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Reconceptualization Wewengkon Land Of Kasepuhan Cirebon Based On Justice (Werner Menski Analysis)

By

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Abstract

This research focuses on reconceptualization of wewengkon land which is then linked through a theoretical approach to Wener Menski. The focus of this research is considered important because the wewengkon land of the Kasepuhan Kasultanan Cirebon as a hereditary land has been conceptualized as a self-governing land, which led to a conflict between the Cirebon City Government and the Cirebon Kasepuhan Sultanate and the cultivators. The problem of this research is how to reconceptualize the land of Wewengkon Kasepuhan Cirebon as a land of customary rights based on justice. To answer or analyze these problems, research is carried out using socio-legal approach an alternative approach that examines doctrinal studies of law supported by the theory of Legal Pluralism through Wener Menski's flying kite theories. The results of the study show that the reconceptualization of wewengkon land in the Kasepuhan Sultanate of Cirebon as customary land rights becomes property rights as regulated in Article 5 of the UUPA through flying kite theories emphasizing elements of justice, society, state human rights which emphasize aspects of international law so as to create right law. The land of the Kasepuhan Sultanate was conceptualized as wewengkon land because the Kasepuhan Sultanate had never entered into a political contract agreement, both lange contracten and korte verklaring, which was confirmed by the Supreme Court's decision, so there was a need for a reconceptualization of the land of the Kasepuhan Sultanate of Cirebon covering historical, sociological and political aspects, complemented by regulatory policies. justice based.

Keywords: Reconceptualization, Wewengkon Land, Justice Based

Introduction

The issue of the concept of ex-swapraja land being allowed to be occupied by the state, while the concept of wewengkon land containing the private property of the king is private, it cannot simply be taken over or claimed by the government/state. The difference in concept between the local government of the city of Cirebon and the Kasepuhan Sultanate regarding the wewengkon land and the former self-government land, has an impact on land issues, in land regulation in the city of Cirebon. The issue of rights to wewengkon land must be viewed

comprehensively from the historical or historical background of the Kasepuhan Sultanate land, including its legal history because through legal history it will be able to explore various legal aspects in Indonesia in the past, which will be able to provide assistance in understanding the rules and regulations. legal institutions that exist today in Indonesian society (Soejono Soekamto, 1986), that property rights are a claim that can be imposed by society or the state, by custom, agreement or law (Macpherson, 1989). The purpose of the research is to find, rebuild by doing and discovering a new concept of wewengkon land as land with customary rights based on justice. The issue is that the Kasepuhan Cirebon Sultanate regarding the status of the wewengkon land, that the Cirebon Kasepuhan Sultanate never entered into a political contract agreement with the Dutch East Indies, either lange contrac (long statement) or korte verklaring (short statement). On this basis, the Kasepuhan Cirebon Sultanate cannot be categorized as a former autonomous region. Differences in interpretation in interpreting the status of ex-swapraja land are affirmed as state land while sociologically, generally people consider land that is considered ex-swapraja still belongs to the Sultanate which is often called wewengkon land, as stated by Satjipto Rahardjo in interpreting certainty that this fact must be formulated with clear so that it avoids mistakes in meaning besides that it is easy to carry out (Satjipto Rahardjo, 2006).

Pluralism in land law is a necessity, before independence, the Republic of Indonesia already had various tribes with different languages and customs and customary laws governing land. Furnivall as quoted by Nasikum (Nasikum: 2003) shows the existence of plural societies in the Dutch East Indies. Adapting the theory from Menski, the concept of wewengkon land as customary land rights based on justice that accepts the uniqueness and distinctiveness of the existence of the Kasepuhan Cirebon Sultanate in accordance with the will of the community and is imbued with social justice in Pancasila.

Differences in interpretation can occur due to the existence of state legal pluralism (state legal pluralism) when state law originates from the body of norms that were originally formed as state law and partly comes from non-state norms recognized by state law, such as customs and religion. (I Putu Sastra Wibawa, 2018). According to Eugen Ehrlich that law is a legal reality that lives in society (Eugen Ehrlich, 2002). The law is not only statutory regulations, but also law in its form as local regulations originating from a community habit (customary law), customary law (adat law/adatrech), religious law (religious law) and self-regulating mechanisms (self-regulation or inner-order mechanism) (I Nyoman Nurjaya, 2011). This condition provides an explanation that legal pluralism opens up space for other local wisdom values that form the philosophical and sociological foundation in the policy-making process. The law is present in the midst of various interests and resolves problems, including the problem of the concept of the former self-government land in the UUPA, which does not escape the interests of both the government and the Sultanate in solving their problems on land controlled by the Sultanate. Through Werner Menski's pluralism with his flying kite theory which places legal certainty, the point of human rights with the recognition of wewengkon land. Relevance to the research of Thanisa Dita Murbani who examined the legal status of the land of the Kasepuhan Cirebon Palace after the enactment of Law Number 5 of 1960 concerning the basic regulations on agrarian principles, concluded that it was unclear about the status of the land controlled by the Kasepuhan Cirebon Sultanate, namely wewengkon land (Thanisa Dita Murbani: 2019). Lukman Zulkaedin in his research review of the land law of the Kasepuhan Cirebon Sultanate occupied by residents related to the Indonesian Railways Limited Liability Company Lawsuit in terms of national land law, concluded that wewengkon land is hereditary land that is leased. The relevance of this research is in the object under study, namely the land of the Kasepuhan Sultanate of Cirebon (Lukman Zulkaedin: 2017).

