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THE PROCESS OF REVIEWING THE SALE AND PURCHASE OF LEGAL ASPECTS OF HIGH HERITAGE LAND DISPUTES (ANALYSIS OF DECISION NUMBER : 11/PDT.G/2015/PN.BSK)

Ridho Syahputra Manurung
Magister Ilmu Hukum Pascasarjana
Universitas Pembinaan Masyarakat Indonesia

ABSTRACT

Land disputes are one of the maximum tough troubles to remedy and need to be dealt with carefully. High inheritance is the not unusual place assets of a folks who are associated through blood and inherited from era to era from their ancestors. Buying and promoting consistent with normal regulation is an alternate and is what's known as coins or coins. The hassle is that layout land (excessive heritage) can not be traded primarily based totally at the West Sumatra Regional Regulation Number 6 of 2008 regarding layout land and its utilization. The formula of the hassle on this thesis is what's protected withinside the putting of the scope consistent with Decision quantity 11/Pdt.G/2015/PN.BSK, what elements are the reasons for excessive inheritance land disputes and the way to remedy excessive inheritance land disputes. sale and buy decided through the Batusangkar District Court. The nature of this thesis study is descriptive studies the use of a qualitative method and the form of normative criminal studies and empirical juridical method (sociology). The records series method makes use of number one records, particularly statement, and secondary records, that is received from legal guidelines and regulations, books, work medical papers associated with these studies, criminal dictionaries, reliable files, and regulations In conclusion, it seems that layout rights (Tanah Pusaka Tinggi) can not be traded, however in fact from the case that I analyzed, selection quantity 11/Pdt.G/2015/PN.Bsk became out to be withinside the normal community, the excessive inheritance land was traded and subsequently have become a dispute that subsequently entered the world of regulation.

Keywords: Legal Aspects, Sale and Purchase, High Heritage Land Disputes.

INTRODUCTION.

The land has occupied an important position in life and human life. The land is a very basic need of human life, humans live in carrying out activities on the ground so that every time humans are always in contact with the land, it can be said that almost all activities of human life, either directly or indirectly, always require land.1 Every time the human need for land is always increasing both for housing and land for business, thus causing humans to race to control and own land. Seeing the importance of the existence of land in human life, the ancestors of the Indonesian nation have long outlined provisions regarding land law in the customary law of each region.

Based on customary law, between the legal community as a unit and the land it occupies, there is a very close relationship, namely a relationship that originates from a religious-magical view. This is what causes the community to get the right to control the land, use it, collect the results of the plants on it, hunt for the animals that live there, and so on. The rights of the customary law community to the land This is called the title of lordship or layout rights.2 In West Sumatra, layout land is defined as a piece of heirloom land along with the natural resources that exist on it and in which it is obtained from generation to generation which is the right of the customary law community.3

The land issue is a sensitive issue for humans in general and the Minangkabau community in particular because land in Minangkabau is one of the elements in a matrilineal organization (mother's lineage). In addition, for the Minangkabau people, the land is considered as one of the criteria that determines one's dignity in the life of the Nagari. A person who owns the land of origin is considered a native in the Nagari who is more entitled to greatness in the Nagari.

Talking about land issues in Minangkabau means talking about issues of Minangkabau customary law. This is because land issues are an inseparable part of Minangkabau customary law itself. Land in Minangkabau is a self-identity because the land here functions as a binder of relations between tribes and

peoples as well as proof of origin, with the existence of land as a binder of relations between tribes, tribes, it will create a social interaction that shows the strong existence of the community. Minangkabau itself.

One of the privileges and strengths of Minangkabau Customs is the existence of High Heritage Treasures and the recognition of the Ulayat Land as a unit that cannot be separated from the unity of tribes or peoples in material kinship that binds one another. For the Minangkabau people, high inheritance or layout land is a marwah within their tribe or people, there is high inheritance and ulayat land means there are tribes or peoples, because the characteristics of the existence of a tribe or people in a material kinship are:

1. gadang house (house gadang where people or tribesmen gather)

2. Jarami figure (rice fields or fields to support family or people)

Penghulu in a Nagari according to the number of each tribe that existed in the village in the past.

