

## LEGAL CERTAINTY OF ULAYAT LANDSCERTIFICATION IN THE EMPOWERMENT OF NAGARI ASSETS IN WEST SUMATERA PROVINCE

Yulia Mirwati<sup>1</sup>  
Zahara  
Neneng Oktarina  
Surya Kamisli<sup>4</sup>

<sup>1</sup>Email: yuliamirwati@gmail.com

**Accepted date:** 17 December 2017

**Published date:** 15 January 2018

### To cite this document:

Mirwati, Y., Zahara, Oktarina., N. & Kamisli, S. (2017). Legal Certainty of Ulayat Lands certification In The Empowerment of Nagari Assets In West Sumatera Province. *International Journal of Law, Government and Communication*, 2(6): 127-138.

---

**Abstract:** *Nagari in West Sumatra is one of the titles for indigenous villages (Article 7 of Law No. 6 of 2014 on Villages) which is the spearhead of the lowest administrative regional administration. Nagari as the lowest government also has assets, both in the form of land and lain. Kepastian law of nagari assets in the form of land done through land certification. In general, the nagari asset in the form of ulayat land. With the empowerment of nagari assets in West Sumatra, will provide more free space for nagari in utilizing its assets, in an effort to improve the nagari economy, and or at the same time to provide legal certainty regarding the assets nagari. Untuk it need to be examined 1. How is the legal certainty of the certification of ulayat land in the empowerment of nagari assets in West Sumatra? 2. What are the constraints and solutions of legal certainty for the certification of ulayat land in Nagari asset empowerment in West Sumatra. This study uses "The juridical method of empirical, and normative. The result of the research shows that the land asset in West Sumatera nagari is not certified yet (there is no legal certainty). Obstacles to certification due to communal land do not include the object of certification (PP No. 24/1997).*

**Keyword:** *Legal Certainty, Ulayat Land Certification, Nagari Assets*

---

### Introduction

Based on the West Sumatra Regional Regulation No. 9 of 2000 on the Basic Provisions of the Nagari Government (Perda No.9 of 2000) which has been replaced by Local Regulation No. 2 of 2007 on the Principles of Nagari Government. This regulation as an application of Law no. 22 of 1999 on Regional Government which has also been replaced by Law no. 32 Year 2004 and last 23 Year 2014, then changed with Government Regulation Penganti Act No. 2 Year 2014 (Perpu No.2 Year 2014), and last changed with Law Number 9 Year 2015 About Local Government.

Fresh Winds concerning the Government of Nagari, since the issuance of Law No. 6 Year 2014 on Village (UUDes) which then followed up with some provisions of implementers such as Government Regulation No. 43 of 2014, About the Implementation of Act No. 6 of 2014 on the Village, which then changed with Regulation No. 47 of 2015 concerning the amendment to PPNumber 43 of 2014 on the implementation of Law No. 6 of 2014 and Regulation of the Minister of Home Affairs of the Republic of Indonesia (Permendagri) Number 83 of 2015 on the Appointment and Dismissal of Village Devices. then Permendagri Number 1 Year 2016, About Utilization of Village Assets.

West Sumatra Province located at 0 ° 54'LU and 3 ° 30'LS and 98 ° 36 '- 101 ° 53'BT. The total area of West Sumatra Province is 42,200 km<sup>2</sup> or equal to 2.21% of the total territory of Indonesia consisting of 19 Regions II, 648 nagari, spread in 11 districts namely, South Coast, Solok, South Solok, Sijunjung, Dharmasraya, Padang Pariaman, Tanah Datar, Agam, Limapuluh Kota, Pasaman and Pasaman Barat<sup>1</sup>, Nagari Government is known for the Minangkabau kingdom, with a system of government using custom Koto Pilinag and Budi Caniago, which is determined by a nagari. The formation of Nagari is determined to be at least four tribes (Nagari Baampek Tribe), and before the nagari dbentuk is first determined ulayatnya (territory). Thus the existence ulayat already a historical custom and culture Minangkabau.

Nagari in West Sumatra as the lowest Government with the same village. There are 4 Functions of Nagari Government that need to be integrated into Local Regulation No. 2 Year 2007 namely: a. Nagari as the lowest government unit of Indonesia is equivalent to Desa. b. Nagari as unit of indigenous and socio-cultural unity in order to embody the ABS-SBK cultural philosophy .c. Nagari as a unit of ulayat land as an asset of Nagari and as a unit of economic based business. Nagari is a legal entity. Nagari can be utilized to create jobs and business fields for Nagari residents and can also be in the form of BUMNagari or cooperative with syirkah-syariah principle, in addition to the respective efforts of the villagers d. Nagari as a unit of security and security units that can autonomously safeguard and protect the people and the wealth of Nagari. Keberadaan KAN (Indigenous Density Nagari) in the Perda No.9 of 2000, replaced with CAS (Density Adat and Syarak) with the oration Adat Basandi Saraf and Syarak Basandi Kitabullah (ABS-SBK). CAS members consist of elements of TTS (Tungku nan Tigo Sajarangan, Tali nan Tigo Sapilin ie ninik-mamak, clerics and cadiak-clever plus elements of women and youth.