Through a socio-legal approach, it is aqualitative research looking at law in the context of society, leads to a more comprehensive understanding of the law, not just texts, schemes, or 'legal frames'. How the law commands and commands but also how the continuation of the legal orders. I also want to know whether the regulation is effective, positive, productive, or even disturbing and destructive (Satjipto Rahardjo, 2009). The socio-legal research method assumes that "theoretical work without supporting theoretical content is tantamount to denial (Rob van Getste, Hans-W Micklitz & Miquel Poiares Maduro, 2012). There is no single national legislation that accommodates the existence of the wewengkon land. But de facto and de jure wewengkon land has lived and existed in the people of the city of Cirebon since the Indonesian state was not yet independent. The efforts made by the Kasepuhan Sultanate in seeking justice, with the existence of three execution decisions, are an acknowledgment of the existence of wewengkon land. The Cirebon city government did not implement the decisions that had been made by the Supreme Court. The settlement of various land concepts has resulted in legal uncertainty in the community regarding the ownership of land rights, including the right to manage and enjoy the natural resources that exist on Indonesian soil to support people's lives, by realizing a people's welfare through justice. For Ronald Dworkin, justice is the best moral and even the best moral (Dworkin, Ronald, 1986), justice which emphasizes the importance of individual involvement in an equal position so that justice is created as a joint construction and justice is also the importance of individual understanding in the creation of justice. Wewengkon land as land hereditary from the previous king or land owned by the Supreme Court Decision, such as wewengkon land in land law, it must still accommodate the diversity of local customary law provisions, in accordance with Article 5 of the UUPA and General Elucidation number III (1) which states customary law as the basis of the UUPA. Article 5, Elucidation of Article 16, Article 56 and Article 58 of the UUPA. The existence of customary law is synergized with laws and regulations related to customary land rights, namely Part Five Changes in Old Rights in Government Regulation No. 18/2021, so that the concept of wewengkon land can be changed. Reconceptualization by rebuilding the ideal concept of ex-swapraja land as wewengkon land based on justice is not only in its meaning but also on the substance of the concept itself in the context of creating future laws (ius constituendum) namely wewengkon land as customary land rights.

Literature Reviwer

Werner Menski explains pluralism based on comparative studies, combining state law, society and natural law, thus regarding law, Menski gives the view that law is a universal phenomenon. Sources of law basically manifest the state, society and religion/ethics, competing and interacting in various ways. Legal experts as professionals and theorists tend to emphasize the centralism of law in this case the law produced by the state and thus minimize the role of non-state sources, including ethics, especially society and cultural elements. Such conditions seriously underestimate the potential for coexistence with various regulatory systems. In this context, the laws of the state/reproduced state are dominant (Werner Menski, 2014). The triangular concept of legal pluralism is used by Werner Menski in his book Comparative Law in Global Context which states that to create perfect law (perfect justice) must pay attention to several aspects, namely the value which in this case is the value of social justice in Pancasila, the state or state law and society or society (Wener Menski, 2006), then developed into flying kite theories that emphasize four things that include elements of human rights or human rights that emphasize aspects of international law. In this case, the configuration of the four things will create what is called the right law.

Werner Menski's theory of legal pluralism has the same concept, which emphasizes the relation of legal pluralism, namely that there is no understanding of legal domination by the state, but law is a harmonious relationship between state law (state), religious law/norms (religion/ethics/morality) and community law, because law is global. The next development of Werner Menski's thinking is to consider the issue of human rights, thus modifying the theory of legal pluralism by including four (4) main points, namely religion/ethics/morality, state, society and international law. The two theoretical buildings do not eliminate the substance of legal pluralism itself. Law must be continuously worked on or negotiated in a certain cultural social context, thus being dynamic and flexible (Werner Menski, 2006). Pluralism is a legal concept whose content is more than legal substance and looks at the situation and differences in the existing social facts ".... legal pluralism is much a social fact as normative pluralism. It is important to distinguish between state legal, legal polycentriccity autonoms and semi-autonoms legal and social fact" (William Twinning, 2010)

State legal pluralism as called by Gordon Woodman (R. Woodman, Gordon, 2005) or weak legal pluralism (weak legal pluralism) as John Griffths (John Griffths, 1986) states an understanding of weak legal pluralism refers to on the ideology of legal centralism, which is a small part of state law, which is valid as long as it is ordered (implicitly) by the top authority based on the basic rules of thumb for a small group of people based on certain considerations, which can be in the form of ethnic, religious, nationalism or geographical factors The and is used as agricultural land by farmers can be used as an object of agrarian reform (TORA) in accordance with Presidential Regulation Number 86 of 2018 concerning Agrarian Reform. In line with the reorganization and wewengkon land is property rights. This means that regarding unwritten national land era which must be able to stand in the middle between economic interests and the interests of the rulers in exercising their power (David Kennedy, Leiden Journal of International Law, 2013) as well as the interests of the community, ".....the core elements of both economic and political activity-capital, labour, credit, and money, as well as public or private power and right are legal institutions. Law is the link binding centers and peripheries to one another and structuring their interaction...." (David Kennedy, 2013). The law is present in the midst of various interests and resolves problems, including the problem of the concept of the former self-government land in the UUPA, which does not escape the interests of both the government and the Sultanate in solving their problems on land controlled by the Sultanate.

