



Dispute on Use of Nagari Ulayat Land for Plantation Business by PT. Permata Hijau Pasaman in Nagari Kapa, Pasaman Barat District

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Abstract

The dispute over the use of Nagari Kapa Ulayat Land began with the submission of control of Nagari Kapa Ulayat Land to an investor, namely PT. Permata Hijau Pasaman, which was used for an oil palm plantation business. This transfer of control was based on a statement of agreement for the handover of 1.600 hectares of land dated February 6, 1997, which was handed over to the regent as the regional head, as is Article 9 Paragraph 3 of the West Sumatra Regional Regulation Number 6 Of 2008 Concerning Communal Land and its utilization which reads “Utilization of Communal Land for the Benefit of Legal Entities or Individuals can be Carried out based on tenure agreement and customary community agreements”. To guarantee legal certainty, the company registers its Cultivation Rights. This research focuses on three issues, namely, First: How is the mechanism for handling over Nagari Kapa Ulayat Land carried out by Ninik Mamak for plantation utilization by PT. PHP, Second: How is the mechanism for issuing Cultivation Rights by BPN Pasaman Barat originating from Nagari Kapa Ulayat Land, Third: What the causes of disputes over the used of Ulayat Land in Nagari Kapa and the methods of settlement adopted by the parties. This study uses a juridical Sociological research method with an analytical descriptive nature. The sources are obtained from interviews, reports and documents which are then processed. Secondary data comes from relevant laws and regulations, articles, journals and internet sites. The result showed that First, in the process of handing over Nagari Kapa Ulayat Land there was no transparency between Ninik Mamak and Ninik Mamak and the regent with Ninik Mamak, meaning that the handover of ulayat land did not include all of Ninik Mamak Nagari Kapa, namely Ninik Mamak Panghulu Langgam, then in the handover there was no the regent’s good faith in explaining the status of the land after being granted a Cultivation Right. Second, the Cultivation Rights certificate issued by the BPN only mention Nagari Sasak, so there is an administrative legal defect which should include the name of the regency in accordance with the type of rights with Regency/Municipality area units. Third, the way of resolving disputes is Non-Litigation by negotiating and mediating, while Litigation is by suing, to Court with case number 15/PDT.G/2005/PN.LBS and Case Number 24/Pdt.G/2020/PN Psb.

Keywords: *Dispute; Ulayat Land; Plantation Companies; Cultivation Rights*

I. Research Background

The purpose of land rights is to describe the authority over the owner of the right, so that it can be utilized while still paying attention to the nature of the rights. In the utilization of land ownership rights, it can be done in several ways including:

1. Through customary law regulated in government regulations;
2. Determination of the government according to the method and conditions stipulated by government regulations;
3. Legal provisions.

The provisions of the law governing land rights and their utilization are regulated in the UUPA which is the implementation of Article 33 Paragraph (3) of the 1945 Constitution with the nature of unification of law, simplicity and guaranteeing legal certainty for all Indonesian people. UUPA as national agrarian law is based on customary law or law that lives and develops in Indonesian society which does not conflict with national interests.

The rights and use of land by indigenous peoples are also recognized by the constitution. As Article 18B Paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that state recognition of customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which is regulated in law. One of the traditional rights referred to in Article 18B Paragraph (2) of the 1945 Constitution of the Republic of Indonesia is the right of indigenous peoples to ulayat land.

Customary land is very important for indigenous peoples, especially the Minangkabau people as a priceless heirloom. The saying "dijua indak makan bali, digadai indak makan sando" illustrates that customary land cannot be bought and sold or mortgaged carelessly. Although transferable, the transfer must be careful and only temporary and can only be mortgaged under certain conditions. However, growing population growth and a growing need for land often lead to land-related conflicts and disputes.

Customary land disputes are common in almost every major region of West Sumatra. During the Orde Baru Era, the implementation of the UUPA by the government seemed unrestrained and ignored the control, recognition, and protection of indigenous peoples' customary land, even sought to be eliminated. This problem is exacerbated by the lack of public understanding of the rights stipulated in the UUPA.

This situation is exploited by interested persons including companies to take advantage of this situation to take over customary land, facilitated by the State by granting location permits for company plantations. The government grants permits to use customary land for plantations without regard for the rights of indigenous peoples, as happened in Nagari Kapa by PT. Permata Hijau Pasaman, a subsidiary of Wilmar Group.

