



Settlement of Land Pawn Disputes Through Courts in West Sumatra

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Abstract

The legal act of pawning is a two-party legal act, which involves the pawnbroker and the pawner. Manggadai is a land transaction. But the right to land remains with the land owner. The pawn recipient has the right to work on the pawned land and collect income from the pawned land. The problem is how the causes of land mortgage disputes in West Sumatra, how the process of resolving land mortgage disputes through the court in West Sumatra, and how the legal considerations of judges in deciding land disputes in West Sumatra. The method used in this study is the normative juridical method. The normative juridical method is carried out using a case approach. Based on the problems mentioned above, the results of the study are obtained. First, there are 5 (five) factors that cause land mortgage disputes in West Sumatra, namely not paying ransom for land pawns. One of the parties committed an illegal act, namely in the case of land acquisition without a legal basis. Default to the pawnshop agreement either in terms of not giving something, giving something but not on time, not doing something, doing something that is prohibited. Instead of a pawn without the agreement of the land owner, the pawn is only done by the pawn recipient and the pawn recipient. A bad intention from one of the parties. Second, in the settlement of land mortgage disputes, it should be resolved through mediation through both litigation and non-litigation. Third, the panel of judges in ruling a land pawning dispute must also consider the applicable customary law and the pawn merchant agreement itself. Law Number 56 Prp of 1960 must be changed or replaced, especially Article 7 concerning land pawning. Amendment or replacement of Law Number 56 Prp of 1960 must be by law, not by statutory regulations under the law. So the President or the House of Representatives must take the initiative to submit a bill for amendment or a bill to replace Law Number 56 Prp of 1960. Because Article 7 of Law Number 56 Prp of 1960 is clearly contrary to the Minangkabau Customary norm governing pawning agricultural land. And if no action is taken against the prevailing legal norms, according to the author, more land pawn cases will emerge in court. As well as in the drafting of the aforementioned Bill, it must involve all indigenous peoples throughout Indonesia, especially the Minangkabau indigenous people through representatives of traditional leaders as well as agrarian and customary law experts.

Keywords: *Dispute; Land Pawn; West Sumatra; Minangkabau; Judge's Decision*

Introduction

The legal act of pawning is a two-party legal act, which involves the pawnbroker and the pawner. Selling a pawn (groundverpading) is the surrender of land with cash payment, but the surrender has the right to take back the land by paying the same amount of money. There are several pawn terms, namely manggadai (Minangkabau), selling gade, adol sende (Java), selling a contract or gade (Sundanese). Manggadai is a land transaction not a transaction related to land. But the right to land remains with the land owner.¹

Liens on land are regulated in Article 53 paragraph (1) of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (hereinafter referred to as UUPA). Article 53 paragraph (1) of the BAL provides the meaning that a lien is one of the land rights, in addition to the land rights stipulated in Article 16, but the intended lien is only temporary. Liens are classified as one of the temporary land rights because the properties contained in the lien are contrary to the LoGA and this liability is sought to be erased in a short time. Although Article 53 paragraph (1) of the LoGA mandates that the liens are temporary, the fact is that after 59 years the LoGA came into force, the liens still apply in the Republic of Indonesia.

Then what is required by Article 53 paragraph (1) of the LoGA, is regulated simultaneously in Law of the Republic of Indonesia Number 56 Prp of 1960 concerning Determination of Agricultural Land Area (hereinafter referred to as Law No. 56 Prp of 1960), especially Article 7. Although Article 7 UU no. 56 Prp of 1960 has been said to be forced and cannot be softened, but the problem of pawning settlement still requires guidelines that can be used as a guide, both by the parties concerned and by the relevant agencies. So on July 22, 1963, the Minister of Agriculture and Agriculture issued Minister of Agriculture and Agrarian Regulation No. 20 of 1963 concerning Guidelines for Resolving the Pawn Problem.

With regard to customary law as the basis of the LoGA, Boedi Harsono said, the customary law in question was customary law that had been purified or saneering from elements that were not original, and in the formation of the Loga that was used as the main ingredient was its conception and principles.² Then Ter Haar said that customary law is the entire regulation that is incarnated in the decisions of legal functionaries who have the authority and influence and in its implementation apply immediately (spontaneously) and obeyed wholeheartedly.³

In the Minangkabau traditional legal system it has long been known that there are land pawns or pawning apprentices. In the Minangkabau customary law, the saying "Pawn is given, it is also passed through" (pawning must be redeemed, selling left alone). This raises legal issues, because however, for the return of the land to the owner, redemption must be made to the pawn. As long as the pawn has not been redeemed, so long as the pawn holder can control the land and enjoy the results of the land.