The Nagari asset in West Sumatra in the form of land is generally ulayat land, which consists of three levels of ulayat nagari, suku and kaum. The Nagari ulayat can not be transferred to its ownership. Regarding the ulayat land of nagari that has been transferred to Hak Guna Usaha from any party needs to be returned to Nagari. Nagari can also work through a Nagari Owned Enterprises (BUMNagari). The Nagari secretary must be a civil servant (PNS) subject to the rules of civil servant law, because the Nagari is integral to the State Government.

Nagari / Desa as the lowest government in Indonesia since the issuance of UUDes in Article 1 paragraph (1) it is explained that the village is a village and an adat village or called by another name, hereinafter referred to as Desa, is a legal community unity that has territorial

---

<sup>1</sup>[https://en.wikipedia.org/wiki/Daftar\\_nagari\\_di\\_Sumatera\\_Barat](https://en.wikipedia.org/wiki/Daftar_nagari_di_Sumatera_Barat), visited Monday 27th of Agustus in 2017 at 06.10

boundaries authorized to regulate and taking care of government affairs, the interests of local communities based on community initiatives, origins, and / or traditional rights recognized and respected within the government system of the Unitary State of the Republic of Indonesia. In Article 1 paragraph (2) mentioned that the Village Government is the implementation of government affairs and the interests of local communities in the system of government of the Unitary State of the Republic of Indonesia. Thus the village government Integral with the government of the republic of Indonesia.

With regard to Nagari assets it is determined that Village Asset Management / Nagari is a series of activities ranging from planning, procurement, use, utilization, security, maintenance, deletion, alienation, administration, reporting, appraisal, guidance, supervision and control of Village / Nagari assets<sup>2</sup>. Nagari government assets have the same provisions with the management of government assets, both Central, Provincial and Regency and City. In the case of assets in the form of land must be proven by the certificate to ensure legal certainty. Speaking of the land in question is the surface of the earth<sup>3</sup>, which in its use includes as well as some of the earth's body beneath it and part of the space above it.<sup>4</sup>

This is also one of the implementation of Nagari Government based on the principle of legal certainty (Article 24 of Law Number 6 Year 2014), including Nagari's assets in the form of land. Regarding the assets of Nagari as mentioned in Article 76 paragraph (1) of Law No. 6 of 2014 states that the Village Assets may be Village's land, ulayat land, Village market, animal market, boat mooring, Village building, fish auction, agricultural auction, village-owned forests, public baths, and other assets belonging to villages. Village / Nagari asset management is headed by the Village Head and assisted by the Village Secretary and asset management<sup>5</sup>. A village asset in the form of land when borrowed must be granted written permission from the Bupati. Strategic village assets of which one is ulayat land.<sup>6</sup> Other village assets may also originate from the Government's property and the village-level Local Government existing in the village may be granted ownership to the village (Article 76 paragraph (3), in Article 76 paragraph (4) (5) and (6) it is affirmed that the village asset in the form of village property belonging to the land in the form of land is certified on behalf of the Village Government, and the property owned by the Village which has been taken over by P the local government of the Regency / City shall be returned to the Village, except those already used for public facilities. and the Village Building must be furnished with proof of ownership status and administered in an orderly manner.

### ***Formulation of The Problem.***

Based on the above, it is formulated as follows:

1. What is the concept of legal certification of ulayat land in the provision of legal certainty concerning the assets of Nagari in West Sumatra Province? How is the implementation of the ulayat land certification of Nagari's assets in the provision of legal certainty regarding Nagari's assets in West Sumatra Province?

---

<sup>2</sup> Permendagri Number 1 Year 2016 Article 1 paragraph (6)

<sup>3</sup> Basic Agrarian Law (UUPA) Article 4 paragraph (1), ... The surface of the so-called soil

<sup>4</sup> Boedi Harsono, 1999, Agrarian Law of Indonesia-History of the Establishment of UUPA, Position, Jakarta, p265.

