

THE EXISTENCE OF CUSTOMARY LAND OF THE KAUM AS COMMUNAL PROPERTY RIGHTS POST-CERTIFICATION IN LIMA PULUH KOTA REGENCY

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Abstract

This research is motivated by the fact that the existence of land is essential for human life; the land is not only understood as an economic resource, a place to live, and a place for the grave, but it is also something sacred, especially for the Minangkabau people, especially communal land which is considered to have magical religious value. The existence of communal land as communal property, especially in Fifty Regency Cities, is decreasing daily. Both in terms of quality and quantity, in terms of quality, with the certification of these people's customary rights, in the perspective of Minangkabau customary law, the quality will decrease because it will be easily transferred or switched to other parties, either by purchasing and selling or used as collateral at the bank. Regarding quantity, the certification of customary rights will make the land of high value and easy to buy and sell or transfer to other parties. Besides, Minangkabau customary law prohibits buying and selling of customary land; this is stated in the old custom saying or kato adat, "Jua indak makan bali, gadai indak dimakan sando," which means that customary land cannot be bought and sold. Its ownership is transferred to parties outside the legal community association.

Keywords: *Existence of Communal Land; Customary Land.*

INTRODUCTION

The land is a gift from God Almighty that cannot be separated from the life system of living things, such as a place to live or a source of livelihood for the survival of living things. Therefore, land has a vital function for human life. In society, the Minangkabau people consider the land, specifically customary land, controlled by customary rights because it is a communal property right. It has magical religious value, where they see a sacred relationship between them and the land they control. And the land is also a symbol. The identity of their fellowship is reflected in the traditional adage, saying: "*Hilang Sako dek Hilang Pusako*", "which roughly means that if the heirloom or customary land is lost or used up, it will

cause the disappearance of their clan alliance. (Fitrah Akbar Citrawan, 2020)

Customary land or customary rights in legislation regulated by Law Number 5 of 1960 concerning Basic Agrarian Principles, which is called UUPA, in article 3 states:

"Based on the provisions in Article 1 and Article 2 regarding the implementation of customary rights and similar rights from communities law customs, as far as it still exists, it must be in such a way that it is by national interests and country which based on the unity of the nation as well as may not contradictory with other higher constitution and regulations."

Constitutionally, recognition of customary land as communal property rights is contained in Article 18B



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paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which, as a result of an amendment, states that:

"The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and by the development of society and the principles of the Unitary State of the Republic of Indonesia, as regulated by law."

This article is an official recognition given by the State in the constitution both to the existence of its customary law community and to the traditional rights inherent in that legal community. One of the rights inherent in that legal community is customary rights. However, this recognition is accompanied by the condition that the customary rights are as long as they are alive.

Generally, in the West Sumatra region, particularly in Lima Puluh Kota Regency, Nurdin Yakub said customary land or customary rights cover lands not cultivated by the residents' clan and eventually owned by Nagari. The land boundaries are determined according to the natural situation surrounding the area. The customary word "*ka bukik baguliang aia, kalurah baaanak sungai*" (Rahmi Murniwati and Sucey Delyarahmi, 2023). The existence of customary land as a communal property right is decreasing day by day in terms of both quantity and quality. The decreasing existence of customary land is because the customary land has been bought and sold by the legal community, even though Minangkabau customary law prohibits the buying and selling of customary land; this is stated in traditional saying or the kato adat "*Jua indak dimakan bali, gadai indak dimakan sando*" meaning that customary land may not be bought and sold. Its ownership is

transferred to parties outside the community public law.

The decrease in customary land is due to its certification. Accreditation makes it easier to buy and sell customary land. If the land is certified or registered, its legal certainty is guaranteed, so buyers do not hesitate to buy it.

According to Article 19 Paragraph (1) of the UUPA, to guarantee legal certainty, the government will conduct land registration throughout the territory of the Republic of Indonesia according to the provisions regulated by Government Regulation. The Government Regulation by the mandate of Article 19 Paragraph (1) of the UUPA, which is currently in force, is Government Regulation Number 24 of 1997 concerning Land Registration.