Regarding understanding the meaning of law is not singular in the study of legal pluralism, borrowing from Menski's thoughts (Wener Menski, 2006), which offers legal pluralism, namely the existence of links that are divided into 3 (three) points of view, namely the point of view from the state aspect (positive law), the community aspect. (social legal approach) as well as morals, ethics and religion within the framework of legal pluralism. The method of law that only relies on positive law with rule and logic and its rule bound will only lead to a deadlock in the search for substantial justice (Suteki, 2013), another angle that places the regulation of wewengkon land in the context of its protection from the point of view of human rights. Menski called this development the term " flingkites" (kite flying), making the formation no longer divided into three as in his book (2006), but turned into four corners, namely International Law as a limitation of State Controlling Rights and protection of Human Rights (Winer et al. Manski: 2015).

Research Methods

This research activity is a scientific activity that seeks to obtain or obtain problem solving data on a problem by understanding the problems that arise in the people of Cirebon City to find answers to problems that require a research approach. The research approach is a method used by researchers to direct the research to be studied to be explored more deeply. A Hamid Attamimi stated that legal science has never been a pure normative science and has never been a pure social science because law can come from sollen-sein and can come from sein-sallen (A Hamid Attamimi 1992). Likewise, Bernard Arief Sidharta reaffirmed that legal science development activities always involve 2 (two) aspects, namely legal rules and facts (facts) and in the development process these two aspects interact and must be interacted (Bernard Arief Sidharta, 2000).

The development of legal science always involves 2 (two) aspects, namely legal rules and facts (facts) and in the process of development these two aspects interact with each other and must be interacted (Bernard Arief Sidharta, 2000). Developing the two aspects above, the study used in this research is socio-legal, legal studies using a legal approach and the social sciences (Nicola Lacey and Brian Tanamaha: 2013). An approach that leads aresearch to show and examine the social and legal reality that applies to a gap (Nicola Lacey and Brian Tanamaha: 2013). Using social theories that are directly explanation of the plurality of the law above, has an impact on law in the global related to the community to analyze the legal problems that occur.

socio-legal approach, the concept of law is interpreted as a manifestation of the symbolic meanings of social actors as seen in their interactions in daily life (Esmi Warassih, 2008) . Socio-legal is a new perspective in examining legal issues that are included in the approach to non-doctrinal research, namely research that examines in depth juridical and empirical studies in which the portion of both is balanced and impartial (Esmi, Sidartha, et.all 2016).

Wheller and Tomas (R, Banakar, & M. Travers, 2005) explain that socio-legal is an alternative approach that examines doctrinal studies of law. Regulations outside the legislation or laws that apply in society, in this case the law is no longer conceptualized in a positivist way as ius constitutum or law as what it is in the books, but is conceptualized empirically in the realm of reality (reality) or law is no longer conceptualized as norms in a formal legitimacy system (Bernard Arief Sidharta , 2000) . The existence of the concept of wewengkon land, hereditary land controlled by the Cirebon Kasepuhan Sultanate in the Cirebon city community is a reality even though there is no regulation in the legislation.

The research will be explored with a socio-legal approach from the Cirebon city government, Cirebon City District Court, Cirebon City Agrarian Spatial Planning/BPN Office, Cirebon City Development Company, PT KAI Daop 3 Cirebon, Kanoman Palace, Kacirebon Palace and Sultan Palace Kasepuhan Cirebon and the people of Cirebon city, namely: (1) the concept of ex-swapraja land contained in the state constitution and UUPA and Government Regulation No. 224 of 1961; (2) the concept of wewengkon land ; (3) explore existing concepts in order to find a new concept of land wewengkon Kasepuhan Kasultanan Cirebon as justice-based customary property rights (4) Law 56/Prp/1960 related to the maximum limit of land ownership and Government Regulation Number 86 of 2018 related to land object of agrarian reform.

Based on the stand point above, the research is included in socio-legal studies, the steps begin with building awareness that the purpose of law is to realize justice, stability, and welfare of life. For this reason, a law must be created that contains three legal bases simultaneously, namely justice (philosophical value), certainty (juridical value) and expediency (sociological value). The socio-legal approach assumes that "theoretical work without supporting theoretical content equals denial (Rob van Getste, Hans-W Micklitz & Miquel Poiares Maduro, 2012).

The study of the socio-legal approach looks at law in the context of society, leading to a more comprehensive, complete understanding of the law, not just texts, schemes, or 'legal frames'. Thust the essence of what we want to observe and know is not only how the law commands and orders but also how the continuation of the legal order is. I also want to know whether the regulation is effective, positive, productive, or even disturbing and destructive (Satjipto Rahardjo, 2009).

