

## The Registration Of "Ulayat" Land In West Sumatra: Between The Legal Certainty And The Social Justice

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**Abstract.** Ulayat land House of communal rights is a member of the House, as a fellowship of customary law. The purpose of the arrangement of Ulayat Land is to protect the customary land and take the benefits for survival in some generations and uninterrupted between the members of the House with its territory. Conceptually, this is related to a social justice. While the purpose of the registration of land, according to the article 19 BAL is to guarantee the legal certainty over land. The implementation of Customary Land or Ulayat Land Registration was preceded by the creation of the base rights. The making of the pedestal of this right in the form of a waiver of physical mastery of plots of land (Sporadic). Before the creation of the pedestal of this right was preceded by the creation of Ranji by Ninik Mamak, which was passed by the House. The writing Empirical Juridical approach, was supported by empirical juridical approach. Empirical juridical approach was done by collecting all the materials and data obtained from the field-related to the problems are examined. Registration of the customary (Ulayat) rights of the House is done by applying to the Head Office of land district/city. The filing listed on behalf of or Mamak Head Heirs using a waiver of physical mastery of parcels of the land that are signed by the Mamak Head Chiefs as Heir. The statement must be approved by the head of the tribe or Tribal King and Chairman of custom Density Nagari and known by *Lurah*/village chief concerned by attaching a document containing the names of the members of the House of at least three generations created by Mamak Chief Heir and known by the ruler of the tribe and the leader of the RIGHT. The registration of Customary House was expected to guarantee legal certainty for members of the House as a fellowship of customary law, because it is aimed at maintaining Customary Rights for indigenous Justice. Therefore, the customary land register of House in conceptional in touch with the land registry purposes, i.e. to guarantee legal certainty while also embodying a sense of Justice for indigenous citizens (members of the House).

**Keywords:** Social Justice; Legal Certainty; The Registration of Ulayat Land.

### 1. Introduction

The article "The registration of Ulayat land between the certainty of law and social justice" is interesting to be written, at least because of three reasons. First, since the land registry is the mandate of the Act No. 5 of 1960 of Agrarian legal basis Regulation (BAL). Second, because the land registry is philosophically important to guarantee rights to ownership and control over land, which is closely related to legal certainty.

The third reason, most of the land in Indonesia, nowadays, does not have a certificate, but it is related to justice for citizens who own or controlled the land. Most of the land in the region of Indonesia that is Customary land is owned by indigenous communities.

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Includes the West Sumatra, Ulayat land consisting of Customary land House, land, and the land of the tribe of Customary Customary.

Customary Land Rights is the shared Communal House of the members of the House, as the Guild's customary law in question and it is not an individual right which belonged to a family. Ulayat land is *Beschikingsrecht Indigenous* community (law) in order to meet all the needs of the life of its citizens.

Article 4 Regional Regulation of West Sumatra No 6 of 2008, states that the purpose of the arrangements of Customary land and its utilization is to keep (be able to) protect the existence of customary land according to the customary law as well as taking the benefits of the policy for the survival life as a legacy from one generation to the next and uninterrupted by between customary law and the society concerned. Conceptually, this is related to the concept of social justice. Whereas article 19 of principal Act Number 5 of 1960 Agrarian, land registration where the goal was for legal certainty over land.

On the other hand, the rules the Minangkabau law in basing on the view, that it was customary land belonging to the communal communities (clans, tribes, and district) who prefer the concept of community is also justice for indigenous people. Then it came a question "whether the registration of customary land in accordance with the legal certainty as a goal-oriented or more registration land on a communal Justice Society customary law?"

Based on the description above, then the article with title: "Customary Land Registration between legal certainty and social justice" will be discussed with the formula: how customary land registration process of West Sumatra?; How the relationship between customary land register with the certainty of law and social justice?

### **Research Methods**

The main approaches that were used in this research is Empirical and juridical approach that is supported by empirical juridical approach. Legally normative legal research is searching a logical rule of law, in which law is normative are purely symptoms of autonomic and focusing more on this law book<sup>4</sup>. The empirical juridical approach is done by collecting all the materials and data obtained from the field related to the customary land register House in West Sumatra. Specification of research is analytical descriptive study, this research will only describe the process of registering customary land in West Sumatra. In this study, the data source that was used by the researchers, including the primary data and secondary data. To obtain the data, researchers used data collection techniques such as: libraries, observation, and interviews.

The data were obtained either from the study field, through interviews, and literature studies are primarily a landscape data analyzed in qualitative descriptive, i.e. the data that are collected in the form of a logical explanation is poured and systematic, further analyzed to obtain the clarity problem solving, then drawn the conclusions in deductively, i.e. of the impersonal heading to the things that are special. The data were obtained from the results of the research and are analyzed qualitatively by giving comments and do not use figures and presented in an analytic descriptive, i.e. it will only describe the course of the research results related to the principal problems are examined.

