

Discriminatory policy of land ownership of the Chinese in the special region of Yogyakarta in constitutional and local regulation perspective

Rahmi Agnes Tania^{*} and *Iwan Satriawan*

Law, Faculty of Law, Universitas Muhammadiyah Yogyakarta, Indonesia

Abstract. For more than forty years, the Yogyakarta Sultanate has applied discriminatory policy on law ownership to Chinese Indonesian. Historically, the Chinese descendants have not been able to own land except Building Rights or HGB. This policy was outlined in the Regional Head Instructions Number K.898/I/A/75. The research analyzes what is the legal basis of application the discriminatory policy on land ownership for Chinese-Indonesia. The research uses normative and empirical legal research with constitutional and local regulation approach. The result of research shows that the Special Region of Yogyakarta imposed a Discriminative Land Ownership Policy to the Chinese-Indonesia is due to historical reason, when the Giyanti Agreement of 1755 sued the Chinese traitor group to the Sultanate. Since then, the Instructions Letter of the Regional Head of DIY PA. VII/No. K/898/I/A/75 was issued to Prohibit the Property rights of Non-Indigenous Indonesian citizens. The research recommends that the Government of Special Region of Yogyakarta should re-considers and reviews the time limitation of banning land ownership to Chinese- Indonesia in the light of respecting the constitutional rights of new generation of the Chinese-Indoensia. This recommendation, off course, needs some requirements for the Chinese-Indonesia such as statement of loyalty to the Sultanate and limitation of the area they may have land ownership.

1 Introduction

Indonesia is still vulnerable to the race discrimination, ethnicity unfairness, and native or non-native customs which may lead to any kind of manifested conflicts [1]. Yogyakarta is without exception as the Chinese descendants cannot purchase and own the land. Yogyakarta recently has revised discrimination law regarding the land ownership by Chinese people. It was legalized after two (2) court decisions [2], letters for two presidents and two State body recommendations have been signed and approved. Descendants, mainly from ethnic Chinese and Indians except non-indigenous, still have a right to own land in the Special Region of Yogyakarta. Non-indigenous Indonesian citizens, including China, cannot indeed own land in the Special Region of Yogyakarta.

* Corresponding author : rahmi.agnes.2016@law.umy.ac.id

In the past, they can only have HGB or Building rights. The Policy turned out to have a reasonably long historical background [3].

The Constitutional Court once handled a request regarding the special privileges of Yogyakarta, which made Indonesian Chinese citizens unable to obtain land ownership rights on November 15, 2019. In the review of Article 7 paragraph (2) letter d of Law Number 13 of 2012 concerning the special status of the Special Region of Yogyakarta (DIY) governing law ownership to the Constitutional Court. Indeed, the article's enforcement has caused the Chinese-descent WNI not to claim a right to land with DIY ownership status.³ Handoko, a Chinese citizen of Chinese descent, once sued the Deputy Head of the Special Region of Yogyakarta Instruction Number K.898 / I / A / 1975 concerning Uniforming Policy on Granting Rights to Land Non-Indigenous Indonesian Citizen to the Yogyakarta State Administrative Court (PTUN). However, through No. 179K / TUN / 2017, the Yogyakarta Administrative Court stated that they could not prosecute because the Instruction did not constitute discretion.

Land Policy related to land rights restrictions for Chinese citizens of Chinese descent historically began when on March 5, 1975, when the Special Region of Yogyakarta (DIY), represented by the Deputy Head of DIY, namely Paku Alam VIII, issued An Instruction outlined in Letter No. K/898/I/A/1975 Regarding the Uniformity of Policy on Granting of Land Rights to a non-Indigenous Indonesian citizen. The letter is addressed to Regent/Mayors of Regional Heads throughout the DIY Region, carrying out a uniform Policy related to granting land rights to non- native Indonesian Citizens who have ownership rights over community land to the relinquishment of rights. Then, the non-native Indonesian citizens' ownership rights can apply to the regional heads of DIY to obtain other rights.

The Chinese always get political protection from the colonial side. For the support, there are finally succeed in appearing as a new economic power in Yogyakarta. However, instead, the natives experienced a prolonged bankruptcy. Tensions in the Chinese community and indigenous people continue. Instead of providing support in the war against the Dutch, the Chinese prefer to leave Yogyakarta. Sultan Hamengkubuwono IX, who heard that then gave an ultimatum: if the Chinese leave when the people are at war, they cannot go back to Yogyakarta forever. The lack of harmony between native and Chinese-Indonesia people in Yogyakarta continued until the New Order Era. Soeharto, who provided many economic facilities to Chinese businesspeople, made the Sultan take anticipatory steps. One of them is by issuing a ban on Chinese citizens to owned land in Yogyakarta in 1975, and which applies today.

