

## Legal Strength Analysis of Land Ownership under Grant Sultan Status in the Indonesian Land Law System (Case Study of Supreme Court Decision Number 227-PK/PDT/2015)

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Article Info	ABSTRACT
<p><b>Keywords:</b> Land Ownership System, Legal Power of Grand Sultan Land Ownership. And Law System.</p>	<p>In human life, this country is a place where people can live and live, so that this country is not separate from human actions themselves. Therefore, land is needed for everyone on this planet, which often causes problems and conflicts, especially those related to land. The formulation of the problem that is the purpose of this study is: How is the land ownership system in Indonesian law and What are the problems that arise in land ownership with the status of Grant Sultan looking at case no. 227-PK / PDT / 2015. This study uses the nature of Descriptive Analytical research. The type of research used in this study is Normative Juridical legal research obtained from secondary data. This research method uses normative juridical research, namely research based on the reason that legal research is a process of discovering legal rules, legal principles, and doctrines to answer the legal questions faced. For this reason, a rule is needed that regulates the relationship between humans and land. For humans, land is a place and space for all living things on earth, and is a source of life. On the one hand, population growth has increased and continues to accelerate, followed by the development of science and technological progress in various fields, while the country is limited natural resources.</p>
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### INTRODUCTION

Land is something that can be used as a means of investment. For financial specialists, land ownership and control is a very profitable investment tool and land control is a very profitable investment tool and provides long-term security "as a result, many lands are purchased not to be cultivated or developed.<sup>1</sup>The relationship between humans and land is very close, as explained above, that land is a place for humans to stand and live. Before the enactment of the Basic Agrarian Law, land law in Indonesia was influenced by the conditions during the colonial era which was dualistic, where the legal status of land was controlled by European law (Burgelijk Weetboek) and some were controlled by customary law (Customary Land Law).<sup>2</sup>

Philosophically, land is often interpreted as land and not soil, so that land is viewed in a multidimensional vision.<sup>3</sup>Land is the most important aspect for human life, they can live

and thrive because of the land. In the concept of Islam, it is stated that land is the main element that forms humans.<sup>4</sup>In certain areas and locations in the city, the more expensive the land price, the more difficult it is to own it, so land seems to be a rare commodity.<sup>5</sup> Lands controlled by European law are also called western rights land, for example eigendom land, erpacht land, Opstal land and others which are almost all registered at the Land Registry, according to the Overschrijvingsordonnantie or name change ordinance. Countries with these western rights are subject to western agricultural regulations. For example, you have the obligation and duty to have the way you received it, your transition, disappear or remove it, other rights and authorities, and rights and from this fact thus, the legal basis that is used as the basis of national agrarian law is customary law according to the UUPA. Based on this fact, it is clear that the existence of customary land rights recognized under the UUPA can still be found today.

For example, the land of the Grand Sultan. The position of the rights obtained by the Grand Sultan is determined that the rights of the Grand Sultan are Indonesian rights, subject to customary law.<sup>6</sup> Grant Sultan is a decree or decree issued by the Sultan or King in the past, which grants land rights to a person or certain party. The granting of this right is generally related to services, devotion, or special relations with the Sultanate. The existence of Grant Sultan is closely related to the system of government and customary law that applied before Indonesian independence, especially in areas that had strong kingdoms or sultanates. The legal status of Grant Sultan in the Indonesian land system is that after independence, Indonesia enacted the Basic Agrarian Law (UUPA) No. 5 of 1960 as the basis for national land law. UUPA aims to unify and standardize land laws that were previously diverse due to the influence of customary law, colonial law, and other laws.

In this context, the status of the Sultan Grant becomes complex because it needs to be integrated into the new land law system. The state as an organization of power in Indonesia has the authority to regulate the ownership, allocation, transfer and registration of land for the rights of the Indonesian people. The state's right to regulate is called the State's Right to Control as stated in Article 2 Jo. Article 8 UUPA. Regulation by the state is important because land which is the main life for humans will face various things, including:<sup>7</sup>

1. Limited in quantity and quality compared to the needs that need to be met.
2. Shifting patterns of relations between the state and landowners as a result of changes caused by development processes and general social change.
3. On the one hand, land has grown as a very important economic object, on the other hand it has grown as a material for commerce and an object of speculation.
4. The land must be used physically and mentally and fairly, on the one hand, for the largest well in the country, but on the other hand, it must be preserved.<sup>8</sup>

Along with the development of law and land in indonesia, there is a deep need to evaluate and analyze the legal force of sultan grant land in the current indonesian land system. This analysis is important to provide legal certainty for sultan grant land owners, both in terms of property rights protection and in terms of the legal process that must be gone through so that the rights to the land can be recognized and protected by the state.

