

Heirs of Sultan Deli X's Legal Position on Land Procurement Object for Medan-Binjai Highway Project

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Abstract: Land is an entity that is very vital in a country and often used as the object of disputes. One example is the dispute over land ownership which was used as the object of land procurement for the construction of the Medan-Binjai highway which is located at the village of Tanjung Mulia Hilir, Medan Deli District, Medan City, North Sumatra Province, where the heirs of Sultan Deli X were suing to the Medan District Court and Medan High Court with Case Number 429/Pdt/2018/PT MDN. This research analysed the position of the heirs of Sultan Deli X in terms of the enforcement of civil and land law in the Republic of Indonesia. The research used a combination of normative and empirical juridical methods, in which the Primary data is tested and developed based on secondary data and to find out certainty of applicable law. The Court Decision of the dispute said above has fulfilled the legal certainty of the Certificate of Property Rights claimed by Sultan Deli X's heirs and disqualified ownership of Sultan Deli X's heirs at dispute because the validity of the basis of ownership of the land and the rights of the heirs have expired in the trial.

1 INTRODUCTION

Customs have strong bond and influence in communities that depend on the people who support the customs themselves. Customs and customary laws can be distinguished from the rules that live in the community and the sanctions for those who violate the rules. Malinowski stated that the difference between customs and law is based on two criteria, namely the source of sanctions and the sanctions' implementation. In the customs, the source of sanctions implementation is in the citizens of community, either it is individually or in groups, the sanctions are also implemented among the groups themselves. In law, the sanctions and its implementation is centralized onto the certain agencies in society (Anggoro, T., 2017).

Customary law contains elements that derived from the values that have been ingrained in society through the actions of the community. These values then evolved into unwritten mutually agreed norms. These norms are then enforced by institutions or organizations, which are sanctioned and influenced by the religion or belief that embraces the community. These values and norms are still being

referred in national and state life, and is often referred as local wisdom (Makmur, 2019).

During the Dutch Colonization period between year 1816-1829, there was a debate among the Dutch government regarding the principles and patterns of agrarian wisdom based on the view that the state as the owner or who owns a part of land (*staatseigendom*). As a result, there were 2 (two) thoughts, namely the Asian tradition that based on the power of the King of Asia and the Western tradition that born of Western which is based on the form of lease and legitimate farmers' rights.

The indigenous people's land's rights regulated that the General Governor should not take the land that belongs to the people which was been acquired from forest clearing and was being used for their own purposes, villages that own the land and general grazing places. The indigenous people's land's rights that have been obtained for generations could be granted with the *eigendom* right. Although this regulation recognizes the indigenous people's rights, it was obviously restricting the implementation only on the directly community-owned land. For the land that was not directly owned, it became the *eigendom* property of the state and the use of the land was regulated through the *Agrarische Wet* which was known by the statement of ownership or *domein*

verklaring through the regulation of Article 1 of *agrarische besluit* (S 1879. No. 118) as the implementing regulation of *Agrarische Wet* (Sukirno, 2008).

After Indonesia proclaimed their independence in 1945, the efforts to end the excessive land resource ownerships by the colonizers continued through the establishment of a National Agrarian Law that was along with the people's side. Considering that land is the God's gift to all mankind and the condition of Indonesia which is patterned as an agrarian nation where people can not be separated from the land, then the "land for farmers" philosophy became the basis of national land law establishment. This philosophy was then formulated in Law No. 5 of 1960 about the Basic Rules of Agrarian Fundamentals (UUPA), while removing the dualism of the land law, *domein verklaring* and feudalism. The establishment of national agrarian law was based on customary law because it was seen as an accordance with the personality of the Indonesian people and the law of the original Indonesian people.

The realization of the value of legal certainty, justice, and usefulness/benefit were meaningful if it makes farmers become wealthier and prosperous. However, in its development, the basic value had shifted due to the influence of capitalism that affects the Indonesian economic system (Hasnati, 2008). The indigenous people's rights were degrading continuously as a result of the government's policy insistence that saw the land only from economic aspects. In certain circumstances, customs and customary laws were feared as a danger or threat to democratic civilization and humanitarian values. Custom was also being thought to threaten the rational modern political system. This condition was caused by an assumption that customs and customary law were not placed in the sense of a system of regulating and organizing life in the community.

2 METHODS

This article aims to identify and explain the Heirs of Sultan Deli X's Legal Position on Land Procurement Object for Medan-Binjai Highway Development Project by determining the Land Ownership's Legal Provision and identifying the procedure of Land Rights' Legal Certainty's Guarantee.

This research uses both normative and empirical methods in order to identify and reach the objectives. Normative research method is a research

that involve the law principals, law systems, law synchronizations, law histories and law comparisons. Empirical research method is an approach that is to analyze about the effectiveness of a law product in community. The researchers combined the study of law products such as Private Law, Land Law and Customary Law with those law products' implementations in community.

The empirical method of this research took place in Tanjung Mulia Hilir Village, Medan Deli District, Medan City, North Sumatera by interviewing the citizens and Head of the Tanjung Mulia Hilir Village. The information obtained from interview session with the Head of Tanjung Mulia Hilir Village and it's people, then was being synchronized with information obtained from literature to find out how much the Sultan Deli X's influence affected the land ownerships in Tanjung Mulia Hilir Village in the past. This information was also combined with present law products to find out the existence of Communities' Law (Adat Law) in existing National Land Law.

