

## ***NGINDUNG & MAGERSARI:***

The Harmonization of Customary Law and State Law dealing with Land Ownership and its Shifting Meaning in Jogjakarta

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### **Abstract**

*Ngindung* and *Magersari* are very common terms for the people of Jogjakarta. The former is dedicated and related to the land owned by people in general, while the latter is designated and associated with the land owned by the Sultan of Jogjakarta. There is a historical relationship between the latter and the former. Agrarian Act (*Undang-Undang Pokok Agraria*) of 1960 as a representation of the state laws have been enacted in the Yogyakarta Province entirely since 1984, however, the influence of historical background on the status of *magersari* and *ngindung* still maintains in harmony up to the present. The development and the rapid rate of population growth affect the existence and the commercial value of land. Indeed, the social value of land tends to be changed into commercial values which inspires the relationship among the members of the society, especially in terms of land tenure. Nature of the relationship between them initially is based on kinship and mutual relationship. The relationship is recognised as *batih* relationship or family relationship, nonetheless, the relationship has changed into self-interest relationship. Hence, the meaning of *ngindung* and *magersari* has already changed into commercial function, and not a social one anymore.

**Key Words:** *ngindung* and *magersari*, local law, state law, the shift of meaning

### **Introduction**

The land law in “Daerah Istimewa Yogyakarta” right now is not in spite of the continuity of history which would greatly influence by *ugeran* and policies Kraton Jogjakarta. That is included the tradition of the local laws related to land rights called “*Ngindung*” and “*Magersari*”. *Ngindung* and *Magersari* are an individual

land rights born of gratitude landowners based on the principle of mutual help and kinship. Someone who gets *ngindung* authorized by the owner of land may build houses on the land or the inhabited portion of the building houses the landowner at no particular payment. If possible it contained payment, merely marks (symbols) into the yard or the house is owned by someone else.<sup>1</sup>

*Ngindung* and *Magersari* are very well known among the people of Jogjakarta. The term is typically intended *ngindung* and lands associated with the title rights held by the general public. On the other hand *Magersari* designations and associated with specific understanding of the yard for the land title rights owned by the Sultan of Jogjakarta and people who are there for historical ties.<sup>2</sup>

Looking from history, the first king (Sultan) of Jogjakarta is the absolute owner of the land that is his national territory. King as the absolute owner of the land is a logical consequence of the understanding of the origin of the state theocracy legitimism its power, including the power to the land itself. The absolute power of the king and the royal thoroughly understand its contents are classic understanding which received at that moment, as the Majapahit Javanese Period accepted since the Islamic Mataram.

According to this understanding, the land territory of the king and the king is the king of the land is free to do as they wish. The concept of the king as the owner of the land until today, especially in Yogyakarta is known as the "Land of

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<sup>1</sup> Ter Haar Bzn. 1959. *Asas-asas dan Susunan Hukum Adat*, terjemahan, K.Ng.Soebekti Poesponoto, Jakarta: Pradnya Paramita. P. 115.

<sup>2</sup> Pasal 1 Keputusan Kawedanan Hageng Punokawan Wahono Harto Kriyo Nomor 29/W&KI/1981.

*Kagungan Dalem*". In further developments is known as "Sultan Ground" with the title of SG.<sup>3</sup>

On the basis of this understanding, people merely have the right to use (*anggaduh*). If the land is agricultural land, then the user (*Penggaduh*) obliged ceded half or a third of the land under their control. However, if the land is in the form of garden soil, then *penggaduh* shall work without pay for the benefit of the king or royal officials. In its development, the land belongs to the king was given to servants and royal officials as salary. The provision of land by the king is accompanied by the transfer of the right of the king over the results of the land. Stelsel is commonly called *Stelsel Apanage*.<sup>4</sup>

The beginning of the 1900s many Dutch entrepreneurs invested in the plantation sector. For this purpose many employers required land and it can be obtained easily from the king and *apanage* holder. King and *apanage* holder feel happy because it's easier to get rents from the planters. Similarly planters prefer to deal directly with the king and *apanage* holder; in addition to easily get the land can also be obtained for free labor. Instead, the cultivators of land (farmers) suffered quite lot because they had to give his cultivated fields ranging from half or one-third plus had to work without pay for the planters.<sup>5</sup>

Under such conditions, the Yogyakarta Sultanate government is aware. In 1918 held improvement in the affairs of granting land rights to the people.