According to Alisaman, in his thesis on "Agricultural Pawn in Minangkabau After the Enactment of Law No. 56 Prp of 1960", pawn of agricultural land based on the provisions of customary law tends to contain elements of exploitation, because in customary law there are no provisions regarding the return and redemption of pawned agricultural lands, so that if the land owner cannot redeem his land, the land will remain controlled by the holder pawn. In fact, agricultural land pawn is difficult to be eliminated, because agricultural land pawn is still mostly done by the community, especially farmers.⁴

In practice, there have been many land mortgage disputes, especially in West Sumatra Province. Land mortgage disputes that go to court also have received decisions that have permanent legal force

¹ Suriyaman Mustari Pide, *Hukum Adat: Dahulu, Kini, dan Akan Datang*, Prenadamedia Group, Jakarta, 2014, p. 146.

² Boedi Harsono, *Hukum Agraria Indonesia*, Cetakan Kesebelas, Edisi Revisi, Djambatan, Jakarta, 2007, p. 177.

³ Imam Sudiayat, *Asas-Asas Hukum Adat Bekal Pengantar*, Liberty, Yogyakarta, 1985, p. 5-6.

⁴ Alisaman, *Pelaksanaan Gadai Tanah dalam Masyarakat Adat Minangkabau di Nagari Kampago Kabupaten Padang Pariaman Setelah Berlakunya UU No.56 Prp 1960*, Tesis Program Pascasarjana Universitas Diponegoro, 2005, p. 19.

(inkracht van gewijsde). Some of these decisions are the Decision of the Supreme Court of the Republic of Indonesia Number 411 K / Pdt / 2015, the Decision of the Supreme Court of the Republic of Indonesia Number 479 PK / Pdt / 2016, and the Decision of the Supreme Court of the Republic of Indonesia Number 2654 K / Pdt / 2017.

One example of the application of the land mortgage law in the legal consideration of a decision, namely the Decision of the Supreme Court of the Republic of Indonesia Number 479 PK / Pdt / 2016. The panel of judges decided that the recipient of the pawning was required to return the pawned land to the pawnbroker even though the pawner's debt had not been paid, this refund was due to the fact that the pawning had already exceeded 7 (seven) years.

Thus it can be said, that both state and customary law must take place side by side. In the event of a land mortgage dispute, this is where the role of law enforcement, especially judges, is to harmonize existing laws, explore values and laws that live in the community. Ideally, law enforcers, especially judges can adjust or harmonize between the two fields of law. Based on the background of the problem, the writer formulates the problem as follows: 1. What is the cause of the land mortgage dispute in West Sumatra? 2. What is the process for the resolution of a land mortgage dispute through a court in West Sumatra? 3. What are the judges' legal considerations in deciding a land mortgage dispute in West Sumatra?.

Research Methodology

The method used in this research is normative juridical. The normative juridical approach refers to the legal norms contained in the legislation and court decisions and legal norms that exist in society. In addition, by looking at synchronizing a rule with other rules in a hierarchical manner.⁵

Discussion

1. The Cause of the Land Mortgage Dispute in West Sumatra

The sample taken at Nagari Pitalah is based on the Decision of the Supreme Court of the Republic of Indonesia Number 479 PK / Pdt / 2016. That based on the statement of the Plaintiff in his lawsuit, the pledge land which was the object of the dispute was a pawn apprenticeship conducted by the Defendant and the Plaintiff. The parties to the a quo case are:

- 1) Zulfa Roberto Dt. Ampang, Syafrimen Dt. Sinaro Kayo, Suwirtatati, Dartawarni, Dekonis, Bendrizal Dt. Sirajo (Defendants I, III, IV, V, VI, VII / Compared to I, III, IV, V, VI, VII / Cassation Appellant I, III, IV, V, VI, VII / The Petitioners for Reconsideration);
- 2) Mulkifar Dt. Sidi Gindo (Plaintiff / Appellant / Respondent Cassation / Respondent Review); and
- 3) Nurjanah (Defendant II / Compared II / Appellant of Cassation II / Participant of Respondent for Reconsideration).

The object of the case in this case was the land located in Kapalo Jambak Nagari Bungo Tanjung (administratively located in Nagari Pitalah) with an area of 4 (four) small and large plates with the following boundaries:

⁵ Sudikno Mertokusumo dan A. Pitlo, *Bab-Bab tentang Penemuan Hukum*, Citra Aditya Bakti, Bandung, 1993, hlm. 4.

