



Heritage Land Pawn Agreement in Nagari Koto Tengah, West Sumatera Province, Indonesia

Ilham Yudha Putra¹; Kurniawarman; Irzal Rias²; Putri Gemala Sari³

¹Graduate Program Student in Notary, Andalas University, Indonesia

²Faculty of Law, Andalas University, Indonesia

³Polytechnic Negeri Padang, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v6i3.866>

Abstract

Pawning of heritage land (tanah pusako) is a generally implemented by community in Tilatang Kamang District, Nagari Koto Tengah of West Sumatera Province, Indonesia. There are some differences between the heritage land pawning agreement in the area with that have been regulated in Indonesian positive law. Therefore, the aim of this research was to study how to bind the pawn agreement over heritage land in Nagari Koto Tengah. The method of the study was using an empirical juridical approach. The data used in this study were primary data in the form of interviews and observations in the field, while secondary data consists of document learning. The result showed that the method of heritage land pawning agreement in Nagari Koto Tengah is carried out in written documents and is witnessed and known by the *penghulu* (tribal chief) of each party, and Nagari Koto Tengah already manage the rule of the registration of the land pawn agreement.

Keywords: Land Pawn Agreement; Heritage Land; Nagari Koto Tengah

I. Introduction

The community in Minangkabau is known as a territorial genealogical community. This can be seen from the composition of the community which consists of at least four tribes. Each tribe consists of several clans and each tribe or people are led by a leader called *penghulu*. The set of leaders of a Nagari is called *niniek mamak*.

In general there are two types of heritage land in indigenous communities in Minangkabau, namely *Pusako tinggi* and *Pusako randah*. *Pusako Tinggi* is a land that is owned jointly on a matrilineal lineage inherited from generation to generation. The inheritance from ancestors was passed on to the next generation in full, not divided and should not be shared. The mastery of the high *pusako* land of the people is in the people of the clan. The land of *pusako tinggi* is considered very important for the Minangkabau people because it is related to the prerequisites of the life and existence of the Minangkabau community. The people who do not have land are seen as people who are *malakok* which means their origin is not known.

While *pusako randah* is the land owned or obtained from the work of the parents. The property of *Pusako randah* can or can be transferred. In the case the utilization of the land of *pusako randah*, it is managed by the family which led by the head of the family and can be forwarded or delegated to other members of the family if the head of the family has passed away or is not in a family bond according to the procedure stipulated in community law or *adat*.

Nagari Koto Tengah has an area of 6,219 ha with an altitude of around 850 masl consisting of 28 *Jorong*¹. Each tribe in Jorong has a tribal chief which is called *penghulu*. Group of community which implement certain tradition which is inherited from ancestor called *kaum*, headed by *penghulu kaum*. *Penghulu* is responsible to maintain, administer and regulate the utilization of heritage land from *pusako tinggi* for posterity. *Penghulu* may not utilize, sell or pawn the land at will. The land shall be used for social functions especially for the welfare of the members in *kaum*, while Members of the *kaum* only get the right to use heritage land of *pusako tinggi* which is called *ganggam bauntuak* which means that the land is used for living and also family businesses.

Being compared to customary law, the pawning agreement (*pand*) is different with Indonesian Civil Code, Undang-Undang Hukum Perdata in the article 1150-1162. There are differences in the object of the guarantee and the rights of the creditors and debtors. Objects that can be used as collateral objects according to the Civil Code are limited to movable objects, not including immovable objects (soil). The party holding the pawn is not allowed to use the collateral object. The *pand* pawn also have an expiration. The delay of the mortgage giver pays the debt to the recipient of the mortgage, could give the right to the recipient of the pawn to sell the object of the pawn in order to take back the debt. In this case there is a difference in pawning according to *adat*, that is, which object is land. Specifically, the party holding the collateral object is allowed to use and take advantage of the collateral object². Customary pawns do not recognize expiration, with the late payment of debt by the pledge giver does not give the right to the recipient of the mortgage to be able to sell the object of the mortgage in order to take the debt.

Based on Indonesian Regulation, Undang-undang Number 5 year 1960 concerning Basic Agrarian Principles, in the article 16 paragraph (1) letter h, that "liens are not included in the rights stipulated in this law, and will be stipulated in the provisions other laws. Other regulations referred after the enactment of Undang-Undang Number 5 Year 1960 above, mortgage which is regulated in Perpu Number 56 Year 1960 concerning Determination of Agricultural Area. This regulation intends to eradicate the elements of extortion contained in the mortgage, namely by regulating the mortgage time limit.