Results

Theoretically, the new concept of land controlled by the Kasepuhan Sultanate, namely wewengkon land, hereditary land has full rights as property rights, making wewengkon land as customary land. no longer categorized as ex-self-governing land. Wewengkon that is spread outside the city of Cirebon rearrangement of the land ownership structure in Indonesia from Landlord to poor landless farmers, the government faces many difficulties to make it happen as a concrete form in the land reform and land redistribution program, according to state regulations in PP no. 224/1961 concerning the implementation of land distribution and compensation. Regarding agrarian reform in Indonesia in the reform era, in its implementation based on Article 2 of the Decree of the MPR RI Number IX/MPR/2001, there are two aspects, namely on the one hand the aspect of control and ownership, on the other side the aspect of use and utilization. The arrangement of control and ownership is the main activity of Land reform, then in article 2 there is the word "continuous" which looks at the agrarian renewal of the past, present and future. Based on this, then it is determined what should be done for future goals through futuristic interpretations (Achmad Sodiki, 2013).

State recognition of the existence of lands that have or are similar to what is implied in the rule of law made by the state in the condition that it puts forward state legal regulations explicitly in order to recognize the diversity, uniqueness and specificity or plurality of laws in society, nation and state which are patterned multicultural. In connection with this diversity, it is inevitable for the government to reorient and reform the pluralistic legal development paradigm (legal pluralism paradigm), by prioritizing state legal regulations that explicitly provide complete and essential protection (genuine recognition and protection) to the legal system. In addition to the state legal system, customary law and religious law include local regulatory mechanisms (inner-order mechanisms) which empirically exist and live and operate more effectively in society (Sukirno, 2018)

Regarding the government in providing complete and essential protection, including local regulation, so that there is a need for the development of a law that is pluralism in diversity and specificity regarding sultanate lands in the archipelago, all of which need to be seen from the history of their ownership. As is the case with the existence of the Wewengkon land of the Kasepuhan Kasultanan Cirebon, in the local regulatory mechanism (inner-order mechanism) empirically it still exists and lives in the community. Despite the fact that wewengkon land is considered as ex-self-governing land by the state/government. The debate about different concepts on the same object, namely land, between the parties namely the government and the Kasepuhan Sultanate has their own arguments against the ownership of the land.

Wewengkon land is categorized as ex-swapraja land, one of the indicators is that the sultanate had implemented an agreement with the Dutch East Indies government through its political contract. The truth and instructions given and explained by the Kasepuhan Cirebon Sultanate that it had never entered into an agreement with the Dutch East Indies government either through lange contract and korte verklaring, then wewengkon land became customary land, referring to several articles in the UUPA which are interrelated, namely in article 58 The UUPA regarding implementing regulations that are not written on land will remain valid with land rights valid as long as they do not conflict with the spirit and the UUPA.

In Article 5 of the UUPA, customary law makes the basis by accommodating the diversity of customary law provisions of a region as long as it does not conflict with national and state interests, then in General Elucidation number III of the UUPA which formulates that customary law is perfected and adapted to the interests of the community. Article 16 of the UUPA and its explanation emphasizes the right to land by giving the authority to use the land with the boundaries that have been determined by the legislation. Wewengkon land as customary land rights that have been owned for generations by the Kasepuhan Cirebon Sultanate, in article 56 of the UUPA gives the authority as similar to the strongest and fulfilled property rights.

The explanation above, it can be said that in directing the direction of reconceptualization into customary land rights, national land law remains the basis for reference for the provisions contained in Chapter Two of Article II paragraph (1) of the UUPA. The second chapter of the conversion provisions can be stated as reinforcement, that the UUPA has accommodated the settlement of conflicts and disputes over customary lands in the conversion provisions and indeed the conversion provisions are juridical changes, namely where old lands become one of the rights regulated by UUPA. The regulation on the conversion of old rights to new rights is contained in Chapter Two of the Conversion Provisions Article II paragraph (1), confirming that if there are other rights under any name, the Minister of Agrarian Affairs will confirm further. This means that other rights under any name can be addressed to the wewengkon land as property rights in accordance with Article 20 paragraph (1) of the UUPA, so that it can describe as a force what is indeed proposed or proposed in addition to the historical basis of the UUPA that has already regulated it.

Case dispute related draft new soil wewengkon as soil right belong, then soil wewengkon which has been used by PJKA (PT KAI) and the Cirebon City Government can receive for sale buy it . Agricultural land that is outside the city and is cultivated by the people can be used as Land for Agrarian Reform / TORA (land reform) of course with compensation from the government in accordance with the rules on land reform without overriding the rules that previously existed, namely in PP No. 224/1961 (State Gazette of 1961 No. 280) concerning the Implementation of Land Distribution and Compensation, and Presidential Regulation No. 86 of 201 8 concerning Agrarian Reform.