The dispute over the use of Nagari Kapa Ulayat Land began with the handover of Nagari Kapa Ulayat Land to the investor, namely PT Permata Hijau Pasaman, hereinafter referred to as PT PHP which was used for oil palm plantations. This transfer of control was carried out by the Pucuk Adat Luhak Saparampek Nagari Kapa, namely Dt. Gampo Alam, who claimed to act for and on behalf of and represent the customary land holders according to the Adat Salingka Nagari Kapa based on a statement letter of agreement handing over 1,600 hectares of land dated February 6, 1997, the transfer of which was through The Regional Head is the Regent. In the agreement to hand over the customary land, it turned out that it was not discussed beforehand with the Nagari Kapa community, so that many of the Nagari Kapa people did not know about the handover process.

Ninik Mamak Panghulu Langgam who stated that he had the same rights in controlling ulayat lands was not involved at all in terms of the agreement and handing over of ulayat nagari lands. Meanwhile, Ninik Mamak Ampek in Dalam and Ampek Dilua who had rights to control the land were only asked to put their signatures on the handover letter of ulayat land which had previously been prepared without their knowledge and there was no explanation regarding the status of the land that had changed to become State land, so they assumed that after When the customary land use expires or the HGU expires, the customary land returns to its original form, namely the Nagari Kapa Ulayat Land under the control of the Ninik Mamak of the Nagari Kapa indigenous people.

Referring to several regulations, namely Law Number 5 of 1960 concerning Basic Agrarian Regulations and Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2019 concerning Procedures for Administration of Ulayat Land for Customary Law Community Units, it states that use rights Business is the right to cultivate land that is directly controlled by the State, thus the ulayat land given for Cultivation Rights is relinquished as ulayat land to become State land, and when the HGU period expires it returns to land controlled by the State. Thus the customary land of the customary law community becomes extinct after going through the process of granting HGU to investors.

However, this regulation conflicts with other regulations, including Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration as well as Regional Regulation Number 6 of 2008 concerning Ulayat Land and Its Utilization states that if the agreed timeframe for utilization ulayat land in the framework of investment has ended, then the status of control and ownership of the land returns to its original form meaning it returns to ulayat land controlled by customary law communities.

With regard to Cultivation Rights (HGU), in order to guarantee legal certainty in the land sector and as proof of maintenance, the company, namely PT PHP, then registered the HGU after the handover agreement was litigated by the Regional Government, namely the Regent of Dati II Pasaman which has now been changed to West Pasaman based on Law Number 38 of 2003 which was formed from the division of the Pasaman Regency. The first HGU was issued in 2004 and then revised in 2014 by the National Land Agency (BPN) at the West Pasaman District Land Office.

Furthermore, the HGU certificate issued by the National Land Agency includes the HGU with the area of Nagari Sasak, not Nagari Kapa, while PT PHP uses the Ulayat Land of Nagari Kapa for oil palm plantations. So that this becomes a loophole for the Nagari Kapa indigenous people to claim their customary land and declare the HGU issued by the BPN invalid because the Kapa indigenous people consider that their customary nagari land is not recognized in the HGU certificate. So various efforts were made by the ninik mamak and the Nagari Kapa Indigenous People so that the ulayat nagari land would return to their control, both through litigation and non-litigation. That is why the author is interested in discussing, studying and researching related to **"DISPECT ON THE USE OF NAGARI ULAYAT LAND FOR PLANTATION BUSINESS BY PT PERMATA HIJAU PASAMAN IN NAGARI KAPA, PASAMAN BARAT DISTRICT"**.

II. Research Methods

To answer the problems that have been formulated in the formulation of the problem mentioned above, a method is needed so that the research results to be obtained can be accounted for. Method is a way used to obtain data that can later also be scientifically accounted for.

The research method used here is Sociological Juridical, which is an approach that emphasizes field practice associated with aspects of applicable law or legislation. This research is descriptive-analytical, namely research that describes or describes the object of research which is then analyzed through qualitative juridical analysis.