In Article 7 it is stated that after seven years or more, the land that becomes the object of the pawn must be returned to the owner without ransom or compensation. This is regulated because the lawmaker considers that in practice, the recipient of the mortgage receives the proceeds from the mortgaged land greater each year compared to the amount of the mortgage at the time the pawning agreement is made first with the pledgeman.

The provisions of Article 16 paragraph (1) of Undang-Undang Number 5 Year 1960 concerning Basic Principles of Agrarian Affairs are then explained by Article 53, which states that: "Mortgage rights are temporary rights, regulated to limit their characteristics. contrary to this law, these rights are attempted to delete them in a short time "

The above provisions explain that the land pawn provisions that exist in indigenous peoples will be abolished, in order to achieve unification of land regulation in Indonesia so as to ensure legal certainty for the community. Until now, the Minangkabau people in West Sumatra, pawning rights, known as *pagang gadai*, still exist. This fact illustrates that the strength of customary rights to the Minangkabau community in West Sumatra.

¹ https://id.m.wikipedia.org/wiki/Koto_Tengah_Tilatang_Kamang,_Agam accessed on 8 Januari 2017

² Iman Sudiyat, 1981, *Hukum Adat Sketsa Asas Liberty*, Yogyakarta, page 29 (in Bahasa Indonesia)

Based on the problems described above, researchers felt interested in raising the issue for research. The purpose of the study was to determine the implementation of heritage land pawn agreement in Nagari Koto Tangah.

II. Research Method

The study was conducted in Koto Tangah Nagari, Tilatang Kamang Sub-District, Agam Regency, West Sumatra Province with in-depth interviews with local officials and communities. While secondary data in the form of document studies. Data analysis was done qualitatively.

III. Results and Discussion

Indigenous people in Nagari Koto Tangah in carrying out customs use a system that is *Duduak Samo Randah, Tagak Samo Tinggi Tagak* which means that each leader has the same degree in implementing customary systems in Nagari Koto Tangah. This is indicated by the design of a meeting place and customary deliberation or better known as the *balairung* which forms a circle without any level in the meeting place / hall. However, it is not necessary for any customary negotiations to be held at the *balairung*, it can also be held at *Medan Nan Bapaneh* which means in the field. where the leaders agree to carry out negotiations or find solutions to the problems to be discussed³.

Every *kaum* in the Koto Tangah Nagari is led by a *penghulu kaum*. An ordinary *penghulu kaum* is called *mamak kapalo warih*, who is responsible to register designation and the owner of the heritage land of his *kaum*. The heritage land is utilized as much as possible for the welfare of the people.

According to the results of research that researchers have done in Nagari Koto Tangah with interviews with respondents and informants⁴. The indigenous people of Nagari Koto Tangah avoided and were ashamed to pawn their heritage land of *pusako tinggi* or better known as *Tembilang Ruyuang*, because pawning heritage land was considered as someone who had no money or had a difficult life so he felt embarrassed if known by others.

The function of land for the people in Nagari Koto Tangah is a source of life for members of the *kaum*. When the land was mortgaged it could not be used as a source of life for the people. Land is a condition for the existence of as Minangkabau people. Pawning only take place due to the urgency situation that cannot be overcome by the people.

The principle that is held firmly by the indigenous people in Nagari Koto Tangah explained that the heritage land of *kaum* should not be sold or pawned, this can be seen in the teachings of the Minangkabau tradition, *dijua indak dimakan bali, digadai indak dimakan sando*, which means sold cannot be bought, pawned cannot be pawned.

There are four conditions / exceptions that make it possible for the heritage land pawn to be carried out in the Nagari Koto Tangah:

- 1) *Gadiah gadang indak balaki arang tacoreng di kaniang*, means if there are members of women who are mature and have the right to get married but not yet, or if there is a widow who is not married, then the heritage land pawn is allowed to support the marriage cost
- 2) *Maik tabujua di ateh rumah*, means if there is a death in *kaum*, but there is no money to finance the funeral, then land pawn can be done to finance the funeral.

³ KAN Koto Tangah, Asal Usul Pusako di Tilatang Kamang,, Agam, hlm 7

⁴ Wawancara dengan Z Datuak Batuah selaku Sekretaris KAN Nagari Koto Tangah Periode 2004 sd 2007, pada tanggal 26 November 2016

- 3) *Rumah gadang katirisan*, means if there is no money to repair a *rumah gadang* that is damaged or leaked, then it is possible to do pawn the heritage land for the cost of repairing the *rumah gadang*.
- 4) *Adat indak badiri/mambangkik batang tarandam*, means if the title of *penghulu* is being delayed because there is no funding for the ceremony fo *Punting Pangulu* (designation of *penghulu*).