- North side with rice fields of the Ja'i Jambak Nagari Bungo Tanjung tribe, now Raima;
- South side with rice fields of the Insam Jambak Tribe Nagari Pitalah, now Nurni / Insam's grandchildren;
- West side with Dt. Panghulu Marajo, Jambak Tribe, Nagari Pitalah, who is still pawned by the Plaintiff;
- The eastern border is the road.

The cause of the pawn dispute here is that the pawnbroker in this case exercises control of the pawn land without paying off the debt. Even though his Chief Mamak had already made a pawning on the land based on the Pawn Merchant Renewal Letter dated December 25, 1973 and its addition on November 6, 1979. Before the pawner took control of the pawn, the pawner should pay off the debt to the pawn recipient. What is done by the pawn giver is an indifference in the Minangkabau customary law "The pawn is given, also passed through" which means that the pawn must be redeemed, as long as the pawn has not been redeemed, then the pawnbroker has no right to control the pawn land. The parties in conducting the legal pledge of land relations, carried out in customary Minangkabau law. This can be seen from Mamak Kepala Kaum who pawns the land of his people.

The parties in carrying out the pawning legal act should be aware of the consequences of the act, especially the pawnbroker. In carrying out the legal pledge of land pawning, the recipient of a pawning land is in a passive position because it is only accepting. So according to the author, the pawn of land carried out by the parties was born on the initiative of the pawnbroker. The act of pledging the land pawning by the land giver in this case Mamak Kepala Kaum is in accordance with the provisions of the Minangkabau customary law. In Minangkabau customary law, Mamak Kepala Kaum / Mamak Kepala Waris plays a role in maintaining high heirlooms and low heirlooms, selling and pawning land and / or rice fields.

In Minangkabau customary law, Mamak Kepala Kaum as "a person who takes precedence one step, elevated seranting" in his people, meaning Mamak Kepala Kaum is a respected person in his people. Every action taken by the Head of the People's Office on the property of the people, either directly or indirectly, the act is also binding on the nephew or member of his people. Including land pawning or pawning apprentices known in the Minangkabau indigenous community. From this it can be seen that the importance of the Pawn Apprenticeship or the Pawn Apprenticeship Agreement, because the letter or agreement is the basis for the legal pledges of a pawn apprenticeship. The Pawn Certificate itself can be made in the form of an authentic deed or underhanded deed.

Deed under the hand is a deed made by the parties for the purpose of proof, which does not involve making an official deed authorized to make it. Whereas an authentic deed is a deed made both by the parties before an authorized official or made by the authorized official himself. The purpose of making an authentic deed is the same as a deed under the hand, that is, for the purpose of proving, especially in court if a dispute occurs.

2. Process for the Resolution of a Land Mortgage Dispute Through a Court in West Sumatra

Settlement of land mortgage disputes based on Minangkabau customary law can be through a traditional institution called Nagat Adat (hereinafter referred to as KAN). Settlement through KAN institutions is included in non-litigation dispute resolution (outside the judiciary). Based on Minangkabau customary norms, the KAN Institution's Decision on land pawning disputes is not only binding on the parties but also their heirs. In this paper the focus of the discussion is only limited to the settlement of

land mortgage disputes through the court institution.⁶ If the trial is smooth, the number of trials will be approximately 8 times, consisting of the first trial up to the judge's decision.

1. First Session

After the presiding judge opened the hearing by stating "the hearing was open to the public" by tapping on a hammer, the judge began by asking questions to the plaintiff and the defendant.

- a. the plaintiff's identity.
- b. defendant's identity.
- c. do you understand the purpose of bringing the parties in front of the court hearing?
- d. the judge appealed for peace.

In this case even though the parties answered that it was impossible to be peaceful because the efforts to resolve the peace had been carried out many times, the judge still asked to be tried again. So in this first trial the nature is checking the identity of the parties and whether the parties have understood why they were called to attend the hearing. As proof of their identity, the parties present their respective KTPs. If the plaintiff's attorney and the defendant come, the judge invites the parties to examine the opponent's special power of attorney. If no deficiencies or defects are found, the trial continues. After the parties were understood to have understood the judge appealed to the two parties to hold peace, then the hearing was suspended.

2. Second Session (Defendant's Answer)

- 1) If the parties can make peace there are two possibilities.
 - a. The lawsuit was revoked.
 - b. They held peace outside or before the congregation.
- 2) If peace is carried out outside the court, then the judge does not interfere. The two sides make peace themselves. Characteristics of peace outside the court are:
 - a. carried out by the parties themselves without the interference of the judge.
 - b. if one party breaks the promise, the problem can be raised again by the PN.
- 3) If peace is made before a judge, the characteristics are:
 - a. The power of peace is the same as a court ruling.
 - b. If one party breaks a promise, the case cannot be filed again.
- 4) If a peace is not reached, then the trial continues with the submission of answers from the Defendant. This answer is made in triplicate. The first sheet is for the plaintiff, the second sheet is for the judge, the third sheet is for the defendant's own file.