A high inheritance or layout land in Minangkabau cannot be traded or pawned to other people, because if a high inheritance is pawned or moreover sold to other people, a tribe or people will lose their layout and property so that there is no guarantee of life for relatives and nieces.

This means that customary land in Minangkabau cannot be traded and must not be pawned. As the meaning of the word Minangkabau ulayat land may not change its ownership status. There may not be Cultivation Rights (HGU), which according to customary principles are profit sharing, leasing, capital participation, and or usufructuary rights. If there has been an HGU grant, then this incident violates Minangkabau customary provisions or may include violating the Human Rights (HAM) of the Minangkabau indigenous people.

3. Pandam Pakuburan (the graveyard of people or tribes)

4. Good luck (gardens and customary forest boundaries for development effort).

High inheritance and layout land are not assets obtained through the efforts, work, and search of a father that can be distributed and passed on to his children and wives. High heirloom assets are assets obtained from the results of cooperation, cooperation between Mamak and nephews in a tribe or clan in the past that were intended for benefits for relatives and nieces according to ethnicity or clan from the mother's line according to the material concept, while layout land is obtained from the division of power between Penghulu in a nagari according to the number of each tribe that existed in the village in the past.

The object of the case in the dispute is a high inheritance land belonging to the descendants of the Rumah Kapalo Koto Tribe of the Limo Rumah Supanjang which has been passed down from generation to generation based on Minangkabau customs. However, the high inheritance land belonging to the descendants of the Rumah Kapalo Koto Persukukan Limo Rumah Supanjang in this case has been sold unilaterally and secretly without the knowledge of the heirs of the high inheritance land, resulting in material and immaterial losses for the heirs.

Based on the background in writing this thesis, I am interested in conducting research related to the issue of disputes over ulayat lands for sale and purchase. So with that, the author makes a thesis research entitled: "Legal Aspects of Disputes on High Heirloom Lands for Sale and Purchase (Analysis of Decision Number: 11/Pdt.G/2015/PN.Bsk)".

Practical benefits are expected to be able to provide information and input in the legal aspects of high inheritance land disputes that are traded and traded, especially for decision makers in similar disputes that are currently happening or in the future, both in the original customary law institutions and for official government institutions that will be used as decisions. law.

LITERATURE REVIEW.

2.1. Definition of Land Dispute

Land disputes are disputes that have existed for a long time, from the old order era, new order era, reform era and until now. Land disputes in terms of quality and quantity are problems that always exist in

the order of people's lives. Land disputes or conflicts are chronic and classic problems and last for years or even decades and are always everywhere. Land disputes and conflicts are forms of problems that are complex and multidimensional in nature.

Land disputes can be in the form of administrative disputes, civil disputes and criminal disputes related to ownership, transactions, registration, guarantee, utilization, control and customary rights disputes. Objects of land disputes include land owned by individuals or legal entities, land assets state or local government, state land, customary land and ulayat land, ex-western rights land, national rights land, plantation land and other types of ownership.⁷

Land disputes are disputes that arise because of a conflict of interest over land. Land disputes are unavoidable in this day and age due to the very high demand for land in this day and age while the number of plots of land is limited. This demands improvements in the field of land management and use for the welfare of the community and especially its legal certainty. For this reason, various efforts have been made by the government, namely seeking to resolve land disputes quickly to avoid the accumulation of land disputes, which can harm the community, for example land cannot be used because the land is in dispute.

Based on this, in giving an understanding of land disputes, there are two interrelated terms, namely land disputes and land conflicts. Although these two terms are land cases, in the Regulation of the Head of the National Land Agency Number 3 of 2011 concerning Management of the Assessment and Handling of Land Cases, it is clear to distinguish the meaning of the two terms. In Article 1 point 2 it is explained that: Land disputes which are abbreviated as disputes are land disputes between individuals, legal entities, or institutions that do not have a broad socio-political impact.