As a middle way in making a new concept of wewengkon land, namely placing wewengkon land as property rights, it can become an object of land reform, so that it can achieve or realize the concept of wewengkon land based on justice in accordance with substantial justice (contextual) not formal justice (textual) by using legal pluralism. Legal justice is a legal settlement process that goes beyond the text of legislation (beyond the law) and puts forward the substantial value of justice in a case.

Table 1. The Existing Condition of the Wewengkon Land Concept of the Kasepuhan Sultanate Cirebon

1	Base	The control of the rights and authority over the lands controlled by the Cirebon Kasepuhan Sultanate as stated in the Fourth Dictum letter A of the UUPA as ex-swapraja land, with the publication of Announcement No. 01/Peng/1961 dated September 28, 1961, Decree of the Minister of Home Affairs Number: 415 of 1977, Decree of the Mayor of Cirebon Number 592.05/Kep.25-Tapen/2001 dated February 11, 2001 and the National Land Agency with Letter Number 400-1581 on June 24, 2003.
2	S subject	Regional Government, PT KAI Daop 3 Cirebon, ATR/BPN Cirebon City, Cirebon City District Court, the community and the Kasepuhan Sultanate who control the wewengkon land
3	Object	Wewengkon land of the Kasepuhan Sultanate of Cirebon
4	Destination	Uncertainty and legal protection for wewengkon land owners
5	Sub s tance	a) There is no legal certainty, namely : - regarding the control or use of wewengkon land in Indonesia, this is due to the absence of conception juridical or rules regarding this matter. - wewengkon land , there is a conflict and there is no legal protection for the real owner. - regarding the status of the land and the legal subjects of the wewengkon land cause injustice from the parties. Therefore, it is necessary to clarify the legal status and legal subjects of wewengkon land based on justice. - regarding the legal status and legal subjects of the wewengkon land will cause conflict in the community, as well as the absence of legal protection over the control exercised by the local government, the community and the Sultanate. This also resulted in not achieving orderly land law and orderly land administration. b) Not yet justice in dominate or use soil wewngkon , so that the condition of the creation of a conflict between the Sultanate, local government, and the community will cause losses for the parties. This is because there is no arrangement for wewengkon land in the city of Cirebon even so protection law for owner . c) Not yet benefit lands wewengkon in mastery community, and yet existence guarantee protection law for Public to soil authority .
6	Consequence	The state should make arrangements regarding the control and legal status of wewengkon land that reflects the value of justice

Under these conditions, it can be said that the substantive condition of the existing concept of wewengkon land is, firstly, there is no recognition of the justice-based concept of wewengkon land belonging to the Kasepuhan Sultanate. The control of the wewengkon land as a former self-governing land does not reflect justice. Second, conditional recognition and control will limit the participation of the people of the city of Cirebon in the lands belonging to the Kasepuhan Sultanate in the pattern of authority/control and utilization of wewengkon lands in the community. Third, conditional recognition and authority will limit the access of the people and the Kasepuhan Sultanate to the rights to the concept of the Wewengkon land which is claimed to be the land of the former self-government agency, thus causing injustice to the people and the Kasepuhan Sultanate. Fourth, conditional recognition and control/ authority will open up opportunities for recognition and control of the existence of the land concept rights of the Kasepuhan Sultanate in accordance with the wishes of the state authorities. Fifth, the condition of mutual domination and hegemony from state law to local wisdom, which reflects legal neutralism.

Werner Menski then explained about pluralism based on comparative studies, combining state law, society and natural law, thus regarding law, Menski gives the view that law is a universal phenomenon. Sources of law basically manifest the state, society and religion/ethics, competing and interacting in various ways. Legal experts as professionals and theorists tend to emphasize the centralism of law in this case the law produced by the state and thus minimize the role of non-state sources, including ethics, especially society and cultural elements. Such conditions seriously underestimate the potential for coexistence with various regulatory systems. In this context the laws of the state/reproduced state are dominant (Werner Menski, 2014)

The relationship pattern that can be simple as an initial pattern then develops, where the atmosphere of legal pluralism fills the middle empty space. The opposing forces have begun to have a balance to stabilize, so the conditions that were previously central are renegotiated (Werner Menski, 2014). In a broader context, the inherent triangular pluralism of the law can be considered and illustrates the interconnected nature of all laws. The laws of the world contain many triangular pluralisms in the scope of space and time. So it can be said that the law is so plural, it can hardly reach its theoretical totality

Legal pluralism is a new approach strategy that must be mastered by law enforcement in order to make legal breakthroughs through the non-enforcement of law (Suteki, 2013). This is because this approach is no longer imprisoned by the provisions of legal formalism, but has jumped to the consideration of living law and natural law. The way of law in Indonesia is not appropriate if a positivistic approach is used, such as the origin of Indonesian law (especially Europe) without looking at the moral/religious or ethical aspects as well as considering the socio- legal aspects (Suteki, 2013).

Regarding understanding the meaning of non-single law in the study of legal pluralism, borrowing from Menski's triangle thinking (Sukirno, 2018) which offers legal pluralism, namely the existence of links that are divided into 3 (three) points of view, namely the point of view from the state aspect (positive law), the community aspect (social legal approach) as well as morals, ethics and religion within the framework of legal pluralism. The method of law that only relies on positive law with rules and logic and its rule bound will only lead to a deadlock in the search for substantial justice (Suteki, 2013).