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<sup>3</sup> Soemarsaid Moertono, 1985. *Negara dan Usaha Bina Negara di Jawa Masa Lampau*, Jakarta: Yayasan Obor Indonesia. p.135.

<sup>4</sup> Budi Harsono, 1968. *Undang-Undang Pokok Agraria, Sejarah Penyusunan, Isi dan Palaksanaanya*, Djakarta: Djambatan. p.57.

<sup>5</sup> Werner Roll, tanpa tahun. *Struktur Pemilikan Tanah di Indonesia*. Jakarta: CV.Radjawali. p.52

Yogyakarta Sultanate government action is known as the Land Stelsel Reorganization. Prior to the 1918 reorganization stelsel land, use of land in Yogyakarta Sultanate based on "Complying *Pranatan* 1863" which can be grouped into:

- a. Land used by the Sultan for his palace with all the equipment as for the square, performances, *Siti Hinggil*, *mandungan (keben)*, *sri pengganti*, and so on. This land is called *Tanah Keprabon*.
- b. Land that the Sultan handed over free of charge for use by the Dutch government (Gubernement) NIS, to Fort Vredenberg, *Karisidenen* Office, Railway Station, and so on.
- c. Lands that are given to the Dutch and Chinese to *eigendom* right or *opstal* right.
- d. Group Land, namely lands granted by the Sultan to the royal officials.
- e. *Kesentanan* land, which land granted by Sri Sultan to relatives or *Sentono* palace with use rights.
- f. Regent yard. This land basically included the group land but it eventually released from the bonds of class and become yard of the other higher employees with the surrounding villages.
- g. *Tanah Kebonan* (read garden), the land planted with trees and yard are usually located outside the center of the capital and it is given to *pepatih* with the right to use.
- h. Land of the civilian, excluding of that categories land mentioned above. It placed directly under the *kepatihan*.

- i. These lands are managed by *Bekel*; the land is called *maosan* palace land.<sup>6</sup>

Since 1918, the village in Yogyakarta area designated as a legal entity that has the rights to the land. Similarly, the rights for the people of the land are used as a residence and business recognition. With *Rijksblad* Sultanate in 1918 and No. 16 of 1918 *Rijksblad* Paku Alaman No. 18, both claimed control over the land in each region as follows: “*Sakabehane bumi kang ora ana tanda yektine kadarbe ing liyan mawa wewenang eigendom, dadi bumi kagungane kratoningsun Ngayogyakarta*” (all land that is not proven owned by someone else with the *eigendom* right, belonged to the Nagayogyakarta Palace).

On the basis of the domain statement, the Government of the Sultanate and Paku Alaman grant rights of use (*anggaduh* authority) to the establishment of villages. Later, rights based *Rijksblad* Sultanate of 1926 and *Rijksblad* Paku Alaman 1925, *anggaduh* right from the village was changed to the right or *andharbeni andharbeni* authority. However, the lands granted to the village with the *andharbeni* right not cover all the land that has been clearly worn by them, either to stay or processed or grown continuously or at an entrepreneur uses the grace period as contained in the registers *Kalurahan*.

Granting authority *andharbeni* land rights to the village accompanied by the obligation that the village should still preserve the rights of members of the public land users. The use rights of the people are hereditary (hereditary *anganggo*

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<sup>6</sup> Notoyudo, 1975. *Hak Sri Sultan atas Tanah di Yogyakarta*, tanpa penerbit. p.9.

authority) as intended by the Sultanate *Rijksblad* 16 in 1918 and *Rijksblad* Paku Alaman 18 in 1918.