<sup>5</sup> Permendagri Number 1 Year 2016 Article 4 paragraph (5)

<sup>6</sup> Permendagri Number 1 Year 2016 Article 4 paragraph (3)

2. What are the constraints experienced in the implementation of the certification of ulayat land of Nagari assets in the provision of legal certainty concerning Nagari assets in West Sumatra Province?
3. How to solve / solve the solution in the certification of ulayat land of Nagari assets in the provision of legal certainty concerning Nagari assets in West Sumatra Province?

### **Research Methods**

The type of research used in this study is the type of juridical empirical research. Understanding empirical juridical is research based on field research<sup>7</sup>, the authors also conduct a thorough review of legislation related to the implementation of land certification and the provisions relating to assets of Nagari, or related with the Management of Nagari Goods related to the land certification program. In addition, normative juridical approach or doctrinal legal research is also called library research or document study. Library research or document study is caused by this research is mostly done on secondary data in library.<sup>8</sup> Secondary library data are data obtained from literature research and documentation, which is the result of research and processing of others, which is available in the form of books or documentation, which is usually provided in the library, or private property.<sup>9</sup> The legal materials collected through the literature review include: a. Primary legal materials, namely legal materials directly related to this research in the form of Act, PP, Permenag, Permendagri, Perda and other legislation b. Secondary Legal Material is a material that provides an explanation of the primary legal material. The secondary legal materials include textbooks, previous research results, papers, articles, journals, and other documents relating to the object of research. Legal material as a guide in conducting research<sup>10</sup>. c. Tertiary legal materials, ie materials that provide guidance and explanation of primary legal materials and secondary legal materials. The materials include dictionaries, encyclopedias, legal magazines and so on<sup>11</sup> which provide a definition of etymology / meaning of words or grammatically for the terms related to the problems to be studied. This research is descriptive, ie research that aims to describe or describe about land certification of Nagari asset derived from ulayat land. The data collection tools in this study are: Interviews conducted with the implementing actors of asset certification of Nagari land, both with Regency and Municipal BPN including the Regional Office of SumateraBarat Regional Office. Interview with the original owner of Nagari West Sumatra in Districts and Cities. In the District Court, the State Administrative Court of the Court of Appeal in SumateraBarat.LKAAM, KAN / CASH, and the adat stakeholders relating to the land ofUlayat.Holder of land rights before being transferred to the Government of Nagari.

Besides that, it is also used survey which is a moderate participant to the activity of the government asset certificate implementer and other related subject, besides that the observation focuses on the certification of the land of the local government asset coming from the land. Furthermore, document studies<sup>12</sup> are intended to collect data collected from literature and bibliography documents, such as papers, papers, and scientific papers related to theory, legal basis and several models of dispute settlement of asset certification of local government

---

<sup>7</sup> Sutrisnio Hadi, 1989, *Research Methodology* volume 1, Andi Offset Printing, Yogyakarta, p.70.

<sup>8</sup> Suratman, 2012, *Legal Research Methods*, Alfabeta, Bandung, pp. 51.

<sup>9</sup> Hilman Hadikusuma, 1995, *Method of Making Working Paper or Science Thesis*

<sup>10</sup> Peter mahmud Marzuki, *Legal Research*, Cet.VI, Kencana, Jakarta, p.35.

<sup>11</sup> Nico Ngani, *Research Methodology and Legal Writing*, Pustaka Yustisia, Yogyakarta, p.78.

<sup>12</sup> Document study is a tool of data collection conducted through written data by using content analysis, see further Sorjono Soekanto, 1986, *Introduction to Legal Research*, Jakarta: UI Pres, p.21.

in West Sumatra. For that will be conducted interviews with informants whose purpose to gain further understanding of the data.

The location of the research is purposive by determining the area of origin of Minangkabau namely in three Luhak (area), Luhak Nan Tou, called Luhak Tanah Datar, then luhak land, ie District Agam, and Luhak nan Bungsu ie District Lima Puluh Kota, nagari the early or tuo nagari, namely Nagari Parahiyangan, and Nagari Kapau in Luhak Agam, and Nagari Taratang Kamang and harau in luhak nan Youngest that is Lima City District. Besides, it is also determined by the Village in Kota who still use the term Village and or Kelurahan. By determining the location by purposive method represented by the research for West Sumatera region. The taking of location is done with the cluster.