3 RESULTS AND DISCUSSIONS

Some of the previous researches that have been conducted, as follows:

- Reconstruction of the Complete Systematic Land Registration Regulation Based on Justice Value, by Nurhayati Desy Dwi Hartanti, et al. in 2020;
- Reconstruction of Law Enforcement of State Land Possessed by Community Based on Value of Justice: Study in the Directorate General of Water Resources of Indonesia, by Sugiyanto, et al. in 2020;
- Reconstruction of Legal Use of State's Land by People as an Embodiment of Welfare State Based on Justice Value, by Rosdiana, et al. in 2020;
- The Status of *Rechtsverwerking* in the Land Registration System in Indonesia, by Taufiq Yuli Purnama, et. al. in 2020;
- Land Ownership Based on National Land Law in Indonesia, by Irene Eka Sihombing in 2018;
- Land Ownership Reform in Islam, by Ridwan in 2018;
- The Future of Land Ownership Regulation in Indonesia by Yubaidi, R. S. in 2020;
- The Role of Customary Land Ownership in Land-Use Conversion in the Peri-urban of Bukittinggi, Indonesia by Darwin, I. S., et. al. in 2019.

Compared to the 8 mentioned researches above, this research used two research methods instead of one by involving the head and the people of Tanjung Mulia Hilir Village as used by the eighth research. By interviewing them, researchers obtained more accurate and more reliable resources so that the law products' effectiveness in Tanjung Mulia Hilir Village could be clearly distinguished.

3.1 Legal Provisions on Land Ownership According to UUPA

The State acts as the organization of people's power. The State's Controlling Right is intended in the UUPA (Article 1 paragraph 2) which authorizes the State to:

- a. Regulate and administer the provision, usage, supply and the care of earth, water and space;
- b. Determine and regulate the legal relationships between people and earth, water and space;
- c. Determine and regulate the legal relationships between people and legal deeds that concern on the earth, water and space.

Based on the State's Controlling Right as referred in Article 2, there are various rights to the land which can be given to and owned by people and legal entities (UUPA, Article 4 paragraph 1). This article authorizes the use of land as well as the body of the earth, water and the space above it, only if it is necessary for the interests that directly related to the use of the land within the limitations of this law and other higher legal regulations (Parlindungan, A. P., 2006).

According to Suseno, F. M. (1987) as cited by Salfutra, R. D. (2019), the concept of the State's Controlling Rights is inseparable from the concepts of Power and Authority. Control, power and authority are closely related to the coercion that manifests in the sanctions of the law (Salfutra, R.D., 2019). So power is the coma of authority. In law, this authority is valid if implemented under applicable law. Exceptionally, the authority is owned by the State, so the State has the right to demand compliance. Therefore, the State's authority or power is within the scope of public law.

The power is also related to civil law, namely the ability to do something (*bekwaam and bekvoudg*) (Erwiningsih, W., 2009). Furthermore, Erwiningsih, W (2009) explained that the State as the holder of power can have legal relationships with objects, such as individual objects with humans as their owners. The legal relationship of the State with the land belongs to the category of objects or land used for public use (*res publicae*). The consequences are

that public roads *et cetera* are State-owned for reasons, namely:

- a. The special legal relationship between the state and the lands that are in the category of *res publicae* in *publico usu*, which is a deviation from the *res publicae* in *patrimonio* (objects that become the general public's wealth);
- b. The power of law exercised by the state to the land, especially those which is used by the public, has the same content as the power that the State exercises to other lands that used infinitely. The content of this power has the same character as the power of an individual in civil law.
- c. The land that is being used for public services, such as government office buildings, including *res publicae* in *publico usu*, so that it's belong to the State.

Personal rights on land are the natural rights of people, and the people themselves acts as the subject of personal law (*naturlijk*). The placement of the human right to own that is of a human nature shows that the strong position of man on the land, so as to exclude landowning by the State. On this basis, the State is unlikely to have the right to land but only to control, regulate the use and provise the land.

Kalo, S. (2006) as cited by Salfutra, R.D. mentioned that the State is not arbitrarily owns the land, but rather to allocate it for the whole Indonesian citizens' interest. This provision actually wasn't described clearly, so it is easy to experience irregularities and misappropriation or abuse in connection with the exercise of the State's Controlling Rights. For example, the takeover of indigenous rights over land for the usage of development for the State's interest. The State's Controlling Rights has a public aspect in the form of regulating supply, usage, provision and maintenance, regulating legal relations, regulating legal relationships and legal actions. This shows that the State's Controlling Rights does not mean the State as a landowner.

The relationship between land ownership and buildings has a very strong relationship with agrarian law. However, in the UUPA it is not elaborated on the legal relationship, although in practice the problems that arise always relate to the legal relationship. To know the relationship of ownership of land rights with buildings or other objects on it, there are several principles that can be used as a basis to know it, namely:

1. Principle of Attachment
Land, building or other things that matter are something called objects. The matter is found

in the Civil Code which adheres to the principle of *natrekking beginsel* or accessie principle, or more commonly known as the principle of attachment. The provisions of article 500 of the Civil Code have outlined that the building and plant are part of its land. Then in Article 571 of the Civil Code explains that the building established, the plant planted on the land, because the law belongs to the one who has the land, unless or there is another agreement (Salfutra, R. D., 2019).

2. Principle of Horizontal Separation (*Horizontal Scheiding*)

In line with the enactment of the UUPA, the provisions of the Civil Code above were revoked and replaced with the principle of horizontal separation which became the legal basis of objects in the national agrarian law (Ismaya, S., 2011). The principle of horizontal separation can be used in the case that the building stands on the land of indigenous rights. In accordance with this principle, there is a separation between land and buildings. The land is subject to the laws of land and buildings subject to the law of the liabilities. He who owns the land does not always be the owner of a building that someone else has built on his land (Salfutra R. D., 2019).