This condition is different from individual rights to land inside the city. If *andharbe* right outside of town owned by the village, then in the city are owned by individuals. Thus individual rights over land in the city is stronger than the individual rights to land outside the city (rural) with the right to use it. Regarding land rights in the city, set in *Rijksblad* Kasultanan No. 23 in 1925 and No. 25 *Rijksblad* Paku Alaman 1925. Thus, it means that the reorganization of the city more than the final reorganization outside the city. But individual rights are acquired by the citizens in the city are more powerful than those in the village who are not bound by the village, no town given in the village.

Later in the year 1954 is an important step increase people's rights over land in DIJ, especially in rural areas. This year “Daerah Istimewa Jogjakarta” born Regulation No. 5 of 1954, the contents of which promote the right to use or authorize *angango* proprietary hereditary. Despite the increased use rights to the property, but still within the bounds village, so the village is entitled to intervene in the execution of such property in the traffic society, for example in the case of transfer, use, and loading. Under the regulation, the landowner has the authority to exercise its right for the benefit of themselves and their families, for example, process and use to stay; divert forever: sell, donate, give, pass, move for a while: mortgage, rent, and the burden with debt. On the other hand, it has issued Regulation No. 5 of 1954, the position of individual rights over land in the town still remain under the rule of *Rijksblad-Rijksblad* Sultanate and Pakualaman. In

case, this enrolment still uses the old way, i.e., according to the provisions of Rijktsblad Sultanate No. 1 in 1926 and No. 13 in 1926 and Rijktsblad Pakulaman No. 32 in 1925 and No. 36 in 1925.<sup>7</sup>

1 April 1984 pursuant to Presidential Decree (Kepres) No. 33 year 1984 and article 5 of the Basic Agrarian Act 1960 (Undang-Undang Pokok Agraria - UUPA) in Yogyakarta. With full force, the normative consequences of all the problems in the field of agriculture, including land subject to this UUPA comply.

Based on article 53 of the UUPA was determined that the land rights from indigenous rights by BAL ranked as the rights of temporary and needs to be regulated to limit properties as opposed to UUPA. These rights are also sought abolition in a short time. One of those rights is the right ride (*ngindung* and *magersari*). In the Customary Law library, rights are used to refer to the rights that can be held by a person to build a house on land owned by another person who has the permission of the land. From this sense is known as right to inhabit the yard inhabit home on the land of others.<sup>8</sup>

### **Problems**

The problems that will be studied in this paper focus on the following questions:

(1) How are *Ngindung* Rights and *Magersari* existence article 5 of the agrarian law of 1960 on the UUPA in DIY?; (2) What is the meaning of *Ngindung* and *Magersari* for Yogyakarta society?

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<sup>7</sup> Soedarso, 1978. "Pengaruh Undang-Undang Pokok Agraria terhadap Tanah Adat di Daerah Istimewa Jogjakarta," dalam *Simposium* Undang-Undang Pokok Agraria dan Kedudukan Tanah-Tanah Adat Dewasa Ini. Jakarta: Bina Cipta, p. 296-302.

<sup>8</sup> Iman Sudiyat, 1981. *Hukum Adat Sketsa Asas*. Yogyakarta: Liberty. p.54.

## Discussion

Although UUPA has been fully implemented in the province since 1984, but the influence of historical background on the status of *ngindung* or *magersari* rights are still going on until now. In this development, Kumoro (1996) explains that the right of *ngindung* or *magersari* appeared with the following characteristics:

1. Rights of *Ngindung* essentially born of a legal relationship or agreement which only put a strain unilateral obligation on one party only. *Ngindung* rights over land occurred during license or permission to set up and have houses provided by the landowner. From this observation the western civil law, rights over land can be classified *ngindung* the agreement for free of charge, because the profits or benefits of a relationship *ngindung* only be felt by one of the parties that the user.
2. Legal relationship that make on land rights of *ngindung* essentially just binding on the landowner and user only. Therefore user heirs who continue *ngindung* rights without the knowledge and permission of the land owner may have done occupy or use the land of another without right. On the basis that the person concerned can be sued as have committed unlawful (*onrechtmatigedaad*).
3. In line with the tendency for people to make changes in order to adapt to the developments, the legal relationship which spawned *ngindung* rights on land originally was based on incest relationships (familial) shifted towards relationships that are selfless. It is characterized by the existence

of the obligation to provide a fixed payment each month or a year, commonly referred to as rent.<sup>9</sup>

