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Application Of Indigenous Minangkabau On Dispute Settlement Certificate Property Rights To Land Between Peoples Indigenous Minangkabau

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ABSTRACT

Introduce: In West Sumatra, there are several registered lands, administered, and published its certificate by the National Land Agency is still identified as customary land-based on customary law. This condition results in disputes between the interests of individuals and/or indigenous peoples who feel disadvantaged over the issuance of certificates with the government. If this dispute cannot be resolved amicably, it can be resolved in the State Administrative Court. The purpose of this study is to find out the concept of the ideal application of Minangkabau customary law in the future in the Padang State Administrative Court Decision in resolving disputes over land ownership certificates between the Minangkabau Customary Law Community and the National Land Agency.**Method:** This research is classified as normative legal research which focuses on the case approach by analyzing the ratio decidendi or the reasons considered by the judge in making decisions by taking into account formal and material facts.**Result:** This study resulted in conclusions. Analysis of legal considerations that include formal aspects (exceptions) and material aspects (principal cases) has a level of accuracy that can achieve legal objectives, including justice, expediency, and certainty if it has a philosophical, sociological, and juridical basis that more in-depth on the Decision of the Padang State Administrative Court. **discuss**. the ideal concepts of implementing Minangkabau customary law in the future in the Padang State Administrative Court's decision are to apply customary law without excluding national law, promote substantive justice, judges must explore the values of customary law and judges must consider facts and realities. the reality in society.

Keywords: Minangkabau Customary Law, Land Ownership Disputes, State Administrative Court.

1. INTRODUCTION

The Minangkabau customary law community is classified in a legal alliance with the form of a regional environment that has blood ties. The Minangkabau Customary Law regulates the use of customary land. Customary lands in Minangkabau are categorized intangible (material) wealth called pusako (heirloom assets)[1]. The inheritance consists of high inheritance and low inheritance. High heirloom assets are assets owned by the Minangkabau Indigenous Peoples collectively and obtained from generation to generation which is inherited by blood-lined heirs according to the maternal line.

This high inheritance is in the form of fields, artificial banda, pumpkin tapian, tanggoameh house jo Perak, PandamPakuburan, uncultivated land forest, SaratoTaranak Paliharo[2,3,4,5] Meanwhile, low inheritance is property acquired by a person or a relative (relative). The local district/city Land Office in issuing certificates of property rights is only guided by the data requested by the applicant and without taking into account the socio-economic conditions of the local customary law community. In the eyes of the UUPA and Government Regulation Number 24 of 1997 concerning Land Registration (hereinafter referred to as PP 24/1997) the customary rights of customary law communities are recognized, regulated, respected, and protected, but at the level of implementing regulations, customary land rights do not obtain proof of ownership of rights in the form of a certificate. so that from a juridical perspective it is not recognized and is not an object of land registration[6,7,8]. The logical consequence, from the optics of land law in general and UUPA, PP 24/1997 in particular can be said that the land rights of customary law communities exist and their dynamics are between "existent" and "nothing" or between "life" and "death". This situation raises problems in the field of the legal protection of customary land rights of customary law communities which are disputed in almost every region, especially the Province of West Sumatra[9,10,11,12].

One of the disputes that occurred was between the Minangkabau Customary Law Community and the Regency/City Land Office and the holder of the certificate of title to the land. The causes of disputes, among others:The Minangkabau Indigenous Law Community, represented by Mamak Chief Waris, resolved disputes over land title certificates issued by the Regency/City Land Office by filing a lawsuit with the Padang State Administrative Court (hereinafter referred to as the Padang TUN Court)[13]. The Padang State Administrative Court is part of the State Administrative Court which has jurisdiction covering the entire province of West Sumatra. Judicial power within the State Administrative Court is exercised by the State Administrative Court and the State Administrative High Court culminating in the Supreme Court[14].The TUN Court is an institution that carries out limited material testing regarding the vertical consistency of a KTUN (beschikking) against the laws and regulations on which it is based. A judicial review instrument for laws and regulations is needed to maintain vertical consistency of laws and regulations in Indonesia Vertical consistency of laws and regulations is needed for efforts to harmonize the national legal system so that it is guaranteed[14,15,16]