Handoko is one of Chinese descent has also registered the application for testing the Instruction material test with the Supreme Court in case Number 13 P / HUM / 2015. Based on Law No. 12 of 2011 concerning Formation of Laws and Regulations in conjunction with Article 1 paragraph (1) of the Court and Supreme Court Number 1 of 2011 concerning Materials Testing Rights. Based on Constitutional, there are several conditions for as a source of law to get the right to be free from Discrimination. The subject of the conditions is divided into two parts. The first is a citizen, and the second is every person without qualifications. With these two conditions, the right to be free from Discrimination is for citizens' rights and human rights [4]. The constitutional provisions made by the government regarding human rights to be free from Discrimination are as follows. Article 5 paragraph (3) of Law No. 30 of 1999 stipulates that every person who belongs to a vulnerable group of people has the right to receive treatment and protection concerning their specificity.

2 Research Novelty

No.	Author, Title	Written Form (Thesis, Journal, etc)	University	Year	Summary to the Content
1.	Subagijo Ferdy Haryanto, <i>Pemilikan Hak Milik Atas Tanah Bagi WNI Keturunan Tionghoa di Daerah Istimewa Yogyakarta</i>	Journal	Universitas Kristen Satya Wacana	2012	How citizens of Chinese descent can obtain land ownership rights that apply in the UUPA, namely Indonesian citizens have the same rights over BARA, in the circular letter of the Governor of DIY PA VIII No.K.898/I/A/1975 which in fact until now the circular letter is still in force.
2.	Febrianto Frans, <i>Telaah Yuridis Terhadap Intruksi Kepala Daerah Propinsi Daerah Istimewa Yogyakarta Nomor K/898/I/1975 Tentang Penyeragaman Policy Pemberian Hak Atas Tanah Kepada Seorang WNI Non Pribumi</i>	Journal	Universitas Islam Sultan Agung	2018	The Instruction of the Head of the DIY Region No.K/898/I/A/1975 is a product of pseudo legalization which is the policy of Sri Sultan Hamengkubuwono IX in protecting his weak people.
3.	Pandamdari Endang, <i>Mengkritisi Diskriminasi Pemilikan Tanah di Provinsi Daerah</i>	Journal	Universitas Trisakti	2018	The implementation of land ownership in the Province of the Special Region of Yogyakarta is different from the UUPA, as evidenced by the enactment of the Instruction of the Deputy

No.	Author, Title	Written Form (Thesis, Journal, etc)	University	Year	Summary to the Content
	Istimewa Yogyakarta				Governor of the Special Region of Yogyakarta no. K. 898/I/A/1975, concerning the uniform policy of granting land rights to non-indigenous Indonesian citizens, so that in practice land ownership rights cannot be granted to non-native Indonesian citizens. The land ownership discrimination is contrary to the 1945 Constitution of the Republic of Indonesia, the Basic Agrarian Law and Law no. 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination, therefore the Instruction of the Deputy Governor of the Special Region of Yogyakarta needs to be immediately revoked.
4.	Lestarini Ratih, Kebijakan Pertanahan Bagi WNI Keturunan Tionghoa Di Yogyakarta: Diskriminasi atau Diskriminasi Positif	Journal	Universitas Indonesia	2018	The enforcement of land policy related land rights for Indonesian citizens of Chinese descent in the Territory Special Region of Yogyakarta. In this context, they can only be granted land rights in the form of HGB, not allowed to obtain property rights to land in Yogyakarta. This restriction is considered as a different treatment of citizens of Chinese descent. This issue becomes important to be discussed

No.	Author, Title	Written Form (Thesis, Journal, etc)	University	Year	Summary to the Content
					<p>considering the Law No. 5 of 1960 on Agrarian Principles ensuring the arrangement of land tenure is directed to be utilized for all Indonesian citizens without exception in a fair manner. The discussion of the issue will be further elaborated using the perspective of the sociology of law in order to explain how the people of Yogyakarta responded to such policy.</p>
5.	Kurnia Titon Slamet, Constitutional Court and The Right To Be Free From Discriminatory Treatment	Journal	Universitas Kristen Satya Wacana	2015	<p>Judicial interpretation of the right to be free from discrimination is a central issue in the practice of judicial review by the Constitutional Court of the Republic of Indonesia. This article attempts to describe and systematize these practices and then restate the principles stated by the Constitutional Court in its decision. This article finds that, in principle, the practice of the Constitutional Court in determining whether a piece of legislation contradicts the principle of non-discrimination is carried out by applying two main testing grounds, namely strict scrutiny and rationality.</p>

No.	Author, Title	Written Form (Thesis, Journal, etc)	University	Year	Summary to the Content
6.	Thara Sito Sekar V, Problematika Surat Intruksi Kepala Daerah Nomor K.898/I/A/75 Tentang Penyeragaman Policy Pemberian Hak Atas Tanah Kepada Seorang WNI Non Pribumi di Yogyakarta	Thesis	Universitas Islam Indonesia	2016	To find out the position of the DIY PA VIII Regional Head Instruction Letter No. K.898/A/1975 Concerning Uniform Policy on granting land rights within the Special Region of Yogyakarta to a non-indigenous citizen from a human rights perspective
7.	Rahmi Agnes Tania, Discriminatory Policy of the Chinese in the Special Region of Yogyakarta in Constitutional and Local Regulation Perspective	Journal	Universitas Muhammadiyah Yogyakarta	2021	The Chinese descendants have not been able to own land except Building Rights or HGB. This policy was outlined in the Regional Head Instructions Number K.898/I/A/75. the Special Region of Yogyakarta imposed a Discriminative Land Ownership Policy to the Chinese-Indonesia is due to historical reason, when the Giyanti Agreement of 1755 sued the Chinese traitor group to the Sultanate. Since then, the Instructions Letter of the Regional Head of DIY PA. VII/No. K/898/I/A/75 was issued to Prohibit the Property rights of Non-Indigenous Indonesian citizens. This

No.	Author, Title	Written Form (Thesis, Journal, etc)	University	Year	Summary to the Content
					research compares with the 1945 Constitution. One of the laws contained in the 1945 Constitution is: Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia stipulates that every person has the right to recognition, guarantee, protection, and legal certainty that is just and equal treatment before the Law.