III. Research Result

The Mechanism for Issuance of HGU by BPN Pasaman Barat Originating from Tanah Ulayat Nagari Kapa

The West Pasaman Government guarantees the implementation of development for the benefit of the community and the public interest. Therefore, various efforts have been made, one of which is the use of customary land with the aim of optimizing the utilization of potential to increase and develop investment which in its implementation prioritizes just and democratic humanitarian principles and improves the welfare of customary law communities while guaranteeing the legal interests of the party who acquires land rights in this case is PT Permata Hijau Pasaman.

In the Decree of the Head of the National Land Agency, it is explained that PT Permata Hijau Pasaman is a legal entity domiciled in Pasaman whose business activities are engaged in plantations established based on the Deed of Limited Liability Company "PT Permata Hijau Pasaman", and has obtained a location permit for the purposes of oil palm plantations on land covering an area of 3,850 ha located in Pasaman District, Pasaman Regency based on the Decree of the Head of the District Land Office Pasaman dated October 20, 1995 Number 402.1144 / BPN-1995, and then obtained a release as a forest area located in the B.Pasaman-B.Kapar group, Pasaman District, Pasaman Regency, West Sumatra Province covering an area of 5,455 ha for oil palm plantation cultivation business.

Land granted location permits and release of part of the forest area which was originally located in Pasaman District, Pasaman Regency. However, based on the Letter of the Head of the Regional Office of the National Land Agency of West Sumatra Province dated May 30, 2014 Number 445/9-13,300/V/2014, it is stated that based on Law Number 38 of 2003, the land requested for Business Use Rights by PT Permata Hijau Pasaman which was originally located in Pasaman Regency because the expansion became located in West Pasaman Regency. And based on field research and cadastral measurement results, the requested land is located in Sasak Ranah Pasisie and Luhak Nan Duo Districts, West Pasaman Regency which based on the Decree of the Head of the National Land Agency dated October 4, 2004 Number 65 / HGU / BPN / 2004 states that it grants Business Use Rights for 30 (Thirty) Years to PT Permata Hijau Pasaman domiciled in Pasaman on State land covering an area of 1,600,72ha, located in Luhak Nan Duo and Sasak Ranah Pasisie Districts, West Pasaman Regency, West Sumatra Province.

PT. Permata Hijau Pasaman has been registered with the Investment Board and Integrated Licensing Services of West Pasaman Regency on May 8, 2014 Number TDP.03.17.1.46.00005, so that it has qualified as a subject of Business Use Rights. On October 4, 2004, the Decree of the Head of the National Land Agency Number 65 / HGU / PBN / 2004 concerning the granting of Business Use Rights on land located in West Pasaman Regency, West Sumatra Province. However, this Right to Use Business cannot be registered due to a lawsuit from the Chairman and Secretary of the Kapa Village Unit Cooperative (KUD) due to default or act of breaking promises made by the company as agreed dated April 22, 1998 between PT Permata Hijau Pasaman with Ninik Mamak Nagari Kapa and KUD Kapa,

through letter Number 096 / KUD / KP. X/2005 dated October 11, 2005 against the President Director and Manager of PT Permata Hijau Pasaman.

The default carried out by PT PHP is in the form of an agreement to provide plasma plantations to plasma participating farmers when the plants have produced or 4 (four) years after planting. The plasma distribution was supposed to be carried out in 2001, but until 2005 it was still not carried out by the company. The lawsuit reached cassation until an agreement was reached between PT Permata Hijau Pasaman and the Kapar Village Unit Cooperative (KUD) in 2007 as stated in the peace deed, in essence the parties were willing to agree to resolve problems arising by peaceful means provided that PT Permata Hijau Pasaman was willing to build a shortage of 344 ha of Kapar KUD plasma plantations whose land would be determined by the Kapar KUD and would be supported fully by PT Permata Hijau Pasaman, and KUD Kapar is willing to withdraw its lawsuit in case Number 15/PDT. G/2005/PN-I.BS jo. Register Number 1025 K/Pdt/2007 which is in the process of Cassation at the Supreme Court of the Republic of Indonesia and states this peace as evidence of the revocation of the case. so that the application area of PT Permata Hijau Pasaman originally covering an area of 1,600,725 ha was returned to an area of 344 ha for the Village Unit Cooperative Plasma (KUD) Kapar. So what can be requested for Business Use Rights is only 1,247 ha.