Facts that cannot be denied that the enactment of the UUPA (*legal positivism*) in full in Jogjakarta as a whole does not mean removing customary law (*the living law*) are there. Actually, if examined carefully, the enactment of the UUPA in Jogjakarta actually strengthen the customary law of the land. It appears from the contents of article 5 of the basic agrarian law determines "*Agrarian Act which applies to the earth, water and air space are customary law, provided they do not conflict with national interests and the state, which is based on the unity of the nation ... and so on*". It must be acknowledged honestly, that although UUPA compiled based on customary law, but impressed at the level of practice occur dualism in land law. According to the writer, so more this condition can refer to as harmonization of law, namely the application of the conjunction between local law (custom) and state law (*positive law*). In other words, there is considerable scope to apply customary land regime in the UUPA and it is required by the law itself. Customary law and positive law are complementary so there is no contradiction (*legal gap*). Thus it can be said that UUPA is essentially a manifestation of customary land law, and both are one entity.<sup>10</sup>

Of the provisions of Article 5 of the UUPA can be understood that customary law is the basis of the implementation of the agrarian in Indonesia, because the native customary law is the law for the nation of Indonesia. However,

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<sup>9</sup> Endro Kumoro, 1996. "Aspek-Aspek Hukum Hak Ngindung atas Tanah di Kotamadya Yogyakarta". *Tesis* Program Pascasarjana Universitas Airlangga Surabaya. p.115-116.

<sup>10</sup> Wisnu Susanto, 1983. *Hukum Adat dan Perkembangannya, Bagian I*. Surabaya: Yustisia, p.9.

the enactment can be interpreted as insincere because restrictions are contained in Article 5 of the UUPA, namely:

- a. Not to be contrary to the national interest based on nation unity;
- b. Not contrary to the interests of the state by the nation unity;
- c. Not against socialism Indonesia;
- d. Not contrary to the rules contained in the UUPA;
- e. Not conflict with other laws.

According to Mahadi (1978), restrictions on the entry into force of customary law should be interpreted narrowly so that these restrictions would likely eliminate the existence of customary law itself. In other words do not let these restrictions into the primary, while the force of customary law into secondary. Better validity of customary law was bent to a more harmonious (see harmony).<sup>11</sup>

The same thing also expressed by Abdurrahman (1984), that the common law as the basis of national agrarian law implies that all sorts of rights derived from customary law following concerning the legal relationship between man and the land or deed relating to land under customary law, should its place in the system of national agrarian law despite various modifications must be made certain.<sup>12</sup> As with Daniel S. Lev, that the influence of the presence of force UUPA

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<sup>11</sup> Mahadi,1978. "Kedudukan Tanah Adat Dewasa Ini", *Simposium Undang-Undang Pokok Agraria dan Kedudukan Tanah-Tanah Adat Dewasa Ini*. Badan Pembinaan Hukum Nasional. Jakarta: Bina Cipta. p.28

<sup>12</sup> Abdurrahman, 1984. *Kedudukan Hukum Adat dalam Perundang-Undangan Agraria di Indonesia*. Jakarta: Akademika Pressindo. P.80.

land rights in fact been abolished land rights derived from customary law. Although still permitted some administrative policy that is in accordance with local customary law, but obviously UUPA denies indigenous rights are typical, with the aim of creating a land law which is general and national.<sup>13</sup>

Actually, the process of the relationship *ngindung* or *magersari* on land owned by Kraton Jogjakarta has been set in the Decree Kawedanan Hageng Punokawan Wahono Sarto Kriyo Ngayogyakarta 29 /W 7K/1981. In Article 2 stated that the right *ngindung* given to those who occupy / land use Ngayogyakarta palace and then made an agreement with the rent as high as 3% x the price of land every year. Meanwhile *ngindung* relations on land owned by individuals are generally only based on oral or written agreements. This resulted in a lack of regarding the terms that accompany the onset or the legal relationship between users with the landowner.