3 Research Method

3.1 Type of Research

This research is normative and empirical legal research (combined). Normative legal research is a legal research method that is carried out only by examining library materials or secondary data.⁵ Empirical legal research is a legal research method that uses empirical facts obtained from human behavior, including verbal behavior obtained from interviews and actual actions obtained through direct observation. The facts used in the introduction process from the relevant truth test are current facts. Research on empirical legal norms (combination), namely legal research on the actual implementation of a particular legal event on the implementation of legal provisions (legislation) active in society.

3.2 Type of Data

3.2.1 Primary Data

1. Research Sites

Legal Normative-empirical (combined) legal research requires a research location. To combine what is happening in the field with existing theories to find the absolute truth, this research obtained is the Yogyakarta State Administrative Court.

2. Interview

The Interview is a way to check or authenticate information. Namely, information obtained previously by asking questions about the questions in this study or people who know directly about these questions, namely the Special Region of Yogyakarta's laws and regulations, deprives Chinese citizens of their land rights. Interviews is a way to obtain information related to legal events directly or verbally to obtain the information needed in

writing this thesis. This Interview is conducted to find out the main problems.

3.2.2 Secondary Data

Secondary data were in the form of legal materials used as research material and taken from library materials consisting of primary legal materials [6], secondary legal materials, and tertiary legal materials, namely:

- 1) Primary legal materials, namely binding legal materials, are laws related to the Discriminatory of Land Ownership on the Chinese. This research's primary legal materials for this research are the 1945 Constitution, Law Number 5 of 1960, and Law Number 39 of 1999.
- 2) Secondary legal materials are legal material that can explain primary legal materials, including:
 - a. Related scientific books such as laws and regulations.
 - b. Related research results such as Interviews.
 - c. Related papers such as journals.
- 3) Non-legal materials, namely materials used as a complement to legal materials.

3.3 Data Collections

Retrieval of data in this study is to use secondary data collection systems and primary data, namely:

- 1) Primary data were obtained through field studies, namely by using Interviews with parties related to this research problem as the primary material in this study .
 - a. The results of an Interview with Dr. Mohammad Amrullah, S.H. M.H. Bantul District Court;
 - b. The results of an Interview with Hj. Siti Maisyarah., S.H., M.H. Yogyakarta State Administrative Court;
 - c. The results of an Interview with Yuni Shuwan. Rinjani Salon owner, a Chinese citizen.
- 2) Secondary data were obtained through literature study collects all laws and regulations, documents, scientific books, research results, seminar papers, and literature related to the problem. Furthermore, statutory regulations and related documents will take the primary meaning or legal principles of the article's respective contents related to the problem. For scientific books, papers, and related literature, theory and statements will follow the research topic, systematically arranging all the data to facilitate the analysis process.

3.4 Method of Data Analysis

The data or legal materials obtained from both secondary data and primary data in this study will then be analyzed descriptively-qualitative manner. The results were analysed by sorting and selecting, classifying, and relating the realities that occur in the field with the problems studied to provide a clear picture of what happened in the field to conclude [7].

4 Result and Discussion

4.1 The concept of Non-discrimination in the 1945 Constitution and other legislation

4.1.1 The regulation in the 1945 Constitution

All citizens have the right to have land rights in Indonesia without restrictions and distinctions from the central and regional governments. Land rights are still seen as natural rights that all groups, including the State, must respect, although there are still restrictions relating to the public interest, control, and use, as well as the extent [8]. The 1945 Constitution also regulates Citizenship, as stated in Article 26 of the 1945 Constitution, which states that: Paragraph (1): “Those who are citizens are native Indonesian people and those of other nationalities who are ratified by Law as citizens in the country.” Paragraph (2): “Residents are Indonesian citizens and foreigners who reside in Indonesia.” Paragraph (3): “Matters concerning and residents are governed by the Law.” The 1945 Constitution is a written fundamental Law, the Constitutional of the current Republic of Indonesia Government. Article 27 of the 1945 Constitution clearly states: “All citizens have the same legal and governmental position and are obliged to uphold Law and government without exceptions.” This formula means that all citizens, regardless of status, officials or, ordinary people have the same rights before the Law and government. Therefore, there are no citizens before the law. Interpretation involves the principle Equality is appropriate, citizens or not, they become residents of the Republic of Indonesia. In developing countries, including Indonesia, Law enforcement’s main problem is not the legal system but the Law enforcement’s Equality.

Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia stipulates that every person has the right to recognition, guarantee, protection, and legal certainty that is just and equal treatment before the Law. Article 28I paragraph (2) of the 1945 Constitution of the Republic of Indonesia stipulates that every person has the right to be free from discriminatory treatment on any basis and has the right to received protection for discriminatory treatment. Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia stipulates that all citizens are equal in Law and government and must uphold the Law and government with no exception.

This Policy becomes an exciting study to gain a more profound understanding background, and this Policy might apply in Yogyakarta and deviate from the 1945 Constitution of the Republic Indonesia. There are at least two reasons why the intended Policy is interesting to study, namely:

1. The land Policy in Yogyakarta, which is considered discriminatory, still in use because of the 1945 Constitution of the Republic of Indonesia’s regulations that every person has the right to get special facilities and treatment to obtain equal opportunities, benefits, and Justice.
2. Yogyakarta people themselves have different perspectives in responding to the Policy.

4.1.2 The Arrangement in the Agrarian Law

In general, Law Number 5 of 1960 on Agrarian Law which regulates agricultural, natural resources, also regulates land rights. These are the types stipulated in Article 16 paragraph 1, including ownership rights, cultivation rights, building use rights, lease rights, land opening rights, forest product acquisition rights, and other rights. In the provisions of Article 16, the types of Land Rights can divide into three (3) categories, namely:

1. Permanent Land Rights, namely ownership rights, land use rights, building use rights, use rights, building lease rights, land reclamation rights, and forest product collection rights.
2. Temporary Land Rights, namely Pawnshop, production sharing agreement, hitchhiking rights, and agricultural land lease rights.
3. Land Rights with Legal Status mean that land rights can change due to Law changes, and the Law will issue in the future.

Land policies related to restricting land ownership by Chinese Indonesian citizens began in 1975, to be precise on March 5, 1975, issued by the Deputy Governor of the Special Region of Yogyakarta and later by the Deputy Governor of DIY Paku Alam VIII. There are Instructions in letter No. K. 898/I/A/1975 regarding the integrated Policy of granting land rights to non-indigenous Indonesian citizens. This letter was mainly sent to Regents/Mayors and Regents throughout Yogyakarta, containing directions to all the Regents mentioned above to implement an integrated policy regarding granting land rights to non-native Indonesian citizens' land [9]. To release their ownership by giving up their rights, then after giving up non-native Indonesian citizens' property rights, they can submit a request to the person in charge of the DIY area for other rights. The circular's appearance caused non-native Indonesian citizens not to have the right to land in the DIY area. Non-native Indonesian citizens who already owned the land before the issuance of the regional director's Instruction letter are also required to relinquish their ownership to the State under the direct control of the DIY regional government for conversion to other land rights. The above letter of Instruction has resulted in differences in treatment for indigenous Indonesia and Chinese-Indonesia people living in the DIY area.

Before UUPA's existence in the Special Region of Yogyakarta, land issues regulates in the Sultanate and Pakualaman rijksblad. Then in its development, land issues are regulated in several Regional Regulations based on autonomous authority given by Law No. 3 of 1950 concerning the Establishment of DIY. The new UUPA can be enforced in DIY in 1984 through Presidential Decree No. 33 of 1984 concerning the Fully Enforcement of the UUPA in the Special Province of Yogyakarta. Results in the study can found the lands owned by Sultanate and Pakualaman controlled according to Rijksblad. Given becoming property individuals and villages since 1954 in provisions several regional regulations, lands are subject in UUPA and implementing regulations are former western land rights in 1960 converted one of the land rights under the UUPA. Shows pluralism' reality in regulating, controlling, and ownership of land in the Special Region Province of Yogyakarta.

4.1.3 Provisions in the Human Rights Law

Law Number 39 of 1999 concerning Human Rights (HAM) respects human beings and considers them as the creatures of God Almighty, who is fully responsible for managing human welfare and maintaining the universe. Ensuring the existence of dignity and environmental harmony. The legal basis for Law Number 39 of 1999 concerning Human Rights, are namely:

1. Article 5 paragraph (1), Article 20 paragraph (1), Article 26, Article 27, Article 28, Article 30, Article 31, Article 32, Article 33 paragraph (1) and paragraph 3), and Article 34 of the Law – The 1945 Constitution;
2. Decree of the People's Consultative Assembly Number XVII/MPR/1998 concerning Human Rights.

Fundamental freedoms and fundamental rights are called human rights. They are inherent rights bestowed by God Almighty on humanity, and these rights cannot deny. Therefore, every country, government, or organization should recognize and protect everyone's human rights without exceptions [10]. Human rights must always be the starting point and goal of organizing the community and nation's life. In line with the above view, as the foundation of the State, Pancasila believes that humans were created by God Almighty, with two aspects, the personality aspect (individual) and the social aspect (society). Therefore, the freedom of each person has limited by the human rights of others. Everyone has the responsibility to recognize and respect the human rights of others. This obligation also applies to any organization at any level, in particular the State and government. Therefore, the State and government have the responsibility to respect, protect, defend, and protect the human rights of every citizen and people without Discrimination.