An explanation of Werner Menski's flying kites theory is first , from the point of view of religion, ethics and morals or natural law (religion/ethics/morality) (located in the upper corner of the triangle) and the state in forming legislation must be able to combine ethics to respect different perceptions with the public regarding the concept of lands controlled by the sultanate/kingdom by looking at the diversity and uniqueness and specificity in the management of sultanate/kingdom lands in Indonesia. There is no evidence that the Kasepuhan Sultanate of Cirebon has entered into an agreement with the Dutch East Indies, both lange contraten and korte verklaring , so that the Kasepuhan Sultanate cannot be categorized as a former autonomous region. This condition affects any form of policy from the government regarding directly or indirectly with the Kasepuhan Sultanate which is part of the community that still holds traditional traditions such as the existence of wewengkon land, must be communicated until the policy can be accepted without any party being harmed, then both angles need to be addressed. combined with ethics to be able to appreciate the different concepts of land controlled by the Sultanate/Kingdom by the state (government), and morally by applying substantial social justice is justice created by judges in their decisions based on excavations for a sense of justice in society without being shackled by sound articles of applicable law.

Second, from the point of view of the State, the state 's recognition of the land rights of the Kasepuhan Sultanate Wewengkon contained in the Cirebon community is based on the terminology of protecting, even though the state has the right to control land rights in Indonesia. The state has obligations and responsibilities mandated by Pancasila, namely social justice for all Indonesian people, the 1945 Constitution of the Republic of Indonesia in particular the goals of the state, a unitary state, people's sovereignty, and Article 33 paragraph (3) MPR Decree no IX /MPR/2001 concerning Agrarian Reform and Natural Resources Management, Government Regulation in Lieu of Law No. 56/Prp/1961 concerning Maximum and Minimum Limits on Land Acquisition, PP 224/1961 concerning Implementation of Land Distribution and Provision of Compensation Losses and Presidential Regulation Number 86 of 2018 concerning Agrarian Reform

Third, from the community point of view, state recognition of the rights to lands controlled by the Kasepuhan Sultanate as wewengkon lands which have hereditary characteristics must also be based on social reality or the social structure of the community. Sultanate land as customary property rights obtained from generation to generation becomes property rights, not the Fourth Dictum of the UUPA, in connection with this it is fundamental to the social structure related to the existence of the sultanate/kingdom where each region has its uniqueness and specificity as in the lands it controls. Moreover, the Supreme Court Decree Number 558/K/Pdt/1997, Number 1825 K/Pdt/2002 and Number 331 PK/Pdt/2009 which states that wewengkon land is hereditary land identical to property rights.

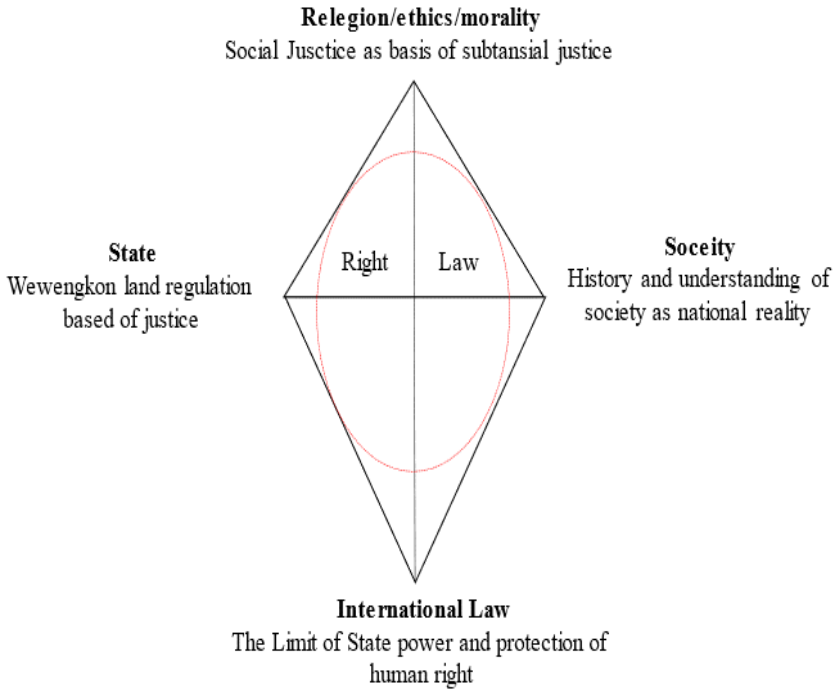
The three sides are processed and combined to form a new concept of wewengkon land of the Kasepuhan Sultanate as customary land rights based on justice, which is called justice based wewengkon land. It is said to be based on substantial justice which rests on the 'response' of the community, beautifully shaping the resolution of problems based on the law which 'deeps the voice of the people's conscience. Recognition, the authority to control wewengkon land as hereditary land is property rights which are customary land rights can refer to Article 5 of the UUPA, Elucidation of Article 16, then Article 56 and Article 58 of the UUPA.

