

Analysis of Legal Aspects on Sale And Purchase of High Heritage Land Disputes

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ABSTRACT

Land disputes are one of the problems that are not easily solved and must be resolved carefully. High inheritance is the common property of a people who have blood ties and are inherited through generations from their earlier ancestors. Buying and selling according to customary law is exchange and is called cash or cash. The problem of ulayat land (high heirloom) can not be traded based on West Sumatra Regulation No. 6 of 2008 concerning ulayat land and its utilization. This study examines what is included in the scope arrangement according to sentence no. 11/Pdt.G/2015/PN. BSK, what factors are the cause of the dispute of high heirloom land and how the settlement of high heirloom land disputes sold is determined by the Batusangkar District Court Data collection techniques using primary data, namely observation and secondary data that is obtained from legislation, books, scientific works related to this research, legal dictionaries, official documents and regulations.

Keywords : *Legal Aspects, Buying and Selling, Land Disputes.*

INTRODUCTION

The land has occupied an important position in human life. Soil is a very basic human life need, man lives in doing activities on the ground so that at all times man is always in touch with the land, it can be said that almost all human life activities both directly and indirectly always need land. At all times the human need for land is always increasing for both the needs of residence and land to strive , thus causing humans to race to rule and own the land. Seeing the importance of the existence of land in human life, the ancestors of the Indonesian nation since long ago have outlined the provisions on the law of land in the customary laws of each region.

Based on customary law, between the legal community as a unit with the land occupied there is a very close relationship, namely a relationship that is sourced in a religio-magical view. This is why people gain the right to control the land, make use of it, collect the proceeds from the plants on it, hunt animals that live there and others. Soil problems are a sensitive issue for humans in general and minangkabau society in particular, because the land in Minangkabau is one of the elements in the matrilineal organization (maternal lineage). In addition, for minangkabau people the land is considered as one of the criteria that determine one's dignity in nagari life. A person who owns the land of origin is considered a native in the nagari who is more entitled to greatness in the nagari.

Land in Minangkabau is a self-identity because the land here serves as a binder of relations between tribes and peoples as well as evidence of origin, with the existence of land as a binder of relations between tribes, peoples, it will create a social interaction that shows the strong existence of minangkabau society itself. High heirlooms or ulayat land in Minangkabau should not be sold or mortgaged to others, because if a high heirloom is mortgaged or let alone

sold to another person then a tribe or people will lose their ulayat and property so that there is no longer a guarantee of life for the sister and niece of women in the future, and there will be a decrease in the values of material kinship itself, this is what is called in the traditional adage "*harato pusako tinggi dijua indak dimakan bali digadai indak dimakan sando*" (high heirloom treasures sold not eaten buy pawn not eaten collateral).

This means that ulayat land in minangkabau should not be traded and should not be mortgaged. As the meaning of the word ulayat Minangkabau land should not change its ownership status. No Right to Business (HGU), which can be according to customary principles are revenue sharing, rent rent, capital investment, and or right to use. If there has been a grant of HGU, then this incident violates the minangkabau customary provisions or may include violating the Human Rights (Human Rights) of minangkabau indigenous peoples.

One example of a case of ulayat land dispute is high heirloom land traded in the jurisdiction of the Batusangkar District Court in The sentence No. : 11/Pdt.G/2015/PN.Bsk. As for sitting the case that the plaintiffs are members of the descendants of Rumah Kapalo Koto Persukuan Limo Rumah Supanjang and Defendant I is the head of his heirs and Defendant II and Defendant III are outsiders of the customary keturuan, as as a commoner in Jorong Supanjang, the object of the case in the dispute is a high heirloom land belonging to the descendants of Kapalo Koto Persukuan Limo House Supanjang which has long been passed down through generations based on Minangkabau culture. However, the high heirloom land belonging to the Descendants of Kapalo Koto Persukuan Limo Rumah Supanjang in this case has been sold unilaterally and secretly without the knowledge of the heirs of high heirloom land, resulting in material and imateril losses for the heirs.