3.2 Land Registration as a Guarantee of Legal Certainty of Land Rights

UUPA laid the groundwork on the rules on the mastery, ownership, provision, use and control of land utilization aimed at managing and utilizing the land for the greater prosperity of the people. One of the aspects needed for that purpose is about the certainty of land rights that are the main basis in the framework of legal certainty of land ownership.

Rosdiana, et al. (2020) explained that Indonesia's philosophy in the concept of the relationship between humans and land places individuals and communities as an inseparable unit (dual), that the fulfillment of one's needs for land is placed within the framework of the needs of the whole community so that the relationship is not merely individualistic, but rather is collective in nature while still providing place and respect for individual rights. This is an embodiment of the Indonesian state as a welfare state. As mentioned in Article 2 paragraph (3) of the Agrarian Law, state authority derived from the right to control natural resources by the state is used for the greatest prosperity of the people.

Santoso, U. (2015) investigated that the guarantee of legal certainty regarding land rights for all Indonesian people, which is one of the objectives of enacting UUPA can be realized through two efforts, namely:

1. The availability of written, complete and clear legal devices that are implemented consistently in accordance with the soul and its provisions;
2. The implementation of land registration that makes it is possible for land rights holders to easily prove the right to land that it controls, and for interested parties, such as prospective buyers and prospective creditors, to obtain the necessary information about the land to be the object of legal action to be carried out, as well as for the Government to exercise the discretion of the land.

Article 19 of the UUPA sets the basis of land registration, as follows:

- (1) To ensure legal certainty by the Government, land registration is held throughout the Republic of Indonesia in accordance with the provisions governed by government regulations.
- (2) The registration in paragraph (1) of this article includes:
 - a. Measurement, mapping and bookkeeping of land;
 - b. Registration of land rights and the transfer of such rights;
 - c. The provision of proof of rights, which applies as a powerful evidentiary tool.
- (3) Land registration is organized with the state and community in mind, socioeconomic traffic needs and the possibility of implementation, according to the consideration of the Republic of Indonesia's Minister of Agrarian.
- (4) In the Government Regulation, it is mentioned that the costs concerned with registration are intended in paragraph (1) above, provided that people who cannot afford to be exempted from the payment of such fees.

In The Explanation IV of the UUPA, it has been determined that:

"Land registration will be held with a mind that the interests and circumstances of the state and the community of socioeconomic traffic needs and its possibilities in the field of personnel and equipment. Therefore, it will take precedence in cities to gradually increase in cadastral covering the entire country. In accordance with its purpose that will provide legal certainty, the registration is required

for the right-holders concerned, with the intention that they obtain the certainty about the right. In addition, the birth of article 10 in the UUPA is addressed to the government as an instruction for ensuring the legal certainty of the land by doing such land registration or *rechtskadaster* in Indonesia."

As an effort to ensure legal certainty in the land, in 1997 Government Regulation No. 24 of 1997 on Land Registration (GR of Land Registration) had been issued as an improvement to UUPA. This Government Regulation retained the purpose and system that is used in the registration of land which in the rights above the land had been established in the UUPA, where the registration of land is held in order to provide guaranteed legal certainty of land with a negative system with positive element, because it will produce letters of proof of rights that apply as a powerful proof (Salfutra, R. D., 2019).

The implementation of land registration a.k.a registration of land rights which was carried out based on the provisions of UUPA and GR Number 24 of 1997 is using the principle of publicity and the principle of specialty. The principle of publicity is being reflected in the existence of land registration stating the subject of the right, type of right, transfer and assignment. Meanwhile, the principle of specialty is being reflected in the presence of physical data on land rights such as land area, land location, and land boundaries. The principle of publicity and the principle of specialty are being contained in a list so that anyone who wants to know about it can easily find out. This means that anyone who wants to know the data on the land does not need to conduct a direct investigation into the location of the land concerned because all the data can be easily obtained at the Land Office. Therefore, each transfer of land rights can run smoothly, orderly and efficiently.

The purpose and objective of the government to register land or it's rights is to ensure legal certainty regarding to a plot of land, namely in the context of proving if there's a dispute and/or in the context of opening up matters concerning the land. Herein lies the relationship between the principle of publicity and the principle of specialty in implementing a land registration or registration of land rights in Indonesia.

The meaning of land registration is mentioned in Article 1 number 1 PP Number 24 of 1997, namely a series of activities carried out by the Government continuously and regularly, including data collection, data processing, bookkeeping and presentation, as well as maintenance of physical data and juridical data, in the form of maps and lists,

concerning land parcels and apartment units, including the issuance of certificates as proof of their rights for land parcels which there are already rights and ownership rights over apartment units and certain rights that impose them. Juridically, in the form of maps and lists, regarding land parcels and apartment units, including the granting of certificates as proofs of their rights for land parcels which there were already a rights and ownership rights to apartment units and certain rights which burden.

According to Salfutra, R. D. (2019), there are basic principles for land registration reference, namely:

- Simple principles, which are intended so that the basic provisions and procedures can easily be understood by interested parties;
- The principle of safety, which is intended to indicate that the registration of the land needs to be organized carefully, so that the results can provide a guarantee of legal certainty;
- Affordable principles, which are intended on the affordability of those in need, especially with regard to the needs and capabilities of the low economy class;
- The cutting-edge principle, which is intended to be adequate completeness in its implementation and continuity in the maintenance of its data.
- The open principle, which is intended so that the data stored in the Office of the National Land Agency about the land is always in accordance with the real circumstances in the field and the public can get information about the correct data at any time.