3. Third Session (Replic)

At this hearing the plaintiff submitted a replica, one for the judge, one for the defendant and one for the plaintiff's own savings. Replic is the respondent's response to the defendant's answer.

⁶ R. Soeroso, *Praktik Hukum Acara Perdata, Tata Cara dan Proses Persidangan*, Cetakan Ketujuh, Sinar Grafika, Jakarta, 2006, pg. 41-44.

4. Fourth Session (Duplic)

In the trial, the defendant submitted a duplicate, that is the defendant's response to the plaintiff's duplicate.

5. The Fifth Session (Proof of the Plaintiff)

The fifth trial can be called a hearing by the plaintiff. Here the plaintiff presents evidence that reinforces the plaintiff's arguments themselves and which weakens the defendants' arguments. The evidence in question consists of letters and witnesses. The proof of the letter (photo copy) at the time of the trial must be matched with the original by the judge or the defendant. The judge asked questions which were continued by the defendant while the plaintiff provided answers to these questions. Against the witnesses the judge invited the plaintiff to ask questions first, then the judge himself also asked questions in order to gain confidence. In the civil hearing precisely in this proof there were questions and answers and debates under the leadership of the judge. If the proof is not finished then proceed to the next session. This evidentiary session can be enough for one day, but usually it can be two or three times or more depending on the smoothness of the proof. It should be noted here that before being questioned and giving testimony witnesses must be sworn in first and may not enter the courtroom if not yet called.

6. Sixth Session (Proof of the Defendant)

If the fifth trial is a plaintiff's evidentiary session, then the sixth trial is the evidentiary hearing of the defendant. The proceedings are the same as in the fifth session, with the record that the defendants are giving evidence and witnesses, while the question and answer are the opposite of the fifth trial.

7. Seventh Session

The seventh session is a session to submit a conclusion. Here both parties draw conclusions from the results of the trial. The contents of the main conclusion are certainly beneficial to the parties themselves.

8. Eighth Session

The eighth session was called the judge's ruling. In this trial the judge reads the verdict that should be attended by the parties. After reading the verdict, the judge taps the hammer three times and the parties are given the opportunity to appeal if they are not satisfied with the judge's decision. This appeal statement must be made within a period of 14 days from the day after the verdict is rendered.

3. The Judges' Legal Considerations in Deciding a Land Mortgage Dispute in West Sumatra

The parties to the a quo case are:

1. Zulfa Roberto Dt. Ampang, Syafrimen Dt. Sinaro Kayo, Suwirtatati, Dartawarni, Dekonis, Bendrizal Dt. Sirajo (Defendants I, III, IV, V, VI, VII / Compared to I, III, IV, V, VI, VII / Cassation Appellant I, III, IV, V, VI, VII / The Petitioners for Reconsideration);
2. Mulkifar Dt. Sidi Gindo (Plaintiff / Appellant / Respondent Cassation / Respondent Review); and

3. Nurjanah (Defendant II / Compared II / Petitioner Cassation II / Participant of the Respondent's Review).

The Plaintiff is the recipient of the Pusako Treasure of the Defendants (Datuk Ampang, Jambak Tribe, Nagari Pitalah, Batipuh District, Tanah Datar District). The pawn merchant's rice field object had been mortgaged by the Defendants with the head of the people at that time Jus Dt. Ampang (deceased) to the Plaintiff as a Pawn Merchant Renewal Letter dated September 25, 1973 with a total amount of 7 ½ (seven and a half) American gold ringgit and then an additional 1 (one) American mas paw was added on November 6, 1979 so that the number of pawn was given The Plaintiff to the Defendants was 8 ½ (eight and a half) American mas, but without the permission of the Plaintiff in February 2012, Defendant VI and her husband began to control and work on it. This was stated as an illegal act by the Plaintiff. Thus a brief review related to the case position.

