - ⁹ The Constitution of the United States of the Republic of Indonesia year 1949 replaced the 1945 Constitution after the Dutch colonial government did not recognise the independence of the Republic of Indonesia. The structure of the Republic of Indonesia was changed from a previously unitary state into federal state.
 - ¹⁰ The summary of the statements of the pro-unitarian group in the *Konstituante* Meeting dated 11 July 1945. The statements seen in the Minute of Meeting were compiled in Kusuma (2004).
 - ¹¹ The summary of the statements of the pro-federalist group in the *Konstituante* Meeting dated 11 July 1945. The statements seen in the Minute of Meeting were compiled in Kusuma (2004).

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