Through this analysis, it can be seen the steps that must be taken by the holder of the rights to sultan grant land so that the land is valid and recognized in the Indonesian legal system, such as through land registration, certification, and dispute resolution related to the status of the land. In addition, this analysis will also help understand how the government provides solutions to legal problems that arise in connection with lands that have a long history.

Several issues surrounding land often occur. The order in the law that prioritizes the interests of the people must eventually be eroded by investment and commercial interests that benefit a handful of groups so that the interests of the people who should receive top priority are finally neglected.<sup>9</sup>The case between PT Pelabuhan Indonesia (Pelindo) and the Head of the Medan City Land Office related to the issue of land ownership and use. Broadly speaking, this problem is related to claims of ownership and use of land considered to belong to PT Pelindo which is located in the Medan City area. PT Pelindo is a company engaged in port management, while the Medan City Land Office is responsible for managing land administration in the area. One of the problems that often arises in this case is about a land dispute between. Based on this background, the problem formulation of this research is as follows: How is the land ownership system in Indonesian law?. What are the problems that arise in ownership of land with Grant Sultan status looking at case number 227-PK/PDT/2015?

## RESEARCH METHODS

To discuss and carry out the research, the research steps are as follows:

1. Nature of Research

The nature of the research used is descriptive analytical, where the research is solely directed at books and normative legal research methods with an empirical legal approach.<sup>10</sup>

2. Types of research

The type of research used is Normative Juridical, which is also called doctrinal legal research, where law is conceptualized as what is written in statutory regulations (law in books), and research into the legal system can be carried out on certain legal regulations or written laws.

3. Method of collecting data

The method of data collection in this study is normative legal. The selection of this normative legal method is based on the reason that legal research is a process of discovering legal rules, legal principles, and doctrines to answer the legal questions faced. with a literature study (Library Research) in this study was conducted at the Library of the PancaBudi Development University, Medan. Against documents that have a connection and relevance. Observation and Observation through searches on related internet sites.

4. Data Types

This research data uses data obtained from secondary materials, secondary data consists of:

- a. Primary legal materials consist of statutory regulations, jurisprudence, or court decisions.
- b. Secondary legal materials obtained from research, books, journals, scientific articles and theses.

## DISCUSSION

### Land Ownership System in Indonesian Law

Land is a basic need for human life, legal certainty in matters relating to land is needed. For years, land has had significant economic functions and values. Issues relating to land, especially those relating to land certificates, often arise in everyday life. Land certificates, issued by the National Land Agency (BPN), serve as proof of ownership and rights to a plot of land.<sup>11</sup>

Land is essential for the life of all communities, serving various purposes such as housing, plantation businesses, agriculture, mining, and others. In Indonesian society, some common problems include unfairness of land ownership or control, illegal land control, and complications related to land acquisition for legitimate development purposes or authorities. Land law policy refers to government strategies related to land allocation and use by authorities or landowners. This involves determining land use to ensure legal protection, improve welfare, and encourage economic activities through the enactment of defense laws and related regulations. The principles of the Indonesian National Land Law are set out in Law Number 5 of 1960 concerning the Principles of Agrarian Affairs (UUPA), which regulates land in Indonesia. Every year, the demand for land in Indonesia increases due to rapid population growth. Due to the increasing price of land, many individuals consider land as an investment.<sup>12</sup>

Land use and regulation in Indonesia is regulated in the Decree of the People's Consultative Assembly of the Republic of Indonesia Number: II/MPR/1993 concerning the outlines of state policy, which includes the mandate: 'The regulation of state control over land aims to ensure its use achieves social justice for all Indonesian people, while land use planning is carried out systematically to maximize people's welfare. Land use planning must consider community rights to land, the social role of land rights, the maximum limit of land ownership, and various steps to avoid concentration of land control that is detrimental to the public interest. The perfection of land institutions aims to improve the realization of an integrated, harmonious, effective, and efficient land management system that includes orderly life administration. Improvement and support for the development of land administration activities are needed with more effective land analysis tools and information systems. Land serves as a major source of income, and land ownership gives individuals a respected status in the legal community. Land use can be managed for various purposes while ensure environmental sustainability and avoid land use that is detrimental to public interests and development.<sup>13</sup>