According to the Law No. 39 of 1999 concerning Human Rights, Human Rights are a set of Rights inherent in human's nature and existence as creatures of God Almighty. They are his Gifts that must be respected, uphold, and protected by the State's, Law, government, and everyone. For the honor and protection of human dignity. The scope of human rights includes:

- 1) Private property;
- 2) Personal Right;
- 3) Rights related to economic and social problems;
- 4) Civil and political rights to participate in government affairs.

4.1.4 The Arrangement Land Policy in the Special Region of Yogyakarta

The privileges Act (UUK), released in 2012, interpreted the basis for this phenomenon context of today's society. Even if not, because the phenomenon has been going on long before the UUK existed. UUK regulates special authority regulations and special legal regulations stipulated by the regional government authorities in the Regional Government Law. Therefore, it is not a *lex specialis* from UUPA. The DIY district's extraordinary power to manage its land is interpreted as a moment to change land ownership structure based on the spirit of the revitalization of the 1918 National Assembly. This Policy is an active Policy aimed at protecting land from non-indigenous people's control.

It is clear that Yogyakarta's land Policy has implemented in the issuance of the "Letter of Instruction of the Responsible DIY Region" (No. K.898/I/A/1975)¹¹. As a result, there was anxiety among Chinese Indonesian, which eventually sparked strong protests against the Yogyakarta Regional Government. The following consequence is the large number of land cases related to land ownership. Even those who protested loudly became members of the Gerakan Anak Negeri Anti Diskriminasi (GRANAD). This movement is trying to stop the DIY local government land Policy, which they believe will create different treatment between the Chinese-Indonesian to get land rights in Yogyakarta. Meanwhile, in other Provinces of Indonesia, land policies' implementation also applies to all Indonesian citizens.

Therefore, it is interesting to study this Policy to understand better the background and how the Yogyakarta Policy's implementation deviates from the national land Policy. There are at least two reasons why this policy is worth examining, namely 1). Considering that the national land regulation guarantees all Indonesian citizens have fair access to land rights, the Yogyakarta land Policy is still considered discriminatory. 2). The people of Yogyakarta have different views on this Policy.

The DIY Regional Government's reasons to maintain the land Policy found in the certificate issued by the DIY Provincial Government May 8, 2012, numbered

593/00531/RO.I/2012. Article 28: K.898/1975 is still in effect, is an affirmative Policy that aims to protect indigenous or investors who are financially stronger or more capable. However, this affirmative Policy aimed at protecting Yogyakarta citizens from financially stronger investors. Still, what we know is that in 2020, many business people in the Yogyakarta area are of Chinese descent. This regulation is just a rule, or do people of Chinese Indonesian descent have the right to land ownership? There is still a big question mark whether Yogyakarta is discriminating against Chinese descent or not.

4.2 Review some cases on disputes of Land Ownership in the Special Region of Yogyakarta

4.2.1 The lawsuit filed by a citizen of Chinese descent in the Special Region of Yogyakarta

In the reform era, there has been a movement to eliminate Discrimination against Chinese citizens. Due to the recognition of Confucianism as a religion and Presidential Instruction Number 26 of 1998 Issued by President B.J. Habibie, which banned use pribumi and non-pribumi terms. Presidential Instructions issued to ministers, heads of non-departmental government agencies, the highest government agencies, governors, regents, and mayors. There are several points in the President's Instructions. First of all, the terms of pribumi and non-pribumi are no longer use in the formulation and implementation of all policies, plans, or implementation of government operational activities. Second, giving equal treatment to all Indonesian citizens. Third, according to these presidential Instructions, review and adjust all Laws, regulations, policies, plans, and other activities.

Adopting a more open Policy towards the survival of Chinese Indonesians continued to exist under President Abdurahman Wahid's leadership and the Presidential Decree No.6 of 2000. Regarding the revocation of Presidential Instruction No.14 of 1967, Restrictions on Religion, Beliefs and Chinese Customs. The existence of this Policy resulted in allowing public celebrations and public gatherings of the Chinese New Year. The upcoming New Year is called Cap Go Meh.

The lawsuit filed by Chinese citizens in Yogyakarta State Administrative court, namely:

1. In 2018, Handoko [12], a DIY resident of Chinese descent sued the head of the DIY Land agency regarding land ownership not being granted, and Handoko also filed a lawsuit against the DIY PTUN. The panel of judges refused. Not only Handoko and H. Budi Setyagraha, in 2011 the National Anti- Discrimination Movement sent a letter to the President regarding this land ownership issue. However, government officials in Yogyakarta ignored the central order. In May 2012, the Regional Secretary stated that this directive's implementation was an affirmative Policy to protect indigenous peoples from the significant capital.
2. The case of Budi Setyagraha
On August 25, 2000¹³, the Chinese Indonesian citizen filed a lawsuit at the State Administrative Court. This rejection reflects in letter 630.1/451/2000 from the Head of Land Affairs of Bantul dated November 17, 1999. The letter stated that property rights do not transfer to Budi Setyagraha and that buildings could only grant through a waiver process and an application for rights. Even though the land was purchased by Budi Setyagraha from the property rights as stated in the posita number 2 and 3 of the lawsuit at the State Administrative Court against the Bantul Regency Land Office dated August 25, 2000, namely:

In connection to the request for the transfer of the plaintiff's property rights, the Bantul Land Office could not transfer land ownership from Yohanes Haryono Daerdono to the plaintiff but only gave the land use rights. The Bantul Land Office argued that the plaintiff could not transfer ownership of the land because there was still a uniform Policy on granting land rights to non-native Indonesian citizens in the Instruction letter the Regional Head No. K/898/I/A/75.