The building of the concept of legal certainty for land regulation of the Kasepuhan Kasepuhan Sultanate of Cirebon based on justice does not only move from state law alone, but from various parties moving from the obscurity and absence of laws and regulations governing it, the efforts to regulate wewengkon land to create legal certainty as the goal of national agrarian law. The legal concept follows Menski's opinion, by including the relegion/etchis/moraliy point of view, containing

non-discriminatory and fair treatment, the state point of view of uncertainty or ambiguity in the regulation of wewengkon land in legislation, the social point of view, containing the reality of legal uncertainty in society, the government and other parties. Kasepuhan Sultanate as a social reality

Apart from the three angles mentioned above, one other angle that places the regulation of wewengkon land in the context of its protection from the point of view of human rights. Menski called this development " flyingkites" (kite flying), making the formation no longer divided into three as in his book (2006), but turned into four corners as in the diagram below.

Scheme. 1 Concept of Wewengkon Land, Kasepuhan Sultanate, Cirebon



Departing from Exhibit 1 above, the flyingkites model is the point of human rights being a substance that should not be ignored in the legal model of legal certainty for wewengkon land. The point of view of human rights is related to the recognition of wewengkon land in land regulation in agrarian law which must be respected and protected by the state.

Absence of n draft juridical soil used self government which has an impact on the existence soil wewengkon until need existence an impact on the existence soil wewengkon until need existence draft new for confess existence soil authority. The substance of the new concept of state recognition of the justice-based land of the Kasepuhan Kasepuhan Sultanate, contains the following legal principles:

1) Legal certainty (rechtssicherkeit) regarding the control or use of wewengkon land in Indonesia , namely :

a. Reflecting justice in the concept of wewengkon land can be obtained through Article 5 of the LoGA, Elucidation General number III (1), Explanation chapter 56 as well as Article 58 of the UUPA which accommodates diversity provision law custom local During no contrary in UUPA or regulations / policies other with regard to aspect historical, sociological, cultural (as state goals) .

b. regarding the status and legal subjects of the wewengkon land so that there is justice from the parties. Clarity of legal status and legal subjects of justice-based wewengkon land (Pancasila as a guide to substantive justice)

c. regarding the legal status and legal subjects of wewengkon land so as not to cause conflict in the community with the existence of legal protection over the control carried out by the local government, the community and the sultanate, then the achievement of land law order and administrative law order (human rights point of view)

2 Justice (gerechtigkeit) regarding the control or use of wewengkon land in Indonesia in regulating wewengkon land prioritizes the weak party (farmers) by making it the Land of Agrarian Reform Objects (land reform) , so that it does not cause conflict. With legal protection for the real owner. (consequences of the existence of the state based on social justice) and justice in the arrangement of wewengkon land in the city of Cirebon based on substantial justice, minimizing losses for the parties, with compensation by the government. (legal pluralism approac).

3 Benefits (zweckmassigkeit) sultanate lands, namely soil wewengkon which is currently under the control of society. Wewengkon land is processed, empowered / made effective to meet the daily needs of the cultivating community /users and benefits existence guarantee of legal protection for the community on land wewengkon as land that is cultivated / used .

Discussion

The concept of justice-based land law wewengkon Kasepuhan Sultanate contains the principles mentioned above, which can also be seen in the following table:

Table. 2 Concept of Wewengkon Land Based on Justice

1	Base	Wewengkon land regulation is an effort to create legal certainty as the goal of national agrarian law
2	Subject	Regional Government, PT KAI Daop 3 Cirebon, ATR/BPN Cirebon City, Cirebon City District Court, the community and the Kasepuhan Sultanate who control the Wewengkon Land
3	Object	Wewengkon land of the Kasepuhan Sultanate of Cirebon.
4	Destination	To provide legal certainty and protection for wewengkon land owners and end the occurrence of wewengkon land conflicts between the parties.
5	Substance	a) Legal certainty regarding the control or use of wewengkon land in Indonesia, namely: Reflecting justice in the concept of wewengkon land can be obtained through Article 5 of the UUPA, General Elucidation number III (1), Elucidation of Article 56 and Article 58 of the UUPA which accommodates the diversity of provisions of local customary law as long as they do not conflict with other regulations/policies by taking into account historical, sociological aspects. culture (as state goals

	- regarding the status and legal subjects of the wewengkon land so that there is justice from the parties. Clarity of legal status and legal subjects of justice-based wewengkon land (Pancasila as a guide to substantive justice) - regarding the legal status and legal subjects of wewengkon land so as not to cause conflict in the community. The existence of legal protection over the control carried out by the local government, the community and the sultanate, then the achievement of land law order and administrative law order in accordance with Part Five of PP Number 18/2021 concerning Management Rights. Land Rights, Flat Units and Land Registration (human rights angle). b) Justice regarding the control or use of wewengkon land in Indonesia in: - wewengkon land prioritizing the weak (farmers) is carried out by making land the object of agrarian reform (land reform) which is contained in the replacement regulation of Law No. Agrarian Reform so as not to cause conflict. The existence of legal protection for the real owner (consequence of the existence of the state based on social justice). - wewengkon land in the city of Cirebon based on substantial justice minimizes losses for the parties, with compensation by the government, in accordance with the provisions in PP no. 224/1961 on the Implementation of Land Distribution and Compensation (legal pluralism approach). c) The benefits of the sultanate lands are: - Wewengkon land which is currently under community control. Wewengkon land is processed, empowered / made effective to meet the daily needs of the cultivating community / users. - there is a guarantee of legal protection for the community against wewengkon land as the land that is cultivated/used.
6Consequence	The state makes arrangements regarding the control and legal status of wewengkon land as customary land rights that reflect the value of justice.