2. METHOD

This study used this research classified into the type of normative legal research that focuses on the case approach by analyzing the ratio decidendi or the reasons considered by the judge in making decisions by paying attention to formal facts and material facts. From the type of data required, namely secondary data originating from primary, secondary, and tertiary legal materials, it is clear that the data collection method used is library research. Data is collected from any library that allows researchers to obtain data on this research topic, including data provided by the website. Regarding the dispute over the certificate of ownership between the Head of the Land Office and the Minangkabau customary law community in West Sumatra in the form of a court decision obtained from the Padang State Administrative Court[17].

3. RESULTS

Table 5.1 Philosophical, Sociological and Juridical Analysis of the Padang State Administrative Court's Decision on the Land Title Certificate Dispute between the Minangkabau Customary Law Community and the Head of the Land Office in the Period 2011 to 2019

Law on	**Criteria for Indigenous Peoples**
Law State Constitution Republic of Indonesia 1945	Units of customary law communities and their traditional rights as long as they are still alive Following community development Following the principles of the Unitary State of the Republic of Indonesia regulated in
Law Number 41 of 2009 concerning Forestry, the	community is still in the form of an association (*rechsgemeenschap*); There are institutions in the form of traditional rulers; There is a clear customary law area; There are legal institutions, particularly customary courts, which are still being adhered to; and Still collecting forest products in the surrounding forest areas to fulfill daily needs.
Law Number 32 of 2009 concerning Environmental Protection and Management Community	groups have traditionally lived in certain geographic areas; The existence of ties to ancestral origins There is a strong relationship between the environment; and The existence of a value system that determines economic, political, social, and customary law institutions.
Law Number 6 of 2014 concerning Villages	Having an area of at least one or a combination of elements; A society whose citizens have a shared feeling in the group; Customary government institutions; Wealth and / or objects; custom and/or Set of customary law norms[17,18].

In addition, one of the Experts in the trial of the Judicial Review of Law Number 18 of 2004 concerning Plantations in the Decision of the Constitutional Court of the Republic of Indonesia Number: 55/PUU-VIII/2010 dated 19 September 2011 namely Prof. Dr. Afrizal, MA also gave the opinion that there are 4 (four) criteria to identify customary law communities, namely. the existence of customary law communities who have lived for generations in certain geographical areas, the existence of customary law areas, the existence of customary government, the existence of assets and/or customary objects. Recognition of the

Indigenous Law Community is very important because recognition brings legal protection to the Indigenous Law Community and their rights[18,19,20,21,22].

1. It must

not conflict with national and state interests According to BoediHarsono, the provisions of customary law should not conflict with national and state interests. Customary law must serve the national and state interests. National and state interests must be placed above group and regional interests, let alone individual interests. then take the example of customary law provisions that are contrary to national and state interests, namely in General Elucidation number II/3 concerning the implementation of ulayat rights. The LoGA recognizes ulayat rights but does not confirm that based on their authority as executor of ulayat rights, these adat rulers hinder or hinder the government's efforts to achieve the greatest prosperity of the people. For example, hindering the implementation of land clearing plans on a large scale and regularly needed for large businesses in the context of implementing plans to achieve food self-sufficiency, land clearing to expand large plantation areas, resettlement[23,24,25].

Customary law provisions that authorize customary authorities to defend the content and implementation of their ulayat rights absolutely, as if the customary law community concerned is not part of the State and is not related to legal communities or other areas as if the ground in the legal community areas reserved for members of the indigenous and tribal peoples such self.the roleis actually contrary to the national interest and the State are based on the unity of the nation.