Population is the whole or himpunan object with the same characteristics.<sup>13</sup> Population in this research subject implementing pengsertikatan assets of local government in this case is Financial Management and Asset Nagari and or handle Nagari Asset. The sample is the smaller part of a population.<sup>14</sup> The sample in this case is based on the way the respondent is taken by purposive sampling. The study was conducted in a purposively selected area above, beginning with the collection of preliminary informants, administering the necessary research letters, then contacting the local government to support the required data, visiting the research area collecting data (collection stage) with interview guidelines and focused observation. After collecting then the data in the analysis while in field and then after returning from the field. Further discussion with the team to sharpen and seek input from various sources of data both primary and secondary. After that it is compiled in a unified form of the research report. This final report will be extracted into writing in the form of scientific articles and will be incorporated into the relevant accredited scientific journals. Data analysis using a qualitative approach is implemented in the research steps. Data analysis is regarded as an endless process. The data obtained will be organized into categories: a. coding, b. editing, and c. sorting physical data, then interpret theoretically with inductive methods, then analyzed data qualitatively with approach to legal norms and theoretical that has been determined above. Analysis is defined as a systematic and consistent decomposition process against certain symptoms.<sup>15</sup> The analysis meant here is an analysis of primary and secondary data. This research is included in the category of legal research, the analysis of legal materials is done by normative analysis<sup>16</sup> of various rules of law that exist mainly related to the certification of local government assets derived from state land, land rights and ulayat land qualitatively<sup>17</sup> in the analysis based on related legal theories to obtain the juridical and theoretical basis in understanding the existing problems.

---

<sup>13</sup> Sutrisnio Hadi, 1989, *Research Methodology* vol., Publisher Andi Offset, Yogyakarta, p.70.

<sup>14</sup> *Ibid*, p. 40

<sup>15</sup> Soerjono Soekanto, 1986, *Introduction to Legal Research*, UI Pres, Jakarta, p.63.

<sup>16</sup> Normative analysis is the core of legal analysis, where the task of this legal analysis is to analyze the definition of law, legal law principles, legal system and various juridical concepts. Thus in this normative analysis the starting point can not be separated from the juridical provisions based on the pure legal concept of Hans Kelsen, see further in the book; Johnny Ibrahim, *The Theory and Methodology of Normative Law Research*, Bayu Media, Malang, Publishing, 2008, p.311.

<sup>17</sup> The concept of qualitative analysis is to use materials that are not merely normative but also related to legal concepts, philosophy and other areas beyond the norm of law, see further in the book; CFGSunaryati Hartono, *Legal Research in Indonesia at the End of the Century to 20*, Bandung: Alumni1994, p.166.

## Results and Discussion

1. The legal concept of the certification of ulayat land in the provision of legal certainty concerning the assets of Nagari in West Sumatra Province.

Nagari is the lowest government of the government in Indonesia. In Local Regulation No. 2 of 2007 mentioned that nagari is a legal entity. The meaning is a public legal entity. In the administration of Nagari government must be done with the principle of legal certainty. In the case of assets that one of its assets is derived from ulayat land should be given legal certainty through the registration of land. In West Sumatra Ulayat land in reality are classified in three levels namely ulayat nagari, tribal and clan.<sup>18</sup> In addition to ulayat land in West Sumatra, it is also known as customary land (private property), land rights (individual rights type, Article 16 paragraph (1) of BAL). In the BAL is also known the existence of State land (Article 2 UUPA), land rights (Article 16 paragraph (1) UUPA, and Ulayat land (Article 3 UUPA). Nagari as the smallest unit of government in carrying out its duties certainly require land in the form of assets, in inventaris of nagari assets must be proved by the certificate. The need for such land is good for the construction of office buildings or other operational activities. Land arrangements for Nagari are obtained from direct grant by the government either District / Municipal or provincial government or grant from the local government for nagari, grant and disposal with compensation from land owned by the population.

The status of the land plots remains as an asset of the Nagari Government due to the source of funds derived from the Government, especially with the Village Law and the APBN allocation for the Nagari administration, and Nagari is subject to the orderly administration of Nagari. The provisions of this asset must be maintained and reported to the State and through the audit of the Corruption Eradication Commission should be well documented and the evidence required for it.

Prior to the enactment of UUPA the provision and guarantee of legal certainty concerning immovable goods in the civil law system (KUHPerdara), there are already provisions, although not yet touching the orderly penguasaannya. The provisions are stipulated in Staatsblad 1911 No. 110 juncto Staatsblad 1940 Number 430, concerning property, buildings and military fields. Regarding the plot of land is called or summarized into "is lands-onroerende goederen or" fixed property / immovable property of the State "while the order of administration of control by the agency is used by the term in beheer or" in control ". As proof that the plot of land is in the control of a particular agency, is that the agency has a budget from the government to finance its maintenance.

