



Loan (Salang Pinjam) Agreement with Profit Sharing of Agricultural Land in Toboh Gadang Village, Padang Pariaman Regency

Diana Suryani; Kurnia Warman; Jean Elvardi

Faculty of Law, Andalas University, Padang, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v6i3.899>

Abstract

The majority of the Minangkabau people still live in their hometowns in West Sumatra Province and live in a rural atmosphere by having a main livelihood in agriculture. Loan agreement with profit sharing is an agreement that occurs in the Minangkabau customary community whose object is inheritance. This agreement has been carried out for a long time. In fact, it has become a habit until now. This agreement is carried out with the aim of meeting financial needs. The research problems of this thesis include: 1) How is the process of making and implementing loan agreements with profit sharing of agricultural land in Toboh Gadang Village, Padang Pariaman Regency, 2) How is the process of redemption or completion of loan agreements with profit sharing of agricultural land in Toboh Gadang Village, Padang Pariaman Regency, 3) How is the validity of the loan agreement based on the Agrarian Law. This research was conducted by using empirical juridical research method. The results of the research showed that the form of a loan agreement with profit sharing is made by the parties in the form of a private agreement letter. The process of completing the loan (*salang pinjam*) agreement is carried out if the gold has been returned in full by the owner of the land/ rice field to the party who borrows as well as works on the land/ rice field. At that time, the land/ rice field will be handed over by the cultivator to the land owner. If the cultivator does not want to return the loan yet, the land/ rice field is still processed/ cultivated by the cultivator (party who lends) while still providing benefits in the form of profit sharing for each harvest to the owner of the land/ rice field. Furthermore, the validity of this loan agreement is valid according to Agrarian Law, Customary Law, and the prevailing laws and regulations in Indonesia governing land affairs.

Keywords: Agreement; Land; Profit Sharing

Introduction

Land has a very broad meaning because it does not only contain physical aspects but also social, economic, cultural, political, legal, production and defense and security aspects.¹ One of the things that must be achieved is the conformity with the objectives of agrarian law, i.e. to achieve the greatest

¹ Zhu, Jieming, and Hendricus Andy Simarmata. "Formal land rights versus informal land rights: Governance for sustainable urbanization in the Jakarta metropolitan region, Indonesia." *Land Use Policy* 43 (2015): 63-73.

prosperity of the people to reach a just and prosperous society based on Pancasila and the 1945 Constitution (Article 33 paragraph 3).

The use of agricultural land is regulated by the branch of agrarian law.² In Latin the word agrarian comes from the word *ager* and *agrarius*.³ The word *ager* means land or plot of land while the word *agrarius* means cultivation, rice fields, agriculture. The definition of agrarian in Article 1 paragraph (2) covers the entire earth, water and space, including natural resources contained in it which are within the territory of the Republic of Indonesia as the gift of God Almighty. It is the earth, water and space of the Indonesian nation and is a national wealth.

Regarding the conception of customary law as the main source in the development of national land law, there are principles of customary law used in national land law. It covers the religious principle (Article 1 of the Basic Agrarian Law), national principle (Articles 1, 2, and 9 of the Basic Agrarian Law), the principle of democracy (Article 9 of the Basic Agrarian Law), social principles, equity and social justice (Articles 6, 7, 10, 11 and 13), principles of planned land use and maintenance (Articles 14 and 15), and principles of horizontal separation.⁴

One of the unique ethnic groups in this archipelago is the Minangkabau ethnic group. Because of their uniqueness, they have been puzzles for a long time for outsiders to become research material, especially for anthropological and customary sociologists. It is caused by a paradoxical or conflicting system and social life. For example, Minangkabau people are very obedient to embrace patrilineal Islam but in social life they adhere to and are more obedient to practice the matrilineal system. They really like to wander but they still maintain their ethnic identity which is rooted in their hometown or village.

