

# DISPUTE RESOLUTION OF HIGH PUSAKO LAND SOLD WITHOUT THE CONSENT OF THE HEIR (Study of Article 107/PDT. G/2017/PN.PDG)

<sup>1</sup>Amelia, SH., MH., <sup>2</sup>Prof. Dr. Kurniawarman, SH., M.Hum., <sup>3</sup>Dr. Zefrizal Nurdin, S.H., M.H.

<sup>1</sup>Master Of Law Student, <sup>2</sup>Master Of Law Lecture, <sup>3</sup>Master Of Law Lecture

Faculty Of Law, Andalas University, Padang, West Sumatera, Indonesia

Email - <sup>1</sup>ameliaakhwil95@gmail.com, <sup>2</sup>kwarman@gmail.com, <sup>3</sup>zefrizalnur1@gmail.com

**Abstract:** *Minangkabau society today is faced with a reality that the High Pusako Treasure of the people have been shaken even sold or have changed hands or are no longer intact. A situation contrary to the principle of mastery of the High Pusako Treasure in Minangkabau that has given clear boundaries that the High Pusako Treasure is not transferable and is still belonging to a tribe. There are many High Pusako Treasure claims in the Padang District Court, one of which is a High Pusako Treasure dispute over the traded land without the knowledge of heirs. The problem in this thesis is what is the process of buying and selling high Pusako land according to Minangkabau customary law?, how is the process of dispute resolution of high Pusako Land sold without the consent of the heir based on Article No. 107/PDT. G/2017/PN.PDG in the District Court of Class 1 A Padang?, and how does the execution of a civil lawsuit that has a fixed legal force (Inkrach van Gewijsd) on the order of judges under the head of the District Court? The method used in this research was empirical, where this method is done by the authors by spreading about a dispute settlement of high Pusako property through the pathway of litigation (through court) systematically, factual, accurate so that the bias was tested truthfulness. The results showed that the buying and selling process of high Pusako land today is an easy matter, as well as the buying and selling process. Only, the difference is on the taxes charged to the seller because of the sale. If the regular sale, the person listed in the land certificate is present to sign the deed of sale and purchase. This time buying and selling inheritance is done by sellers who are heirs of a deceased person. Existing heirs will be evidenced by the existence of an inheritance certificate (SKW). Based on Decree No. 107/Pdt.G/2017/PN. Pdg, the Court of Justice argued that due to the defendant's exception was granted, the plaintiff's lawsuit was not eligible to be formal, so the tribunal argued that the plaintiff's lawsuit should be declared unacceptable. There was a wide range of formyl defects which became the basis for the judges to impose the final verdict with the dictum stating the unacceptable lawsuit (Niet Ont van Kelijkverk laard). Formyl defects that can be used as a basis by the judge impose a negative final judgment in the form of an inadmissible lawsuit, among others, that the lawsuit is a power not supported by a special power letter under the terms set forth in article 123 HIR Jo. SEMA No. 1 year 1971 Jo. SEMA No. 4 of 1996, a lawsuit containing error in persona, a lawsuit outside the absolute or relative jurisdiction of the court and the lawsuit of a libel obscuur. Contains defects obscuur libel is a vague plaintiff's lawsuit, does not qualify clearly and definately (Duidelijk eenbepaal deconclusie) as the base of process Doelmatigheid (for the sake of events).*

**Key Words:** *Dispute resolution; High Pusako treasure; Buy and sell; Heirs.*

## 1. INTRODUCTION

Land is a very basic human need. The State governs this in Section 33 of Paragraph (3) of the Constitution of year 1945, that, "the Earth, water, and wealth contained therein are ruled by the state and used for the maximum prosperity of the people." The implementation of the Constitution is governed by Article 2 Paragraph (4) of the UUPA. According to Boedi Harsono, from the provisions of the UUPA can be found that, the law applicable to the Earth, water, and space is customary law. Customary law is a law that grows and develops in indigenous peoples.[1]

In Article 18B Paragraph (2) of the Constitution 1945, said, "the state acknowledges and respects the provisions of the indigenous peoples and their traditional rights as long as they are alive and in accordance with the development of the people and principles of the unitary Republic of Indonesia, which is governed by law." The land itself is a land controlled jointly by indigenous peoples, where the arrangement of management is performed by the customary leader (head of Adat) and the utilization of both the public and the appropriate indigenous peoples and foreigners.[2]

As the implementation of the article, the regulation of the Minister of Home Affairs No. 52 year 2014 on the guidelines on the tax and protection of indigenous peoples and the regulation of the Minister of Agrarian and the

spatial/Head of national Land agency No. 10 year 2016 on procedures for establishing communal rights on the land of indigenous peoples and communities in particular regions.