After cadastral measurement, the land that can be considered for granting Business Use Rights is a total area of 1,247 ha (One Thousand Two Hundred Forty Seven Hectares), located in Nagari Sasak and Kapar, Sasak Ranah Pasise and Luhak Nan Duo Districts, West Pasaman Regency, West Sumatra Province. In the map of land parcels dated March 7, 2014 Map Number 05-03.17.2014 which consists of:

-NIB. 03.17.00.00.00049..... an area of 932 ha;

-NIB. 03.17.00.00.00050..... an area of 315 ha;

Published by the Regional Office of the National Land Agency of West Sumatra Province. However, the certificate with NIB only lists Nagari Sasak does not mention Nagari Kapa as mentioned in the Decree of the Head of the National Land Agency of the Republic of Indonesia Number 135 / HGU / BPN RI / 2014 concerning the Granting of Business Use Rights on behalf of PT Permata Hijau Pasaman, on Land in West Pasaman Regency, West Sumatra Province, so it becomes a polemic.

Muhammad Arif Datuak Majobasa as secretary of KAN Kapa said that the HGU of PT Permata Hijau Pasaman issued Number 54 of 2014 covering an area of 932 ha and Number 55 of 2014 covering an area of 315 ha, was considered invalid because it was located in Nagari Sasak, Sasak Ranah Pasisie District. Thus, there has been an administrative defect in the issuance of the Right to Cultivate as stated in Article 35 of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 21 of 2021 concerning the Handling and Settlement of Land Cases, stating as follows:

- a. Errors in the process/procedure for issuance of land rights, registration of rights and the process of maintaining land registration data;
- b. Errors in the measurement process/procedure;
- c. Errors in the process/procedure for issuing replacement certificates;
- d. Errors in the process/procedure for issuing certificates of entitlement;
- e. Misapplication of laws and regulations;
- f. Error of the subject of rights;
- g. Error object rights;
- h. Error type of rights;
- i. Overlapping land rights;

- j. Overlaps with forest areas;
- k. Misdetermination of land consolidation;
- l. Misaffirmation of land objects of landreform;
- m. Errors in the process of granting permission to transfer rights;
- n. Errors in the process of issuing a cancellation decree;
- o. There is a criminal court decision with permanent legal force that proves the existence of forgery, fraud, embezzlement and/or other criminal acts;
- p. There are documents or data used in the process of issuing certificates that are not products of the agency based on a certificate from the relevant agency;
- q. There are court decisions in which in its legal considerations it is proven that there are facts in the issuance of sanitary law products and / or there are defects in lawmaking in the transfer of rights but in the judgment is not expressly stated.

To ensure legal certainty in the context of resolving land disputes, the government took steps by issuing the Regulation of the Minister of Agrarian State/Head of the National Land Agency Number 9 of 1999 concerning Procedures for Granting and Canceling State Land Rights and Management Rights, which if in the process of issuing the Right to Cultivate there is an administrative legal defect, the Right to Cultivate certificate can be canceled by the National Land Agency in accordance with Article 107 PMA / KBPN Number 9 of 1999 above, namely:

- a. Procedure errors
- b. Misapplication of laws and regulations;
- c. Error of the subject of rights;
- d. Error object rights;
- e. Error type of rights;
- f. Extensive miscalculation;
- g. There are overlapping land rights;
- h. Juridical data or physical data are incorrect; or
- i. Other errors of an administrative nature.¹

Alex Suvrianto as the Coordinator of the Substance Group for the Maintenance of Land, Space and PPAT Development at the Office of the National Archery Agency in West Pasaman Explained regarding the HGU certificate which only mentions Nagari Sasak, that the HGU certificate should not mention Nagari but must be the name of the Regency as in Article 169 Paragraph (2) of the Regulation of the Minister of Agrarian State/Head of the National Land Agency Number 3 of 1997 which reads " *The land book of Management Rights and Business Use Rights is arranged according to the type of rights with the Regency / Municipality area unit*". However, because the use of customary land in HGU is in two Nagari which predominantly come from the Land of Ulayat Sasak, it is only mentioned Nagari Sasak. This does not mean that the HGU of PT Permata Hijau Pasaman in Tanah Ulayat Nagari Kapa does not exist, because in the Decree to the National Land Agency Number 135 / HGU / BPN RI / 2014 states that it grants PT Permata Hijau Pasaman the Right to Use Business for 20 (twenty) years from the date of the decree, on State land covering an area of 1,247 ha (one thousand two hundred forty seven hectares) located in Nagari Sasak and Kapar, Sasak Ranah Pasisia and Luhak Nan Duo Districts, West Pasaman Regency.²

¹ Regulation Minister of Agrarian State/Head of the National Land Agency Number 9 of 1999 concerning Procedures for Granting and Canceling State Land Rights and Management Rights.