The Minangkabau ethnic community originated from an area that belongs to the West Sumatra Province. They live in a legal alliance called village (*nagari*).⁵ Village (*nagari*) is a legal alliance where genealogical factors and latent factors have a meaningful place. Thus, the village can be called a genealogical-territorial legal alliance (*genealogische-territoriale rechtsgemeenschap*).⁶

The majority of the Minangkabau people still live in their hometowns in the West Sumatra Province and live in a rural atmosphere with a main livelihood in agriculture. As farmers, their livelihood is very dependent on nature, especially the land where they grow plants that are the source of their livelihood. Their dependence on land, respect for ancestors who have inherited land as their source of life, and the nature of a communal society, create a living relationship between members of the Minangkabau indigenous community, which they also have a close connection with land as a legal relationship.

The limited land causes land to have high economic value and control of land becomes a symbol of prosperity and wealth which is a living capital to be inherited to future generations. In addition, the land has religious magical value because it is one of the elements of the engagement and relationship of the heirs with their ancestors.

In conducting transactions with land objects, the Minangkabau people are subject to their customary law. If they want to pawn the land from inheritance, the pawner must get approval from all the

² Bakker, Laurens, and Sandra Moniaga. "The space between: Land claims and the law in Indonesia." *Asian Journal of Social Science* 38.2 (2010): 187-203.

³ Lucas, Anton, and Carol Warren. "The state, the people, and their mediators: the struggle over agrarian law reform in post-New Order Indonesia." *Indonesia* 76 (2003): 87-126.

⁴ Lee Peluso, Nancy, Suraya Afiff, and Noer Fauzi Rachman. "Claiming the grounds for reform: agrarian and environmental movements in Indonesia." *Journal of Agrarian Change* 8.2-3 (2008): 377-407.

⁵ Franzia, Elda, Yasraf Amir Piliang, and Acep Iwan Saidi. "Rumah Gadang as a symbolic representation of minangkabau ethnic identity." *International Journal of Social Science and Humanity* 5.1 (2015): 44.

⁶ Bachtiar, Harsja W. "Negeri Taram: a Minangkabau village community." *Villages in Indonesia* (1967): 348-385.

people and *mamak kepala waris* (head of the heirs). Meanwhile, if the object of pawning is a livelihood, the owner can directly pawn it.

Considering that generally the lands in West Sumatra are high inheritance owned collectively by all members of the people who basically cannot be sold, pawn transactions become the main alternative to obtain money in meeting urgent needs. As for money owners, mortgage transactions are more profitable than land leases. Moreover, mortgage transactions also become a way to expand ownership of agricultural land.

The profit-sharing agreement has been regulated by Law No. 2 of 1960, in Article 1 letter c which states that:

“The profit sharing agreement is an agreement with any name that is held between the owner on one party and a person or legal entity on the other party which is referred to as “cultivator” which is based on the cultivation agreement permitted by the land owner to carry out agricultural business above the land with profit sharing between the two parties”.

In the Civil Code, the term loan agreement is known as the Borrow and Use Agreement. This Borrow and Use Agreement is an agreement stipulated in the Law, i.e. in Articles 1740 to 1753 of the Civil Code. Article 1740 of the Civil Code which states that:

“Borrow and Use is an agreement whereby one party gives an item to another party for free use, provided that the recipient of this item, after using it or after a certain time has passed, will return it.”

In the borrow and use agreement system, the borrower has the obligation to maintain and maintain the loan object as best as possible. Borrowers cannot use borrowed objects for other purposes that are not in line with the initial loan agreement. The use of borrowed objects that are not in accordance with the requirements or longer than the agreed time can make the borrower responsible for the damage or destruction of the item even if it was done accidentally.

In the current era, it is still used by the Minangkabau people in general and specifically in Toboh Gadang Village, Padang Pariaman Regency, which carries out loan agreements with profit sharing of agricultural land with an unspecified period of time. Thus, in fact, it is more beneficial for the cultivator, not the land owner. Law No. 2 of 1960 in Article 4 paragraph (1) states that a profit-sharing agreement is held for the time stated in the agreement letter in Article 3, provided that the time for rice fields is at least 3 (three) years and for dry land at least lack of 5 (five) years. The loan agreement that they have made is a profit-sharing agreement; therefore, between the title of the letter and the contents of the agreement is clear. In this case, the object loan agreement with profit sharing is the land/ yard obtained from the High Heritage Treasure in one *paruik* or one lineage from the *mamak kepala waris*. The definition of a profit sharing agreement is a form of agreement between a person entitled to an agricultural land and another person called a cultivator, based on an agreement in which the cultivator is permitted to cultivate the land concerned by imposing a profit sharing between the cultivator of the fields and those entitled to the land according mutually agreed balance. The agreement was only made privately. So, if in the future a problem occurs, it can only be resolved by custom because it does not have authentic evidence through a notary.