*Ngindung* or associated with this tenant, the palace has set conditions that must be met by anyone who occupy or use land in the state as a palace Ngayogyakarta user or tenant The requirements are contained in a manuscript letter of agreement issued by the Office Panitikismo using Java language as follows:

1. *Samangsa pekarangan kagungan Dalem ingkang kula engeni wau wonten karsa Dalem bade kagem kula inggih nyumanggaaken, boten bade damel angel punapa-punapa, namun nyuwun paring Dalem kerugian (1/3) sapara tiganipun pengaosing griya miturut tapsiran, sarta nyuwun inah tumrap bede pindah kula saking ngriki lami-laminipun (3) tigang wulan kapetang wiwit titimangsa serat dawuh..* (When the yard belonging to the Sultan that I occupy will be used before the Sultan, I will follow and will not be difficult, but I beg a third compensation (1/3) house prices as expected prices, and have approximately three months starting this letter into force);
2. *Tumrap tetaneman kula piyambak ingkang kula tanem wonten ngriku boten bade nyuwun kerugian punapa-punapa,* (For plants that I planted in the ground, I will not ask for damages);

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<sup>13</sup> *Ibid.*

3. *Boten kening ngrisak utawi unduh-unduh kerangkitri ing pekarangan kagungan Dalem ingkang kula enggeni, kajawi sampun angsal ijin Dalem mawi serat*, (Prohibited damage or picking crops in the garden of my land which belonged to the Sultan occupied, except the existing permit by mail);
4. *Boten kening: ngewahi wewangunaning griya punapa dene ngedeaken griya enggal sakderengipun angsal ijin Dalem mawi serat, angliyaraken wewenang dados magersari dateng tiyang sanes sarta sade griya tanpo ijin Dalem mawi serat*, (Prohibited changing shape of the house and add new buildings prior permission from the Sultan by mail, transfer the tenant on others and also sell it without a license from the Sultan);
5. *Samangsa bade andadosi griya ingkang risak langung rumiyin kedah ngawuningaken angsal ijin Dalem mawi serat boten kening miyagah lajeng andadosi sakajeng kula piyambak*, (When will repair damaged homes must obtain prior permission from the Sultan to the letter and can not fix itself at will);
6. *Kedah anjagi tata tentreming pekarangan ingkang kula anggeni, awit saking punika mila boten kening damel reroyoman ingkang tumuju dateng reresah*, (Had to keep the peace garden that I live in, and should not be doing noise);
7. *Pangindung menawi nrajang (nyulayani) prajanjian kasebat salah satunggal, menawi wonten dawuh Dalem andikakaken kesah, inggih kedah kesah boten mawi nyuwun kerugian punapa-punapa*, (Pengindung when a promise from one of the items in this letter, and asked to leave the grounds by the Sultan, the will not get any compensation);
8. *Menawi wonten dawuh Dalem Ngewahi tatananing magersari, kulo inggih sagah angestoaken*, (If there is a change in this agreement, I will follow);
9. *Kula sagah bayar arta penanggalan ing saben wulanipun Rp...* (I could pay "in a date" every month IDR ....);
10. *Menawi ladosan arta penanggalan ngantos kasep tigang wulan dumuginipun pitung wulan mboten ngadosi, menawi wonten dawuh Dalem andikaaken kesah inggih kedah kesah boten mawi nyuwun kerugian punapa-punapa*, (If payment is late from three months to seven months, when the Sultan asked to leave the yard, then had to leave without any compensation);
11. *Samangsa kula tilar donyo, waris supados ngawuningaken ing Ngarsa Dalem*, (If I die, then the heir to the Sultan to be informed);
12. *Yen salebetipun (1) satunggal tahun kepetang saking titimangsa serat ijin siti gaduhanipun wau boten dipun degi griya, siti wau kaanggep kundur, hak anggaduh lajeng sampun lebur*, (If within one year from the application of this letter, then do not set the house, the land was considered returning to the Sultan, and his right clear).