As the implementation of the provisions of the Regulation on the land of Ulayat which has been described above, West Sumatera as a province that there are many Ulayat lands in the environment of indigenous peoples whose management, mastery, ownership and utilization based on the provisions of local customary law then issued regional regulation of West Sumatera Province No. 6 year 2008 about Ulayat land and utilization. The land is meant by the forest according to Minangkabau is divided into 4 (four) kinds that belong to the common (communal), namely: the land of the People's Ulayat, the land of ethnic tribes, Land of Ulayat Nagari, and the land of the Rajo Ulayat. Communal rights consist of 2 subjects, namely the co-ownership of the land on which the subject of customary law Society and the property rights to the land on which the subject of non-legal society is customary.

The Pusako Treasure can be divided into 2, one of which is the property of High Pusako is the joint Treasure rights of a people who have a blood relation and inherited hereditary from the previous ancestor, and this property is under the management of the Mamak heir (the oldest man in the tribe). The process of transferring Pusako Treasure from Mamak to niece in the term adat is called "Pusako Basalin". For the treasure of high Pusako apply the following adat provisions: Tajuain Dak dimakan Bali (sold can not be purchased) and Tasando Indak dimakan gadai (collateral can not be pawned). It means that the high Pusako Treasure should not be sold.[3]

Minangkabau Society today is faced with a reality that the high-life Pusako Treasure of the people have been shaken even sold or have changed hands or no longer in full state. A situation contrary to the principle of mastery of the high Pusako Treasure in Minangkabau that has given clear boundaries that the high Pusako Treasure is not transferable and is still belonging to a tribe.

There are many high Pusako Treasure claims in the Padang District Court, one of which is a High Pusako Treasure dispute over the traded land without the knowledge of the heir between Nazzaruddin as plaintiff and Hendra Gunawan as defendant. This issue began when the Mamak and the members of the tribe sold two areas of Nazzaruddin land that came from the high estate of people who were ruled by generations from Jaluna, which is located in RT. 01/RW. 05 Sungai Sapih Subdistrict of Kuranji Sub-district to the other party, who made Nazzarudin lose his rights to the land, but Nazzaruddin still tried to claim his right to the land, finally in 2010 Nazzaruddin succeeded in obtaining the rights to the land in a way of peace with the rights holder of the fractional certificate that was purchased from the land. With the realization of the peace between Nazzaruddin and the party's rights of fractional certificates (sipurchasers), Nazzaruddin with the rights of a fractional certificate from the land has agreed to sell it to another party or buyer, which in this case has been sold to Afrizal, SPd. This kind of problem is often happening in the High Pusako Treasure.

## 2. CONCEPTUAL FRAMEWORK:

### a. Settlement of Dispute

Settlement of dispute resolution dispute is a way to resolve a dispute through the tribunal, (*Alternative Dispute Resolution*), and through the Adat Institute.

### b. High Pusako Treasure

High Pusako Treasure is all the treasures of the Pusako of the people who are passed down from several generations based on mother lineage.

### c. Land of ulayat

Land of is the field of heirloom and natural resources that exist on it and within it is acquired by generations is the right of indigenous peoples.

### d. Buy and sell

Buy and sell sale according to article 1457 Civil Code of sale and purchase is, "an agreement by which a Party shall bind itself to surrender a material and other party to pay the promised price."