In other words, land law is similar to itself. Effendi Perangin, as quoted by Urip Santoso, argues that land law encompasses all legal regulations, both written and

unwritten, that regulate land rights, forming real legal institutions and legal relationships. Arba shares this view, describing land law as a complete set of legal regulations consisting of written elements (derived from the Basic Agrarian Law) and unwritten (based on customary law) that all target the same object: land rights as a concrete legal institution and legal relationship, with private and public dimensions systematically regulated within a cohesive framework.<sup>14</sup> Meanwhile, in Indonesia, the agrarian law that regulates land, water, and space is based on customary law. This law is rooted in the practices of local customary communities, as long as it does not conflict with national interests and the state's principles of national unity and Indonesian socialism. Land rights defined by the UUPA are rights that are established after the date of enactment of the law on September 24, 1960. The UUPA identifies 4 causes for establishing land rights, namely; (1) land rights based on customary law, (2) land rights based on government determination, (3) land rights based on legislation, and (4) land rights based on grants.

According to the UUPA, land rights are derived from land rights. This is a plot of land associated with a particular right, often referred to as registered land, and is identified by the registration number of the right in the land rights certificate resulting from the land registration process. The certificate shows that land rights do not only have the authority as types of rights but also carry obligations to protect those rights in certain areas.<sup>15</sup>

Studying land legally is an important method for understanding regulations, laws, and court decisions related to land ownership and use. It involves assessing the legal dimensions related to land, including legal basis, ownership rights, land registration processes, land disputes, and protection of individual or entity rights in the land area. In the realm of land law, there are a number of elements that can be analyzed:

### **Legal Basis**

Land law analysis begins with understanding the legal framework that governs land in a jurisdiction. This includes statutes, constitutions, local regulations, and technical standards that define the rights and obligations of landowners.

- a. To limit the adverse socio-economic and political effects of progress, the UUPA seeks to impose a social function on property rights, establish land conservation requirements, provide special treatment for vulnerable groups, facilitate cooperative arrangements for large-scale enterprises, and prohibit monopolies.<sup>16</sup>
- b. Law No. 5 of 1960 emphasizes that the management and use of land, water and air must comply with the principles of justice and prosperity to encourage the creation of a just and prosperous society.
- c. According to Article 16 Paragraph (1) of the UUPA, there are various rights related to land, including: ownership rights; cultivation rights; building construction rights; usage rights; rental rights; land clearing rights; and the right to collect forest products.
- d. As stated in Article 19 paragraph (2) of the UUPA, land registration consists of a series of activities which include: a. land mapping and bookkeeping; b. measurement; c. registration of land rights and transfer of those rights; d. issuance of land rights certificates, which function as strong evidence.

- e. Article 16 paragraph (1) of the UUPA states the various types of land rights, namely;
1. right of ownership
  2. Cultivation Rights,
  3. building rights,
  4. right of use,
  5. lease rights,
  6. land clearing rights,
  7. the right to collect forest products,
  8. other rights which are not included in the rights mentioned above which will be determined by law as well as temporary rights as mentioned in article 53.

### Property rights

Legal analysis of land requires an understanding of the various types of property rights, including ownership rights, building use rights, use rights, and lease rights. Understanding the process by which these rights are granted, transferred, and terminated is essential.

1. The right to property is an important and constitutional right. Legal certainty over land for those who do not have a certificate for certified land, when linked to Article 28D paragraph (1) of the 1945 Constitution, confirms that: 'Everyone has the right to recognition, guarantees, protection, and fair legal certainty and equal treatment before the law. "Meanwhile, Article 28H paragraph (4) of the 1945 Constitution stipulates that 'everyone has the right to private property rights, and these rights may not be taken over arbitrarily by anyone." Meanwhile, the Basic Agrarian Law (UUPA), which is the basis of national land regulation, affirming that "land rights are hereditary, the strongest and fullest rights that an individual can have over land, taking into account the provision that all land rights have a social function" (Article 20 UUPA). The term "Rights" refers to the relationship between an individual and an object in the legal concept. The term refers to the right of ownership of an object, known as property rights.<sup>17</sup>
- b. The concept of Building Use Rights (HGB) includes the right to build and own buildings on land owned by another party, with a maximum duration of 30 years and the possibility of extension up to 20 years. Article 35 of the Basic Agrarian Law (UUPA) provides this explanation.<sup>18</sup>
- c. According to Article 2 paragraph (3) of the UUPA, the Right to Use or Management Rights implemented by the State are aimed at achieving maximum welfare for the people in terms of social happiness, welfare, and freedom, in the sovereign, just, and prosperous legal state of Indonesia. Management Rights by the State, as stated in Article 2 of the UUPA, are defined by the existence of various rights to the surface of the earth, known as land or Land Rights.<sup>19</sup>
- d. Lease rights for buildings are regulated in Article 44 paragraph (1) of the Basic Agrarian Law (UUPA). This provision stipulates that individuals and/or legal entities

who have land rights as lease rights must ensure that the tenant has the authority to manage land rights belonging to other people for development purposes and to carry out leases. by making payments to the legal entity that holds land rights, in accordance with the agreement between the tenant and the land owner.<sup>20</sup>

### Land Registration

A fundamental aspect of land law is land registration. The analysis should include an assessment of how effective the land registration system is, how accurate the ownership records are, and how effective the policies governing it are.