Based on the background description above, some of the following problem formulations will be discussed: 1) How is the process of making and implementing loan agreements with profit sharing of agricultural land in Toboh Gadang Village, Padang Pariaman Regency, 2) How is the process of redemption or completion of loan agreements with profit sharing of agricultural land in Toboh Gadang

Village, Padang Pariaman Regency, 3) How is the validity of the loan agreement based on the Agrarian Law.

Research Method

This applies an empirical juridical approach.⁷ The empirical juridical approach is a method/procedure used to solve research problems by examining secondary data first to then proceed with conducting research on the primary data in the field.⁸ It means that the empirical juridical approach method aims to review the relevant laws and regulations and relate them to the reality.⁹

Results and Discussion

1. The Process of Making and Implementing a Loan Agreement with Profit Sharing of Agricultural Land in Toboh Gadang Village, Padang Pariaman Regency

The loan agreement at Toboh Gadang Village is the most widely used method for cultivating agricultural land with profit sharing from the harvest. This is because the owner of the farm does not have the cost to process the land. On the contrary, the cultivator has sufficient costs but does not have land/agricultural land to be cultivated.

There are a number of things done by those who will make the loan agreement obtained from the respondents who have been interviewed as the first party and the second party as follows:

a. Discussion

Heritage land in Minangkabau is shared land owned by all members of the clan who are joint heirs of inheritance whose ownership rights are not shared. Each heir has only the right to use it (*ganggam nan bauntuak*) while its possession is in the *mamak kepala waris* (head of the inheritance) as the head of the clan.

At present, in terms of family livelihood, the obligation to provide for the family and provide proper education for children is the responsibility of a father. So, every Minangkabau man is always advised that he should have adequate work for the provision of his domestic life before marriage, such as the statement of traditional saying "*lakek dulu singguluang barulah cari baban*" and the parents try to find a mate for their daughter a young man who has a job.

The above situation is different from the past, where the obligation of *ninik mamak* to the niece was very large because the livelihood of a family was very dependent on agricultural products from the inheritance cultivated by his mother and the wisdom of *ninik mamak*. At that time, the position of father for his child in the family was very weak. The position of a father as *urang sumando* in the wife's family is considered/ likened to a migrant "like ash on a furnace/ *bagaikan abu di ateh tungku*". So, it is not surprising that the older generation of generation 45 and above, from both men and women, generally marry more than one wife because divorce between husband and wife is very easy to occur and children are the responsibility of mothers and their people.

⁷ Calleros, Charles. *Legal method and writing*. Wolters Kluwer Law & Business, 2014.

⁸ Seale, Clive, et al., eds. *Qualitative research practice*. Sage, 2004.

⁹ Cane, Peter, and Herbert Kritzer, eds. *The Oxford handbook of empirical legal research*. OUP Oxford, 2010.

However, at present the function of inheritance as a source of family livelihood has been greatly reduced so that the role and responsibility of the *ninik mamak* towards the niece also has been reduced as well. However, in terms of power over inheritance, the role of *ninik mamak* as the head of inheritance who is the leader of a person who controls inheritance is very important, which is without the role of *ninik mamak*, the act of transferring rights to land such as selling or pawning and loans (*salang pinjam*) is illegal.

Each heir basically has only the right to use (*ganggam bauntuak*) so that if the heir wants to pawn the inheritance which is his/ her right, it must also be based on the agreement of all the other heirs and approved by the head of the heir.

Ninik mamak, especially the headman or the head of inheritance, are in principle not allowed to sell inheritance. However, based on the agreement of all members of the people, the above actions can be carried out. Thus, on the basis of unanimous consensus, any action on land can be carried out.