Definition of registration land in Government Regulation Number 24 of 1997 concerning Land Registration, which is a refinement and scope of land registration activities based on Article 19 Paragraph (2) of Government Regulation Number 10 of 1961, which only includes measurement, mapping, and transfer of land rights and the provision of proof of rights as a vital means of evidence. Guarantee certainty: The law to be realized in this land registration includes certainty of the registered rights status, the subject of rights, and the objects of rights. This land registration produces a land certificate or certificate of land rights as valid evidence. One of the objectives of land registration is to provide legal certainty for land rights. By the mandate of the UUPA, the implementation of this land registration is the task of the Government; the agency or institution appointed to manage this land registration is the National Land Agency.

To obtain a land certificate for the first time, the applicant must first carry out the first land registration, which is expected to be by the principles of land registration. Ownership of the certificate: the landowner can carry out any legal acts if they do not conflict with applicable laws, public interest, and morality. In addition, with a certificate, the land will have a high economic value, which will undoubtedly cause the landowner to be interested in selling it. So, the customary land will decrease in number every day because it is traded.

In the Regional Regulation of West Sumatra Province Number 6 of 2008 concerning Customary Land and its Utilization, Article 1 Number 7, customary land is: "Customary land is a piece of ancestral land along with the natural resources therein and obtained through hereditary means is the right of the customary law community in West Sumatra Province.". Furthermore, in Regional Regulation, the types of customary land in West Sumatra are Nagari Customary Land, Tribe Customary Land, Kaum Customary Land, and Rajo Customary Land. The customary land of the people is the right to own a piece of land along with the natural resources on it and in it, which are owned by all members of the people consisting of jurai / paruik whose control and use are regulated by the mamak jurai / paruik mamak kepala waris.

In Article 4, the purpose of regulating customary land and its utilization is to continue to protect the existence of customary land according to Minangkabau customary law and to take advantage of the land, including natural resources, for the continuity of life and

livelihood from generation to generation and uninterrupted between the customary law community and the relevant area. The most essential characteristic of customary land is that it belongs not to individuals but to the legal community and cannot be transferred forever. From its first characteristic, it is clear that the rights holder is the customary law community together. Every member of the community can take advantage of the customary land. From its second characteristic, it is clear that parties outside the legal community can also utilize it, but not by transferring the rights permanently. (Syarifuddin , 1984)

In the UUPA, the regulation of joint ownership rights (communal rights) over land is included in the scope of land rights regulation. The initial reference can be seen in Article 4 Paragraph (1) of the UUPA which states:

"Based on the state's right to control as referred to in Article 2, it is determined that there are various kinds of rights to the surface of the earth, called land, which can be given to and owned by people, either alone or together with other people and legal entities."

Article 16 Paragraph (1) UUPA then determines the various types of land rights, namely ownership rights, business use rights, building use rights, and use rights, including rental rights. Based on Article 4 Paragraph (1) above, rights to this land can be owned by individuals (individuals) and can also be owned jointly with other people (communal). So communal rights are land rights, especially property rights, which are owned by people with other people. (Kurnia Warman, 2023). So, from the background explanation, the researcher

will examine the existence of customary land in the Kaum as communal property rights after certification in Lima Puluh Kota Regency.

RESEARCH METHODS

The approach method used is empirical juridical. It uses an empirical juridical approach because it studies the provision of applicable laws and what happens in society. (Suharsimi, Arikunto, 2012). This research is descriptive because it describes the data and facts surrounding the research. The data types used in this legal research are primary, field, and secondary data from library materials. The data sources in this paper are library research *and* field research *with* data collection techniques, Document Study, and Interviews. The population in this paper is the customary land of the Lima Puluh Kota Regency community. Sampling by taking certain subjects is considered to be able to represent the existing population. Then, the data obtained from the research results will be analyzed qualitatively.

