

CHAPTER ONE

INTRODUCTION

A. Background of Research

Indonesia is still vulnerable to the race discrimination, ethnicity unfairness, and native or non-native customs. Yogyakarta is without exception as the Chinese descendants cannot purchase and own the land. Yogyakarta recently has revised discrimination law regarding the land ownership by Chinese people. It was legalized after two (2) court decisions, letters for two presidents and two State body recommendations have been signed and approved.¹ Descendants, mainly from ethnic Chinese and Indians except non-indigenous, still have a right to own land in the Special Region of Yogyakarta. Non-indigenous Indonesian citizens, including China, cannot indeed own land in the Special Region of Yogyakarta. In the past, they can only have HGB or Building rights. The Policy turned out to have a reasonably long historical background.²

The Chinese always get political protection from the colonial side. For the support, there are finally succeed in appearing as a new economic power in Yogyakarta. However, instead, the natives experienced a prolonged bankruptcy. Tensions in the Chinese community and indigenous

¹ Subagijo Fredy Haryanto, "Pemilikan Hak Milik Atas Tanah Bagi WNI Keturunan Tionghoa di Daerah Istimewa Yogyakarta", *Jurnal Hukum Tanah di DIY*, Vol 1 No 1 (2012), page 19.

² Muljadi Kartini, 2009, *Hak-Hak Atas Tanah*. (Jakarta: Kencana), page 15.

people continue. Instead of providing support in the war against the Dutch, the Chinese prefer to leave Yogyakarta. Sultan Hamengkubuwono IX, who heard that then gave an ultimatum: if the Chinese leave when the people are at war, they cannot go back to Yogyakarta forever. The lack of harmony between native and Chinese-Indonesia people in Yogyakarta continued until the New Order Era. Soeharto, who provided many economic facilities to Chinese businesspeople, made the Sultan take anticipatory steps. One of them is by issuing a ban on Chinese citizens to owned land in Yogyakarta in 1975, and which applies today.³

The Constitutional Court once handled a request regarding the special privileges of Yogyakarta, which made Indonesian Chinese citizens unable to obtain land ownership rights on November 15, 2019. In the review of Article 7 paragraph (2) letter d of Law Number 13 of 2012 concerning the special status of the Special Region of Yogyakarta (DIY) governing law ownership to the Constitutional Court. Indeed, the article's enforcement has caused the Chinese-descent WNI not to claim a right to land with DIY ownership status.⁴ Handoko, a Chinese citizen of Chinese descent, once sued the Deputy Head of the Special Region of Yogyakarta Instruction Number K.898 / I / A / 1975 concerning Uniforming Policy on Granting Rights to Land Non-Indigenous Indonesian Citizen to the Yogyakarta State Administrative Court (PTUN). However, through No. 179K / TUN /

³ Lestarini Ratih, "Kebijakan Pertanahan Bagi WNI Keturunan Tionghoa di Yogyakarta: Diskriminasi atau Diskriminasi Positif", *Jurnal Hukum & Pembangunan*, Vol 48 No 1 (2018), page 44.

⁴ *Ibid.*

2017, the Yogyakarta Administrative Court stated that they could not prosecute because the Instruction did not constitute discretion.

Handoko has also registered the application for testing the Instruction material test with the Supreme Court in case Number 13 P / HUM / 2015. Based on Law No. 12 of 2011 concerning Formation of Laws and Regulations in conjunction with Article 1 paragraph (1) of the Court and Supreme Court Number 1 of 2011 concerning Materials Testing Rights. Based on Constitutional, there are several conditions for as a source of law to get the right to be free from Discrimination. The subject of the conditions is divided into two parts. The first is a citizen, and the second is every person without qualifications. With these two conditions, the right to be free from Discrimination is for citizens' rights and human rights.⁵ The constitutional provisions made by the government regarding human rights to be free from Discrimination are as follows. Article 5 paragraph (3) of Law No. 30 of 1999 stipulates that every person who belongs to a vulnerable group of people has the right to receive treatment and protection concerning their specificity.⁶

Land Policy related to land rights restrictions for Chinese citizens of Chinese descent historically began when on March 5, 1975, when the Special Region of Yogyakarta (DIY), represented by the Deputy Head of DIY, namely Paku Alam VIII, issued An Instruction outlined in Letter No.

⁵K Kurnia Titon Slamet, "Constitutional Court and The Right to be Free From Discriminatory Treatment", *Journal Konstitusi*, Vol 12 No 1 (2015), page 32.

⁶ Ibid.

K/898/I/A/1975 Regarding the Uniformity of Policy on Granting of Land Rights to a non-Indigenous Indonesian citizen. The letter is addressed to Regent/Mayors of Regional Heads throughout the DIY Region, carrying out a uniform Policy related to granting land rights to non-native Indonesian Citizens who have ownership rights over community land to the relinquishment of rights. Then, the non-native Indonesian citizens' ownership rights can apply to the regional heads of DIY to obtain other rights.⁷

B. Research Problem

Based on the description in the background above, the research formulates the problem as follows:

1. What are the Constitutional and legal basis of the principle of Nondiscrimination in the 1945 Constitution?
2. How to solve the policy problem by the Special Regional government of Yogyakarta, citizens of Chinese descent who only get building rights?

C. Objective of Research

1. To understand and analyse the concept of Non-discrimination in Indonesia, particularly in Yogyakarta.

⁷ Yogyakarta, Surat Instruksi Kepala Daerah Istimewa Yogyakarta No K.898/I/A/1975, Surat Instruksi Mengenai Penyeragaman Policy Pemberian Hak Atas Tanah Kepada Seorang WNI non Pribumi, tertanggal 5 Maret 1975.

2. To provide better advice for Discriminatory Policies regarding Chinese Land Ownership in the Special Region of Yogyakarta.

3. To propose a better Policy relating to Chinese Land Ownership in the Special Region of Yogyakarta.

D. Benefit of Research

1. Theoretically

The research would grant a better and deeper theoretical understanding of a positive impact on society to respect different ethnicities without Discrimination.

2. Practically

This research can give a recommendation for a better Policy on the application of Non-discrimination principles in Indonesia, particularly Yogyakarta.