A sell-off transaction will cause a relationship between a people and the inheritance that they inherited from generation to generation forever in the relationship of law and religious magical relations. So, in carrying out the above actions, in addition to the legal aspects, they also have psychological aspects.

According to the Minangkabau indigenous people, “An act that is wrong with inheritance is believed to bring harm to these people because of “sworn in spirit”. This is because in fact in the right to inheritance there is an implicit obligation to preserve it and inherit it for the next generation. So, the plan to sell the inheritance and is very difficult to get agreement from all members of the community. This is why it is very rare to find ownership of land rights obtained from sale transactions at Toboh Gadang Village.

In the case of land pawn transactions, the role of *ninik mamak* is also very important. *Ninik mamak* or the headman or the head of the heirs is allowed to pawn the inheritance as long as it fulfills certain conditions, especially the agreement of the clan. However, since—in the land pawn transaction—the party that pawns the heirs can redeem it, the land pawn process is easier. Although sometimes there are members of the people who disagree, land pawn transactions can take place. In the pawn agreement also included a clause which shows that there is an agreement of all heirs and head of the heirs.

The clause is intended to guarantee legal protection for the holders if there is one group of heirs who oppose the loan agreement. So, if the dispute between its owners occurs, the holder will not be harmed because the total loan amount will be returned in full.

Next, the understanding of this annual sale transaction is explained by Soerjono Soekanto as follows:

“Annual selling is a legal behavior that contains the handing over of the right to a certain piece of land to another legal subject, by accepting a certain amount of money provided that after a certain period of time, the land will return automatically without going through certain legal behavior (Soerjono Soekanto).”

In this case, there is a temporary transfer of land rights. Both selling pawn and selling yearly are repayment or payment of debt by giving up land for a while. According to Iman Sudiyat, the difference is:

“... in a pawn, which is filled with the produce of the land is “interest” from the sale price of the pawn while on the annual sale, which is repaid with the yield of the land is the annual selling price itself.”

b. Form of Agreement

The form of the agreement made by the parties in the loan agreement is a written agreement. Written agreements have been a long-standing choice for Minangkabau people who live in Toboh Gadang Village in implementing loan agreements. By using written evidence, this loan agreement will be stronger and easier in proof if a dispute occurs.

The parties usually write the loan agreement on stamped paper (seal paper). According to respondents, the agreement made on seal paper (stamped paper) will be stronger than the agreement written on non-stamped paper. After making the letter of loan agreement, the agreement made has fulfilled the element of clarity. The point is the validity of the agreement of the letter can be easily known. It is because in the loan agreement we can find out the agreement of the heirs, how much the loan is, the location of the object, and the witnesses.

In making a loan agreement, the parties generally choose the private deed form because usually between the giver and the recipient in the case of a loan agreement there are still bonds and family ties. So, basically between them there are strong bonds and mutual trust and are based on the nature of help.

According to respondents that have been interviewed, based on their knowledge, there was no one in Toboh Gadang Village who made a loan agreement before a Notary because the agreements made on seal paper for them were strong evidence.

Thus, the parties choose the form of private mail because:

- 1) There is strong mutual trust;
- 2) It is based on the nature of help.

The above is also explained by Mr. Yasman as guardian of Toboh Gadang Village. During his tenure as guardian of the village, the community generally made a loan agreement based on an agreement between the two parties which was made in the form of a stamped letter and signed by each party approved by their respective heirs, known by the head of the clan, guardian of the *korong*, and the guardian of the village, known as the loan agreement. This is only known by the guardian of the *korong*, who according to them is strong enough to be used as evidence that they made an agreement. The agreement letters they made were reported and filed in the guardian village office and some were not reported so it was unclear to know how many people there were in Toboh Gadang Village who carried out the loan agreement.

Furthermore, he said that there is no community in Toboh Gadang Village which made the loan agreement was in the form of a Notary deed. That is because the community may be unfamiliar with the function of the notary and possibly the community with the cost of the notary deed. This was conveyed again by him that the agreement made by the community had a strong power that was known by the guardian village and there were no costs incurred by them.

c. Loan Agreement Object

Generally, the lands in Toboh Gadang Village are heritage land, both high heritage and low heritage. These inheritance lands are owned by each of the people collectively which they inherit from their ancestors and every heir master it based on the right to use it (*ganggan bauntuak*).