In land registration, it is generally known that there are 2 (two) land registration systems, namely positive systems and negative systems (Salfutra, R. D., 2019). The positive system means that what is listed in the land registration book and the proof of rights issued is an absolute proof. Third parties in good faith acting on the basis of such evidence receive absolute protection, even if it turns out that the information contained in it is incorrect. (Salfutra, R. D., 2019). The negative system means that the proof of rights applies as a powerful proof tool in which all information that is included in it has the force of law to be accepted as a true fact during and as long as there is no other evidentiary tool that proves otherwise. If there is any other evidence that can prove otherwise, then it is the court that decides the correct proof. If the information in the proof of rights is wrong, then changes and corrections are necessary.

Regarding these land registration systems above, Salfutra R. D. (2019) explained that the registration of land used in Indonesia is a negative system with positive tendency. This means that the weaknesses of the negative system are being reduced in such ways, so that the legal certainty can be achieved. This is in accordance with Article 19 paragraph (2) letter c of the UUPA which does not order the use of a positive system, that in this land registration system, the proof of rights issued is a powerful proof of proof, but not absolute. The origin of choosing a negative land registration system with positive dependence is, as follows:

- In negative system, the guarantee of protection provided to third parties is not absolute, as in positive systems. Third parties should still always be careful and should not absolutely believe in what is listed in what is issued. The weakness of this system is offset by the principle, that third parties who are in good faith and base their actions on the information provided by the registration of the land, generally get law protection.
- 2. UUPA does not choose a positive system, because the implementation of this system takes a lot of time, effort and cost. This does not mean that the registration of land with a negative system ordered by the UUPA will not be held thoroughly. Although a *rechtscadaster* always has a thoroughness in its maintenance, it does not need to be as careful as a positive system.

Perangin, E. (2008) as cited in Salfutra, R. D. (2019) explained that in negative system, registration officers are not passive, meaning they do not take for granted what is submitted and are said by the party requesting registration. The implementing officers are required to conduct research as necessary to prevent mistakes from occurring. The boundaries of the land are set by using the *contradictoire delimitatie* system, where before the land and its rights are recorded, the first announcement is held. Disputes are submitted to the court if they cannot be resolved on their own by the interested. This means the party whose name is listed as the rights holder in the land book and certificate always faces the possibility of a lawsuit from another party who feels they own the land.

Parlindungan, A. P. (2006) as cited by Salfutra R. D. (2019) investigated that to overcome this weakness as mentioned above, there is a *rechtsverwerking* institution in customary law where if a person for so long leaves his land unworked and the land is done by someone else who obtains it in

good faith, then it loses its right to reclaim the land. In connection with this, in the Torrens System there is also known as the examiner of title institution (Land Committee) which gives the opportunity to the person or party who feels his right is stronger than contained in a certificate, so to claim this must be by submitting it to the local court with adagium who feels entitled to submit his evidence. If it's convincing, the court judge declares that the certificate is void, and states the person who filed the case is more entitled and convincing. Budhayati (2008) as cited in Purnama (2020) stated that *Rechtsverwerking* concept is known in customary law as a consequence of the existence of nomad lifestyles of indigenous people who always move their residence by opening the forest and leave it if it gives no results and cannot be utilized. In Indonesian law, the *Rechtsverwerking* Institute has been recognized for its existence in national law, as an evidenced by the existence of several decisions of the Supreme Court which based its decision on *Rechtsverwerking*.

The land registration activity is further described in Government Regulation No. 24 of 1997, namely:

1. Land registration activity for the first time (*Opzet*) as mentioned in Article 1 number 9 GR No. 24 of 1997 is a land registration activity carried out against land registration objects that have not been registered under GR No. 10 of 1961 or GR No. 24 of 1997;
2. Data maintenance activities (*Bijhouding* or *Maintenance*) as mentioned in Article 1 number 12 GR No. 24 of 1997 are land registration activities to adjust physical data and juridical data in registration maps, land listings, rosters, measuring letters, land books and certificates with changes that occur later.

3.3 The Heirs of Sultan Deli X's Legal Position that Occupying the Land Procurement Object for Medan-Binjai Highway Development Project

The land that became the land procurement object for Medan-Binjai Highway Development Project, is a part of the land that had been claimed as a belonging of the Heirs of the late Sultan Amaluddin Sani Perkasa Alamsjah (Sultan Deli X) based on Sultan's Grant which was being converted into a Surat Keterangan Haq Memperusahai Tanah (Certificate of Land Usage Right) with List No. 90/DbL. KLD/"60 published by Asisten Wedana (Head of Sub-District) of Labuhan Deli Sub-District

dated July 22nd, 1960 and was also being signed by Prakit Pradja Kewedanaan of Labuhan Deli Sub-District jo. Location Map dated August 08th, 1960.

As one of the land area that owned by the Sultan Deli, the ownership of the land has been going on since before 1924, during the leadership of Sultan Ma'moen Al Rasjid Perkasa Alamsjah or better known as Sultan Deli IX. On September 9th, 1924, Sultan Deli IX rested in peace and through the Peace Letter of The Division of The Estate of the late Sultan Deli IX dated February 28th, 1928, especially on page 8 (eight) article 6 (six) mentioned that the ownership of one of the rice fields in Tanjung Mulia (Tanah Abang) with an area of 150 Hectares located in Kampung Tegal Rejo, Tanjung Mulia Village, Labuhan Deli District, Deli Serdang Regency (now known as Tanjung Mulia Hilir Village, Medan Deli sub-district, Medan City) had been transferred to the late Sultan Amaluddin Sani Perkasa Alamsjah (Sultan Deli X).