### e. The civil law

The civil law of the civil proceedings is the law governing the court's lawsuit, how the defendant was to defend himself from the plaintiff's lawsuit, how the judges acted both before and under the examination, and how the judges broke the matter filed by the plaintiff and how to perform the ruling accordingly in accordance with the prevailing regulations, so that the rights and obligations set forth in the civil law can run as it should.[4]

### f. The Decision

Sudikno Mertokusu defines the judgment of a Judge as a statement by a Judge, as a state official authorized for it, is pronounced at the proceeding and aims to terminate or settle a matter or dispute between the parties. The judge's verdict should be pronounced in a hearing that is open to the public. The decision of the said Judge must be the same as that set forth in written form, which is an authentic deed.

### **3. THEORITICAL FRAMEWORK:**

#### **a. The dispute resolution theory**

The dispute resolution theory of the dispute (disputes) in law is the point of departure against earlier legal theories conducted by the forefathers in the United States. They no longer give a legal conception by moving from a rule oriented law definition, but giving a sense that rests on a disputes settlement by the court or other official, analyzing the decisions of the future.[5]

#### **b. The theory of legal certainty**

The theory of legal certainty is a question that is not as good as sosilogis, as a rule of wisdom.[6] According to Kelsen, it is a norm system. The norm is a statement that undertakes the "supposed" or Das Sollen aspects, with the ability to ambkening some of what should be done. Norms are human products and actions that are deliberative..[7]

#### **c. The theory of law protection**

according to Satjipto Raharjo, the legal shield is an effort to organize various interests in the community so that there is no impact on the interests and can enjoy all the rights granted by the law.[8]

### **4. LITERATURE REVIEW:**

The Treasure Pusako in Minangkabau terminology is called Harto Jo Pusako. Harato is something that belongs to the people who look and form materially such as rice fields, fields, Rumah gadang, livestock, and so on. Pusako is something belonging to the people inherited by hereditary both visible and invisible. Therefore, in Minangkabau, there are two words of twinned which means that the more is much different, namely Sako and Pusako.

- Sako

Sako belongs to the hereditary generation according to the matrilineal system that is not material form, such as the title of Penghulu, greatness of the people, praise and respect that is given to him.

- Pusako

Pusako is the Treasure of hereditary generations according to matrilineal system in the form of material, such as rice fields, fields, Rumah Gadang, and others.

The High Pusako Treasure is a shared Treasure of a people who have a blood relation and inherited from the ancestors of berforehand, and this property is under the management of the Mamak heir (the oldest man in the tribe). The process of transferring power over this estate from Mamak to kemanakan. Regarding the high heirloom, it applies the customary provisions of Tajuan dak dimakan bali, tasando indak dimakan gadai. This means that high heirloom cannot be bought and adjusted. Nevertheless in the practice of pawn can be done with certain conditions. For the high heirloom, for example, the pledge can only be done by the member's agreement as the owner of the high heritage in question.[9]

### **5. METHOD:**

The method used in this study is the juridical law of empirical, comparing the existing norms to the facts that exist in accordance with the research conducted.[10] The Data for this study was obtained from the state court office of Class 1A Padang, National Land Agency, Kelurahan Sungai Sapih, and the Padang state prosecutor..

### **6. DISCUSSION:**

Broadly, the emergence of the High Pusako Treasure dispute can be said as follows, due to the fault of seeing the ranji and the inheritance of property, sold out, the pawn system that is too long, often changed hands, and began to be ignored in the custom system Matrilineal so that Pusako Treasure diverted to the livelihood, the presence of social and economic criteria of certain individuals or groups against other individuals or groups, and loss of land barriers naturally. Some information in the countryside indicates that the emergence of land disputes is due to the view that the distribution of inheritance is not fair, it is mentioned because of the blurring of the family lineage, so that among the one with the other Jurai each claim treasure Pusako. The blurring of the lineage can occur when a former spokesman had many treasures (land) then in the extinct period.