2. Cannot conflict with Indonesian

socialism The definition of Indonesian socialism is explained in the Summary of Decisions of the Provisional People's Consultative Assembly Number II/MPRS/1960, among others as follows:

“Indonesian socialism is teaching and movement regarding a just and prosperous society based on Pancasila. A just and prosperous society based on Pancasila is the demand of the Indonesian People's Suffering Mandate. A just and prosperous society based on Pancasilais the embodiment of Indonesian socialism based on justice. The purpose of the National Development Planned Universe is not[26,27,28]

3. Not Contrary to the Basic Agrarian Law

If there is a customary law provision that is contrary to the LoGA, then the customary law provision must be set aside, meaning that it is not used as a basis by the national agrarian law and declared not 1384 According to BoediHarsono, this is because the LoGA is a basic regulation of the National Land Law, by itself, there should be no written or unwritten Land Law regulations that contradict it[9]

4. Not Contrary to Other Legislations

Apart from the LoGA, the application of the law Customs must also not conflict with other laws and regulations. According to Muhammad Bakri, what is meant by other statutory

regulations here are all implementing regulations of the LoGA. For example, Article 19 paragraph 1 of the LoGA states:

"To ensure legal certainty by the Government, land registration is held throughout the territory of the Republic of Indonesia according to the provisions regulated by Government Regulations."

According to the provisions of Article 19 paragraph 1, further rules regarding land registration are regulated in the form of a Government Regulation. At the request of the article, a Government Regulation was made which regulates land registration which was originally regulated in Government Regulation Number 10 of 1961 concerning Land Registration which was later replaced by Government Regulation Number 24 of 1997 concerning Land Registration[9.13]

4. DISCUSSION

Land in Minangkabau often causes disputes, this is due to the distinctive pattern of land ownership, namely land ownership by tribes or tribes. So each member of the tribe may only use and benefit from the land but cannot own it. It will be a problem when many customary land practices are traded. Because this will save the potential for disputes in the Minangkabau community.

To resolve the customary land dispute, 2 settlement routes can be used by the parties, namely the non-litigation settlement path (outside the court) and the litigation route (through the court). Land disputes can cause disturbed self-esteem and stress on the disputing parties because self-esteem is an assessment of themselves against something around them[31,32]. In the litigation settlement process, one of the courts that can be used to resolve customary land disputes is through the State Administrative Court. The media that can be used as the basis for examining State Administrative disputes is a lawsuit. A State Administrative Lawsuit is an application containing a claim against a State Administration Agency or Official and submitted to the Court to obtain a decision. In this State Administrative Lawsuit, the Defendant is the State Administration Agency or Official who issued the decision. Because the dispute is land rights, the State Administration Agency or Official who can be sued is the Head of the Land Office[3,4,5,6].

As has been done previously on the legal considerations of the 9 (nine) decisions of the Padang State Administrative Court which is a customary land dispute involving the Minangkabau Customary Law Community with the Head of the Land Office which in its legal considerations uses the rules of Minangkabau customary law, the author finally found the concept of applying the law The ideal Minangkabau custom in the future is the decision of the Padang State Administrative Court on the dispute over land ownership certificates between the Minangkabau customary law community and the Head of the Land Office. Based on an analysis using the grounding philosophical, sociological, and jurisdiction over nine (9) of the decision, the concepts of ideal application of customary law Minangkabau in the future at Decision State Administrative Court Padang is as follows:

1. Applying the Customary Law Without Excluding National Laws

In the operation In the judiciary that involves the customary law community and the State, individual, or legal entity today, the growing stigma is “Customary Law vs. National Law". According to the author, this view is a very fatal logical fallacy, especially in land disputes. This argument is based on the fact that customary law is the basis for the formation of national land law. Regarding this matter, BoediHarsono explained that the position of customary law is our original law and also following the personality of our nation. Therefore, seeing customary law as a rival to national land law as a contest is unacceptable, but both must be placed in the same position. Agreeing with this, Bradford W. Morse in his paper entitled “Indigenous Law and the State” stated that customary law and national law cannot be contradicted. Furthermore, he explained that the legal dualism between the two should be labeled as a “Co, namely as follows