Initially, Budi Setyagraha filed a lawsuit at the Bantul Land Office at the Yogyakarta State Administrative Court. In his lawsuit, the Bantul Regency Land Office alleged to have only been able to grant the right to build on a land plot from Johanes Haryono Deadardono in the Bantul area. The land to be treated initially owned land because Budi Setyagraha was a non-native Indonesian citizen of Indonesia descent, so the land ownership status reduced to Building Use Rights (HGB). The Bantul Regency Land Office responded to the lawsuit with an exception.

Regarding the Lawsuit and Exception, the Yogyakarta State Administrative Court decided to reject the exception, approved the lawsuit, declared it invalid, and order the Bantul District Land Office to revoke the letter from the Head of the Land Office Johanes Haryono Deadardono to H. Budi Satyagraha. The decision then submits to the Surabaya State Administrative High Court. The appeal accepts the cassation level, and the Yogyakarta State Administrative Court decision overturns in Yogyakarta. Regarding the Surabaya State Administrative High Court decision, Budi Setyagraha, through his lawyer, submitted the decision to appeal to the Supreme Court.

Based on the appeal, the Supreme Court decided to reject H. Budi Setyagraha's appeal because the objection could not be determined because the *Judex Facti* did not misuse the Law, and the objections raised were an evaluation of the evidentiary results. Therefore, hearings can only hold at the cassation level, not at the cassation level, only if the Law has not in implemented or the Law's application is wrong. The disputed object is not a State Administrative Decree or administrative *beschiking* but only a correspondence letter containing an explanation or notification.

In the Regional Head Instruction No. K/898/I/A/75 may not be Absentee¹⁴. Ownership of the Absentee itself is the farmland's ownership outside the identity card ownership (KTP). For example, in Australia, Indonesian citizens cannot have land rights but can Permanent Residence. Thus, regulations like this depend on the political Law in the country. When a PT (Limited Liability Company) wants to buy land that also does not have an ownership or use rights, it is maximum that it only owns HGB (Hak Guna Bangunan).

The Yogyakarta PTUN judge approved the plaintiff's petition in the verdict and ordered the Bantul Land Office (defendant) to revoke the letter from the Bantul Land Head, who refused to transfer the plaintiff's property and ordered the defendant to take care of the ownership to transfer to the plaintiff's land. In the case of cassation, the Surabaya State Administrative High Court overturned the Yogyakarta Administrative Court decision and did not lead to legal consequences, but only in the form of a letter containing an explanation. On the decision, Budi Setyagraha filed an appeal, which the Supreme Court later rejected. Budi Setyagraha remains in cassation and continues to work hard in working on legal reviews. However, the Supreme Court again rejected the reconsideration request because the court used the Yogyakarta Palace inscription history. When considering the decision, the Supreme Court stated:

"It is necessary to consider that valid in the Special Region of Yogyakarta cannot separate from historical or historical facts from a Law standpoint. That prevails in the form of inscriptions within the Kraton Yogyakarta, which gives the Sultan authority to arrange between other agrarian problems in the Special Region of Yogyakarta as referred to in Law Number 3 of 1950 along with other related regulations."

As mentioned above, the General Principles of Good Governance contains in Law Number 30 of 2014 concerning Government Administration Article 10 sub-C and G, namely the principle of impartiality and the public interest, which has the meaning of Nondiscrimination. Indonesia as a Constitutional State regulates that all people are equal before the Law “Equality before the Law,” which regulates in the constitution of Article 27 paragraph 1 of the 1945 Constitution. Which reads: “All citizens have equal position in Law and government and are obliged to uphold Law and government it with no exception.” It is also regulated in Article 28 D paragraph 1 of the 1945 Constitution, which reads: “Everyone has the right to recognition, guarantees, protection, and just legal certainty as well as fair treatment, the same before the Law. The Principle of “Equality before the Law” guarantees that every Indonesian citizen is treated the same before the Law. Indonesia is a country of Law, and its nature includes recognition of Upholding human rights (HAM) and “Equality before the Law.” What makes the principle if everyone is equal before the Law, everyone has the right to equal, fair, and Non-discriminatory treatment. The aim is to clarify that every citizen, regardless of race, color, social status, creed or, political opinion, is entitled to legal protection. A person’s skin color or descent should not prevent that person from obtaining legal protection, including Indonesian citizens who wish to own property rights.