- a. The government/state is involved in a series of activities for land registration that are ongoing and systematic. This involves collecting certain information or data about certain land in a designated area, processing and storing this information, and presenting it for public benefit. The purpose is to ensure legal certainty regarding land, including the issuance of evidence and maintenance of records.<sup>21</sup>
- b. In Indonesia, land registration consists of two stages: initial land registration and maintenance of land registration data. Land registration for the first time can be done in two ways: systematic land registration and sporadic land registration. Land plots that do not have certificates are registered as part of the systematic land registration process initiated by the Government, especially the National Land Agency (BPN). This is done based on long-term and annual work plans in the village/sub-district area, in accordance with regulations stipulated by the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (ATR/BPN).

### Problems that arise in land ownership with Sultan Grant status, Case no 227-PK/PDT/2015.

The parties involved in this case are PT (Persero) Pelabuhan Indonesia I and the Head of the Medan Land Office, as the applicant for judicial review who was previously the defendant, against Muhammad Hfizham and Drs. Teuku Azan Khan who holds the title of Sultan Muda Deli, who is the respondent for judicial review who was previously the plaintiff. Regarding the problem of the object of the dispute which is considered clear in case no. 227-PK/PDT/2015, the details of the problem of the object of the dispute are as follows:

1. That the cassation panel was wrong in considering and applying the findings of the Field Inspection conducted by the First Level Fact Judge at the location of the disputed land measuring 10 hectares on May 22, 2012. The evidence shows that the Defendant in the Judicial Review (Cassation Plaintiff/Appellant I/Plaintiff/Defendant Intervention I) could not clearly and accurately identify the position, location, and boundaries of a plot of land measuring 47.5 hectares based on Grant Sultan 1709 of 1917, which the Defendant claimed as part of the 10 hectares. As a result, the facts of the First Level Judge and the Jurisdiction Judge were clearly wrong in considering the results of the Direct Inspection which had truly determined the boundaries.
2. The First Level Judex Facti did not investigate the location, position and boundaries of the 47.5 hectares of land in accordance with Grant Sultan 1709 of 1917 or the Statement Letter dated 12 December 1989. Consequently, there is no basis for the

statement that 10 hectares of land is part of the 47.5 hectares when its location and boundaries are unknown.

3. Even if it is true that the non-object land in this case belongs to the Respondent for Review (i.e., the Appellant/Appellant I/Plaintiff/Victim Intervenor I) and that its location and boundaries are clear, in fact there is no side that borders the land of Grant Sultan 1709 from 1917, which covers an area of 47.5 hectares and is recognized by the Respondent for Review (i.e., the Appellant/Appellant/Plaintiff) as their property according to the Statement Letter dated 12 December 1989.
4. Circular of the Supreme Court of the Republic of Indonesia Number 7 of 2001, dated 15 November 2001, concerning On-Site Examination states: "Conducting an On-Site Examination of the object of the case is necessary for the Panel of Judges, assisted by a Substitute Clerk. This can occur on the initiative of a Judge who considers it necessary to obtain an explanation or details about the object of the case, in response to an exception submitted, or at the request of one of the parties involved."
5. The Site Inspection conducted on 22 May 2012, therefore did not clarify or confirm the existence of the land Grant Sultan No. 1709 from 1917, which is 47.5 ha in area and is the source of the 10 ha of land at issue in this case. Therefore, the Judges of Fact and Law of the Supreme Court should not have considered or acknowledged the results of the Site Inspection conducted on 22 May 2012.
6. The Supreme Court judges have made a mistake by considering that the following decisions indicate the revocation of Management Rights Certificate Number 1/Belawan dated March 3, 1993: the decision of the Medan State Administrative Court Number 59/G.TUN/2007/PTUN MDN jo., the decision of the Medan High State Administrative Court Number 12/BDG/2008/PT.TUN-MDN jo., and the Decision of the Supreme Court of the Republic of Indonesia Number 248 K/TUN/2008 jo. together with the Review Decision of the Supreme Court of the Republic of Indonesia Number 106 PK/TUN/2009.
7. That the Decision of the Medan State Administrative Court Number 59/G.Tun/2007/PTUN Mdn, in conjunction with the Decision of the Medan High State Administrative Court Number 12/BDG/2008/PT MDN in conjunction with the Decision of the Supreme Court Number 248 K/TUN/2008 in conjunction with the Decision of the Judicial Review Number 106 PK/TUN/2009 between Gunawan Lusman as the Plaintiff against the Head of the Medan City Land Office as the Defendant and PT (Persero) Pelabuhan Indonesia I as the Second Intervening Defendant is "To declare void the Certificate of Management Rights Number 1/Belawan dated March 3, 1993 in the name of PT. (Persero) Pelabuhan Indonesia I, specifically against the Plaintiff's land measuring approximately 63,000 m<sup>2</sup>, not against the land measuring 47.5 ha as in the Judex Juris decision.
8. The State Administrative Court Decision Number 59/G.Tun/2007/PTUN Mdn involves a case concerning land of approximately 6.3 hectares. The decision does not mention that this land is "part" of the Sultan's grant of 47.5 hectares. Therefore, the basis of