RESULTS AND DISCUSSION

1. The Existence of Customary Land of the Kaum as Communal Property Rights Post-Certification in Lima Puluh Kota Regency

Geographical Conditions of Lima Puluh Kota Regency, namely its territorial boundaries, to the north and east with Kampar, Riau. Furthermore, the southern boundary with Tanah Datar and Sijunjung. Then, there is the western part with Agam and Pasaman. Payakumbuh City is an enclave of this regency. Lima Puluh Kota Regency has 13 sub-districts and 79 nagari. (Suharsimi Arikunto, 2012) Lima Puluh Kota Regency is part

of Minangkabau because it is divided into three luhak. The definition of luhak here is connected to a particular area or territory, namely:

- a. Agam Village
- b. Luhak Fifty Cities
- c. Land of Datar

The division of these three luhaks is also related to the customary government system adopted by each luhak. Nagari in Luhak Agam generally has a customary government system that adheres to the Bodi Caniago harmony. Nagari in Luhak Lima Puluh Kota, their customary government system adheres to the Koto Piliang harmony. At the same time, the Nagari in Tanah Datar, in their customary government system, is a combination of the Koto Piliang and Bodi Caniago harmony. The communal community public owns land in West Sumatra. Customary rights, in a way, principle No, can diverted by the ninik - mamak, either by the clan leader heirs, village head, or the Nagari Customary Council (KAN), because they have customary law is all over community public custom. That alone. (Harniwati, 2019)

The customary land of the community, as explained in the definition in the Regional Regulation of West Sumatra Number 6 of 2008, is the right to own a plot of land along with the natural resources on and in it, which are owned by all members of the community consisting of jurai / paruik whose control and utilization are regulated by the mamak jurai / paruik mamak kepala waris. Then, in its development, the community considered it necessary to register the customary land of its community at the land office, as well as related to the interest of the community

itself; it can transfer the land if it already has a certificate.

Regarding the certification of customary land, data obtained at the

National Land Agency Office of Lima Puluh Kota Regency shows an increase from year to year, as can be seen in the table below:

Table 1 Number of Land Registrations

| No | Land Registration of Customary Land of the People (Last Three Years) | Amount |
|----|--|------------|
| 1 | Year 2021 | 159 fields |
| 2 | Year 2022 | 240 fields |
| 3 | Year 2023 | 393 fields |

Source: ATR/BPN Lima Puluh Kota

This data shows the last three years of Lima Puluh Kota Regency land registration. The data at the Lima Puluh Kota Regency Land Agency is not separated by sub-district. That information is obtained from the Lima Puluh Kota Regency Land Agency Office Staff. The PTSL (Complete Systematic Land Registration) program also supports the increase in land certification. This government program makes it easier for people to get land certificates for free.

As contained in the General Provisions, Technical Instructions for Systematic Land Registration Complete Number 3/Juknis-HK.02/III/2023. Land registration is systematically done based on plan work determined by the Minister of Agrarian Affairs and carried out in designated areas. (Safrin Salam, 2024)

Systematic Land Registration Complete, abbreviated as PTSL, is a first-time Land Registration activity carried out simultaneously for all Land Registration objects throughout the territory of the Republic of Indonesia in

one village/sub-district or other name of the same level, which includes the collection of physical data and legal data regarding one or several Land Registration objects for registration.

Systematic land registration is carried out in all villages in the district area and all urban sub-districts covering all land areas throughout the Republic of Indonesia territory, a Complete Systematic Land Registration (PTSL) policy. Policy This became a National Strategic Program with the concept of building new land plot data and simultaneously improving and maintaining the quality of existing registered land plot data so that all registered land plots are complete and accurate, which provides a guarantee of certainty and legal protection for land rights and a guarantee of certainty of the location and boundaries of land plots.

In Lima Puluh Kota Regency, the number of PTSLs carried out from 2021 to 2023 was obtained in the research process, namely:

Table 2 Number of PTSL

| No | PTSL (Last Three Years) | Target | Achieved |
|----|-------------------------|--------|----------|
| 1 | Year 2021 | 15,000 | 2,300 |
| 2 | Year 2022 | 10,000 | 1,500 |
| 3 | Year 2023 | 9,000 | 500 |

Source: ATR/BPN Lima Puluh Kota

Based on the table above, the number of certified lands with the PTSL program, although not by the existing target, the number of registered lands is still significant. Likewise, Table 1 shows an increase in the certification of customary land from year to year. After researching Rahmawati Boty Notary /PPAT in Lima Puluh Kota Regency, the process of land transfer, there are also many newly certified lands, which, if observed, come from the customary land of the community. So, certifying the community's customary land makes it easier for the holder of the rights in the certificate's name to transfer because many of them certify the customary land of their community, which has become their designation to be registered in the name of an individual, so that it becomes the personal property of the person stated on the land certificate.