Land originating from livelihoods or assets acquired through loans (*salang pinjam*) remains under the control of the original owners. So, if it will be pledged, it must be offered to the landowners. If they are not willing to redeem it, then they can be entrusted to others with the permission of the head of the heirs and all members of the landowners.

If the land included in the high heritage will be pledged, it must be based on the agreement of all heirs. If it is communal land, it must be based on the agreement of all members of the tribe. With the approval of a part of the heirs and the head of the heirs, the terms of the loan agreement or pawn are sufficient.

If a high inheritance is to be sold, it must be approved by the heirs and the head of the heirs as evidenced by the *ranji* or lineage of all members of the clan. However, if there are heirs who do not agree to the decision, the sale of inheritance cannot be carried out. Thus, high inheritance assets cannot be sold because it is not possible to obtain the approval of all members of the community including using the *sando agung* method. According to the customary leaders, "if you want to buy a high inheritance from a people, the buyer must enter into the possession of the traditional inheritance through traditional ceremonies; for example, he/ she became the niece of the members of the people. For land originating from low inheritance, if it is to be pledged, it must also obtain approval from all heirs and the head of the heirs even though the agreement of a part of the heirs and the head of the heirs is sufficiently qualified.

If low inheritance land will be sold, the agreement of all heirs and inheritance chiefs must also be fulfilled. However, low inheritance in general can be sold because the land comes from parental livelihoods and gifts from *mamak* whose origins are still clear.

Land originating from livelihoods belongs to individuals. So, if it will be pledged or wants to be sold, it does not require the approval of others.

d. Loan Agreement Time

One of the reasons why people want to receive a loan (*salang pinjam*) is the desire to make a profit by cultivating and obtaining the benefits of land tenure from the loan agreement. By accepting land such as rice fields, lenders or cultivators have certainly benefited from cultivating the fields that were pledged by their owners. In addition, if they want their money back, the cultivator can pass it to a third party.

To ensure the benefits they will get, cultivators of the fields can utilize the land/ rice field so that the landowner can return the loan to the cultivator because the loan agreement does not explain how long the loan is returned. Loans that are often carried out in this loan agreement are in the form of gold and returned in the form of the amount of gold borrowed. So, the cultivator can use the land during the loan period with an agreement that there is fee/ wages or profit sharing that is issued every time the rice fields are harvested. For example, the cultivator cultivates as many as 2 (two) fields of rice fields, so, every time they harvest the rice field, they take out 1/5 part of the land for the owner.

From the table, it is known that the loan agreement made by the community in Toboh Gadang Village is a loan agreement in the form of pure gold goods with profit sharing from their rice fields (inheritance) that have been agreed by both parties. In general, the loan agreement does not contain the term expiration of the agreement.

e. Proses Loan agreement

In Toboh Gadang Village, land ownership is generally collective ownership because the land is generally part of inheritance. Based on this, the loan agreement process usually involves two stages consisting of the internal process stage and the external process stage.

1) Internal Process

At this stage, the party wishing to make a loan agreement on their inheritance stating their plan and the reasons to the head of the heirs. In this case, the parties agreed on how much money in the form of

gold to be borrowed, how many fields to be cultivated and how much profit sharing from the rice fields that were cultivated.

After the matters contained in the loan agreement are agreed upon, for the first time, the land to be cultivated is offered to members of the community. Since the loan agreement in customary law embraces helpful principle, the most entitled to receive a loan (*salang pinjam*) are members of the community. As much as possible the inheritance must be kept in the power of the people.

If there are already interested members, then the internal process will take place simultaneously with payment in cash. The submission was concluded with the signing of the loan agreement letter by the parties along with witnesses on stamped paper so that the agreement became clear. The original loan agreement letter is kept by the cultivator or lender. While the copy of the loan agreement letter is kept by the borrower (land/ rice field owner).

2) External Process

If in one people no one wants to accept or is unable to receive the land of rice offered, then the land will be offered to others from those whose closest kinship is to the more distant ones, such as people in one tribe, village, *anak pisang*, *bako*, and so on. After the prospective cultivator is obtained, it is continued with the process of submission and signing of the agreement.