As for the agreement on the pawning agreement of *pusako randah* in Nagari Koto Tangah, the researchers found these activities occurred in the community life in Nagari Koto Tangah. However, the term used by the people in Nagari Koto Tangah is not a land pawn agreement but a *pagang gadai* or Taklik sale. As for the reason for the occurrence of the *pagang gadai* due to the situation⁵:

- 1) For children to go to school but there is no money. The cost for school is considered the same as the traditional expression of *mambangkik batang tarandam*, which means, with the education can elevate the family level
- 2) The need to build a residence for family members.
- 3) The need for medical expenses for one member of the family who experiences prolonged illness.
- 4) The need for business capital for family members who will go abroad / *marantau*.

The value or means of exchange in this *pagang gadai* in Nagari Koto Tangah is⁶:

- 1) Rice, which is calculated by 1 belek = 10 sukek, 1 sack = 3 belek, 1 sack = 30 sukek
- 2) Gold, namely with rupiah gold or pure gold
- 3) Money

The stages of *pagang gadai* in the Nagari Koto Tangah are carried out on a predetermined day and agreed between the giver and the recipient of *pagang gadai* known as *manjapuik* (picking up the pawn). The process of ratifying this agreement is as follows⁷:

- 1) *Pagang gadai* must be with the knowledge and consent of *niniak mamak* from both parties together with *Jihaik Nan Ampek / Silantak Binalak* (4 land owners who live next door to the land object that will be used as pawning). Notification of the *Jihaik Nan Ampek* is only carried out orally.
- 2) For people who will be waiting for someone who pawns to pick up money in the *lapiak na takambang sarok nan basapu*, meaning that the process of picking up this mortgage money is not allowed to be arbitrary, at least it must be done at home. The person who will pick up this

⁵ Interview with Dt. Batuah followed with Dt Marajo on January, 6th 2019

⁶ Interview with Dt. Pakamo as the Head of KAN Periode 2015 to 2018 followed with the interview with Dt. Batuah and followed with Dt Marajo on January, 6th 2019

⁷ Interview with Dt. Pakamo as the Head of KAN Periode 2015 to 2018 followed with the interview with Dt. Batuah followed with the interview with Dt Marajo on January, 6th 2019, followed with the interview with Dt Marajo 8 Februari 2017, and followed with interview with Dt Pado Sati on Februari, 11th 2017

money consists of several people, namely: *Mamak* the heir or adult male sent by *mamak* who pawned. Likewise with the women from the party who pawned.

- 3) Make a *pagang gadai* letter and stamp it, then sign it together by both parties and witnesses. In the past, the heritage land pawn agreement was made without a pawn certificate, this is because there are still many people who are still illiterate. Now the Pusako land pawn agreement has been made by written letter, as proof that the *pagang gadai* has been done.
- 4) The agreed pawn agreement is registered with the Nagari government and or KAN (Kerapatan Adat Nagari). According to Koto Tengah Nagari Regulation Number 10 of 2010 concerning Pungutan Nagari, to register a mortgage / *pagang gadai* agreement is IDR 25,000 (twenty-five thousand rupiahs). In the *pagang gadai* practice in Nagari Koto Tengah, there had never been a community that registered a pawn shop to KAN.

Provisions regarding the cost of registering a *pagang gadai* are based on Nagari Koto Tengah Regulation Number 10 Year 2010 concerning Nagari Levies, as delegated legislation of the regency regional regulation number 31 Year 2001 jo Regional Regulations of Agam District Number 12 year 2007 Article 89 paragraph (1) letter c states that one of the original contributions of Nagari is retribution of Nagari, especially the original retribution that already exists.

A logical reason is because the community does not want to register the *pagang gadai* agreement to KAN, because it is obligatory to pay Retribution. The provisions regarding registering a *pagang gadai* agreement are not a normative rule that provides sanctions for those who do not comply, but it is a "appealing" provision by KAN which is stipulated to oversee each *pagang gadai* transaction, but then becomes an object and opportunity for the Nagari Government to withdraw retribution.

There are several forms of borrowing agreements according to Customary Law carried out by indigenous peoples in Nagari Koto Tengah which can turn into pawning / *pagang padai* if the loan money is not paid in time, the loan agreement consists of⁸:

- 1) *Cagak*, which is an agreement to lend and borrow with guarantees are rice fields or other fields or *tabek* (fish pond), for fourteen (14) days. If this is not redeemed after the fifteenth day (15) then the *cagak* can turn into a regular *pagang gadai*.
- 2) *Ronggoh*, namely an agreement to lend with the guarantee of movable objects such as money or gold called *runggohan*. With a period of two days, if it is not redeemed on the third day, then the compensation can be replaced with rice fields / other fields / *tabek* (fish ponds), with an agreement within fourteen (14) days. If it is not redeemed after the fifteenth (15th) day, then the change will be a regular pawning / Taklik sale.
- 3) *Rungguh*, namely an agreement to borrow and borrow with the guarantee of rice fields, lading, *tabek* (fish ponds) called *rungguhan*. The duration of two days, then can be redeemed on the third day. If not redeemed after the third day, the pool can turn into a regular *pagang gadai*.