LITERATURE REVIEW

Overview of The Land of High Heritage In Minangkabau.

West Sumatra province is the main area of Minangkabau people, while minangkabau people still exist in neighboring provinces such as Riau Province, Jambi, Bengkulu and other areas (overseas) in Indonesia even some are abroad. Idrus Hakimy, a minangkabau traditional figure stated that minangkabau custom is "A teaching that is poured in the form of petiti petatah or in other words the norms are expressed in a very deep figurative sense, with a basic teaching of nature takambang become a teacher (learning to nature)".²³ Petatah petiti is the basis of minangkabau customary law in taking all actions to be done, covering all aspects of public life in Minangkabau such as politics, economy, socio-culture, defense and security.

The kinship system of minangkabau ethnicity has been going on since long ago until now is matrilineal kinship that regulates the lineage according to the maternal lineage (female). Children born to mothers include their mother's tribe or their mother's siblings, while fathers belong to their mother's tribe.

Position and Function of High Heritage Land In Minangkabau.

Land and indigenous legal communities have a very close relationship with each other. The legal relationship between indigenous peoples and their land creates a right that gives the community as a legal group, the right to use the land for the benefit of the community which is the original and main right in the customary law in the environment of the indigenous legal

community, which is also considered as the source of customary law and can be owned by the entire indigenous legal community. First of all that is included in this is the mother of the woman herself (if she is still alive) or if this is no brother or sister of the mother who died alone. If this still does not exist then also as a distant warih are members of the blood family environment according to the maternal line that comes from their ancestors.

Based on this, in addition to that jurai-jurai derived from a lung can also be an heir. Furthermore, if all the people mentioned above do not exist, then who gets the sesuku (sepesukuan) and if the other parts of the nagari did not return to the original fence, then the inheritance fell into the hands of nagari. In addition to this there is another ulayat land that belongs to the high heirloom. According to Van Vallenhoven's thinking in Syahmunir asserts that ulayat land as a high heirloom, which should not be transferred forever is strongly related to the function of the land for the survival of minangkabau people and tribes. The issue of land is very important for the indigenous legal community in Minangkabau so that it can not be ignored. Because the degree of a person or a people in Minangkabau can be judged from property or ownership of land in a region. Therefore, the ulayat land in Minangkabau cannot be transferred ownership of the rights of a people to another people or from one person to another either by selling or by pawning it.

Supervision of the land ulayat kaum or high inheritance, is the duty of the Head of the People called tungganai (mamak house that is elder) in jurai and respected as expressed in the traditional adage preceded sa langkah, elevated seranting by members of his people. Besides being burdened with obligations to his nieces and nephews, the penghulu (mamak adat) is also given the right to obtain the kekadangan rice fields (great rice fields) belonging to his people. In addition to using the land of ulayat tribes, there are also people using tribal ulayat land and ulayat nagari land. If the use is productive as for sale the result then here applies culture provisions namely: "*karimbo babungo kayu, kasawah babungo ampiang, kalauik babungo karang*".

Legal Certainty Over High Heritage Land In Minangkabau

Land is a very important factor in the life of the Indonesian people, especially in the environment of the indigenous legal community of West Sumatra, which is mostly the population hangs its life and livelihood from the land. Land is one of the main capital, both as a container for the implementation of people's lives itself maupu as a production factor to produce trading commodities that are needed to increase regional income.

West Sumatra province in reality is still recognized lands in the customary legal community whose management, control and use is based on the provisions of local customary law and recognized by the citizens of the indigenous law community concerned as the land ulayatnya, so that it is known the existence of land ulayat nagari, tribal ulayat land, land ulayat people and land ulayat rajo which is regulated according to the custom that applies to each nagari in West Sumatra. Nagari in West Sumatra has grown and developed throughout its centuries-long history, has contributed greatly to the survival of society, the struggle for independence and development in West Sumatra. Nagari is a unitary indigenous legal community that cannot be ignored in the fields of political, economic, social, cultural and security defense.