2.2. Definition of High Inheritance Land

Land is a very valuable object in the midst of social life, so that many people make land as an inheritance, which in Minangkabau is also called an inheritance. As according to the Big Indonesian Dictionary, heirlooms are "the property left by someone who has died".⁹ Heirlooms are owned by every clan in a tribe, and have been passed down through several generations. This property may not be traded unless it is pawned. This transaction is only allowed after going through a people's meeting chaired by the penghulu based on several considerations.¹⁰

Based on the results of the Minangkabau customary law seminar in Bukit Tinggi in 1968 that in essence, the Pusako in Minangkabau is divided into two parts, namely inheritance (pusako/ancestral property) and self-earned property.¹¹ Thus, pusako can be concluded as inheritance in the form of material, which some adat experts divide into the following criteria:

High heirlooms are all heirlooms that are inherited from generation to generation from previous parents, it is no longer known who was the first to obtain or obtain the property, as stated in traditional saying: Biriek-biriek tabang ka sasak (birds fly to the sasak), tibo is chased for food (suddenly pressed for food), from ninik down ka mamak (from ninik down to mamak), from mamak down ka kamanakan (from mamak down to nephew).

Low inheritance in the form of inheritance that has only been passed down from one generation (from the mother and father or mother), as a result of the income of the parents which is passed on to their children and nephews.

2.3. Definition of Buying and Selling

Buying and selling in everyday use means exchanging or exchanging.¹⁶ Buying and selling in Indonesian comes from two words, namely selling and buying and buying, what is meant by buying and selling is trading, trading, selling and buying goods.¹⁷ Buying and selling according to language is the exchange of anything, either between goods for goods, or with money or money for money.¹⁸ While buying and selling is an activity where a seller hands over the goods to the buyer after both agree on the goods, then the buyer submits a sum of money in exchange for the goods he receives, the delivery of which is carried out by both parties on a voluntary basis.¹⁹

METHOD OF RESEARCH.

This research is a descriptive analysis, namely describing, explaining and revealing the local customary law system or other legislation, its existence in people's lives and its relevance.²⁰ As the object of this research is the problems that occur, giving rise to disputes that are generally associated with the regulation of customary land with all its problems and the subjects are the people as the parties involved in the problems that have occurred. discussed in customary law itself and then resolved in the realm of concrete law, especially in high inheritance land disputes.

In this study, the type of qualitative research is used, namely this study seeks to find symptoms or events that occur in the surrounding community. Related to the problems in this research, what is meant is the symptoms of customary law communities regarding the inheritance of high heirloom lands.

The data analysis used in this research is qualitative analysis, which is a way of analyzing data sourced from legal materials based on concepts, theories, laws and regulations, doctrines, legal principles, expert opinions or the views of the researchers themselves. Data analysis is used to describe the mechanism for analyzing the data obtained and The next step is to describe the mechanism for processing the data so that it becomes a form of information or material used in research.

ANALYZE AND RESULT.

4.1. Case Position Decision Number: 11/Pdt.G/2015/PN.BSK

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

1. People are dealing with bureaucracy.
 1. The people are dealing with state companies.
 2. People are dealing with private companies.
 3. Conflict between people.⁵⁰

In almost every area where there is a land dispute, the parties involved and authorized to deal with the problem resolve the issue in various ways. The dispute resolution methods that have been adopted so far are through courts (litigation) and dispute resolution outside the court (non-litigation). In the juridical dimension of land tenure and land ownership requires protection, the implication is that there must be legal protection of civil rights of land ownership and fair treatment of land ownership.

Protracted land disputes and no good settlement can cause the aggrieved party to file a lawsuit in court. Although there is a wide opportunity to sue through the courts, ordinary people tend to avoid it, besides that there is an assumption in the community that filing a lawsuit through the court is relatively expensive, takes a long time and is even convoluted.