² Interview with the Coordinator of the Substance Group for the Maintenance of Land Rights, Space and PPAT Development at the National Archery Agency Office in West Pasaman with Mr. Alex Suvrianto, on November 9, 2022, at 09.30 WIB.

Dermawan Septiyadi as Head of the Dispute Control and Handling Section at the National Archery Agency Office in West Pasaman explained the mechanism for issuing HGU as follows:

1. There is a declaration from ninik mamak that they have a piece of customary land and need investors in its use in order to improve the development and economy of customary law communities;
2. To realize this, the Regent as the Regional Head issues principle permits/land reserves based on customary land transfer agreements;
3. The company entered into the Regional Government and stated that it was willing as an investor in the utilization of the customary land;
4. The government issues location permits
5. The indemnity company "Siliah Jariah" cannot exceed the reserve permit.
6. Application for Right to Use by the Company to the National Land Agency.³

Based on the author's observations, in 1992 the Governor's Decree Number JK.593.41-652-1992 concerning the Granting of Location Permits for the benefit of PT Permata Hijau Pasaman Oil Palm Plantation Business located in Pasaman District and Lembah Melintang District contained:

1. The application letter for a Location Permit of 12,000 Ha is located in Maligi Village, Rantau Panjang Village, Forest Banana Village, Sialang, Kapar and Sikilang
2. The recommendation letter dated July 26, 1992 stated that it had obtained in-principle approval for land reservation for oil palm plantation business in West Pasaman Regency dated July 20, 1992 Number 525.26/1477/Prod-92 and Letter of principle approval for plantation business covering an area of 9,000 ha on a land reserve of 12,000 ha.

If referring to the chronology of the customary land handover agreement by ninik mamak that occurred in 1997, then the mechanism for the issuance of HGU submitted by Dermawan Septiyadi was not as appropriate, because before the deklair and the handover of customary land by ninik mamak to the regent as the Regional Head, an application for a location permit had been submitted for the benefit of PT Permata Hijau Pasaman's Oil Palm Plantation Business, one of which was in Nagari Kapa. Of course, this has been planned by the company with the Regional Head before the deklair or handover by ninik mamak Nagari Kapa.

This discussion uses the Theory of Justice, because in the use of Customary Land there are 2 (two) Nagari, while the certificate only lists 1 (one) Nagari. So that there is no justice for the Nagari Kapa customary law community for the recognition of Ulayat Land.

Dispute Resolution of Customary Land Use of Nagari in Kapa

In terms of dispute resolution of the use of Ulayat Nagari Land in Kapa, the parties take 2 (two) ways, namely through Non-Litigation (outside the Court) and Litigation (Court).

1. In a dispute related to default in 2004 by PT Permata Hijau Pasaman where the company has not fulfilled what was agreed in the customary land handover agreement in 1997, the solution sought was negotiation by writing to the company to fulfill its achievements in accordance with what was agreed, but this was not heeded by the company. Then Ninik Mamak, the Ulayat Ruler through the Nagari Customary Institution (LAN) Kapa, wrote to the National Land Agency of West Pasaman Regency and the Regent of West Pasaman not to issue PT Permata Hijau Pasaman's HGU on Nagari Kapa Ulayat Land with the following propositions:

³ Interview with the Head of the Dispute Control and Handling Section at the National Archery Agency Office in West Pasaman, Mr. Dermawan Septiyadi, on November 9, 2022, at 14.00 WIB.