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There are many High Pusako Treasure claims in the Padang District Court, one of which is a High Pusako Treasure dispute over the traded land without the knowledge of heirs. As for sitting the case is a High Pusako Treasure dispute over the sold land without the knowledge of heirs. Nazzaruddin as plaintiff and Hendra Gunawan as

defendant. It began when the Mamak and the members sold two areas of Nazzaruddin land that came from the high estate of the people who were ruled by generations from Jaluna located in RT. 01/RW. 05 Sungai Sapih Subdistrict Kuranji Sub-district to another party, which made Nazzarudin to lose the rights to the land, but Nazzaruddin still trying to claim his right to the land. Finally, in 2010 Nazzaruddin succeeded in gaining a land of rights in terms of peace with the rights of a fractional certificate purchased from the land. With the realization of a peace between Nazzaruddin and the party's rights of fractional certificates (sipurchasers), Nazzaruddin, with the rights of a fractional certificate from the land, agreed to sell it to another party or buyer, which in this case has been sold to Afrizal, SPd.

That above the land that is realized, now has stood the residential building of Villa Idaman which was built by Developer PT. Ramah Abadi Jaya where the director is Afrizal, SPd. However, Nazzaruddin until now never waive the right to public facilities (Pasum) to the city government of Padang, although the land is without permission and Seknowledge Nazzaruddin has been diplaning by the Office of Layout and housing of Padang City , which means Nazzaruddin's rights are still attached to the land of the Pasum. After the house was built by the defendant company, the entrance to the housing that was built by the defendant through the land object of matter, where Nazzaruddin itself no waive the right to case object. Bringing the issue of the High Pusako Treasure dispute on the Padang District court above, then arise questions, how the Pusako Treasure can be traded when there are customary provisions stating that the High Pusako Treasure can not be traded, except with the cause that has been determined, although it can be traded how the agreement could be done if there is one heir that is disagree , and of course the judges were taken to understand the Minangkabau customary law itself

## **7. ANALYSIS:**

### **A. The process of buying and selling High Pusako Land according to Minangkabau customary law**

The terminology of buying and selling means that "exchanging property likes" or "ownership in certain ways". The word Exchange or transitional ownership with a replacement, contains the same intent that any activity to transfer the rights and ownership takes place on a reciprocal basis on a mutual will and desire. Buying and selling is an action or transaction that has been ismated in the sense that there is a clear ruling in Islam. The benefit of buying and selling is to avoid people from having trouble with their wealth. In order for the sale to be held in a permissible manner must follow the provisions specified.

Provisions of the High Pusako of property and low inheritance are not allowed to be sold or adjusted, but can be adjusted with the base of the first, a girl who does not sell (or has an old virgin) and does not have a husband, so some of the heirloom can be adjusted for the purpose of married the girl. Secondly, when mait (deceased person) is located at home and there is no charge to hold it. Thirdly, if the Pusako degree (penghulu) has long been lost because there is not enough fee for the ceremony of Batagak Gala Penghulu then the high Pusako Property can be held. Fourth, when the house is leaked or damaged and needs to be repaired, while the saving of the tribe is not there, so for that rice field or property can be adjusted to improve the house. The management of this high Pusako property is not contrary to the inheritance of Islam because it is based on:

1. The property is a common treasure that was originally given as a shared treasure for the offspring inherited by the daughter and as a managed treasure, and not a personal possession;
2. The high heirloom is a treasure that has the law of Qiyas Waqf that its designation has been determined by the generations before. Ownership does not exist in people, but its management rights are determined;
3. The high heirloom, is not a quest of father and mother or grandfather and grandmother. Then no inheritance applies to this.

The process of sale and purchase of land of High Pusako Treasure must involve all legitimate heirs according to its goals. If there is an heir that suddenly sells all of its heirs, without the consent of other heirs, that includes unlawful acts.

### **B. Dispute Resolution Of High Pusako Land Sold Without The Consent Of The Heir Based On The Study Of Matter No. 107/PDT. G/2017/PN.PDG in Class 1 A Padang District Court**

According to its function, the law is differentiated into material law and formyl law or event law. The law of civil proceedings is the civil law of Formil, which essentially serves to defend or enforce the civil law of material through the courts in the event of a violation of the civil law or a dispute. Even the law of the Civil proceedings also regulates how ordinances acquire the right and the legal certainty of which times the dispute occurs by filing a court "petition". Nevertheless, in general the law of civil proceedings governs the process of resolving civil litigation through judges in the Court of drafting a lawsuit, filing a lawsuit, examination of a lawsuit, court judgment up to the execution or execution of a court decision. The legal source of the civil program is the place where the legal provisions of the civil program can be found. The arrangement is still scattered in various laws and regulations, namely:



- 1) HIR (Het Herziene Indonesche Reglement);
- 2) RBg (Het Rechtsreglement Buitengewesten), S. 1927 number 227. RBg applies to areas outside Java and Madura;
- 3) Rv (Reglement op de Burgerlijke Rechtsvordering), S. 1847 numbers 52 and S. 1849 number 63. The Rv is commonly referred to as Reglemen civil proceedings for the Europeans;
- 4) BW (Civil Law Code), especially the IV book;
- 5) WvK (Book of Trade Laws);
- 6) Various laws pertaining. Jurisprudence Regulation of the Supreme Court (PERMA);
- 7) Instruction and the Supreme Court Circular Letter (SEMA);
- 8) International treaties; Doctrine.

The decree of the Padang District Court No. 107/Pdt.G/2017/PN.Pdg in Class 1 A Padang District Court about the High Pusako Treasure lawsuit in Padang District Court. As for sitting the case is a High Pusako Treasure dispute over the sold land without the knowledge of heirs. It is backed by the Mamak and the members sell two areas of Nazzaruddin land derived from the high Pusako property of the hereditary controlled tribe of Jaluna located in RT. 01/RW. 05 Sungai Sapih Subdistrict Kuranji Sub-district to another party, which made Nazzarudin to lose the rights to the land, however, Nazzaruddin still tries to claim his right to the land, finally in 2010 Nazzaruddin succeeded in obtaining the rights to the land in terms of peace with the rights holder of the fractional certificate purchased from the land. With the realization of the peace between Nazzaruddin and the rights holder from the fractional certificate of the Land (Sipurchaser), Nazzaruddin, with the rights of a fractional certificate from the land, agreed to sell it to another party or buyer, which in this case has been sold to Afrizal SPd.

Under the ruling of the judges above the Tribunal argues that due to the defendant's exception being granted, the plaintiff's lawsuit is not eligible to be formal, thus the tribunal argues that the plaintiff's lawsuit must be declared unacceptable. Yahya Harahap In his book explains that the verdict *niet ont vankelijk everklaard* or commonly referred to as the ruling N.O is an award stating that the lawsuit is unacceptable because it contains a formyl defect. [11]

Formyl defects that can be used as basis by the Judge impose a negative final decision in the form of the claim is unacceptable, such as the following:

1. *Disqualification in person*, acting as plaintiff has no right and capacity to sue. In such power, the plaintiff does not have a *persona standi in Judicio* in front of the district court or against the matter. In such case, the defendant may file an exception in persona, for the reason of disqualification in person, the person who filed the lawsuit is not the right person and has a legal position for it.
2. *Gemisaanhoedanigheid*, the party with drawn as the defendant was erroneous. For example, a buy and sell agreement between A and B. Then A draws C as the defendant to allow C to fulfill the agreement. In such cases, uninteresting C as the defendant's party is erroneous, because C has no legal relationship with A.
3. *The Plurium Litis consortium*, acting as plaintiff or being withdrawn as a defendant is incomplete. There are still people who have to be used as plaintiff or defendant, new disputed disputes can be resolved completely and thoroughly.

### C. Execution Of A Civil Lawsuit That Has The Power Of Legal Remains Above (Inkrach Van Gewijsd) The Order Of Judges Under The Head Of The District Court

Execution under the command of the head of the District court who severed the first level shall be governed by Article 195 Paragraph (1) HIR or Article 206 subsection (1) Rbg which reads, "If any decision in the first level is examined and decided by one district Court, then the execution of the ruling is under the principal and chief of the relevant district court." Observe the principles set out in article 195 paragraph (1) of Rbg, as follows:

1. Determine which court is authorized to execute the ruling execution. To keep his firm legal certainty, that the law has determined the authority to conduct a court ruling. From the guidelines determining the authority to conduct an award or execution, no need to be disputed regarding appeals or casings. Even if a case is already through the level of appeals or casting checks it is not a factor in determining the authority to carry out execution of the only factor to determine the authority of execution solely based on the submission and allotment of the ruling on the first level.
2. The authority to execute the execution is only given to the District Court pursuant to what is specified in article 195 paragraph (1) HIR or Article 206 subsection (1) Rbg, executing the execution of the Court of Absolute judgment is given only to the first level judicial institution. State Government, the High Court or Supreme Court does not have the authority to execute the execution and no matter whether the decision to be executed was the

result of a high Court judgment or the Supreme Court, its execution remained under the authority of the corresponding district court who had the case on the first level.