On 04 October 1945, Sultan Amaluddin Sani Perkasa Alamsjah (Sultan Deli X) died and left 12 (twelve) children of 4 (four) wives as his heirs. This is stated as stipulated in the Court of Syariah of Medan with Registration No. 260/1966, dated August 4th, 1966 AD which coincided on 15 Rabiulakhir 1386 Hijriah which was reinforced with the Statement of Heirs of Sultan Amaluddin Sani Perkasa Alamsjah (Sultan Deli X) compiled by Tengku Soehaimy Hidayat Al Haj and Tengku Abdul Aziz on June 15th, 2011. After the death of the late Sultan Amaluddin Sani Perkasa Alamsjah, the area of 150 Hectares which is located in Tanjung Mulia Hilir Village, Medan Deli District, Medan City, North Sumatra Province has not been shared with his heirs until now.

The occupation of the land by the people of Kampung Rejo, Kepenghuluan Tanjung Mulia, Labuhan Deli Sub-District, Deli Serdang Regency was originally began on April 20, 1948, where the land of Sultan's Grant status was granted rental rights to the surrounding people who occupied the land, provided that the community had to pay rent to the Heirs of Sultan Deli X through the rent collectors namely Mohd. Jahja, Ismail and Rejowinangom through The Letter of Duty quoting Rent dated April 20th, 1948 made by Tengkoeh Amiroedin as the legal representative of the Heir of the Sultan Deli X.

By The Heir of Sultan Deli X, Sultan's Grant was then converted to Surat Keterangan Haq Memperusahai Tanah (Certificate of Land Usage Right) that was also being signed by Prakit Pradja Kewedanaan Labuhan Deli Sub-District B. Sjahban and Head of Labuhan Deli Sub-District Murad El

Fuad with List No. 90/DbI.KLD/"60, dated July 22nd, 1960. Where the land status of Sultan's Grant has been measured by the Agrarian Office of Deli Serdang which is founded in the map made by J. Lumbantobing and signed by Ngatiman, Head of Tanjung Mulia Village and Anwar Rasyid as Head of Agrarian Office of Deli Serdang Regency, dated August 08th, 1960. The map was created and re-measured by Datuq Indra Syafri in 2017 which is set out in the Land Situation Map dated July 19th, 2017 for 150 Hectares land located in Tanjung Mulia Village.

After obtaining the Surat Keterangan Haq Memperusahai Tanah (Certificate of Land Usage Right) which is a conversion of Sultan's Grant, through a Letter from Abdullah Eteng (Member of the House of Representatives Commission II) dated November 30th, 1978 on the Case Position on the Land of Heirs of Sultan Amaluddin Sani Perkasa Alamsjah (Sultan Deli X) in Kampung Tegal Rejo, Tanjung Mulia Village, it is known that the heirs of Sultan Amaluddin Sani Perkasa Alamsjah through Sultan Osman Sani Perkasa Alamsjah (Sultan Deli XI) gave power to Albain Pakpahan to cultivate on the land since May 31st, 1962 to August 31st, 1962 (3 months). However, on September 16th, 1962 Albain Pakpahan sold the land to 13 (thirteen) names who were rubber factory workers in Simalungun Regency that owned by a foreigner named Tan Ho Seng. The sale of the land was done without the knowledge of the Heirs of The Sultan Deli X and against the land, has been issued certificate of property rights on behalf of the thirteen names above by the Land Office of Medan City, namely:

- Sajam with Certificates of Ownership No. 159 with the width of 100.000 m²;
- Katimun with Certificates of Ownership No. 160 with the width of 120.000 m²;
- Sadjiman with Certificates of Ownership No. 161 with the width of 120.000 m²;
- Pipin Hutahayan with Certificates of Ownership No. 162 with the width of 120.000 m²;
- Nimrod Hutahayan with Certificates of Ownership No. 163 with the width of 100.000 m²;
- M. Yamin with Certificates of Ownership No. 164 with the width of 120.000 m²;
- Djamin with Certificates of Ownership No. 165 with the width of 120.000 m²;
- Maruli Sirait with Certificates of Ownership No. 171 with the width of 120.000 m²;
- Muller Pakpahan with Certificates of Ownership No. 173 with the width of 120.000

m²;

- Amat Aminu with Certificates of Ownership No. 193 with the width of 100.000 m²;
- Ahmat Sipan with Certificates of Ownership No. 202 with the width of 120.000 m²;
- Abdul Cholik Nasution with Certificates of Ownership No. 161 yang diubah/dikonversi menjadi SHM No. 213 with the width of 120.000 m²;
- Amat Wakidin with Certificates of Ownership No. 428 with the width of 18.800 m².

The condition as mentioned above, certainly raises the objections of people whose rights are threatened. This is because the people had paid the rent to the Sultan Deli X, but suddenly the land they were renting had been issued Certificates of Ownerships which originated from the sale of a portion of the land by Alboin Pakpahan which was authorized by the Heirs of the Sultan Deli X only to cultivate the land, not to sell the land.

Allegations of manipulation by Alboin Pakpahan, were reinforced by The Letter of Chairman II and First Secretary of the Parent Board of The Public Servant Cooperative (PSC) throughout Indonesia at the time, namely HM. Husni Surya and H. Ismail Siregar with No. 604/K-IX/1974 dated October 3rd, 1974 with the cancellation of the Sale and Purchase Act addressed to Alboin Pakpahan. The core of the letter is the Co-operative Parent Board of The Public Servant Cooperative (PSC) objecting to Alboin Pakpahan's stance that canceled The Act of Sale and Purchase No. 40/1971 dated August 7th, 1971 unilaterally.