Based on the description of legal pluralism, Ida Nurlinda (Ida Nurlinda, 2015) simply explains that the term legal pluralism (legal pluralism) means the application of various systems in a country/society, whereas in a narrow sense legal pluralism is considered to exist when the state recognizes the existence of customary law or customary law. local law in addition to the laws made by the state

According to Maria SW Sumardjono (Maria SW Sumardjono, 2004) further gives the meaning that legal pluralism is a situation in which two or more legal systems are found that apply in a society where state law and customary law have a position, the power of each of which is independent. but both apply at the same place and time, so Sulistyowati Irianto (Ida Nurlinda, 2015), relates the understanding of legal pluralism to the law that moves in the realm of globalization

Before Indonesia's independence, this also emphasized customary law as a source of national agrarian law, both as the main source of law and as a complementary source of law. According to Ricardo Simarmata (Ricardo Simarmata, 2005) that in legal pluralism there is an understanding other than narrow legal pluralism (state law pluralism) which is dominated by state law over customary law, then there is also a broad legal pluralism aimed at real situations in a certain social environment. There are also other legal pluralisms, namely strong legal pluralism and weak legal pluralism.

In strong legal pluralism, there is no single legal system that is superior to other legal systems, where individuals or groups living in certain social fields or areas are free to choose the application of one law and/or are free to combine the application of various systems. law that regulates daily activities or in terms of dispute resolution (Ida Nurlinda, 2005). John Griffiths' explanation, regarding pluralism, namely strong legal pluralism (strong legal pluralism) occurs when the state and government recognize the presence of other legal systems outside state law and these non-state systems have the same strong capacity as state law (Irianto Sulistyowati, 2005).

For weak legal pluralism, according to Ricado Simarmata's explanation, it is usually marked by the existence of one legal system whose position is stronger (superior) than other legal systems, meaning that state law is stronger than other laws such as customary law/local law. . In line with the opinion of John Griffiths regarding weak legal pluralism, namely that the state and government recognize the presence of other systems outside of state law and other laws (local/custom) subject to enforcement under state law. According to Ida Nurlinda (Ida Nurlinda, 2005) the essence of customary law currently shows the occurrence of weak legal pluralism in the national agrarian law system, the application of customary law as the basis of national agrarian law is "subjected" by the provisions determined by the state law (UUPA).

The relationship between legal pluralism and justice has been described in a dissertation through the concept of flyingkites theory proposed by Wenner Menski. In this case, in order to create what he calls perfect justice, it is necessary to pay attention to 4 (four) things. The four things are: (a) the value of justice in this case is the value of social justice in Pancasila b) society, where there is a unique land tenure that applies in Cirebon and aspects of the legal culture of the community; (c) state, current state law; (d) human rights considerations. Through these four things, it will create prefect justice or the right law according to Menski. This dissertation is an attempt to pay attention to the hereditary property rights related to the sultanate land and also to pay attention to the existing legal culture of this community.

n this case, if it is associated with John Griffith's concept, this dissertation seeks to realize strong legal pluralism or strong legal pluralism, by paying main attention to the use of customary law in accordance with the spirit of the Indonesian nation (volkgeist) as the basis in regulating the land of wewengkon this concept. be important. Judging from the history of the sultanate or palace, this can be seen from the mechanism for obtaining land rights in customary law, Method in Siocial-Legal Research, Ohaiti:Hart Publishing Oxford and Portland Oregon

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In the concept proposed by Tee Har, the more intense the interaction with the land, the stronger the relationship between people and the land, resulting in ownership. In this case, the wewengkon land , in the review of the acquisition of land rights based on customary law, already belongs to the Kasepuhan whose ownership rights must be protected by taking into account the provisions of agrarian reform including the maximum land excess.

Conclusion

Wewengkon land of the Kasepuhan Kasepuhan Cirebon as a land of customary rights based on justice is by placing the wewengkon land as a land of customary property rights based on hereditary ownership as regulated in article 5 of the UUPA, formulating that agrarian law is customary law which has the meaning that in development national law if positive legal norms do not regulate, then it is taken from local customary law, if there is a problem in the field of land which has a conceptual meaning in the national land law, namely agrarian law, customary law is to fill the legal vacuum, because it does not This is regulated and then there are provisions for the conversion of articles 56 and 58 of the UUPA, ideas or findings from being things that can be strengthened as a basis for resolving disputes or conflicts that occur in the Cirebon city area regarding wewengkon land. Regarding wewengkon land belonging to the sultanate which exceeds the maximum land provisions, it is proposed to be the object of land reform.

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