The term in beheer is then developed or developed so broadly that the definition creates a confusion in the field of law between the government agencies with rights holders and third parties. With the issuance of PP no. 8 of 1953 on the Control of State Land, it has been stipulated that the control over State land is divided into two: 1. The control of state land based on the Law or other Regulations that exist in the ministry, department or self-government area at the time of enactment of this rule. And 2. The control over the rest of the state is in the Minister of Home Affairs. 8 of 1953 in Article 9 is the embryo of the birth of the definition of Management Right. In Article 9, among others, stipulates that ministries, ministries or private areas before being able to use the lands of the State whose

---

<sup>18</sup> Yulia Mirwati, 2015, Ulayat Land Conflict, Andalas University Publishers Padang, p. 25.

authorities are handed over to them, may permit others to use the land in a short period of time, which is temporary and should at all times be revoked back. This provision continued to apply until 1965 although the law no 5 of 1960 did not regulate it. Based on the existing transitional article, the Government Regulation No. 8 of 1953 is still valid. This land holding by government agencies based on this PP is followed up with the policies contained in the Regulation Minister of Agriculture No. 9 of 1965. (Permenag)

In the Permenag, it is noted that what originally only mentioned the word "mastery" was spelled with the word rights and became a "tenure right", there was also a provision that this Conquest of Rights was converted and split into two (2) types of rights: 1. As long as the lands are used only for the agency's own interest, they are converted to Hak Pakai during use. 2. The lands other than for the interest of the agency itself, are also intended to be granted with a right to a third party, then the right of control shall be converted into a Management Right which shall continue for the land to be used for that purpose by the agency concerned. It is stipulated that the Right to Management provides the authority to: a. Plan the designation and use of the land. b. Using the land for its own sake. c. Deliver parts of the land to a third party with a right of use with a period of 6 years, d. Receive income, compensation and or annual mandatory money.

Then the formulation of Management Rights became so widespread with the enactment of the Minister of Home Affairs Regulation No. 5 of 1973 (permendagri). Then with the release of Permendagri 15 of 1974 on the Provisions on the Provision and Granting of Land for the Needs of the Company, regulated wider policy. In Article 3 it is determined that the Management Right granted to the company contains the authority to: a. Plan the designation and use of the land concerned. Use the land for the purposes of the business. C. Submit sections of the land to a third party under the terms specified by the company or holder of such rights covering its terms of use, use, duration and finances provided that the granting of land rights to a third party is exercised by the competent authority.

Further determined in Permendagri No. 1 of 1977, and progress continues until exit except for policy by ministerial level on this Right of Management, there are still policies regulated by PP. No. 40 of 1996 on the Right to Use of Business, Right to Build and Use Right on Land. The provisions on management rights are inserted in Article 1 paragraph (2) which essentially implies the existence of a delegation of authority over the right of control of the State to the holder of management rights. There is no explanation as to whether the delegation of this authority has been sourced or referred to in Article 2 paragraph (4) of the LoGA or not. Management Rights originating from the provisions of the LoGA have not been provided.

Indeed, the determination of the right to land as a Right of Management is a kind of right that needs to be held in-depth review so as to be supported by the right legal source. To Government agencies including Nagari sufficient to be granted the Right of Use as long as the land is used for its main tasks. Now Nagari is also possible to try to establish a Nagari Owned Enterprises, which is subject to the provisions of BAL and should be in accordance with its duties and functions, do not conflict with its duty.

Based on the above provisions, the Nagari as one of the smallest governments may have the right to land in the form of special use rights (in accordance with Article 41 UUPA). The use of this as long as it is used and given free of charge and certified as physical and juridical proof of land used by nagari. The linkage in West Sumatra which is the smallest government unit is the nagari and in general each Nagri has ulayat nagari land and if the implementation of the nagari government on the land belonging to the members of the community or the land belonging to the adat the nagari will be facilitated by the community with the grant during the nagari need. But if the administration of the nagari government needs land that has been hijacked with the right of individual land or group then nagari mharus execute the land into land controlled by the State and then in the certificate becomes a special use rights. In this case the provisions used are provisions on the procurement of land for public interest (Law No. 2 of 2012). This is still based on the BAL. (in Article 14 UUPA). Nagari's possessions / possessions are an important element in the administration of government and services to the community in the nagari.<sup>19</sup> To that end, the Nagari government is required to manage Nagari's wealth professionally, transparently, accountably, efficiently and effectively starting from the planning, distribution, and utilization and supervision stages.<sup>20</sup>

