



Cancellation of Pusako Tinggi Grants that Have Been Certified by Mamak Kepala Waris in Class Ib Pariaman State Court

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Abstract

The problem of managing high inheritance is a problem that often occurs in indigenous peoples in Minangkabau, especially regarding customary rights, customary lands of indigenous peoples. High heritage assets which are divided by grants by clan members to each clan member. Pariaman District Court in handling high customary inheritance disputes in addition to using customary rules, also refers to the Civil Code. The type of research is normative juridical, emphasizing legal material, covering legal principles, legal systematics, legal synchronization level, legal history and legal comparison. The results of this study are: 1) high pusako in Padang Pariaman is a treasure that can be passed down from generation to generation from niniak mamak to nephew, high heirloom treasures can be donated, the method is that members of the clan who are involved in the inheritance must agree, then strengthened by niniak mamak. If the grant is approved, the heirs must submit and be strengthened by the customary niniak mamak, after the grant it can be certified, because the grant has been separated from the person who gave it, unless it is stated in the grant that this grant may not be traded. 2) The granting of high heirlooms. Decision Number 43/Pdt.G/2018/PN.PMN, namely: due to the sense of responsibility of mamak to nephew to improve their standard of living by giving a grant for the high inheritance land which should be protected and not against the law registers the land of the grant to be owned and controlled forever by members of his family and descendants. Decision Number 48/PDT.G/2018/PN.PMN was due to the bad faith of the mamak who at that time was believed to be the head of the heir secretly wanted to control the high inheritance by means of grants and buying and selling of high inheritance land which being certified is a reprehensible act in adat. 3) Decision Number 43/Pdt.G/2018/PN.PMN The judge's consideration was that the grant certificate was contrary to Minangkabau customary law, the grant was a conditional grant, and in Decision Number 48/PDT.G/2018/PN.PMN registration of ownership rights on the object of the case is declared to be against the law so that the a quo case for the issuance of the certificate does not meet the requirements in the transfer of rights to high inheritance land because the defendant is not a member of the clan of the plaintiffs so that the issuance of the certificate is legally flawed because of a legal act that preceded it.

Keywords: *Grant; Pusako Tinggi; Certificate; Mamak Head of Inheritance; District Court Class IB Pariaman*

Introduction

High heirlooms play an important role in the survival and authority of the Minangkabau people. This is because high heritage assets are assets that existed before the current generation existed, and the current generation enjoys its existence together and is passed down from generation to generation according to maternal lineage and is regulated by Minangkabau customary law. Pusako treasure in Minangkabau terminology is called *harato jo pusako*. *Harato* is something that belongs to the people that looks and materializes such as rice fields, fields, *gadang* houses, livestock and so on. Pusako is something belonging to the people that is inherited from generation to generation, both visible and invisible. Therefore, in Minangkabau there are also two twin words which mean very far away, namely *sako* and *pusako*. *Sako* is the property of the people from generation to generation according to a matrilineal system that is not materially formed, such as the title of *penghulu*, the greatness of the people, luck and the respect that society gives to him. *Sako* is the right of men in his people.

The problem of managing High heirlooms is a problem that often occurs in indigenous peoples in Minangkabau, especially regarding customary rights, customary lands of indigenous peoples. These are in the form of usufructuary rights, land tenure, property rights conflicts, seizure of *ulayat* lands, and transitional disputes. The management of indigenous peoples' High heirlooms can be done in two ways:

1. Management carried out by the community holding the High heirlooms). The management of High heirlooms land is carried out by members of the clan, the implementation can be done individually or separately and managed together;
2. Management carried out by outsiders. Management of High heirlooms land carried out by outsiders is in the form of profit sharing agreements, pledges, buying and selling and grants.