In the *cagak andrungguh* agreement, the object of guarantee is land, while the guarantee object of *runggoh* is movable objects which can then be replaced with land. The substitution of guarantee object based on the agreement of both parties, with the aim to guarantee the receivables of the pawn recipient, but in the end, it provides an opportunity for the pawn recipient to collect the proceeds from the pawned

⁸ Interview with Dt. Pakamo as the Head of KAN Periode 2015 to 2018 followed with the interview with Dt. Batuah on Januari, 6 2019

land. The three types of lending and loan agreements above if not redeemed / not paid on time will be able to turn into an *pagang gadai* agreement. There is no provision of Minangkabau traditions which prohibit the land of *pusako randah* to be pawned. Likewise, if it is used as the guarantee object for the agreements of *cagak*, *ronggoh* and *rungguh*, which then cause *pagang gadai*.

The *pusako randah* land which is the object of land pawn in the Nagari Koto Tangah is⁹: Rice fields, Fields and *Tabek* (fish ponds). While the ones that are high *pusako* in Koto Tangah Nagari are *Embung* or *Terusan*, *Rimbo Manduang*, *Pakuburan Pandam*, *Pagadangan Rice Field* and *Tanah Panurunan*.

There is some land of *pusako tinggi* in Nagari Koto Tangah which should not be used as the object of *pagang gadai*, namely *Rumah Gadang*, that is the house where *Sawah Pagadangan penghulu kaum* lives, which means the special land of *datuk/penghulu kaum*.

In addition to the prohibition on pawning two types of heritage land of *pusako tinggi*, there are some restrictions on *pagang gadai* of heritage land in Nagari Koto Tangah. *Pagang gadai* of heritage land of *pusako tinggi* is prohibited for people who reside outside Nagari Koto for those who are not muslim religion. These prohibitions are intended so that the land of the heritage land of *pusako tinggi* in Nagari Koto Tangah is inseparable from the *kaum* itself.

IV. Conclusion

The heritage land (*tanah pusako*) pawn agreement has a special process in the Nagari Koto Tangah is still being carried out until now. The heritage land can be used as the object of the land pawn agreement in Nagari Koto Tangah in the form of paddy fields, fields and *tabek*. Prohibition of *pagang gadai* in Nagari Koto Tangah is not permissible to other than Muslims and should not be pawned on people who live outside Nagari Koto Tangah. The prohibition does not provide any sanctions for people who break the rule. However, the prohibition is only an appeal for the community, to prevent the loss of the heritage land to the people who are not a community of Nagari Koto Tangah.

References

- Alexander SH.SP1,2015, *Peraturan Jabatan Notaris*. (in Bahasa Indonesia).
- Ardianto E.S. 2009. *Mengenal Adat Istiadat Dan Hukum Adat di Indonesia..* LPP UNS dan UPT Press. Surakarta. (in Bahasa Indonesia).
- Badruzaman Mariam Darus. 1994. *Aneka Hukum Bisnis*. Alumni. Bandung. (in Bahasa Indonesia).
- Budiono herlien. 2009. *Ajaran Umum Hukum Perjanjian dan Prnerapannya di Bidang Kenotariatan*. PT. Citra Aditya Bhakti. Bandung. (in Bahasa Indonesia)
- Burhan Boerma. 1991. *Diktat Hukum Perjanjian*. Fakultas Hukum Universitas Andalas. Padang
- KAN Koto Tangah, Asal Usul Pusako di Tilatang Kamang, hlm 7.