Administrative Court (PTUN) stated That only followed the rules of the Yogyakarta Regional Government, judging based on existing regulations. PTUN follows the rules based on what have been practiced in the community and what has become a general provision. It follows those that have become general norms and social norms in the community that the court respects in deciding a case. The existing regulations in Yogyakarta are the same as those in Bali. The point is that regulations like this exist because there are regional policies from the province. However, there is an Agrarian Law that regulates how to own land for foreign citizens. Yogyakarta itself has its particular region. Yogyakarta gives the State’s right to special privileges to regulate its land in the Special Region of Yogyakarta. Judging from the background, Yogyakarta gives special rights because Yogyakarta was the kingdom and a Sultanate.

4.2.2 The case on disputes of Land Policy on Chinese relating to Land Ownership

The issuance of the DIY Regional Head’s Instruction K.898/I/A/75, which contained integrated policies into granting land rights to non-native Indonesian citizens, has caused several problems in society. The DIY Regional Head’s Instruction No. K.898/I/A/75, which contains an integrated Policy of granting land rights to non-indigenous Indonesian citizens [15]. Can it be classified as statutory regulation or just a Policy? It is not appropriate to include the direction of the regional head in statutory regulations. Descriptions are also individual and specific. There must be an organizational relationship between superiors and subordinates, and the nature of legal norms in legislation in general, abstract and continues to apply.

State regulations (staatsregelings) in written regulations issued by official agencies (certain institutions and officials) can divide into three groups:

1. Legislation such as UUD, UU, PP, Perpres, Perda, etc.
2. Policies and regulations (belesidsregels), such as Instructions and circulars.
3. Determination (beschikking), such as decrees, and others.
4. Problems of the Application of Discriminatory Policy on Chinese relating to Land Ownership

4.2.3 Philosophical problems

Philosophy explains the considerations or reasons that the laws and regulations that are formed take into account the views of life, awareness and legal ideals, including the spiritual atmosphere of the Indonesian nation which originates from Pancasila and the Preamble to the 1945 Constitution. As a basic law, the constitution has the highest position in the legal system and is a source of legitimacy or the basis of other forms of legislation. This has the consequence that there should be no laws and regulations that are contrary to the 1945 Constitution. Generations X of Chinese descent in Indonesia no longer understand their own culture. Their traditions can only be preserved through Buddhist or Confucian celebrations, but they slowly erode. So, this is related to the concept of Justice in the 1945 Constitution. How can the 1945 Constitution be declared? The socio-cultural and the historical discourse has been embedded for too long within the society—that it becomes a challenging issue to address while the issue itself is already obsolete and irrelevant to the current time [16] [17]. Indeed the history behind this conflict should not be denied, but how long this history will continue to exist discriminating particular groups of people.

For Chinese people, this kind of land Policy is Discriminatory. As citizens of Indonesia, they cannot obtain ownership rights to land, regulated in Article 21 of the Agrarian Law. In fact, in terms of regional government authority, the Governor and the Sultan must obey the State's Laws, such as the 1945 Constitution. However, other Chinese citizens who are not involved in the business sector do not feel this Policy's impact. They lived in Yogyakarta for generations and learned historical relations between the Chinese and Sultanate. The agreement's substance included the Chinese group's thanks to the Sri Sultan Hamengkubuwono IX to live and carry out economic activities in the DIY area¹⁸. It means that not all Chinese in Yogyakarta believe that this land Policy is Discriminatory. Regarding the Sultan Instructions, some people said it was affirmative action. Even though Komnas HAM stated it was Discrimination from a human rights perspective, the Deputy Governor said that it could say that it was discretionary.

4.2.4 Sociological problems

The sociological basis is a consideration or reason, which shows that laws and regulations are formulated to meet the needs of all aspects of society. The basis of sociology actually concerns empirical facts about the development of social and national problems and needs. The sociological problem is that Chinese people will have difficulty owning land in Yogyakarta. While the right to own is a human right, how to formulate this Policy in the future, whether the Yogyakarta government will lift this ban in the future, allowed if citizens of Chinese descent have rights to the land but still be limited. The human rights implied in the 1945 Constitution are rooted in the basic philosophy and view of the nation's life, namely Pancasila. Human rights enforcement in Indonesia is in line with implementing Pancasila values in the State and the nation's life. In other words, Pancasila is human rights value that lives in the personality of the nation. There are 15 (fifteen) principles of human rights, namely as follows: (1) the right to self-determination; (2) citizen's rights; (3) the right to question and Equality before the Law; (4) the right to work; (5) the right to live a decent life; (6) the right to associate; (7) the right to express an opinion; (8) the right to have religion; (9) the right to defend the State; (10) the right to social welfare; (12) the right to social security; (13) the right to freedom and independence of the judiciary; (14) the right to maintain cultural traditions; (15) the right to defend local languages" [19].

5 Conclusions and Recommendations

The 1945 Constitution explains the principle of Non-discrimination, the Law based on Article 28H (4) of the 1945 Constitution, which reads: "Every person has the right to have private property rights and these rights cannot be taken by arbitrarily by anyone." Article 28I Paragraph (2) of the 1945 Constitution of the Republic of Indonesia stipulates that every person has the right to be free from discriminatory treatment on any basis and has the right to received protection for discriminatory treatment".