For this study the author focuses on the use of High heirlooms land based on grants. Grants in Minangkabau custom are a type of transfer of arable rights that occur in a family relationship, between a person and a certain family, especially in the relationship between father and son. Grants are only made by a father who has extensive inheritance to his beloved children or children whose mothers come from underprivileged families. A grant is simply something that a father gives to a child or grandmother to a grandchild for a certain period of time. Usually, this time is not calculated based on the calendar year but based on a person's age. In addition, any action against high inheritance must be based on the approval of *ninik mamak* as traditional leaders. High heirloom assets that have received approval from all clan members if they are to be given to someone are valid if approved by the *ninik mamak* in all clan members.

High heirlooms assets in accordance with the explanation of the LKAAM (Minangkabau Natural Customary Density Institute) are people's assets that have been received from generation to generation from *ninik* to *mamak*, from *mamak* to nephews according to the mother's lineage. According to M. Rasjid Manggis, the *Pusako Tinggi* is a high forest which is now also known as "*ulayat*". Included in this high treasure are forests and fields, mountains and hills, lakes, swamps and marshes, as well as valleys and rivers. Meanwhile, according to Hamka, *Pusako Tinggi* are heirlooms that can be obtained from *tembilang besi*, and *Pusako Randah* are obtained from *tembilang emas*. *Tembalang Besi* means treasure that has been passed down from generation to generation from the previous people. *Tembalang emas* is a treasure that comes from the results of one's own efforts. In addition, there are also those who call it joint property, meaning assets obtained during married life.

The inheritance of this high heirlooms is in accordance with the provisions of Minangkabau customary inheritance, which is inherited collectively according to the maternal lineage (matrilineal). High heirloom assets may not be sold and pawned for personal use or for several people. The right to use the *pusako* property is carried out at the *rumah gadang* by the mothers. This means that the role of *mamak* and *penghulu* are the leaders in the Minangkabau custom, they always make decisions based on the

consensus of the density deliberation, especially regarding the structure of the exit from their *rumah gadang* or tribe, a *penghulu* will represent the tribe in the *nagari*. Their consensus to lead was taken in a traditional *nagari* meeting called the Kerapatan Adat Nagari (KAN). This Kerapatan Adat Nagari is an agency meeting attended by established tribal chiefs (*batagak penghulu*) within the *nagari*. They are delegates from their respective tribes/villages.

Minangkabau customary law is closely related to Islamic law, including the problem of distributing inheritance in the form of grants. According to the Compilation of Islamic Law Article 171 letter (g) it is said that a grant is the giving of something object voluntarily and without compensation from someone to another person who is still alive to be owned. Furthermore, according to Article 210 of the Compilation of Islamic Law in paragraph 1, it is stated that people who are at least 21 years old, of sound mind without coercion can get as much as 1/3 of their property to other people or institutions in front of two witnesses to be owned. Furthermore, in paragraph (2) states that the property that is donated must be the right of the donor. Thus, if someone who has donated property that is not his right, then the grant becomes void.

An example of a case regarding the cancellation of a high *pusako* grant at the Pariaman District Court Class 1 b is Decision of the Pariaman District Court Case Number: 43/Pdt.G/2018/PN.PMN, this decision regarding:

The Plaintiffs own 1 (one) plot of land which is a high inheritance obtained from generation to generation in the Dt Tianso, *Guci* tribe, which is located in Bindalang, Korong Pasa Limau Nagari Kapalo Hilalang, 2 X 11 Kayu Tanam District, Padang Pariaman Regency. The relationship between the plaintiffs is a clan, *seranji*, related by blood, *sehartu sepusaka*, as well as a cemetery in the Dt. Tianso people, and the relationship between the plaintiffs and the defendants I, II, III, IV and V are people who are loyal to the Dt. Tianso people. At first, the entire inheritance was controlled for generations by the plaintiffs and members of the clan. Around August 1969, Sjamsuar A.Dt. Tianso gave some of the land above to Defendants I, II, III, IV and V by way of a lifetime grant and part of the other land was still being cultivated by the nephews of Dt. Tianso.

In May 2018, Plaintiff III received information from Plaintiff I (*mamak kepala waris* in the clan) and also from the community that the land and other land allegedly belonging to the clan had been certified by Defendants I, II, III, IV and V through *prona Agrarian* Year 2017.