3. Execution of orders and under the head of District Court. The formula above is the principle of execution set forth in article 195 paragraph (1) HIR to the Origin 206 paragraph (1) of the principle that determines that the execution of the court ruling on the order and under the head of the District Court Chairman (op last enonderleiding van den voorzitter van den Landraad). So coincided with the authority to carry out the execution of which was given the act to the Court of the Land, the authority formally lished the chairman of the District Court.

## 8. CONCLUSION:

From the discussion as explained earlier, several conclusions can be drawn, including:

- The process of buying and selling High Pusako land of adults is easy, if in the ordinary sale of buy, the person listed in the certificate of land is present to sign the deed of sale and purchase. This time buying and selling inheritance is done by sellers who are heirs of a deceased person. Existing heirs will be evidenced by the existence of an inheritance certificate. Pursuant to Article 1471 the Book of Civil Law of the buying and selling process is not valid or void and the Seller shall carry out the inheritance of land return to the heirs. But the land has been sold and difficult to return, so the heirs can seek compensation for the asset in other forms of equal value. However, if until the seller does not properly resolve the matter, it means having committed criminal acts of evasion. Heirs may present a lawsuit as stipulated in article 1365 of the Civil Code.
- Pursuant to Decision No. 107/Pdt.G/2017/PN.Pdg the tribunal Judges argued that due to the defendant's exception was granted, the plaintiff's lawsuit was not eligible for formal, so the tribunal argued that the plaintiff's lawsuit should be declared unacceptable. The verdict of niet ont vankelijk everklaard or commonly referred to as NO verdict is an award stating that the lawsuit is unacceptable because it contains a formyl defect.
- Execution under the command of the head of the District court who severs the first level shall be governed by Article 195 Paragraph (1) HIR or Article 206 Paragraph (1) of Rbg. The principle that determines that the execution of the court decision on the order and under the Chief of the District Court (op last enonderleiding van den voorzitter van den Landraad) So coincided with the authority to carry out the execution granted the Act to the District Court. The authority of the District Court shall carry out the execution of Article 195 Paragraph (1) HIR or Article 206 Paragraph (1) Rbg, also shall not be separated from the Article 197 Paragraph (1) HIR or Article 208 Rbg.

## 9. SUGGESTIONS

The suggestions given by researchers are as follows:

- The process of sale and purchase of land of High Pusako must involve all legitimate heirs according to its goals. In certain cases the SKW is made with a court designation or commonly called a fatwa. The SKW with the court designation is required especially for the condition of the heir consisting of many people who potentially pose disputes. This can happen if the heir is a person with a deep vertical level of family relationships.
- Faced with a lawsuit that contains formyl defects, the verdict that was dropped must clearly and expressly enlist in the ruling Amar stated an unacceptable lawsuit (Niet Ont van Kelijk Verklaard). In the jurisprudence of the Supreme Court of Indonesia No. 565K/SIP/1973 dated 21 August 1974 it is stated that the lawsuit must be deemed unacceptable as the basis of the lawsuit is not perfect in this regard because the right of plaintiff over the dispute land is unclear. In such a negative final judgment, the status and legal relationship between the parties and the subject matter is not subjected to any change.
- Execution of the court decision on the order and under the Chairman of the District Court. So coincided with the authority to execute the execution given the LAW to the Court of the land, the authority was formally placed at the head of the District court. The chairman of the District Court is authorized to order execution, and lead the execution course. The authority of the District Court shall carry out the execution of Article 195 Paragraph (1) HIR or Article 206 Paragraph (1) of Rbg, also shall not be separated from the Article 197 Paragraph (1) HIR or Article 208 Rbg. The authority by ex officio, issued a letter of establishment ", which is ordered to execute the execution is the Registrar or the District Court.

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