The Minangkabau community, especially the Batusangkar community, is currently faced with a reality, where the high heirloom assets of their people are sold or changed hands or are no longer intact. A situation that is contrary to the principle of high inheritance in Minangkabau which has provided clear limits that high inheritance cannot be transferred and is permanent as the property of a people, in the customary proverb it is stated "Kabau Tagak Kubang Tinggi". Even if the high inheritance is to be sold, it must meet several requirements as previously described and for the process of selling this high inheritance, there must be permission from the ninik mamak of the people (mamak head of inheritance).

Based on this, as in this study, the author sees and examines the case of high heirloom land being traded that occurred in the jurisdiction of the Batusangkar District Court, as in Case

Number:11/Pdt.G/2015/PN.Bsk. The position of the case is as follows:

4.1.1. Identity

a. Awaludin (Syawal) Age ± 63 years, Employment, Islamic religion, residence on Jl.Pertanian Duri-Riau Domicile in Batusangkar, Jorong Supanjang, Nagari Cubadak, Lima Kaum District, As one of the members of the descendants of Rumah Kapalo Koto Persukuan Limo Rumah Supanjang. Hereinafter referred to as Plaintiff I;

b. Ahmad Zen Age ± 58 years, Limo Tribe of Supanjang House, Self Employed, Islamic Religion, Place of residence Jorong Supanjang, Nagari Cubadak, District Lima Kaum, Tanah Datar Regency, As one of the member of the clan of the House of Kapalo Koto The Supanjang House Limo Tribe. Hereinafter referred to as Plaintiff II;

c. Rofi Mulika Sandi Age ± 37 years old, Limo tribe, Rumah Supanjang, Job Self Employed, Religion Islam, Where to live in Jorong Gurun, Nagari Gurun, Lima Kaum District, As one of the members of the descendants of Rumah Kapo Koto Persukuan Limo Supanjang House/ Representatives of the Yulimar extended family. Next referred to as Plaintiff III; Plaintiff III acted for himself and for

on behalf of Plaintiff I based on a Special Power of Attorney registered in the Registry of the Court Registrar
Country Cage in Number :
43/SK/PDT/2015/PN.Bsk. June 26, 2015.

OPPOSE:

d. Anas Age ± 68 years, Employment, address Jorong Supanjang, Nagari Cubadak, District Five People As the Mamak of the Head of the Inheritance of the Kapalo House Koto Persukuan Limo Supanjang House. Next referred to as Defendant I;

4.1.2. Sit down

The Plaintiffs are members of the descendants of Rumah Kapalo Koto Persukuan Limo Rumah Supanjang and Defendant I is the mother of his heirs and Defendants II and III are outsiders as ordinary people in Jorong Supanjang. While the object of the case in this lawsuit is high inheritance land (ulayat land) belonging to the descendants of the Rumah Kapalo Koto Persukuan Limo Rumah Supanjang. There is a piece of tall heirloom land belonging to the Descendants of the Rumah Kapalo Koto Persukuan Limo Supanjang House covering an area of ± 1000 m² on which there are 4 (four)

fish ponds, 11 (eleven) cloves, 8 (eight) chocolate bars and several coconut stalks which are located in Jorong Supanjang, Kenagarian Cubadak, Lima Kaum District, Tanah Datar Regency.

Tanah Datar Regency is one of the regencies in West Sumatra Province, with Batu Cage as the capital city. This district is the second smallest district in terms of area in West Sumatra, which is 133,600 Ha (1,336 km²). This district consists of 14 sub-districts, 75 Nagari, and 395 Jorong. Tanah Datar Regency is an agrarian area, more than 70% of the population works in the agricultural sector, both for food crops, plantations, fisheries and animal husbandry.⁵¹

The high inheritance land belonging to the descendants of the Kapalo Koto Tribe of the Limo House of Supanjang has long been passed down from generation to generation based on Minangkabau custom which became the rights of the late Ninik Behind the Coffin whose inheritance eventually went to Anas, Rusli, Syawal, Ahmad Zend and Yulimar. However, the high inheritance land belonging to the descendants of the Rumah Kapalo Koto Persukuan Limo Rumah Supanjang has been sold unilaterally and secretly without the knowledge of the plaintiffs and other heirs by Defendant I and the late Zulkarnaini at a very cheap price which is far below the average price. market price to Defendant II and for the assistance of Defendant III.