After that, it turned out that Defendants I, II, III, IV and V of the three object lands of the case were also transferred/sold to the District Government of Padang Pariaman (VII). Because of the above, the plaintiffs felt aggrieved and filed a claim to the Pariaman District Court Number: 43/Pdt.G/2018/PN.PNM.

Plaintiff I (Zasman) is the *mamak kepala waris*, whereas the plaintiff owns a plot of high heirloom heritage land located in Korong Batang Gadang, Kenagarian Tapakis, Kec. Ulakan Tapakis, Kab. Padang Pariaman, with an area of $\pm 20,000 \text{ M}^2/\pm 2 \text{ Ha}$, which is the object of the case in this case is only $\pm 3,640 \text{ M}^2$. The problem arose in 2002. Mansyur By.Darek (late) is the parent of Defendant A. He has submitted an application for certificate of land object of the case to Defendant H. (Head of Land Office of Padang Pariaman Regency) then Defendant H issued his certificate known as Certificate of Ownership No. .65/Nagari Tapakis, measuring letter dated 18 December 2012, No.48/2002 on behalf of Mansyur By. Darek (late).

It doesn't end here, Mansyur By. The Darek (late), on July 08 2011 sold the object of the case to H. Amiruddin Saleh (late) who was the plaintiff's mother before Defendant G as PPAT with the Sale and Purchase Deed No.28/2011. then by the Plaintiff's Mamak on January 19, 2012, the object of the case was granted to Defendant B with the Deed of Grant No.13/2012 and then on March 25,

2015, the object of the case was re-granted by Defendant B to the plaintiff's Mamak with the Deed of Grant No.53/ 2015 and then on 13 May 2015 the object of the case was sold by the plaintiff Mamak to Defendant F before Defendant G. Sale and purchase No.81/2015, for the actions of Mansyur By. Darek (late), the other defendant mentioned above, the plaintiff representing his people felt very disadvantaged, so the plaintiff filed a lawsuit to the Pariaman District Court Class 1b with Case Number 48/Pdt.G/2018/PN PMN interpreted as an unlawful act (onrecht matigedaad).

Based on these descriptions and phenomena, the authors are interested in studying and understanding further through a thesis entitled: " CANCELLATION OF *PUSAKO TINGGI* GRANTS THAT HAVE BEEN CERTIFIED BY *MAMAK KEPALA WARIS* IN CLASS IB PARIAMAN STATE COURT"

Research Methods

The approach method used is normative juridical, which emphasizes legal material, including legal principles, legal systematics, legal synchronization level, legal history and legal comparison. The types of normative legal research include legal principles, legal systematics, legal synchronization level, history law and comparative law. Normative juridical research is research that refers to legal norms contained in laws and regulations and court decisions and stipulations. This research is based on certain laws by identifying the rules that have been formulated in certain laws.

Research Result

The granting of high inheritance rights, Decision Number 43/Pdt.G/2018/PN.PMN and Decision Number 48/PDT.G/PN.PMN, namely:

a. Decision Number 43/Pdt.G/2018/PN.PMN

That the background for the transfer of the high heirloom was due to the sense of responsibility of the mamak people to the *anak pisang* in order to improve their standard of living by providing a grant for the high heirloom land to be cultivated and the proceeds taken to support the family's economic activities in which the mandate should be maintained and not illegally registering the land of the grant to be owned and controlled forever by members of his family and descendants.

b. Decision Number 48/PDT.G/PN.PRM

That the transfer of the high heirloom occurred was due to the bad faith of the mamak who at that time was believed to be the head of the heir who secretly wanted to control the high inheritance by means of grants and buying and selling of certified high inheritance land. with proof of a grant which is clearly a disgraceful act in adat.