The position, function and role of nagari in West Sumatra has been regulated by The Regulation of West Sumatra Level I No. 13 of 1983, then with the Regulation of West Sumatra Province No. 9 of 2000 concerning the Basic Provisions of Nagari Government, which has been refined by Regional Regulation No. 2 of 2007, the existence of nagari as the lowest government was reaffirmed.

METHODS

This study uses research methods that utilize qualitative data and are described as descriptive. Qualitative descriptive research types are often used to analyze events, phenomena, or social circumstances. The way of processing legal materials is done deductively, which is to draw conclusions from a problem that is common to the concrete problems faced. Furthermore, the existing legal materials are analyzed to find out the juridical aspects of the problem being examined.

RESULT AND DISCUSSION

Minangkabau customary law has several principles in devolution, namely unilateral principles, collective principles and virtue principles. The unilateral principle is that inheritance only applies in one kinship line i.e. the line of kinship through the mother. Inheritance from above is received from the ancestors only through the mother line and down passed on to the posterity through the daughter, absolutely nothing through the male line up or down. The collective principle is that the rightful ones are not individuals, but groups together.

Based on the above principle, the inheritance is not divided and delivered to the receiving group in the form of undivided unity. While what is meant by the principle of virtue means that in the receipt of inheritance or acceptance of the role to take care of inheritance, there are levels of rights that cause one party to be more entitled than the other, and as long as the more entitled still exist, then the other will not receive.

The inheritance of high pusako property is done collectively and the rights that the heirs are individually entitled to are limited to the right to use. While pusako randah / low heirloom land is a property obtained by a person or a lung based on a gift that a family has based on livelihood, dipusakai a person or group that can be known for sure the origin of the property.³⁵ So, low pusako property is a property received from a generation or two above. Low pusako treasure can be passed on to the child and become his father's livelihood for the child. A livelihood is a property obtained by a person as a result of his own efforts.

There are several requirements that must be met in the implementation of the mortgage, as it should be in urgent circumstances with attention to several things:

1. "*Gadih gadang ndak balaki*" (unmarried girl), meaning a woman who is old enough but has not yet got a mate, this is a shame for mamak and members of her people. If there is a man who is willing to marry the girl then the woman does not hesitate to spend a lot of money, especially for the family deliberation for both parties.
2. "*Rumah gadang katirisan*" (leaky traditional house), meaning pawn can be done to repair the leaky or damaged traditional house. The purpose is for the safety of traditional houses / gadang, because the house gadang is a symbol of greatness for ninik mamak.

But when the house is destroyed, the roof leaks, the floor is weathered, this is a very embarrassing one.

3. "*Maik tabujua in the tengah rumah*" (corpses scattered in the middle of the house), meaning in the circumstances of one of the members of the people got a disaster, namely the death of one of the members of the people, but has no cost in organizing and carrying out traditional ceremonies, then pawn is allowed.
4. "*Mambangkik batang tarandam*" (dismantling submerged wood / attaching the title of the chief), meaning that in a people need to be established penghulu or long sako (title) is immersed only because the traditional filler nagari not enough. This is rare because the sako or title to be established is jointly owned, as a joint greatness and joint ruler so usually financing is also done jointly, not charged only to the person or candidate who will hold the position of the headmaster.
5. Pawn land known in customary law until now is still a structure used by the villagers. In the concept of customary law, this land pawn is classified as an act against land that is legal action of two parties.

Land cases that often occur when viewed from conflicts of interest of the parties in land disputes include:

1. People are dealing with bureaucracy.
2. People are dealing with state companies.
3. People are dealing with private companies.
4. Conflict between people.