It is known from several respondents who have been interviewed from both parties who made the loan agreement as follows:

a. From Party I (Land Owner)

Information given by Mr. Burahan as Head of the Heirs (Land Owner) that his *saparuik* family made a loan agreement to meet the living needs of his economically inadequate younger brother, for the cost of education and for the cost of the marriage of his niece. The profit received from the loan agreement is the ease of getting a loan for their needs. The reward received by his family as the owner is the profit sharing every harvest. Profit sharing here is called *sasih* from yield as wages from cultivated land.

b. From Party II (Cultivator)

Information provided by Mrs. Jamidar as the second party and at the same time working on the rice field that she held the loan agreement with the aim of providing a loan to the first party with the aim of working on the land because she also did not have land to cultivate. He lent 80 (eighty) pure gold to the first party with a profit sharing of 1/10 of the 4 (four) rice fields each time the harvest was taken from the net yield. Regarding the benefits she received, as long as the gold loan borrowed by the second party had not been repaid, she could enjoy the results of her cultivation in the form of fulfilling daily food needs and saving in the form of gold paid every time the rice was harvested.

Regarding the background of the profit-sharing agreement, Hilman Hadikusuma mentioned that the occurrence of a profit-sharing agreement is due to:

a. For land owners

- 1) Owning the land but cannot or does not have the opportunity to work on its own land;
- 2) Desiring to get results without difficulty by giving other people the opportunity to work on their land.

b. For cultivators

- 1) Does not have cultivated land and or does not have a permanent job;
- 2) Having extra work time because the land has a limited area, the land itself is not enough;

3) Desiring to get additional results.

Information obtained from interviews with several respondents concluded that the loan agreement with profit sharing was made by both parties with the same purpose; i.e. they can enjoy the results of each other without the stipulated time period regarding the return of borrowed goods. The first party, as the owner of the rice field, can borrow goods in the form of gold easily to fulfill all of their urgent economic needs and fees/ wages, which are called *sasih* from the net harvest by the cultivators. Meanwhile, the second party, as well as cultivators can work on rice fields or other crops as long as the borrowed gold have not been returned. In general, the second party is those who have money in the form of gold but do not have land to cultivate. Therefore, the second party is also very helpful for the first party who really needs it.

From the explanation above, the loan agreement process has fulfilled the conditions determined by the agreement theory where the agreement must contain an agreement between the two parties that bind themselves. So, the agreement is also in accordance with the theory of responsibility because the parties are responsible for all the provisions contained in the agreement. Furthermore, the agreement was made in a written form attached to a seal of 6000 (six thousand) rupiah, signed by both parties, agreed by each heir and known by Head of the Heirs, Guardian of Korong, Guardian of Village. Furthermore, the original agreement is held by the second party and the copy is kept by the first party as long as the borrowed goods/ gold are returned as much as the original loan. The agreement was strong enough for the agreement they made as a tool or proof of legal certainty. This is in accordance with the objectives of the theory of legal certainty that both parties feel protected by the existence of evidence. The agreement is their handle if in the future conflict or dispute occurs between the parties or their heirs.

Based on the above information, then the loan agreement with the profit sharing of agricultural land in Toboh Gadang Village, Padang Pariaman Regency is not as stipulated in the Law of the Republic of Indonesia No. 2 of 1960 concerning profit sharing agreements. This is because the loan agreement with the profit sharing does not specify the term of the agreement. As stipulated in Article 4 paragraph (1), a profit-sharing agreement is held for the time stated in the agreement, provided that the fields are at least 3 (three) years and for dry land at least 5 (five) year. Therefore, the community implementing the agreement did not receive guidance from the regulation. Furthermore, the distribution of the results is also not in accordance with what is stipulated in the Law because in the loan agreement, no matter how much the area of rice fields cultivated by the cultivator or the second party is as much as agreed in the agreement. For example, 2 (two) rice fields get a profit sharing of 1/10 (one-tenth) of the net yield of harvested rice fields. Whereas 4 (four) plates of rice fields and 5 (five) plates of rice fields profit sharing is also 1/10 (one tenth) of the size of the land area of the rice fields.