c. The Basis for the Cancellation of the Grant at the Pariaman District Court

It can be seen from the basis of the judge's considerations in the example case Number 43/PDT.G/2018/PN.PMN the cancellation of the grant which has been certified by the Pariaman District Court. This is because the issuance of a grant certificate is contrary to Minangkabau customary law because the grant is a conditional grant (*hibah pampeh*). The conditional grant (*hibah papeh*) here has the meaning only as long as the defendants I, II, III, IV and V live, and if the defendants I, II, III, IV and V die, the land is returned to the members of the dt community. The Tianso. From the definition of grants in Article 1666 of the Civil Code and related to the cancellation of the grant deed according to the Judge's Decision case 48/PDT.G/2018/PN.PMN according to the author's analysis they do not match each other because the panel of judges decided the cancellation of the deed of property rights based on the above grant was caused by the panel of judges The judge is guided by Minangkabau customary law, namely the

conditional grant agreement (*hibah papeh*) valid for the life of the child, while according to Article 1666 of the Civil Code that the grant is an agreement with which the grantor in his lifetime freely and irrevocably, submits an object for the needs of the recipient of the grant who received the submission.

The process of high inheritance grants and their registration in court according to the judge's decision, namely;

- a. The process of claiming the cancellation of grants at the Pariaman District Court can be seen from the mechanism of the civil lawsuit procedure applied by the Pariaman Court and interviews at the Pariaman District Court that the grant cancellation lawsuit process which has been certified at the Pariaman District Court begins with the plaintiff filing a lawsuit to the clerk, then the clerk arranges trial schedule, trial process, trial procedure of amicable efforts, reading of the lawsuit, replica of the plaintiff, replica of the plaintiff, evidence, conclusion, assembly deliberation, reading of the decision, If it is granted and has permanent legal force then the parties then go to BPN to ask for the blocking of the a deed of grant that has had a court order.
- b. While the land registration itself is carried out to obtain legal certainty over the land. So it has become an obligation for the holder of the right in question and is obliged to carry out continuously every time there is a transfer of land. This was done in order to invest data relating to the transfer of land rights according to the Basic Agrarian Law (UUPA) and government regulation number 24 of 1997, concerning land registration. to get a land certificate as a strong proof

The theory of legal protection in the process of canceling the grant certificated at the Pariaman District Court and the process of registering the land grant at the BPN as an effort to protect the law by the processes of the parties filing a lawsuit to the court, registering land to the BPN by facilitating the filing of a lawsuit with a civil lawsuit mechanism and As mentioned above, legal protection is all efforts to fulfill rights and provide assistance to provide a sense of security to the parties. Legal protection is given to legal subjects in the form of tools, both preventive and repressive, both oral and written. In other words, it can be said that legal protection is a separate picture of the function of the law itself, which has the concept that the law provides justice, order, certainty, benefit and peace.

The process of registering and blocking land after the Court's Decision through the BPN is a form of legal certainty for parties who feel that their rights have been usurped by other parties. Legal certainty (*rechtszekerheid* legal certainty) is an important principle in legal action (*rechtshandeling*) and law enforcement (*rechtshandhaving*). It is common knowledge that legislation can provide higher legal certainty than customary law, customary law, or jurisprudence law. However, it should also be noted that the legal certainty of statutory regulations is not merely put in a written form (*geschreven*). According to Bagir Manan, to truly guarantee the legal certainty of a statutory regulation, in addition to meeting the formal requirements, it must also meet other requirements, namely: clear in formulation (*unambiguously*); consistent in its formulation both internally and externally; use of appropriate and easy-to-understand language. The good formulation of the law will result in easy acceptance of these regulations by the community and the passage of these regulations by the community and the passage of these regulations in accordance with what is desired by the legislatif.

Legal certainty provides protection to the judiciary from the arbitrary actions of other parties, and this is related to the effort of order in society. The law exists for humans, so that people expect benefits from the implementation or enforcement of the law, lest this happens in the implementation or enforcement of this law, causing unrest in the community. Legal certainty wants the law to be implemented strictly for every concrete event and there should be no deviation in accordance with the slogan *fiat justitia et pereat mundus* which means the law is enforced even though the sky will fall.

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