⁹ Interview with Dt. Pakamo as the Head of KAN Periode 2015 to 2018 followed with the interview with Dt. Batuah followed with the interview with Dt Marajo on January, 6th 2019

- Kitab Undang-Undang Hukum Perdata (*Burgerlijk Wetboek*), Staatsblad 1847 Nomor 23 tanggal 30 April 1847 (Lembaran Negara Republik Indonesia Tahun 1924 nomor 556).
- Manindiah Bustaman Dt. 2001. *Masalah Tanah, Adat Suami Issteri Dan Bataranak Menurut Adat*. Makalah. Kaluang.
- Marajo Sjafnir Dt. Kando. 2006. *Sirih Pinang Adat Minangkabau, Pengetahuan adat Minangkabau Tematis*. Sentra Budaya dan Pemprof Sumbar. Padang.
- Muhammad Abdul Kadir. 1982. *Hukum Perikatan*. Alumni. Bandung.(in Bahasa Indonesia)
- MS Amir. 1987. *Tonggak Tuo Budaya Minang*. CV Karya Indah. Jakarta.(in Bahasa Indonesia)
- Nan Tuo Datuak Itam, Datuak, Datuak Bandaro Kayo, Datuak Pamuncak Payuang Ameh, Datuak Banyak Ameh, Datuak Bagindo Nan Itam, Inyiak Majo Sinaro. 2006. *Dasar-Dasar Peraturan Adat Menurut Buek Salingka Nagari*. Makalah. Kaluang.
- Nan Tuo H. Narullah Dt. Perpatiah. 1999. *Tanah Ulayat Menurut Ajaran Adat Minangkabau*. Yayasan Sako Batuah LKAAM Sumatra Barat. Padang.(in Bahasa Indonesia)
- , 2002. *Peranan Niniak Mamak dan Kerapatan adat Nagari Dalam Melaksanakan Tugas dibidang Pertanahan di Profinsi Sumatra Barat*. Makalah. Padang.(in Bahasa Indonesia)
- Navis A.A. 1984. *Alam Takambang Jadi Guru, Adat dan kebudayaan Minangkabau*. Grafiti. Jakarta.(in Bahasa Indonesia)
- Peraturan Daerah Sumatera Barat Nomor 7 Tahun 2018 Tentang Nagari
- Peraturan Daerah Kabupaten Agam Nomor 31 Tahun 2001 jo Peraturan Daerah Kabupaten Agam Nomor 12 Tahun 2007 Tentang Ketentuan Pokok Pemerintahan Nagari.
- Peraturan Daerah Sumatera Provinsi Barat Nomor 16 Tahun 2008 Tentang Pemanfaatan Tanah Ulayat.(in Bahasa Indonesia)
- Peraturan Nagari Koto Tangah Nomor 10 Tahun 2010 tentang Pungutan Nagari.
- Prodjodikoro Wirjono. 1981. *Azas-azas Hukum Perjanjian*. Cetakan IX. Sumur Bandung.(in Bahasa Indonesia)
- Saragih Jaren. 1992. *Hukum Perjanjian*. PT Citra aditya. Bandung.(in Bahasa Indonesia)
- Satrio J. 1992. *Hukum Perjanjian*. PT Citra Aditya. Bandung.(in Bahasa Indonesia)
- Setiawan R. 1992. *Pokok-Pokok Hukum Perikatan*. Cetakan IV. Bina Cipta. Bandung.(in Bahasa Indonesia)
- Soekanto Soerjono. 1981. *Hukum Adat Indonesia*. PT. Grafindo Persada. Jakarta.(in Bahasa Indonesia)
- Subekti R. 1991. *Hukum Perjanjian*. Cetakan XIII. P.T. Intermasa. Jakarta.(in Bahasa Indonesia)

- . 1995. *Aneka Perjanjian, cetakan kesepuluh*. PT. Citra Aditya Bakti, Bandung.(in Bahasa Indonesia)
- Sudiyat Iman. 1981. *Hukum Adat Sketsa asas*. Liberty. Yogyakarta.(in Bahasa Indonesia)
- Sumardjono. Maria S.W. 1982. *Puspita Serangkum Aneka Masalah Hukum agrarian*. Andi Offset. Yogyakarta.(in Bahasa Indonesia)
- Syahmunir. 2004. *Eksistensi Tanah Ulayat Dalam Perundang-undangan Indonesia*. PPIM Sumbar. (in Bahasa Indonesia)
- Ter Haar, Bzn. 1960. *Hak Ulayat dan Masalahnya di Sumatera Barat*. Makalah.
- Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria (Lembaran Negara Republik Indonesia Tahun 1960 Nomor 104. Tambahan Lembaran Negara Nomor 2043)
- Undang-Undang Nomor 56 Prp Tahun 1960 tentang Penetapan Luas Pertanian (Lembaran Negara Tahun 1960 Nomor 174, Tambahan Lembaran Negara Nomor 2117)
- Usman Abdul Kadir. 2002. *Kamus Umum Bahasa Minangkabau Indonesia*. Anggrek Media Padang. (in Bahasa Indonesia)
- Wulansari C. Dewi 2010. *Hukum adat Indonesia-Suatu Pengantar*. PT. Refika Aditama. Bandung (in Bahasa Indonesia)

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/>).