2. *Process of Redemption or Settlement of Loan Agreement with Profit Sharing of Agricultural Land in Toboh Gadang Village, Padang Pariaman Regency*

In Toboh Gadang Village, the process of redemption a loan agreement with profit sharing is carried out through two stages covering the internal process stage and the external process stage.

a. Internal Process

This internal process also occurs if the land owner (the borrower) wants to redeem his/ her communal land. Heirs who want to redeem the land express their wishes in the internal discussion of the people to obtain the approval of all members of the clan and head of the heirs. After obtaining approval, the head of the inheritance acts for and on behalf of the borrowing owner to redeem the land to the lending party (the cultivator).

b. External Process

The external process in terms of redemption occurred after the agreement was taken and it was continued with the process of surrendering money or borrowed gold and submitting an agreement letter by both parties. Thus, the borrowed money or gold has been returned by a number of borrowed ones and the land is returned to the real owner.

The agrarian economic system developed by the ancestors of the Minangkabau people was communal; so, basically the land does not relate to private property. So, buying and selling on land does not occupy an important place. If the inheritance is traded, it will cause a people to be driven out forever from the inheritance derived from their ancestors. By using the loan agreement, the parties who get into trouble and are forced to temporarily transfer to relatives or people from their village will not be expelled from their ancestral lands. So, if their land has been depleted due to being diverted, they are usually still entitled to work on the land they have transferred to the profit-sharing system. If they have enough money, they can redeem their land.

Principally, the loan agreement will end if the landowner has redeemed the land by paying an amount equal to the amount of cash to the cultivator. Loans (*salang pinjam*) do not recognize expiration because it has no time limit for landowners to redeem their land. Thus, the loan (*salang pinjam*) will continue and the redemption rights will be inherited to the heirs. In addition, the land will continue to be inherited by cultivators to their heirs to be cultivated.

This can also be seen from several explanations of respondents who have been interviewed. As explained again by Mrs. Jamidar as the second party who gave the loan in the form of gold to the first party, she said that this loan agreement was made without a stipulated period. So, the end of the agreement is if the return of the borrowed gold item has been carried out. Therefore, the land of the first party can be utilized again by a second party.

The process of completing the loan agreement with profit sharing is settled until the debt is repaid as much as the gold borrowed and the rice land is returned to its real owner. As long as the borrowed gold has not been returned, the rice fields are still cultivated by cultivators or second parties while still issuing profit sharing (*sasih*) every time they have harvest time.

From the above explanation, the redemption process or completion of the loan agreement with the profit sharing of agricultural land in Toboh Gadang Village, Padang Pariaman Regency is not in accordance with the provisions in Article 7 of Law No. 56/Prp of 1960 concerning pawning that gives a time limit after 7 years land must return to the owner without ransom; as if making an unattractive pawn transaction. However, due to the difficulty of obtaining money from a bank in West Sumatra, the use of guarantees to impose mortgages on land can permanently release rights to inheritance. Therefore, loan agreement land is an option or a way to get money quickly/ obtain land rights in Minangkabau.

3. Validity of Loan Agreement Under the Agrarian Law

Agrarian law has a dualism with the enactment of customary law and agrarian law simultaneously which are based on western law. For the people of Indonesia, colonial land law does not guarantee legal certainty. For this reason, it requires national agrarian law based on customary law on land, which is simple and guarantees legal certainty for all Indonesian people, without neglecting elements that rely on religious elements. Thus, national agrarian law must be able to provide the possibility of achieving the functions of the earth, water and space.

Land has a very important position in customary law because it is the only property of wealth that will remain in its original state despite experiencing any circumstances that are sometimes not economically profitable.

Under Article 5 of Law No. 5 of 1960 concerning Basic Agrarian Principles Regulations, it states that:

“Agrarian law that applies to earth, water and space is customary law; as long as it does not conflict with national and state interests, which are based on national unity, with Indonesian socialism and with the regulations contained in this Law with other laws and regulations, and everything with due regard to elements based on law religion.”