With regard to the legal certainty of the assets of Nagari in the form of land, the certification must be done in accordance with the intention of Article 19 of the BAL ie to provide legal certainty concerning lolation, location, boundary, subject, area, type of rights or in PP 24 Year 1997 referred to physical evidence and juridical evidence then the right is registered for the birth of a right to land. After that copy the official seraca and issued as evidence in the form of certificate. The certificate is a proof of legal certainty of the right to land. The purpose of the land registration as defined in Article 3 and Article 4 of PP 24 of 1997 namely: a, to provide legal certainty and legal protection to the holder of the right to a plot of land, and other registered rights in order to easily prove himself / herself as the rights holder concerned, b. to provide information to interested parties including the government in order to easily obtain the necessary data in the conduct of legal acts concerning the parcels of land and apartment units already registered; c. for the implementation of the orderly administration of the land. In addition, to provide certainty and protection of land rights law to the holder of land rights, to carry out the information function, the physical data and juridical data of the listed land and apartment units are open to the general public. Then to achieve the administrative order, every plot of land and apartment units including the transition, loading and removal of land rights and property rights of apartment units must be registered. This is in line with the objectives of UUPA reform, one of which is to provide legal certainty concerning land rights for the Indonesian nation (General Election of UUPA). The legal certainty of the land rights in the LoGA is done in a real and juridical way, because the basic concept is customary law relies on religious law, which is real, cash, light, real, to provide legal certainty must be made real.

According to PP 24 of 1997 regulated the type of land rights that must be registered, namely in Article 9 PP 24 of 1997 namely: 1. the plots of land belonging to the right to property, the right to use, the right to use the building and the rights; 2. land

---

<sup>19</sup> M. Yusuf. 2010. Eight steps of Asset Management of Regions Towards Financial Management Best Area. Salemba Four, Jakarta, p. 11.

<sup>20</sup> Chabib Soleh and Heru Rochmansjah. 2010. Financial Management and Regional Assets; A Structural Approach Towards Good Governance. Printed Second Edition. Fokusmedia, Bandung, p. 167.



management rights; 3. landfill; 4. property rights over units of houses; 5. helpment; 6. State land. Specifically concerning State land as the object of registration of land referred to its registration is done by registering the plot of land which is the State land in the daftartanah. Tanpa issuing proof of land rights in the form of certificate. Registration of a technical term for a record shows the extent, value and ownership (or other base of rights) to a plot of land. Therefore, the registration is an appropriate tool which provides the description and identification of the land as well as continuous recording (a continuous recording of land rights)<sup>21</sup>. Thus, the registration of the land is an obligation that must be implemented by the Government.

In view of the provisions of Article 19 of the Law on the Law of the Republic of Indonesia, it is stated that all land claims, under the assumption of a form including hakulayat (Article 3 UUPA), but in Article 9 PP Number 24 of 1997, no ulayat land is seen as the object of land registration. Thus it is seen that the ulayat right to land does not include the land that must be guaranteed legal certainty. It goes on until now. Although in PP 24 of 1997 there is the addition of motorcycle taxi drivers, such as usage rights, management rights, apartment rights, state land (state land) but not visible figures ulayat land is the object of land registration.

If customary land is not included in the object of land registration, will customary land be registered? Is it registered by equating other individual rights? Whereas in ulayat land communities still exist, and the existence of ulayat land as a nagari government asset in West Sumatra how to ensure its legal certainty? The LoGA recognizes the existence of customary rights (Article 3) in addition to other land rights (Article 16 paragraph (1) of the LoGA, as well as the right to state land (Article 2 UUPA). In West Sumatra, Ulayat land also has clarifications namely ulayat nagari, ulayat suku and ulayat The ultimate concept of ulayat land in the LoGA is not determined later in the organic rules, so today with the growth of the lowest rural government in Indonesia, the Nagari governance requires legal certainty of its assets in the form of ulayat land. Obviously the nagari ulayat land property in a nagari to legal uncertainty, if legal certainty is only done by registration soil and its proof with certificate of land.

In reality in West Sumatera, the sample is taken purposively, that is based on the regional division system in Minangkabau which is still known in the customary order that is the original luhak (region) that is Nagari Parahiyangan, which until now there is still called in the daily nagari nan tuo, and even received the award as one of the best villages in the world. Then the area (luhak) Agam, which is now located in Agam Regency, namely Nagari Kapau with a uniqueness of its own. Furthermore Luhak nan Youngest District 50 cities, namely in Nagari Tarantang and Nagari Harau, formerly a Nagari Nagari Harau. Besides, also seen in Nagari in Luhak Rantau taken as a purposive sample is the Level II Region of Padang City, which once Gus is also the capital of West Sumatra Province, the Village / Village Batang Kabung Ganting.