-operation” model“A second possibility could be labeled the “co-operation” model. The co-operation model makes both the indigenous law and the state law function side-by-side. Hence, it can respond to the different needs and circumstances of indigenous peoples.”[17, 23,30,,32,33]

Free translation: The second possibility is to label it as a "co-operation" model. The co-operation model makes customary law and national law function side by side. Therefore, the model can respond to the different needs and circumstances of indigenous peoples. Still, in the contestation between customary law and national land law, BoediHarsono also gives his view that customary law is not outside or opposite or contrary to national land law. These customary law norms are part of the national land law, which is an unwritten part.1391 This is also following Article 3 . Article 5 of the LoGA which states: Article 3 of the LoGA: “Concerning the provisions in Articles 1 and 2, the implementation of ulayat rights and similar rights of customary law communities, as longin accordance as it iswith the facts. Still there, must be in such a way that it is following national and state interests, which are based on national unity and must not conflict with other higher laws and regulations.” Article 5 of the LoGA: "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 is based on national unity, with Indonesian socialism and with the regulations contained in this Law. and with other laws and regulations, everything by heeding the elements that rely on religious law.”

In the administration of justice, especially the discussion is the State Administrative Court, the concept of applying customary law without excluding national law can be used by judges at the legal identification stage. At this stage, the TUN Court judge conducts an assessment/test of legal facts or legal events that have been confirmed, then qualified into which legal relationship. At this stage, the judge has entered the stage of applying the law and the application of the AAUPB, or methodologically entering the deductive step. The judge's initial step is to identify the rule of law and interpret the rule of law which can be applied in concrete events[31,32]. In addition to applying written legal rules, judges can also apply unwritten legal rules (in the form of AAUPB) to test the validity of the KTUN. The results of legal identification which are followed up by the application of the law are usually formulated in the judge's legal considerations. Referring to the “Co-operation” model as initiated by Bradford W. Morse which has been described above, according to the author, the TUN Court judge must apply customary law alongside national law in land disputes involving customary law communities and the state, individuals. , or legal entities. If in the dispute the TUN Court judge

only applies one of the customary law and national law, it will result in tendentious legal considerations. Considering that the position of the two parties to the dispute is recognized by the 1945 Constitution of the Republic of Indonesia. Therefore, by applying the two laws side by side, it will accommodate the needs of both parties. So that later legal considerations in the decisions of the TUN Court judges will be easier to accept by the disputing parties[14,15,33,34].

2. Prioritizing Substantive Justice Substantive

justice developed from the understanding of legal realism which holds that judges' decisions, in general, are the real law. The doctrine that becomes the basic assumption of the argument is the adage that reads "all the law is judge-made law", meaning that all laws are judges' decisions. If studied more deeply using a historical approach, this adage is based on the views of John C. Gray in his book entitled "The Nature and Sources of the Law" which at that time revealed that there was a dispute over an unlawful act (tort) which when the dispute occurred there are no rules and decisions in the subject (there is no statute, no decision, no custom on the subject) but the court must be able to decide the dispute (the court has to decide the case somehow). Based on this thought, in the end, the adage "all law is judge-made law" was created. Based on this way of thinking, the position and position of judges become very central in the context of law formation. Therefore, the judge's decision (especially the one being discussed is the TUN Court judge), must be able to realize the purpose of the law itself. So, referring to the theory of legal objectives according to Gustav Radburch, the judge's decision must fulfill justice, certainty, and expediency. The three objectives of the law (justice, expediency, and certainty) in the administration of justice are very difficult to realize simultaneously. This is because there is often a clash between legal certainty and expediency, between justice and certainty, and also between justice and expediency. If there is a conflict like this, according to Gustav Radburch, who is the mastermind of the theory of the purpose of this law, judges can use the principle of priority, in which justice gets the priority, the benefit is the second priority, and legal certainty is placed on the third priority. The process of making decisions by judges in court is complex and difficult. Thus, a judge must need training and have experience and wisdom in deciding a dispute. According to ArtidjoAlkostar, judges as the central figure of law enforcement must have moral obligations and professional responsibilities to master knowledge, have skills in the form of legal technical capacity and standard moral capacity[33.34].