Considering that non- customary citizens, that non-customary citizen also has the same rights as Indonesian citizens. The enactment of the Regional Head Instruction Letter No. K.898/I/A/75 concerning Uniform Policy on Granting Land Rights to a Non-Indigenous Indonesian Citizen can be classified as indirect discrimination because the policy is not intended to discriminate. On the other hand, it creates discriminatory behaviour for certain groups. In terms of human rights, the existence of a Regional Head Instruction Letter No. K.898/I/A/75 concerning Uniform Policy for Granting Land Rights to a Non-Indigenous Indonesian Citizen is a negative form of protection of property rights, Article 36 of Law No. 39 of 1999 concerning Human Rights which led to the occurrence of violations of human rights.

References

1. Surwandono, S. Jatmika, A. Maksum. 2019. "An Early Warning Information System for Social and Religious Conflict in Yogyakarta, Indonesia." *The International Journal of Interdisciplinary Social and Community Studies* 14 (1): 37-47. doi:10.18848/2324-7576/CGP/v14i01/37-47.
2. S. F. Haryanto, "Pemilikan Hak Milik Atas Tanah Bagi WNI Keturunan Tionghoa di Daerah Istimewa Yogyakarta", *Jurnal Hukum Tanah di DIY*, **19**, Vol. 1, No.1, (2012).
3. Walujono, Amanda, "The Discrimination of the Ethnic Chinese in Indonesia and Perceptions of Nationality", *Scholarship Claremont Scripps Senior Theses*, **25**, 508, (2014).
4. F. Anshari, "Racism and Discrimination on Indonesian Sport (How Online Sports-Themed Media Should Apply Social Responsibility to Stop Sara Discrimination)", *Univ Pancasila*, **10**, Vol. 3, No.1, (2019).
5. S. Soekanto, S. Mamudji, *Penelitian Hukum Normatif (Suatu Tujuan Singkat)*, Jakarta, Rajawali Pers, **39**, (2001).
6. J. Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, Malang, Bayu Media, **34**, (2006).
7. M. Fajar, Y. Ahmad, 2013, *Dualisme Penelitian Hukum Normative dan Empiris*, Yogyakarta, Pustaka Pelajar, page 118.
8. K. T. Slamet, "Constitutional Court and The Right To Be Free From Discriminatory Treatment", *Journal Konstitusi*, **23**, Vol. 12, No. 1, (2015).
9. A. K. Sri, "Analisis Kritis dan Implementasi Undang-Undang No. 13 tahun 2012 tentang Keistimewaan Daerah Istimewa Yogyakarta Dalam Bidang Pertanahan, dalam jurnal bumi Jurnal Agraria dan Pertanahan", **37**, Vol. 1, No.1, (2015).
10. J. N. Martin, T. K. Nakayama, *Intercultural Communication in Contexts*, Fifth Edition, McGraw-Hill, USA, **40**, (2010).

11. P. Endang, “Mengkritisi Diskriminasi Pemilikan Tanah di Provinsi Daerah Istimewa Yogyakarta”, *Hukum Pidana dan Pembangunan Hukum*, **14**, Vol. 1, No.1, (2018).
12. Handoko, Gubernur Daerah Istimewa Yogyakarta, Putusan Mahkamah Agung Nomor 13/P/HUM/2015.
13. B. Setyagraha v Kantor Pertanahan Bantul, Putusan Pengadilan Tata Usaha Negara pada Pengadilan Tata Usaha Negara Yogyakarta Nomor 11/G/TUN/2000/PTUN.YK.JO.
14. L. Ratih, “Kebijakan Pertanahan Bagi WNI Keturunan Tionghoa Di Yogyakarta: Diskriminasi atau Diskriminasi Positif”, *Jurnal Hukum & Pembangunan*, **34**, Vol. 1, No.1, (2018).
15. T. S. Sekar V, “Problematika Surat Intruksi Kepala Daerah Nomor K.898/I/A/75 Tentang Penyeragaman Policy Pemberian Hak Atas Tanah Kepada Seorang WNI Non Pribumi di Yogyakarta”, Program Magister (S2) Ilmu Hukum di Universitas Islam Indonesia, **23**, (2016).
16. I. Adriani, (2015). ASEAN and Ongoing wal Conflicts. *Jurnal Hubungan Internasional*, 3(2), 159-166.
17. H. Herdiansyah, Pengelolaan Konflik Sumber Daya Alam Terbarukan di Perbatasan dalam Pendekatan Ekologi Politik, *Jurnal Hubungan Internasional*, Vol **7**, No. 2, (2019)
18. F. Frans, 2018, “Telaah Yuridis Terhadap Intruksi Kepala Daerah Propinsi Daerah Istimewa Yogyakarta Nomor K/898/I/1975 Tentang Penyeragaman Policy Pemberian Hak Atas Tanah Kepada Seorang WNI Non Pribumi”, Unissula Institutional Repository, **24**, Vol. 1, No. 2, (2018).
19. A. Kanas, P. Scheepers, C. Sterkens, Interreligious Contact, Perceived Group Threat, and Perceived Discrimination: Predicting Negative Attitudes among Religious Minorities and Majorities in Indonesia, *Sage Journals*, **32**, Vol. 78, No. 2, (2015).