### **2. Result And Discussion**

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<sup>4</sup> Sulistiyono, *Pedoman Penulisan Skripsi*, Jakarta: Andi Offset, Jakarta, 2009, page.2

As we know that customary rights is hereditary rights owned by the customary law community over its territory (natural resources). This conception is set explicitly in article 3 of Act No. 5 of 1960 about the basic rules of agrarian trees (BAL), a set of "Customary Rights". However, the registration of Customary land settings is not set out in article 9 of Regulation No. 24 of 1997 Regarding Land Registration.

According to Boedi Harsono,<sup>5</sup> Customary Rights is a series of authorities and responsibilities of a customary law society, which deals with the location of the land within its territory, as has been described above is a major supporter of the livelihood that concerned with the life community and all of the time. According to this understanding, that the concept of customary rights is subjected to the provisions of article 1 paragraph 1 are customary rights includes all the land, that is in the area of environmental law community is concerned, neither of which is already owned by a person or yet.

There is not a thrust of indigenous land in the land register as an object of Regulation No. 24 of 1997 Regarding land registry raises legal prolonged polemics about the customary rights of the legal certainty of land ruled by the customary law community. From the perspective of the BAL, the existence of customary land and/or indigenous land assumed to the front of customary land will disappear gradually along with the times, then through the conversion of provisions contained in the provisions of article I BAL conversion to Article IX.

According to Boedi Harsono, customary rights can be perpetuated or preserve its existence. The development of a community will show the tendency of the loss of Customary rights through a natural process, i.e. by being a strong individual rights in Community law is concerned.<sup>6</sup>

In the context of reforma agraria, then customary rights to land registry (read the publication rights to communal certificate) is a groundbreaking law that is done by the Government, in this regard, by the BPN to do an overhaul of the ownership and control of land as well as legal relationships concerned with land ownership. The function of setup tasks including the overseeing of the ownership land restrictions on ownership land and the use of mastery to carry out the process in article 6 BAL (social function of land rights), article 7 BAL (the principle that is the possession/mastery over land not unlimited), article 10 BAL (the principle that each landowner must manage its own pursuit of land/) and section 1 (the principle that the Government has the authority to take over and rule the land ownership exceeded the maximum number and share it to require).<sup>7</sup>

The land belonging to the indigenous people who previously were not as land registry objects that can be registered by indigenous people through the issuance of Regulations certificates through the head of communal rights of BPN number 9 of 2015 about Communal Rights Assignment Procedures Customary law Community over land and people who are in a particular Area. One of the consideration basic of the rules, namely: "that is in order to realize the noble ideals of the nation of Indonesia and embody the political commitment that is truly in the management of natural resources in a just, sustainable, and environmentally friendly as set forth in the Ordinance of the people's Consultative Assembly of the Republic of Indonesia No. IX/MPR/2001 of

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<sup>5</sup> Boedi Harsono, *Hukum Agraria Indonesia Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*. Penerbitan Djambatan. Jakarta, 2008, p. 186.

<sup>6</sup> Ibid. p. 189

<sup>7</sup> Rusmadi Murad. *Administrasi Pertanahan Pelaksanaan Hukum dalam Praktek*. Mandar Maju, Jakarta, 2013, p 47

agrarian reform and the management of natural resources, needs to be done against the redenomination of legislation".

The publication of the head regulations of BPN number 9 of 2015 which replaced Perka BPN No. 5 OF 1999 About Customary Rights problem resolution Guidelines Community customary law, wants to resolve its legal certainty of land rights by indigenous people with the communal rights certificate issuing. It was defined that communal rights certificate through article 1 paragraph (1) Perka BPN 3 4 No. 9 year 2015 explained that the communal land rights, hereinafter called the communal rights, belong together on land granted to the community in the area of forest or plantations. The sense of communal rights is very firm and very limited nature that granting rights to indigenous people the over land ownership only in the forest area is well protected-forestry or forest products. This definition is very much different from the customary rights are regulated in terms of Perka BPN No. 5 of 1999. The certainty of the laws against the ownership land by indigenous people have been guaranteed by the BAL, particularly article 19 paragraph (1) that the purpose of regulating the BAL land registry is to guarantee legal certainty. The registration of land in addition to serves to protect the owner, also serves to find out the status of a piece of land, which is the owner, what is right, how, to what extent is used and so on.