Concerning the nagari asset in Nagari Parahiyangan, Nagari Kapau, and Nagari Harau, it is stated that the nagari asset in the form of land to regulate the governance of the bear village on ulayat land, but none of them are certified. In Nagari Parahiyangan, nagari tuo, nagari assets or Nagari offices are located on the communal land of the people who are

---

<sup>21</sup> AP, 1999, Land Registry In Indonesia, CV publisher. Mandar Maju, Bandung, p. 18

voluntarily submitted to the affairs and governance of the nagari, so it must be written in the asset nagari report that the asset is the surrender of use to the wali nagari's office during use by Nagari will not be requested and occupied and managed by the owner of the people. In this case, according to the opinion of Wali Nagari, certainty of asset in the form of certificate does not exist but there is no legal certainty concerning the nagari asset, because the people especially who have the land willingly give their ulayat land for the sustainability of the governance of a nagari.

In Tarantang village which is the development of harau nagari because it is located in the location of the government asset of Lima Puluh Kota Regency, the asset of this nagari has been certified on behalf of the second level regency of 50 regency city, where in UUDesa is said to be granted to Nagari. However, in Nagari Harau, its land assets are located on ulayat land of nagari not yet certified. Based on Bylaw No. 2 of 2007 West Sumatra that Nagari in West Sumatra is a legal entity, and must be read with a public legal entity, which is integral with the state of Indonesia, then assets that can be owned land is a usage rights that do not have a period of time, and given free of charge and management rights. In the Law of the Village precisely raised that one of the origin of the village land / Nagari is ulayat land. It is seen that UUDesa is also carelessly putting village assets with ulayat land that clearly can not be given legal certainty through land registration.

Similarly, the nagari asset in Luhak Agam, Nagari kapau, where in this village does not accept any land certification, either individually, groups, legal entities and business entities, other social bodies, so legally national lands in Nagari Kapau not have legal certainty, but Nagari Kapau feels that the lands in the Kapau village belong to the land where Nagari's governance has legal certainty, as measured by Nagari himself and given the measurement evidence he calls the right to the holder of his land rights. Transactions whose objects are the land should be treated to fellow Kapau people, can not be owned by other Nagari residents, let alone foreigners. So since 1960 there has been no land rights certificate in Nagari Kapau. The Nagari Kapau asset does not need a land titling certificate but Nagari Kapau guarantees that Nagari governance regarding assets is the responsibility of Kapau people.

The research in Luhak Rantau namely in Padang City, namely nagari in the City, do not use the term Nagari but uses the term Village and or Village. Kelurahan Batang Gabung Branch located in Koto Tengah Subdistrict, Padang City, West Sumatera Province, because it resides in residential area, built on Mutiara Putih housing housing, then for all housing have been equipped with proof of rights in the form of certificate, either building rights, Right to Use and / or Properties. But for the asset of Village / Kelurahan Batang Gabung is an asset obtained from Vasum issued by Housing Company of Komlek Mutiara Putih and for Vasum has not been certified.

With regard to reports on village assets, the Kelurahan Gabung Kabung stem has proposed the Vasum land certification. Thus it can be said that pensertipitan land asset nagari as one that must be compiled as an asset Nagari the West Sumatra has no legal certainty if the legal certainty is recognized is the registration of land with proof of certificate.

2. Implementation of the ulayat certificate of Nagari's asset in the provision of legal certainty concerning Nagari assets in West Sumatra Province.

Although the concept of land registration of Nagari's asset derived from ulayat land can not be done based on PP 24 tahun 1997 About the Land certification and although the Regional Regulation Number 6 of 2008 indicates the registration of land is done only with PP 24 year 1997, for the ulayat of the people is certified by property rights (Article concept 16 UUPA), and tribal customs are listed as proprietary rights, while the ulayat nagari rights are on the list with the right to use, use rights and management rights. In view of the local regulation on the utilization of communal land, it does not know the concept of individual rights in the LoGA, thus equating the customary rights with land rights contained in Article 16 paragraph (1) of the BAL, because if it is registered with PP 24 1997, without the inconsistency with the concept of ulayat rights, so that it does not understand the distinction of land rights in the LoGA, in Article 2 of the BAL, Article 3 of BAL and Article 16 paragraph (1) of BAL. Thus the consequences of the West Ulayat customary law that impose the customary rights is the same as the state land, so it can be given property rights, rights to use, use rights and management rights, make the destruction of the customary rights. of ulayat land which is already officially recognized in the UUPA.

3. Obstacles encountered in the implementation of land certification of Nagari's private land in the provision of legal certainty concerning Nagari assets in West Sumatra Province.