In almost every area where there is a land dispute, the relevant parties and authorities handle the issue resolved in various ways. The way of resolving disputes that have been taken so far is through the courts (litigation) and the settlement of disputes outside the court (non litigation). In the juridical dimension of land tenure and land ownership requires protection, the implication must be legal protection of the civil rights of land ownership and fair treatment of the ownership of the land. Protracted land disputes and no good settlement can cause the aggrieved party to take the lawsuit to court. Although there is a wide chance of suing through the courts but the public tends to avoid it, in addition there is a presumption in the community that filing a lawsuit through the court is relatively expensive, taking a long time even convoluted.

Minangkabau people, especially in batuangkar society today are faced with a reality, where the high heirlooms of their people are sold or changed hands or no longer in a whole state. A situation contrary to the principle of possession of high heirlooms in Minangkabau that has given a clear limitation that high heirlooms are not transferable and remain the property of a people, in the traditional adage mentioned "*kabau tagak kubangan tingga*". Even if the high heirloom will be sold must meet some requirements as described earlier and for the process of selling this high heritage property then there must be permission from ninik mamak kaum (mother head of inheritance).

CONCLUSION

1. The scope of high heirloom land in Minangkabau is basically jointly owned and passed down through the maternal lineage, while women are the owners of the property, men

- are only tasked with maintaining and obtaining honor to the ownership of the property and inheritance of the people, with the arrangement of its utilization regulated by penghulu / Datuk as the leader of the tribe.
2. The occurrence of high heritage land disputes in Minangkabau is caused by several factors, namely inheritance factors in which the inheritance can already be divided by the heirs, factors of the pawn holding system carried out to cover the need for the shortcomings of the members of the people, as well as factors of land deviation or factors sold to others without the knowledge of other members of the people, so that it will cause discord in the future.
 3. Settlement of disputes of high heirloom land sold based on Decision No. 11/Pdt.G/2015/PN.Bsk is resolved by proving the origin of high heirloom land and proving that the act of buying and selling is an act against the law, so that with the evidence that the origin of the land is a high heirloom land or ulayat land.

REFERENCES

- Ali, Ahmad, 2000, Sistem Kekerabatan Di Minangkabau Dalam Bunga Rampai Pengetahuan Adat Minangkabau, Ratu Grafika, Padang.
- Ammiruddin dan Asikin, Zainal, 2014, Pengantar Metode Penelitian Hukum, Rajawali Pers, Jakarta.
- Anwar, Chaidir, 1997, Hukum Adat Indonesia: Meninjau Hukum Adat Minangkabau, Rhineka Cipta, Jakarta.
- Bushar, Muhamad, 2000, Pokok-Pokok Hukum Adat, Pradnya Paramita, Jakarta. Departemen Pendidikan Nasional, 2008, Kamus Besar Bahasa Indonesia, Gramedia Pustaka Utama, Jakarta.
- Dijk, Van, 1982, Pengantar Hukum Adat Indonesia (terjemahan oleh A. Soehardi), Sumur, Bandung.
- Haar, Ter, 2013, Asas-Asas dan Susunan Hukum Adat, (Beginnelsen En Stesels Van Het Adat Recht), Terjemahan Soebakti Pesponoto, Balai Pustaka, Jakarta.
- Hakimy, Idrus, Dt. Rajo Penghulu, 2001, Pokok-Pokok Pengetahuan Adat Alam Minangkabau, Remaja Rosda Karya, Bandung.
- , 2004, Pegangan Penghulu: Bundo Kandung, dan Pidato Alua Pasambahan Adat di Minangkabau, Remaja Rosda Karya, Bandung.
- , 2004, Rangkaian Mustika Adat Basandi Syarak di Minangkabau, Remaja Rosda Karya, Bandung.
- Harun, Badriyah, 2013, Penyelesaian Sengketa Kredit Bermasalah, Pustaka Yustisia, Yogyakarta.
- Limbong, Bernhard, 2012, Konflik Pertanahan, Pustaka Margaretha, Jakarta.
- M.S, Amir, 2003, Adat Minangkabau: Pola dan Tujuan Hidup Orang Minang, Mutiara Sumber Widya, Jakarta.