- a. The company PT PHP which cultivates the Nagari Kapa Ulayat Land based on the letter of handover of ninik mamak to the Regional Government of West Pasaman Regency dated February 6, 1997 which at that time which had entered its 7th (seventh) year there had never been an agreement on which is the location of the core and which is the location of plasma with Ninik Mamak Nagari Kapa;
- b. Based on the latest plotting, the area of Nagari Kapa customary land that has been planted with oil palm is $\pm 1,394.76$ ha and the company (PT PHP) has never shown good intentions to divide 50% core, 50% plasma according to the surrender letter dated February 6;
- c. that at that time the company (PT PHP) acted unilaterally trying to issue Business Use Rights (HGU) on Nagari Kapa Customary Land covering an area of $\pm 1,041.13$ ha from the cultivated area $\pm 1,394.76$ ha.
- d. That based on the foregoing, Ninik Mamak Nagari Kapa prohibits / sues with the provision that BPN does not issue HGU PT PHP on Nagari Kapa Ulayat Land until there is a concrete settlement in accordance with the land surrender letter dated February 6, 1997 mentioned above.⁴

Dispute resolution through negotiations did not produce results, so the Nagari Kapa Indigenous Peoples through the Kapa Village Unit Cooperative (KUD) sued PT Permata Hijau Pasaman for defaulting on an agreement dated April 22, 1998 between PT Permata Hijau Pasaman and Ninik Mamak Kenagarian Kapa and Kapa Village Unit Cooperative (KUD). This lawsuit was registered at the Lubuk Sikaping District Court with Case Number 15/PDT. G/2005/PN-LBS.

The essence of the lawsuit is:

- a. Request that PT PHP fulfill its achievements as contained in the agreement dated March 15, 1997 Number 020/PHP-DIR/PK-III/97 and Number 03/KUD-KAPAR/III/97 and mutual agreement dated April 22, 1998.
- b. Request distribution and delivery of oil palm plantations that have been produced by the Defendants to the plaintiffs with a system of 50% for nucleus and 50% for plasma maturing in 2001 or after 4 (four) years after planting.
- c. Request the defendants to divide and/or hand over the oil palm plantations that have produced to the plaintiffs as plasma farmer participants from plasma plantations covering an area of 353.63 ha plus some intu plantations covering an area of 343 ha with a total of 696.63 ha to meet compensation for 50% distribution for nucleus plantations and 50% for plasma plantations from the total oil palm plantations producing 1,394.76 ha and if the defendants disobey with the help of the police or state equipment Other.

The lawsuit was granted by the Lubuk Sikaping District Court on March 23, 2006. Against the Verdict, the company, namely the President Director and Manager of PT. Permata Hijau Pasaman filed an Appeal with the Padang High Court Decision Number 119/PDT/2006/PT. PDG dated January 8, 2007 which stated:

- a. Accept the appeal of the defendant's original comparator attorney;

⁴ Attachment Lawsuit Publishing HGU by PT PHP towards Soil Ulayat Nagari Kapa Customs to Head BPN and Regent Pasaman West.

- b. Upholding the Decision of the Negerri Lubuk Sikaping Court dated March 23, 2006 Number 15/Pdt.G/2005/PN. The LBS appealed.

Then against the Padang High Court Decision Number 119 / PDT / 2006 / PT. PDG dated January 8, 2007, President Director and Manager of PT. Permata Hijau Pasaman on February 16, 2007 filed a cassation application as per the Minutes of Statement of Cassation Application Number 03/II/Pdt K/2007/PN/LBS registered at the Supreme Court of the Republic of Indonesia with reg. Number 1025K/Pdt/2007.

During the cassation process, the parties also continue to seek dispute resolution through negotiations outside the court. Until December 2007 an agreement was reached between PT. Permata Hijau Pasaman with Kapa Village Unit Cooperative (KUD). The agreement was stated in the Deed of Peace dated December 6, 2007. The essence of the peace agreement is as follows:

- a. The Parties are willing and agree to resolve problems arising by peaceful means with the provisions of PT. Permata Hijau Pasaman is willing to build a shortage of KUD Kapa plasma plantations covering an area of 344 ha;
- b. The land of the Plasma Plantation will be determined by KUD Kapa and will be fully supported by PT. Pasaman Green Gem;
- c. KUD Kapa is willing to withdraw its lawsuit in Case Number 15/Pdt.G/2005/PN. LBS jo. Register Number 1025 K / Pdt / 2007 which is in the process of Cassation in the Supreme Court of the Republic of Indonesia and states this peace as evidence of the revocation of the case.