Obstacles encountered in the implementation of the asset certification of Nagari's asset in the management of the Nagari's assets are due to: a. The provisions for registration of land of nagari assets derived from ulayat land are absent and not suitable to be carried out by individual land acquisition (PP 24 of 1997 on land certification) ulayat different from state land and land rights. b. The legal community in the nagari does not wish to register the land of the nagari asset with the concept of individual land. c. The community within a nagari in West Sumatra feels that the nagari asset does not need to be certified because without the certificate also the nagari land for governance is deemed to have legal certainty. d. New enrollment is possible if there is a special provision for it, do not be imposed individual provisions for communal.

4. How to overcome / the solution adopted in the certification of ulayat land of Nagari assets in the provision of legal certainty concerning Nagari assets in West Sumatra Province.

The way to solve problems in the designation of nagari land or nagari assets is to establish a provision on the registration of ulayat land in the national agrarian law system.

### **Conclusion.**

1. Legally, the legal certainty concerning Nagari's assets in the form of ulayat land must be registered with the provision of land registration (PP 24 of 1997) and proven by the land title certificate.
2. Nagari assets derived from ulayat land can not be registered or made the proof of their right in the form of certificate because the ulayat right does not include the land registration object.
3. Nagari community states that the nagari asset in the form of ulayat land does not need to be proven by the certificate, because without land registration (without land certificate) it is still accepted as a legal certainty for the nagari to carry out its governance duties.

## **Bibliography**

### **A. Books**

- Bachtiar Effendi, 1993, Land Registration in Indonesia, King Wali, Jakarta.
- Boedi Harsono, 1999, Indonesian Agrarian Law The Association of Agrarian Regulations, Djabatan, Jakarta,
- Boedi Harsono, 2005, Agrarian Law of Indonesia-HistoryFoundingLIFE Content and Implementation, Office, Jakarta
- Chabib Soleh and Heru Rochmansjah.2010. Financial Management and Regional Assets; A Structural Approach Toward Good Governance.Print Second Edition. Fokusmedia, Bandung,
- Hilman Hadikusuma, 1995, Method of Making Working Paper or Thesis of Legal Science, Mandar Maju, Bandung,
- M. Yusuf. 2010. Eight measures of Regional Asset Management Toward Best Local Financial Management. Salemba Four, Jakarta
- Nico Ngani, Research Methodology and Legal Writing, Pustaka Yustisia, Yogyakarta
- Parlindungan, 1999, Land Registry In Indonesia, CV. Mandar Maju, Bandung
- Peter mahmud Marzuki, Legal Research, Cet.VI, Kencana, Jakarta.
- Soerjono Soekanto, 1986, Introduction to Legal Research, UI Pres, Jakarta.
- Sunaryati Hartono, Legal Research in Indonesia At the End of the 20th Century, Alumni
- Sutrisnio Hadi, 1989, Research Methodology vol., Publisher Andi Offset, Yogyakarta
- Suratman, 2012, Legal Research Methods, Alfabeta, Bandung
- Yulia Mirwati, 2015, Ulayat Land Conflict, Andalas Pres University, Padang
- Yulia Mirwati, 2016, Paper on Land Registration of Government Land in Solok District, Koto Baru Solok. Boast

### **B. LEGISLATION**

- Constitution of the Republic of Indonesia.
- Law Number 5 Year 1960 Concerning Basic Regulation of Basic Agrarian Principles.
- Law Number 1 Year 2004 Concerning State Bond.
- Law Number 32 Year 2004 regarding Regional Government.
- Law Number 20 of the Year 2011 on the Law of Flats
- Law Number 19 of 2003 on State-Owned Enterprises.
- Law Number 33 Year 2004About Fiscal BalanceCentral and Local Government,
- Law Number 17 Year 2003 On State Finance,
- Government Regulation No. 24/1997 on Land Registration
- Government Regulation No. 40/1996 on the Right to Use of Business, Right to Build and Use Right.
- West Sumatera Regional Regulation No. 6 of 2008 on the Utilization of Ulayat Land
- Permenag Number 3 Year 1997 About Implementing Provisions of PP 24 Year 1997.
- Permenag Number 9 Year 1999 on Procedures for Granting and Cancellation of Land Rights and Right of Management

### **C. Website.**

- [https://www.humanitarianresponse.info/system/files/documents/Files/Sumatra\\_Barat.](https://www.humanitarianresponse.info/system/files/documents/Files/Sumatra_Barat.),visited 27-05-2016
- [https://en.wikipedia.org/wiki/Danda\\_kabupaten\\_dan\\_kota\\_di\\_Sumatera\\_Barat](https://en.wikipedia.org/wiki/Danda_kabupaten_dan_kota_di_Sumatera_Barat), visited on 27 - 05-2016