This letter was then followed up by a letter from Dorman Saragih as the Joint Administrator of The Civil Servants Union of North Sumatra Province addressed to the Head of the Agrarian Directorate of Medan Municipality with No. 434a/H-IX-I/75 dated November 05th, 1974 with the subject of the Cancellation of the Sale and Purchase Act which essentially questioned the existence of one of the 13 Certificates of Ownerships which were issued as mentioned above. The same was said by R.P. Soeroso and H. Abdul Malik Miraza through a Letter addressed to the Head of The Agrarian Sub-Directorate of Medan on February 25, 1975 and a Letter addressed to the Director General of Agrarian in Jakarta with the number 712/C-I/1975 dated March 03rd, 1975 which essentially questioned the existence of one of the 13 Certificates of Ownerships that had been issued, namely on behalf of Muller Pakpahan where the certificate was obtained through a trade conducted by Alboin Pakpahan who had formally cancelled as the

beneficiary of the power of Sultan Osman Al-Sani Perkasa Alamsjah (Chief Heir of the Sultan Deli X).

This objection was also responded by Abbas as a representative of Tegal Rejo Land Farmers in a letter addressed to the Head of Central Order Operations in Jakarta dated February 08th, 1979 which is essentially explained that in 1960, There has been manipulation of land purchases by Alboin Pakpahan as a cancelled beneficiary of power to 13 buyers who were touted as workers of a Chinese Foreigner named Tan Ho Seng who owns a Rubber Factory in Simalungun Regency. Until year 1972 to 1973, 13 Certificates of Ownerships were issued based on the deed of sale and purchase above.

The public objection to SHM issued based on the deed of sale and sale carried out by Alboin Pakpahan above is further contrasted with the good relationship between the Heirs of Sultan Deli X and the people of Tanjung Mulia Hilir Village through the Joint Capital dated September 07th, 2007 which in essence the people of Tanjung Mulia Hilir Village are willing to complete the entire acquisition of land rights with the Heirs as long as it does not harm both sides.

On November 07th, 1982, the Director General of Agrarian Minister through Letter Number 593.722/4373/692 confirmed that based on the results of his research, there were 16 (sixteen) Certificates of Ownership that previously amounted to 13 (thirteen) Certificate of Property issued on land owned by the Heirs of the Sultan Deli X and all of which are juridically defects.

Following up on the letter from the Director General of Agraria above, Acting Director General of The General Government on behalf of the Ministry of Home Affairs, Drs. H. Sutrisno, M.Si wrote to the National Land Agency of the Republic of Indonesia in Jakarta on June 07th, 2010 which essentially followed up the Heirs of Sultan Deli X's Application on the Reaffirmation of the Letter of the Director General of Agrarian above. It is also intended in a letter from the Secretary of North Sumatra Province to the Regional Office of the National Land Agency of North Sumatra Province No. 597/7374 dated August 04, 2010.

Based on the above letter, the National Land Agency (BPN) in Jakarta through Drs. Aryanto Sutadi, MH., M.Sc as Deputy for The Assessment and Handling of Land Disputes and Conflicts instructed the Head of the Regional Office of the National Land Agency of North Sumatra Province to conduct a re-investigation of Sultan Deli X's 150 Ha Private Land with letter No. 875/26.1-600/III/2011 dated March 21st, 2011.

In addition, T. Isyawari as the beneficial of power of the Heirs of Sultan Deli X through his letter addressed to the Central Land Agency (BPN) on May 12th, 2011 also questioned the status of rights of 150 Hectares land in Kampung Tegal Rejo, Tanjung Mulia Village which is based on Surat Keterangan Haq Memperusahai Tanah (Certificate of Land Usage Right) List No. 90/DbL.KLD/"60, dated July 22nd, 1960 as well as the essence of 13 fake Certificates of Ownerships which were published on the land of Sultan Amaluddin Sani Perkasa Alamsjah.

On the basis of the foregoing, the Deputy for the Study and Handling of Land Disputes and Conflicts at the National Land Agency (BPN) Drs. Aryanto Sutadi, MH., M.Sc invited the 42 parties directly involved in the land dispute (including the heirs of the late Sultan Amaluddin Sani Perkasa Alamsjah) by letter No. 1844/002-600/VI/2011 dated June 9th, 2011 to Hold a Land Case with a land object of 150 hectares in Tanjung Mulia Hilir Village, Medan Deli District, Medan City.

Following up on the letter, the Land Case Title as mentioned above was carried out. As a result, the National Land Agency (BPN) through the Minutes of Implementation of Case No. 56/BAHGP/DV/2011, dated June 16th, 2011 on land objects covering an area of 150 Hectares in Tanjung Mulia Hilir Village, Medan Deli District, Medan City, North Sumatra Province confirms that the 13 Certificates of Ownerships as mentioned above are judicially defects. Regarding those as mentioned above, the Regional Office of the National Land Agency of North Sumatra Province also proved that the entire Certificates of Ownerships was not physically owned and the whereabouts of the owning party were not known. As for the contents of the Minutes of the Implementation of Case Titles above, in essence the thirteen Certificates of Ownerships are legally disabled, because:

- The validity of the proof of ownership of each certificate owner in lieu of Sultan's Grant is doubtful;
- Measurement of the land parts which based the Certificates of Ownerships' issuance has never been conducted;
- The issuance of a number of Certificates of Ownerships did not take the proper procedure;
- Whereas if the SHM can be canceled, then the land status will return to its original status, namely Sultan's Grant, because from the results of the research it is not found that the land is declared as state land.

The recommendations from the results of the

Case Title are as follows:

- Cancels the Certificates of Ownerships which were proven to have administrative defects in its issuance;
- The heir of Sultan Amaluddin Sani Perkasa Alamsjah (Sultan Deli X) can file a lawsuit at the Court;
- Conducting deliberations with the disputing parties.