Based *ugeran* set by the court is understandable that the right *ngindung* or *magersari* of land in essence is the right ride home building on land owned by someone else. It can be interpreted that the right to the land *ngindung* temporary. Therefore natural those landlords require that buildings owned homes user no permanent shape. This meant that any moment user must move his house building since the land will be used by the owners or their heirs; it is not difficult to deconstruct. The temporary nature of the right *ngindung* this land that is often

neglected by the user. It is unusual that after a long user inhabit or live on land owned by someone else and then trying to find it instead of garden that can be owned individually, instead it little by little trying to repair his house, even some that lead to a more permanent .<sup>14</sup>

### **Shifting Meaning *Ngindung* and *Magersari***

At first appearance *ngindung* rights and *magersari* relationships are based on kinship, mutual help and mutual assistance (incest relationship) between people who have land with people who do not own land. This relationship is based on the idea that became the basis of the actions that gave birth to these rights, which provide assistance to fellow members of the community who need help to meet their needs, the land for habitation. But in the next, due to the narrowness of the land from development and rapid population growth, the land changed in character to be commercially valuable objects.<sup>15</sup>

Shifted from the original value of the land is social to the commercial value affects the nature of relationships among the members of society, especially in terms of land tenure. The nature of the relationship between those who initially based on kinship, mutual assistance, and mutual assistance or incest relationships are shifted to a more selfless nature. Consequently *ngindung* and *magersari* have meaning that initially social functioning (not subject to payment to user and tenant)

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<sup>14</sup> Endro Kumoro, *op.cit.* p. 88.

<sup>15</sup> Iman Soetiknjo, 1990. *Politik Agraria Nasional: Hubungan Manusia dengan Tanah yang Berdasarkan Pancasila*, Yogyakarta: Gadjah Mada University Press. hlm.75

at the present time to shift to commercial functions (subject to any periodic payments to the landowner).

These conditions are reinforced by the results of studies that have been conducted by Endro Kumoro (1996) which shows that at the present time are rarely found an association *ngindung* and *magersari* are not accompanied by payment of money by user and tenant to landowners (Table 1).

Table 1: The Amount of Rent or Land Ngindung Calendar or Magersari

No.	The amount of money in dollars	Frequency	Percent
1	Not requested payment	5	15.15
2	Paying for UN	1	3.03
3	Less than 10,000 per year	7	21.21
4	10000-20000 per annum	12th	36.36
5	20000-30000 per annum	4	12.12
6	30000-40000 per annum	2	6.06
7	More than 40,000 a year	2	6.06
	N	33	100

Sources: Endro Kumoro, 1996

The condition can be understood considering the changing society and to build tendency arising from community members to make changes in accordance with the pace of development. No exception, *ngindung* and *magersari* relationships that are initially free covenant relationship shifted to the lease relationship.

## **Conclusion**

Tradition *ngindung* and *magersari* in Daerah Istimewa Jogjakarta is an example of the harmonization of local law and state law. At first the terms of *ngindung* or *magersari* of land is born of gratitude landowners based on the principles of kinship and mutual help. Someone who was given permission to establish *ngindung* or *magersari* houses on land partly inhabit the yard or house building land owners at no particular payment.

Although the UUPA has been a fully implemented in the province since 1984, but the influence of historical background on the status of land ownership and tenant rights *ngindung* still going on until now. Further development, due to the narrowness of the land from development and rapid population growth, the soil turns into its commercially valuable objects. Shifted from the original value of the land is social to the commercial value affects the nature of relationships among the members of society, especially in terms of land tenure. The nature of the relationship between those who initially based on kinship, mutual assistance, and mutual assistance or incest relationships are shifted to a more selfless nature. Consequently *ngindung* and *magersari* have a meaning that initially a social function at the present time to shift to commercial functions.