Defendant I and the late Zulkarnaini as the seller and Defendant II as the buyer and Defendant III as the intermediary (facilitator), have been aware that the land being traded is a high heritage land belonging to the descendants of the Rumah Kapalo Koto Persukuan Limo Rumah Supanjang and this act of buying and selling constitutes a Act against the law. Due to the sale and purchase of high inheritance land descendants of Rumah Kapalo Koto Persukuan Limo Rumah Supanjang it has violated the rule of law and clearly contains legal defects so that it must be declared null and void and become invalid.

4.2. Judge's Consideration in Decision Number: 11/Pdt.G/2015/PN.BSK Regarding High Heritage Land for Sale

Decision making is needed by judges on disputes that are examined and tried. The judge must be able to process and process the data obtained during the trial process, both from letter evidence, witnesses, suspicions, confessions and oaths revealed in the trial. So that the decisions to be made can be based on a sense of responsibility, fairness, wisdom, professionalism and are objective.

Decisions are the product of a case examination conducted by a judge. Based on Article 178 HIR/189 RBG, after the examination is complete, the judge due to his position must hold deliberation to make a decision to be handed down. The examination is considered to have been completed if it has gone through the response stages from the defendant, the plaintiff's replica, the defendant's duplicate, the evidence and the conclusions submitted by the parties. In deciding a case, the most important thing is the legal conclusion on the facts revealed in court. For this reason, judges must explore values, follow, and understand legal values and a sense of justice that live in society.

Sources of law that can be applied by judges can be in the form of statutory regulations and their implementing regulations, unwritten law (customary law), village decisions, jurisprudence, science and doctrine/teachings of experts.⁵²In civil court practice, the legal source is known as *burgerlijk wetboek* (BW) which consists of 1993 articles. The BW based on Article 1 of the Transitional Rules of the 1945 Constitution (amendment) is still valid today. BW applies to some Indonesian citizens, namely:

1. Those belonging to the European group;
2. Those who belong to the Chinese group with some exceptions and additions as contained in the State Gazette of 1917 – 129 (appendix II);
3. Those belonging to the Foreign East group other than the Chinese with exceptions and explanations as stated in the State Gazette of 1924 – 556 (appendix I).

Based on this, meanwhile for the Indigenous Indonesian group, customary law has been applied for a long time among the people, most of which are still unwritten, but live in the actions of the people, regarding all issues in people's lives.

Before making a decision, a judge must consider what is in the evidence through the evidence submitted by the litigating parties and also a judge must listen to the statements of the parties because a judge must not only listen to one party but all parties must have their statements heard. The judge's consideration is very necessary in order to reach a decision that has proper legal basis and reflects the values of justice, truth, mastery of law, facts, ethics and morals of a judge.

CONCLUSION.

1. The scope of high inheritance land in Minangkabau is basically shared property and passed down from generation to generation through maternal lineage, while women are the owners of these assets, men are only tasked with maintaining and obtaining respect for the ownership of property and heritage of the people, with the arrangement for their use regulated by the Penghulu/Datuk as tribal leader.

2. Factors causing high inheritance land disputes in Minangkabau are caused by several factors, namely the inheritance factor in which the inheritance can be divided up by the heirs, the pawn holding system factor which is carried out to cover the needs for the shortcomings of the members of the clan, as well as factors land irregularities or the factor of selling land to other people without the knowledge of other members of the clan, so that over this matter will lead to disputes in the future.

3. Settlement of high inheritance land disputes that are traded based on Decision Number: 11/Pdt.G/2015/PN.Bsk is resolved by proving the origin of the high heritage lands and proving that the act of buying and selling is against the law, so that it is proven that the origin If the proposed land is high heritage land or ulayat land, then the land.

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