Based on the above recommendations, the heirs of Sultan Amaluddin Sani Perkasa Alamsjah (Sultan Deli X) filed a lawsuit at the Medan District Court 2 (two) times. Of the 2 (two) claims, a verdict has been handed down and one of them has been submitted an appeal to the High Court which is then filed for cassation by the opposing party (defendant) to the Supreme Court of the Republic of Indonesia. Of the two decisions, all confirmed the ownership status of the Heirs of Sultan Deli X with details, as follows:

- Decision of the Panel of Justices of the Supreme Court of the Republic of Indonesia on civil case No. 1273 K/Pdt/2013, dated August 22nd, 2013 which states that the Plaintiffs (in this case the Heirs of Sultan Deli X) are legally valid heirs and state that the land area of 60,000 m² previously had the status of Certificate of Ownership No. 308/Tanjung Mulia which is a breakdown of the Certificate of Ownership No. 202/Tanjung Mulia with an area of 120,000 m² in the name of Ahmat Sipan is the property of the Heirs of Sultan Deli X. This decision has permanent legal force (*inkracht van gewijsde*) based on the Confirmation Letter of the Medan District Court dated June 17th, 2014 signed by Sugeng Wahyudi, SH, MH, as the Committee/Secretary on behalf of the Chairman of the Medan District Court.
- Decision of the Panel of Judges at the Medan District Court on civil case No. 336/Pdt. G/2015/PN. Mdn, dated June 26th, 2015 which states that the Plaintiffs (in this case the Heirs of Sultan Deli X) are legally valid heirs and state that the land area of 120,000 m² previously had the status of Certificate of Ownership No. 173/Tanjung Mulia on behalf of Muller Pakpahan is the property of heirs of Sultan Deli X. This decision has permanent legal force (*inkracht van gewijsde*) based on the Certificate of the Medan District Court dated August 2nd, 2016 signed by Tavid Dwiymiko, SH, MH as the Committee / Secretary on behalf of the Chairman of the

Medan District Court.

Sultan's Grant is still considered as proof of ownership of land rights and its legality is still recognized today through the UUPA. This is in accordance with Article 5 of the UUPA which states that "The agrarian law that applies to the earth, water and space is customary law, as long as it does not conflict with national and state interests based on national unity with Indonesian socialism ..."

Rosmidah (2010) said that in the UUPA, basically it does not regulate the existence of these customary rights. However, it can be said implicitly in the UUPA that the determining criteria for whether or not customary rights are still exist must be seen in:

- There is a customary law community who fulfills certain characteristics as the subject of customary rights;
- The existence of land / territory with certain boundaries, as living space which is the object of customary rights;
- There is the authority of the customary law community to carry out certain actions.

The three requirements must be met cumulatively. In other words, if there is only one of the conditions that is not fulfilled, then customary rights can be said to no longer exist (Rosmidah, 2010).

Although basically the land above is mostly controlled by approximately 300 families who have been its cultivators since 1960 until now, based on a joint agreement between the heirs of Sultan Deli X and the people of Tanjung Mulia Hilir Village dated September 7th, 2007, which is basically the community of Tanjung Mulia Hilir sub-district was willing to settle all acquisition of land rights with an the Heirs as long as it does not harm both sides, proving that the position of the Heirs of Sultan Amaluddin Sani Perkasa Alamsjah (Sultan Deli X) is still recognized today.

In addition, the Deli Sultanate as an indigenous community, has the following characteristics (Pratiwi A. E., *et al*, 2018):

1. Having a regular structure which indicates that indigenous peoples must have a permanent or organized structure and be established for a long time;
2. Having a fixed area;
3. Customary communities in their management system must have managers or rulers in them and the management or rulers are determined by way of deliberation
4. Having assets that can support his survival in the form of material or immaterial.

Regarding the authority of the customary law community to carry out certain actions as one of the criteria for the existence of customary rights, it can be proven by the granting of lease rights to the surrounding communities who occupy the land, provided that the community must pay rent to the Sultan Deli X's heir through the the quote for the lease namely Mohd. Jahja, Ismail and Rejowinangom through a Letter of Duty to Quoting the Lease dated April 20, 1948, made by Tengko Amiroedin as the Attorney of Sultan Deli X's Inheritance.

Referring to the three criteria for the existence of customary rights as described above, the heirs of Sultan Deli X still have a position on the land which is the object of land acquisition for the Medan-Binjai Toll Road construction project.

Quoting Prof. Dr. O. K. Saidin, S.H., M.Hum's statement as an expert witness at the trial at the Medan District Court with case number 232/Pdt.G/2017/PN.Mdn, Sultan's Grant is an area land that the Sultan gave to the people and its nature is included in public law. Sultan's Grant is different from Concession which is the granting of rights or permits between the Sultan and the entrepreneur which is bound by an agreement and its nature is included in private law. Meanwhile, Sultan's Grant as referred to above is classified as "Rachim Limpah Kurnia". The Sultan's Grant with the title "Rachim Limpah Kurnia" has been converted into a Surat Keterangan Haq Memperusahai Tanah (Certificate of Land Usage Right). The Certificate was issued by Kewedanaan (Head of Sub-District) of Labuhan Deli District, so it was not a product of the Sultanate. However, this Certificate of Land Usage Right can still be used as long as it does not conflict with the interests of the community.

Until now, the land material with the status of Sultan's Grant is still quite difficult to prove, because:

1. Land position is difficult to identify in the field;
2. The land of Sultan's Grant was mostly cultivated by other parties;
3. There are many Sultan's Grant which are not registered.