ownership of PT Pelabuhan Indonesia I (Persero), namely the HPL Certificate Number 1/Belawan I dated March 3, 1993, which covers an area of 278.15 hectares and includes the object of the case (10 hectares), has not been revoked in this administrative case.

9. As a result, Judex Juris (Supreme Court of the Republic of Indonesia) has erred in its decision to cancel the Management Rights Certificate Number 1/Belawan I dated March 3, 1993, issued to PT (Persero) Pelabuhan Indonesia I for an area of 278.15 ha, based on PTUN Decision Number 59/G.TUN/2007/PTUN. Mdn, while this administrative court decision only cancels a certain area of approximately 6.3 ha and maintains the Management Rights Certificate for 278.15 ha, which covers 10 ha of land in accordance with the decision of the Supreme Court of the Republic of Indonesia Number 2843 K/Pdt/2013.

From the above problems, the Supreme Court's decision on the verdict of this case is, according to the Supreme Court's opinion, there is sufficient reason to grant the petition for judicial review from the Petitioner for Judicial Review: PT (Persero) Pelabuhan Indonesia I and to cancel the Supreme Court's decision Number 2843 K/PDT/2013, dated March 19, 2014 and the Supreme Court will re-try this case with the verdict as will be mentioned below. Considering, that because the Respondents for Judicial Review/Plaintiffs are on the losing side, they must be sentenced to pay court costs at all levels of court. Considering the articles of Law Number 4 of 2004, Law Number 14 of 1985 as which has been amended and supplemented by Law Number 5 of 2004 and other relevant laws and regulations. Granting the request for judicial review from the Applicants for Judicial Review: 1. PT (PERSERO) PELABUHAN INDONESIA I and 2. HEAD OF THE LAND OFFICE OF MEDAN CITY.

## CONCLUSION

Based on the problems that occurred above, the conclusions that can be drawn from this study are: The Basic Agrarian Law (UUPA), Law No. 5 of 1960, regulates land law and emphasizes that the control and utilization of land, water, and air must be in accordance with the principles of justice and welfare for the development of a just and prosperous society. Furthermore, Article 16 paragraph 1 of the UUPA stipulates land rights, which include ownership rights, management rights, building rights, use rights, lease rights, land clearing rights, and rights to collect forest products. Then, land registration is an important part of land law. It consists of a series of ongoing and systematic activities carried out by the state/government to collect certain information or data about certain land areas in the area, process and store this information, and make it available for the public interest. The aim is to ensure legal certainty in the land sector, which includes the issuance of certificates and their maintenance. That the statement letter dated 12 December 1989 of the person concerned (Plaintiff) has obtained the Grant Sultan land from the heirs of the first recipient of the Grant Sultan by way of compensation. The form and method of obtaining rights to this land is contrary to the principles in the Basic Agrarian Law Article 2 paragraph (2) letter c in

conjunction with Article 26 and that Article 37 paragraph (1) and Article 41 paragraph (1) of Government Regulation Number 24 of 1997. That transfer of land rights can only be carried out in the manner regulated by the State, namely buying and selling, exchange, grants, gifts by inheritance, granting according to customary law, auction, and land investment as capital in a legal entity because the Plaintiff received it in the form of an act outside the method that has been determined by the State, therefore it does not have the status as the legitimate holder of the land rights to the Grant Sultan because of the form of his actions in the form of providing compensation according to the Basic Agrarian Law cannot be justified.

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