Furthermore, according to Ridho, Staff of the National Land Agency Office, Lima Puluh Kota Regency, to register land at the land office, in this case, the registration of customary land, several requirements must be met, namely:

- 1) Application letter;
- 2) Ranji people;
- 3) Statement of physical control;
- 4) Membership agreement letter;
- 5) Certificate from the village head;
- 6) Letter of accountability;
- 7) UN;
- 8) Taxpayer Identification Number;
- 9) KTP and KK;
- 10) ID cards of 2 witnesses;
- 11) Letter of the statement of installation of field boundary signs land.

A letter of agreement with member people was made with approval by all

members. Next letter information guardian the acquired village from guardian Nagari. In Article 37 Paragraph (2) of the Regulation Government Number 24 of 1997 concerning registration land :

"In a state of certain as determined by the Minister, Head of the Land Agency Office can register to transfer right on field land right property, which is done between individual Indonesian citizen who is proven with a deed that is not made by PPAT but which is considered Enough For register transfer the rights concerned."

Land registration can be done at the local Land Office where the land is located. To register the land, you can come to the land office and bring the requirements mentioned above, or you can also use the services of a Notary by coming to the Notary's office and getting the requirements. If the requirements are incomplete, they will be requested to be completed first, and customary land can be taken over or revoked by the Government if the land is indeed used for the public interest.

Then, if land has been registered with the land agency and a certificate has been issued when transferring land rights, namely by buying and selling, the certificate will be transferred to the buyer. Transferring a Certificate Name is the process of transferring or changing the name of the rights holder listed on the Certificate. Looking at the number of changes in the name of customary land in Lima Puluh Kota Regency, the following data was obtained:

Table 3 Number of Changes of Name of Customary Land of the Community

| No | Change of Land Name (Last Three Years) | Amount |
|----|---|--------|
| 1 | Year 2021 | 493 |
| 2 | Year 2022 | 246 |
| 3 | Year 2023 | 621 |

Source: ATR/BPN Lima Puluh Kota

Based on the data on name changes that occur each year, 493 plots of land were changed in 2021. Meanwhile, the Lima Puluh Kota Regency consists of 79 Nagari. If divided and taken as an average, the number of plots of land changed; the average per Nagari is six plots per year. This will, of course, result in the community's customary land decreasing in number.

Transactions for buying and selling customary land occur, as is the case in Nagari Solok Bio-Bio and Nagari Situjuah Batua, both of which are in two different sub-districts in Lima Puluh Kota Regency.

1) The land located in Harau District is located in Nagari Solok Bio-Bio. The land has a certificate of Freehold Rights with Number 297, issued on March 11, 2013, by the Lima Puluh Kota Regency Land Office, with a Measurement Letter dated February 27, 2013, and an area of 181 m². As stated on the certificate, this land was obtained from a Sale and Purchase process carried out at a Notary/PPAT in Lima Puluh Kota Regency. It can be seen that this land comes from customary land, namely from the customary land of the Pauh people in the name of Mrs. Mahdalinar. Then, after having a certificate, the land was sold to Dona with a Sale and Purchase Deed dated 03-11-2023, Number 45/2023. So, there was a

rights transfer to the land with Number 297.

2) the land is located in Situjuah Limo Nagari District, Situjuah Nagari Batua. It is issued with a Certificate of Ownership with Number 1200, issued on December 10, 2020, by the Lima Puluh Kota Regency Land Office. A measurement letter dated December 8, 2020, with an area of 2,830 m². As stated on the certificate, this land was obtained from the Sale and Purchase process carried out at a Notary/PPAT in Lima Puluh Kota Regency. It can be seen that this land comes from customary land, namely from the customary land of the Piliang people in the name of Mr Nilwan. Then, after having a certificate, the land was sold to Tomi with a Deed of Sale and Purchase Dated 21-06-2023 Number 24/2023. So, there has been a transfer of land rights.