Communal rights under article 1 paragraph (1) of the regulations of the national land Agency number 9 of 2015 is joint the right property over the land of a society customary law or joint property rights over land given to the people who are in a particular area. Communal rights under article contains a conception of customary law community shared ownership over the land. Communal rights of community customary law only certain areas are on.

The purpose of the registration of the land according to article 19 paragraph (1) BAL set further and in more detail in section 3 of the Government Regulation No. 24 of 1997, land registry purposes are:

1. To provide legal certainty and legal protection to the holders of rights over land and other rights listed in order to easily be able to prove himself as the holder of the corresponding rights;
2. To provide information to the parties concerned, including the Government, so that it can easily obtain data required in legal deeds about hosting a land area that is already registered;
3. For the orderly administration of its implementation of land where every area of land including passage, imposition and losing compulsory land rights are registered.

In order to provide a certainty of legal protection, then to the holders of rights to the land in question is given a certificate of entitlement to land, whereas to carry out the functions of information, data relating to the physical and juridical aspects of land already registered, otherwise it was proven to the public (the principle of publicity), while in terms of achieving an orderly administration of land, then any parcels of land over the units of flats, including the imposition of passage, and the loss of the rights land, and property rights units of flats is obligated to be registered.<sup>8</sup>

The registration that was referred to in this article is the registration of land for the first time. The registration of land for the first time, according to article 1 paragraph 9 PP No. 24 of 1997 is the registration of land activities committed against the registration of land objects that have not been listed based on PP No. 10 of 1961 on the land register. Article 13 of this regulation sets out that for the first time the land

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<sup>8</sup> Yamin Lubis & Abd. Rahim Lubis. *Hukum Pendaftaran Tanah*. Penerbit CV Mandar Maju. Bandung. 2012. p. 169

registration was carried out via the registration of land systematically and the registration of land sporadically. The implementation of Customary Land Registration was preceded by the creation of the certificate as ownership.

Because customary lands of the House of Commons is the House gained hereditary of their ancestors is a land that has been done, either in the form of rice paddies, fields or ground yards/housing called "treasures high heirloom ". Each Member of the House cannot have it, are personal rights, but each can benefit from the ground by following the rules of usage set by Mamak Chief Beneficiary.

As for customary right registration procedure of the House are:

- The petition was submitted to the Head Office of the land district/city.
- Enroll on behalf of or by the use of Heir Head Mamak affidavit of Physical mastery of parcels of land that are signed by the Mamak Head Chiefs as Heir.
- The affidavit must be approved by the head of the tribe or Tribal King and Chairman of custom Density *Nagari* and known by *Lurah/village* chief concerned by attaching a letter of agreement which contains the names of members of the House of at least three generations that was created by Mamak Chief Heir and King known by the Tribe and the leader of the right.

The creation of this certificate in the form of a waiver of physical mastery of plots of land (Sporadic). Based on Circulars *Kakanwil BPN* West Sumatra Province No. 500/88/BPN-2007 8 February 2007 the form used for the manufacture of Ulayat land against Sporadic clan is A Form for Waiver of physical mastery of plots of land belonging to the The House or Form B to the affidavit of Physical mastery of plots of land belonging to the Individual members of the House, form b. 1. (A waiver Deal/agreement of the House) and of the form F (Letter Head). Before making this certificate was preceded by the creation of the letter of agreement.

By registering the Customary Land of House was expected to guarantee legal certainty for members of the House of Fellowship of customary law was concerned. Minangkabau Ulayat land embraced the principle of a separate Horizontal separation of Ulayat land i.e. What is on it. The rules of customary claimed "the water is drinkable, the fruit may be eaten, the soil remained" water and fruit is customary. The consequence of this principle is the Customary Land should not be released to others. This is in accordance with the philosophy of the Minangkabau adat "*dijua indak dimakan bali, digadai indak dimakan sando*".

### 3. Closing

Based on the description in the analysis and discussion above, the following conclusions can be drawn:

- The procedure of registration of customary rights of West Sumatra is as follows: the House request submitted to Head Office Land District/City. Submissions were registered on behalf of or Mamak Head Heirs using a waiver of physical mastery of parcels of land that are signed by the Mamak Head Chiefs as Heir. The statement must be approved by the head of the tribe or Tribal King and Chairman of the custom Density District and known by *the Lurah / village chief* concerned with attaching the name of the Member that contains the ration House of at least three generations, created by Mamak Chief Heir and known by the ruler of the tribe and the leader of the right.
- Registration of a Customary House was expected to guarantee legal certainty for members of the House as a fellowship of customary law, as well as maintaining Customary Rights for indigenous Justice. Therefore, the customary land register House in conceptional in touch with the land registry purposes, i.e. to guarantee

legal certainty while also embodying a sense of Justice for indigenous citizens (members of the House).

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