In Indonesia, the agrarian law that applies to the earth, water and space is customary law, where the joints of the law come from the local customary community as long as it does not conflict with national interests, and the state is based on national unity and Indonesian socialism. According to B. F. Sihombing, customary land law is the right of ownership and control of a piece of land that is around indigenous peoples in the past and present. In addition, it does not have authentic or written proof of ownership. Then, some are based on unwritten confessions.

Based on the explanation of Article 5 of the Agrarian Basic Law, the validity or position of a loan agreement based on agrarian law is legal. This is because the loan agreement is implemented in the customary law community. Meanwhile, the applicable agrarian law is customary law. Customary law is inseparable from a sense of trust. This trust leads to an agreement to bind themselves to one another to do a legal act. Therefore, the loan agreement used by a certain customary community during the loan agreement does not conflict with the higher laws and regulations.

The law accommodates community needs for agreements. For this reason, each agreement must fulfill the terms of the agreement; among other is the existence of a sense of trust that raises an agreement between the parties to the agreement they made.

Based on the analysis of the authors regarding this agreement, until now it is still implemented. The authors found it in Minangkabau people in general and especially in Toboh Gadang Village, Padang Pariaman Regency. The agreement was carried out and made in writing with the letter of the loan agreement with profit sharing with a period of time that was not written down and affixed the signatures of the parties that were sealed or stamped with 6000 (six thousand). Then, it was agreed to by the Head of the Heirs and the heirs of each party. Furthermore, it was known by Guardian of Korong and Guardian of Village. The agreement letter is kept at the Guardian of Village Office and usually each party keeps a copy of it themselves.

Conclusion

The loan agreement at Toboh Gadang Village has become a habit that has been handed down from a long time ago due to the high level of trust among fellow citizens who generally prioritize honesty adopted from Minang's proverb “adat basandi syarak, syarak basandi kitabullah”. So, for the Toboh Gadang Village community, it is enough to use a private agreement to enter into an agreement. The process of redemption of the loan agreement ends when the loan has been returned. As long as the borrowed gold items have not been returned, the land can still be worked on by the lending party. Therefore, the loan agreement letter they made was not written down. In fact, there are parties who have not been able to return it for years. Based on the explanation of Article 5 of the Basic Agrarian Law, the validity of the loan agreement in agrarian law is valid. This is because the loan agreement is implemented in the customary law community, while the applicable agrarian law is customary law. Customary law is inseparable from a sense of trust. The trust has arisen an agreement to do a legal act. Therefore, the loan agreement used by a certain customary law community during the loan agreement does not conflict with the higher laws and regulations.

References

Book

Bachtiar, Harsja W. "Negeri Taram: a Minangkabau village community." *Villages in Indonesia* (1967): 348-385.

Calleros, Charles. *Legal method and writing*. Wolters Kluwer Law & Business, 2014.

Cane, Peter, and Herbert Kritzer, eds. *The Oxford handbook of empirical legal research*. OUP Oxford, 2010.

Journal

Zhu, Jieming, and Hendricus Andy Simarmata. "Formal land rights versus informal land rights: Governance for sustainable urbanization in the Jakarta metropolitan region, Indonesia." *Land Use Policy* 43 (2015): 63-73.

Lee Peluso, Nancy, Suraya Afiff, and Noer Fauzi Rachman. "Claiming the grounds for reform: agrarian and environmental movements in Indonesia." *Journal of Agrarian Change* 8.2-3 (2008): 377-407.

Lucas, Anton, and Carol Warren. "The state, the people, and their mediators: the struggle over agrarian law reform in post-New Order Indonesia." *Indonesia* 76 (2003): 87-126.

Bakker, Laurens, and Sandra Moniaga. "The space between: Land claims and the law in Indonesia." *Asian Journal of Social Science* 38.2 (2010): 187-203.

Franzia, Elda, Yasraf Amir Piliang, and Acep Iwan Saidi. "Rumah Gadang as a symbolic representation of minangkabau ethnic identity." *International Journal of Social Science and Humanity* 5.1 (2015): 44.

Legislation

1945 Constitution of the Republic of Indonesia

Civil Code

Law No. 2 of 1960 concerning Production Sharing Agreements

Agrarian Basic Law No. 5 of 1960

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal. This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).