With sufficient knowledge and technical skills, judges in deciding a case will be able to provide appropriate and correct legal reasoning. If a court decision does not sufficiently consider (OvoldoendeGemotiveerd) matters that are juridically relevant and legitimately appear in court, it will be felt that there are irregularities that will cause the death of common sense (the death of common sense). It is also felt by the most ordinary people because the court's decision concerns the conscience of humanity. Law enforcers are not slaves to words made by legislators, but more than that, they realize justice based on legal norms and common sense. As the argument above, it is such things that are considered to give birth to substantive justice. Justice whose size is not quantitative as it appears informal justice, but qualitative justice that is based on public morality and human values and can provide satisfaction and happiness for the community. Substantive justice decisions do not only accommodate the rules that apply in the most social stages of finding justice. Justice is not merely a juridical issue, but a social problem which in many ways is highlighted by the sociology of

law.1401 The character of substantive justice, which is based on the community's 'response', beautifully shapes the resolution of problems[33.34]

3. Judges are obliged to explore the values of customary law

Judges have the task of implementing judicial and judicial powers, this is formulated in Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that "Judicial Power is an independent power to administer justice to uphold law and justice". As someone in charge of administering justice, the role of the judge is very decisive in implementing and enforcing law and justice. The duty of judges is not only to enforce written laws but also unwritten laws depending on the case at hand. Law is something real, either in the form of statutory regulations (written law) or unwritten law. Harifin A. Tumpa interprets the law as a "body", wherein the body there is a "spirit of justice", which must be implemented by a judge in his decision. In the judge's decision, the law is the basis of the decision, and justice is the spirit of the decision. The judge's decision must have a legal basis, both written and unwritten, material law (substantial law) and formal law is the embodiment of the legality principle adopted by a state of law. The spirit of justice that must animate the law is a manifestation of the purpose of law enforcement.

A judge's decision that ignores justice is the same as destroying the future of humanity. It could even be more than that can lead to a bigger mess. Hugo de Groot, a Dutch philosopher once said that "ubiiuduciadeficiunt incipit bellum" or in English "the absence of judicial decisions leads to war" which when interpreted means "when a decision does not provide justice, then that is where the war begins. no wonder then the sentence is engraved at the entrance of "The Supreme Court of the Netherlands", or the Supreme Court of the Netherlands[34.35.]

4. Judge Considers Mandatory Facts and realities in the Community

one never mentions the legal adage "Testimoniaadsunt cum rerum, quid opus estverbist" or in English "when the proofs of facts are present, what need is there of words" rule on the dispute should remain guided by the evidence and facts of[34.35.]

5. CONCLUSION

TUN Court Judge shall explore traditional values in land disputes involving customary law communities. This is because the TUN Court Judge's Decision can apply the values of justice from the point of view of customary law, and later the decision can be accepted by the disputing parties (especially the customary law community) regardless of the outcome of the decision. Given, customary law has the power to apply sociologically (sociologischegeltung), meaning that customary law applies effectively in a society due to acceptance/recognition by members of the community concerned. Therefore, the ideal concepts of implementing Minangkabau customary law in the future in the Padang State Administrative Court Decision are to apply customary law without excluding national law, promote substantive justice, judges are obliged to explore the values of customary law and judges are obliged to consider the facts. facts and realities in society.

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