The withdrawal of his cassation application was determined by the Supreme Court of the Republic of Indonesia with Reg. Determination No. 1025 K / Pdt / 2007 dated April 13, 2010.

As a result of the Default Lawsuit against PT Permata Hijau Pasaman, land that has been requested for Business Use Rights by the Decree of the Head of the National Land Agency Number 65 / HGU / BPN / 2004 cannot be registered until there is a peace agreement in 2007. And the area of land that can apply for Business Use Rights which was originally 1,600,725 ha to 1,247 ha.

2. Dispute Resolution methods related to the issuance of HGU are sought through non-litigation by inviting the Company by KAN to explain the error of the HGU certificate, but this is not responded by the company. Then a consensus deliberation was held between ninik mamak facilitated by KAN with the conclusion of the agreement obtained as follows:
 - a. The Nagari Kapa Traditional Density wrote to PT Permata Hijau Pasaman which manages Nagari Kapa Ulayat Land, as the core plantation. To question how its status relates to Business Use Rights (HGU);
 - b. The Nagari Kapa Traditional Density invites all Ninik Mamak Stakeholders (members of KAN Kapa), community leaders, administrators of the KUD group, the Nagari Government, Youth and Grandsons of the Kegigi.
 - c. To make and sign a Statement of Agreement to be submitted to the company and ask the company for transparency and provide a photocopy of PT PHP's HGU Certificate on core land that uses Nagari Kapa Ulayat Land;

- d. Then the Nagari Kapa Customary Density conveyed to the Regional Government of West Pasaman Regency regarding the status of Ulayat Land managed by PT PHP which was used as a core plantation.⁵

Efforts to resolve disputes outside the court are still carried out through mediation assisted by a third party as an intermediary party, namely the West Pasaman Regional People's Representative Council. The mediation was attended by several parties, including: Commission I and II of the West Pasaman DPRD; Ninik Mamak Panghulu Pucuak Gampo Alam; Ninik Mamak Panghulu Langgam; National Land Agency (BPN) West Pasaman; PT. Pasaman Green Gem; and Ninik Mamak Daulat Parit Batu, Head of LKAM West Pasaman. But this dispute resolution process remained fruitless, the parties remained on their own arguments.

3. The Dispute Resolution Method related to the handover of Nagari Kapa Customary Land that is unknown to Ninik Mamak Panghulu Langgam is carried out through the Litigation channel with Case Number 24/Pdr.G/2020/PN Psb, namely a Lawsuit for Unlawful Acts committed by a Customary Pucuak entitled Gampo Alam who in the surrender of Ulayat Nagari Land claims and acts for and on behalf of and represents the Customary Land Holders according to the Salingka Nagari Kapa Custom. Panghulu pucuak is considered to have no right in the handover of Nagari Kapa Customary Land. It only functions in terms of mangubalo Adat Salingka Nagari Kapa. In addition to Panghulu Pucuak, Ninik Mamak Panghulu Langgam also sued several other related parties, including:
 - a. The Head Regent of Tk II Pasaman who has now changed to the Head Regent of West Pasaman is the second party in the process of handing over the Land of Ulayat Nagari Kapa;
 - b. PT. Permata Hijau Pasaman, has mastered without rights to Nagari Kapa Customary Land;
 - c. Governor of Level I Regional Head of West Sumatra Province, who oversees Regencies / Municipalities in West Sumatra Province;
 - d. The office of the Pasaman National Land Agency which is now changed to the office of the West Pasaman National Land Agency, as the party that has issued without rights the Right to Cultivate Decree No.65/HGU/BPN/2004;

For this lawsuit the court ruled that the plaintiffs' claim was not accepted, because one of the defendants was a state administrative agency or official. Based on the Jurisprudence of the Supreme Court of the Republic of Indonesia No.620 / K / Pdt / 1999 dated December 29, 1999 provides a legal rule, namely "*if the person being sued is a State Administrative Agency or Officer and the object of the lawsuit concerns actions that are the authority of the Official, then the authority to try the case is the State Administrative Court, not the authority of the District Court*".⁶

The theory used in this discussion is the theory of living law. Customary law communities first seek dispute resolution by non-litigation, namely through LAN (Lembaga Adat Nagari) and KAN (Kerapatan Adat Nagari) which are appointed as customary institutions. This is a law that lives and develops in communities where every dispute first seeks dispute resolution through Customary Institutions.