The conversion of the Sultan's Grant carried out by the Heirs of Sultan Deli X into a Surat Keterangan Haq Memperusahai Tanah (Certificate of Land Usage Right), is quite easy to identify because in order to convert the Sultan's Grant, measurements are also carried out in the field and making a map showing the location of the land. Then in year 2017, Datuq Indra Syafri re-measured

as stated in the Land Situation Map dated 19 July 2017 on a 150 Hectare land located in Tanjung Mulia.

In addition, 13 (thirteen) Certificates of Ownership which were issued above the area of 150 hectare land which raised objections by the parties, especially the cultivators who had paid the lease for the lease rights they had obtained from the heirs of Sultan Deli X and the experts. The Heirs of Sultan Deli X itself, which led to the title of the Land Case which was carried out by the Deputy for the Study and Handling of Land Disputes and Conflicts at the National Land Agency (BPN) Drs. Aryanto Sutadi, MH., M.Sc and the 26 parties directly involved in the land dispute (including the heirs of the late Sultan Amaluddin Sani Perkasa Alamsjah). The title of the case led to a recommendation to the heirs of Sultan Amaluddin Sani Perkasa Alamsjah (Sultan Deli X) to file a lawsuit to the Court.

On the basis of the above recommendations, the heirs of Sultan Amaluddin Sani Perkasa Alamsjah (Sultan Deli X) filed a lawsuit to the court which in the end the court rulings on the 2 (two) cases retained the position of the heirs to parts of the land with the status of Sultan's Grant. Which is converted into a Surat Keterangan Hak Memperusahai Tanah (Certificate of Land Usage Right) with Register No. 90/Dbl.KLD/"60, dated July 22nd, 1960. This is based on evidence in court which proves that the Property Rights Certificate issued on the land has not gone through valid verification and research procedures both in terms of documents of the origin of land rights/land rights basic as well as real conditions in the field so that it ignores the principle of safety which causes the Certificate of Ownerships not having/providing legal certainty. The judges' decisions have permanent legal force based on the Inkracht van Gewijsde Certificate issued by the Medan District Court so that they can be carried out properly by any party.

GR No. 10 of 1961 jo. GR No. 24 of 1997 concerning Land Registration essentially contains a negative publication system, this is clearly seen in the Elucidation of Article 32 paragraph (1) of GR. 24 of 1997 which explains that the certificate is a strong proof of rights, in the sense that as long as it cannot be proven otherwise the physical data and juridical data contained in it must be accepted as correct data.

This means, later if it turns out that the physical data and/or juridical data contained in the certificate are incorrect, based on a judge's decision which has permanent legal force, the certificate will be corrected as necessary (Santoso, U., 2015).

Article 32 paragraph (2) GR no. 24 of 1997 explains that:

"In the event that a land parcel has been issued a certificate legally in the name of the person or legal entity who acquired the land in good faith and actually controls it, then other parties who feel that they have rights to the land can no longer demand the exercise of that right if within time of 5 (five) years from the issuance of the certificate did not submit objections in writing to the certificate holder and the Head of the Land Office concerned or did not file a lawsuit to the court regarding land control or the issuance of the certificate.

Hutagalung, A. S. (1998) as cited in Santoso U. (2015) stated that the Conception of Article 32 paragraph (2) of GR no. 24 of 1997 is based on the rechtsverwerking institution or "loss of right to sue" which is known in customary law. In essence, if a person owns land, but for a certain period of time leaves the land untreated and the land is used by other people in good faith, he can no longer demand the return of the land from the other person.

Santoso, U. (2015) Underlined that the content of Article 32 paragraph (2) above, the legal protection for land rights holders in land registration can be realized if 3 (three) cumulative requirements are met, namely :

1. The issue of Certificates of Ownerships is 5 (five) years old or more;
2. The certificate issuance process is based on good faith;
3. The land is physically controlled by the right holder or proxy.

Although the land title certificate issued by the Regency / City Land Office is 5 (five) years old, it does not mean that the right to sue is lost for people who feel aggrieved by the issuance of the land title certificate. This applies unless the elements in Article 32 paragraph (2) of GR No. 24 of 1997 mentioned above cumulatively (Santoso, U., 2015).

Reviewing the elements as mentioned in Article 32 paragraph (2) GR No. 24 of 1997, especially in the element of "Land rights are obtained in good faith", this is not fulfilled because based on the Land Case Title conducted by the Deputy for the Study and Handling of Land Disputes and Conflicts of the National Land Agency (BPN) in 2011, it was found the legal fact that the issued Property Rights Certificate is not based on good faith. However, if you look at the timeline of the status of the land position, it is clear that the Certificates of Ownership had been issued since 1972/1973, but this case has only been sued since 2011 with case register number 26/Pdt.G/2011/PN.Mdn. In other words, the

Certificate of Ownership has been issued for almost 40 years and if we refer to Article 32 paragraph (1) GR No. 24 of 1997, the Heirs of the Sultan have lost their right to sue in court, even though control of the land is based on bad faith.

4 CONCLUSION

The State as the holder of power can have legal relationships with objects, such as individual objects with humans as their owners. The legal relationship of the State with the land belongs to the category of objects or land used for public use (*res publicae*), the consequences are that public roads etc. are State-owned for reasons, such as the special legal relationship between the state and the lands that are in the category of objects that become the general public's wealth, the power that the State exercises to other lands that used infinitely and the land that is used for public services.

The land registration activity is further described in Government Regulation No. 24 of 1997, consists of land registration activity for the first time (Opzet) and data maintenance activities. This land registration activities were done by implementing simplified principle, safety principle, affordable principle, cutting-edge principle and open principle. The land registration used in Indonesia is a negative system with positive tendency. This means that the weaknesses of the negative system are reduced in such ways, so that legal certainty can be achieved.

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