Basic considerations of judges in the Supreme Court Decision of the Republic of Indonesia Number 479 PK / Pdt / 2016 are as follows:

Renewal of the Pawnshop Agreement between the Plaintiff's family and the Defendant's family dated September 25, 1973 has been valid for 39 (thirty nine) years when the lawsuit was filed in 2012. The additional agreement has been valid for 33 (thirty three) years when or when this dispute was tried in court Negeri Panjang Padang. Both the pawn renewal agreement and the addition agreement have passed the maximum time limit determined by Law Number 56 Prp of 1960 concerning Determination of Agricultural Land Area, which is 7 (seven) years;

Article 7 paragraph (1) of Law Number 56 Prp of 1960 states: "Anyone who controls agricultural land with a lien right at the time this regulation comes into force has been going on for 7 (seven) years or more must return the land to its owner"; Even though the Minangkabau Customary Law recognizes the concept of "batabuih pawn" which means that the pawned land can only be regained by the owner after the owner pays the debt to the pawning holder; National Law in casu Article 7 paragraph (1) of Law Number 56 Prp of 1960 has explicitly stated that the pawned land must be returned to the original owner after 7 (seven) years of the legal pledge agreement. Customary law can apply as long as it does not conflict with national law. National law contains the reason for the need to prevent the exploitation of money holders against the weak landowners.

Basically this pawning institution never disappears from the life of the village community, because it is one of the means of help in the village community, so this pawn is a very important institution of its existence in an effort to meet the inevitable need for money.⁷ From this it can be seen that the pawn of agricultural land is an institution that helps to help the village community. In addition, land pawn also contains the principle of trust. The pawnbroker believes in the pawnbroker that the pawnbroker will return the loan he has given.

The Minangkabau customary law also regulates that the party that can pawn the land is Mamak Kepala Laris and is approved by all members of the clan / tribe. As well as the transfer of pledge, must with the approval of the land owner. Earthquakes can only be done with 4 (four) conditions, namely:

- 1) Rumah gadang katirisan (Big bosor house because there is no roof);
- 2) Gaduh gadang or jando indak balaki (A mature girl and widow without a husband);
- 3) Mayik Tabujua in the middle of the house (The body is lying in the middle of the house because there is no cloth when);
- 4) Manage Tarandam Trunks (Uphold Adat that Does not Stand)

⁷ Muhammad Yamin, *Beberapa Dimensi Filosofis Hukum Agraria*, Pustaka Bangsa Pres, Medan, 2003, p. 127.

Actually, it is permissible to pawn with these four causes, if you want to do that action you cannot do it on purpose. The headman who heads the village is obliged to order his people to try to find various ways before pawning, but if the efforts of his people are unsuccessful and must carry out or finance one of the 4 (four) causes, then with the agreement of all the people then the high inheritance property can be mortgaged according that nagari custom. In the development of the Minangkabau community, pawning can occur outside the four customary conditions that have been set and the absolute prerequisite for the implementation of the pawn is an agreement with the heirs concerned with the heirloom. This should get the attention of the judge if a land mortgage dispute is submitted to the court, whether this kind of lien is legal or not.

In the Minangkabau customary law, the pawning law is known as the term "pawning, but also passed through", meaning that every pawn done by the community must be redeemed by the pawnbroker. As long as the pawn has not been redeemed, so long as the pawn land has not been able to return to the pawnbroker. And according to customary law, the recipient of the pawning does not automatically become the owner of the land even though the land pawning has occurred for a long time and the value of the pawning land is so high.

Suggestion

1. There are 5 (five) factors that cause land pawning disputes in West Sumatra, namely First, not paying a ransom, whereas according to Minangkabau customary law after the pawner pays a ransom, he can only regain control of his land. Second, the act against the law, this is because the party who controls the land without a legal basis. Third, breach of contract pawning agreement. Default in this case can be said not to give something, give something but not in time, do not do something, do something that is prohibited in the pawnshop agreement. Fourth, the transfer of the pawn without the approval of the land owner, this is because the pawn apprenticeship is only carried out by the pawn recipient with the pawn recipient. Fifth, bad faith. This bad intention can arise from the pawnbroker or from the pawner. The bad intention of the pawnbroker is not paying ransom but wanting to control the pawnshop. Whereas from the pawn recipient, even though they have obtained results in excess of the pawning money for the pledging of the pawned land, it still does not return the pawned land so that it has set aside the pawned land as a means to help.
2. Involvement of KAN institutions in the process of resolving land pawning disputes in West Sumatra, namely before reaching the court (non litigation). The process of resolving land mortgage disputes through a court in West Sumatra, which is at the first level resolved by the District Court. The panel of judges at the District Court must encourage the parties to make peace based on PERMA No. 1 of 2016. If peace efforts have been made but the parties have not reached a peace agreement, then the trial process will continue. If the parties are not satisfied with the District Court's decision, the dissatisfied parties can take legal action to appeal, appeal, and review.
3. The panel of judges in the process of resolving land pawning disputes in West Sumatra, legal considerations and decisions are not only in favor of national law but also Minangkabau customary law.

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