⁵ Interview with KAN secretary Kapa Muhammad Arif Datuak Majobasa, on October 20, 2022, at 09.00 WIB.

⁶ Attachment Verdict Court with Number Case 24/Rev. G/2020/PN Psb.

Conclusion

1. The mechanism for surrendering ulayat nagari land for a plantation business began with the handing over of ulayat Nagari Kapa land by Ninik Mamak through the Regent of Pasaman and it was the Regent who handed over to the company to be turned into an oil palm plantation business based on a statement letter of agreement handing over 1,600 Ha of land area dated 6 February 1997, as in Article 9 Paragraph (3) of West Sumatra Regional Regulation Number 6 of 2008 concerning Ulayat Land and Its Utilization which reads "Utilization of Ulayat Land for the Interests of Legal Entities or Individuals can be carried out based on a Letter of Agreement on the Concession and Management of communal land between the owner/holder/entrepreneur of communal land upon the agreement of the indigenous peoples" prior to the handover of the utilization of the ulayat nagari land to PT PHP, the Ninik Mamak rulers of the Ulayat Nagari Kapa Land had agreed to create an oil palm plantation on their ulayat land, this did not obtain a principle permit from the Regent on the grounds that the Nagari Kapa Ulayat Land reserved for paddy fields with tongar stem irrigation. However, the irrigation plan was not implemented. then Nagari Kapa's Ulayat Land can be opened up for oil palm plantations with the condition that the ninik mamak who owns the ulayat land must surrender the ulayat land to the Pasaman Regional Government and it is the local government that will look for investors, namely PT. Permata Hijau Pasaman with an agreement to share 50% of the land for the nucleus plantation and 50% for the plasma plantation.
2. Based on the Decree of the Head of the National Land Agency dated October 4, 2004 Number 65/HGU/BPN/2004, it is stated that PT Permata Hijau Pasaman, which is domiciled in Pasaman, shall grant a Cultivation Right for 30 (Thirty) Years to PT Permata Hijau Pasaman, which is domiciled in Pasaman, on a State land area of 1,600.72ha, located in Luhak Nan Duo and Sasak Ranah Pasisie Districts, West Pasaman Regency, West Sumatra Province. However, this Cultivation Right could not be registered due to a lawsuit from the Head and Secretary of the Kapar Village Cooperative Unit (KUD) until a peace agreement was reached in 2007. After a cadastral measurement, the land that could be considered for granting Cultivation Rights was a total of 1,247 ha (1,247 ha). One Thousand Two Hundred Forty Seven Hectares), located in Nagari Sasak and Kapar, Sasak Ranah Pasisie and Luhak Nan Duo Districts, West Pasaman Regency, West Sumatra Province with Number 135/HGU/BPN RI/2014. However, the HGU certificate only includes Nagari Sasak did not mention Nagari Kapa.
3. The method for resolving disputes over the utilization of Nagari Kapa's customary land is pursued through 2 (two) channels, namely Non-Litigation and Litigation. First, in the Dispute related to Default in 2004 by PT Permata Hijau Pasaman it had not fulfilled what was promised in the 1997 customary land handover agreement, the method of settlement sought was Negotiation by writing to the company to fulfill its achievements according to what was agreed, but this did not respected by the company. Then the Litigation route was taken, namely a lawsuit in court whose decision granted Ninik Mamak Nagari Kapa's lawsuit and reached the stage of the cassation process until an agreement was reached in the form of a peace deed. Second, disputes related to the issuance of HGU are sought through non-litigation by inviting the Company by KAN to explain the error regarding the HGU certificate, but this was not responded to by the company, but it was still attempted through mediation with a third party DPRD West Pasaman. Third, the dispute over the handover of Nagari Kapa Ulayat Land which Ninik Mamak Panghulu Langgam did not know was carried out through litigation, namely the Unlawful Act Lawsuit against Pucuaq Adat, then the Regent and West Pasaman BPN, this lawsuit was rejected because one of the defendants was a State Administrative Officer as Jurisprudence of the Supreme Court of the Republic of Indonesia No.620/K/Pdt/1999 dated 29 December 1999.

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