Certification as a mandate of Law Number 5 of 1960 concerning the Basic Agrarian Law, where its implementation is further regulated in Government Regulation Number 10 of 1961, which was later replaced by Government Regulation Number 24 of 1997 concerning Land Registration, as this can be reviewed from the Theory of Legal Certainty, which according to CST Kansil, certainty is a matter (condition) that is certain, the law must essentially be specific and fair. Then, the legal certainty

in the Constitution of the Republic of Indonesia also states in Article 28D Paragraph (1), "Everyone has the right to recognition, guarantees, and legal certainty, which is fair and equal treatment before the law." Then also, regarding this land registration, one of its objectives is to provide legal certainty and protection to the holder of rights to a plot of land, apartment units, and other registered rights so that they can easily prove themselves as the holder of the rights concerned. Registering the land will provide legal certainty regarding land rights along with their contents and obligations, and it will also make the administration in the land sector orderly. Having the land certified will give the land a high economic value.

The increasing need for land, both for housing, business, tourism and recreation, and even burial places, while in terms of quantity, the land will never increase, while the economic value of the land is increasing day by day, especially if the land is certified then its monetary value will increase. The increasing need for land results in high demand for land even though, on the other hand, the price of land is increasing day by day,

This also happens in Lima Puluh Kota Regency, where the demand for land is increasing daily. Even though land prices are rising, this does not affect interest in purchasing land, especially certified land, for residential or business purposes.

The land in Lima Puluh Kota Regency is generally controlled by proper customary law, especially customary law people, with thus almost all land for sale. That is land customary law in matter. This land customary law people, when the land

customary law race This Already certified will more tall interest buyer to land said. Why? Buyers are more interested in buying land customary law of the people who are accredited Because, according to a buyer like one of the buyers, Mrs Neti Herawati, she says that if purchased, land Already certified will be conveniently obtained in the process of selling or buying, among others:

- a. Sales process buy it No convoluted, enough existing name certified go to PPAT can do selling and buying.
- b. Return process his name. It should not be too long compared to when purchasing land . It is not yet certified so that it will be approved. Formerly new, it Can come back to Name.
- c. Land purchased Can be directly utilised.
- d. Absence of hesitation to land.

The increase in the transfer or sale of certified customary land was also confirmed by one of the community leaders, a clan leader in Harau Village, namely Mr Firdaus. Based on the author's interview with the datuak, he said that it was confirmed that after the certification of customary land, there were more and more transfers of rights to customary land in the village. harau, pointing to several places, said that the land where several *homestays were built* used to be the customary land of the community, now the ownership has changed and has become *a homestay*; while pointing to several plots of land, he said that it used to be the customary land of the community, now it has become private land because it has been sold by the community that owns it to the buyer. If the community's customary land is sold, its status will change from customary land

to private land. This is also in line with the results of the author's research on a Notary/PPAT in Lima Puluh Kota Regency, namely Mrs. Hj Rahmawati Boty, SH, S.pN. , MH, MM, from the data

provided by her, that every year there is an increase in the sale and purchase or transfer of rights to this customary land of the community as in the table below:

Table 4 Number of Purchases of Customary Land of the Community

| No | Buy and sell Customary Land of the People | Amount |
|----|---|--------|
| 1 | Year 2021 | 15 |
| 2 | Year 2022 | 6 |
| 3 | Year 2023 | 13 |

Source: Rahmawati Boty Notary/PPAT Lima Puluh Kota

The data above is only from one PPAT, in Lima Puluh Kota Regency, while the number of PPATs in Lima Puluh Kota Regency is 23 PPATs; if we take the average transfer of customary land rights in each PPAT, ten sales and purchase transactions in one year, multiplied by 23 PPATs, then there will be a Transfer of Rights to customary land or sale and purchase of customary land of 230 plots of customary land, which means that there is a change in status from customary land to private land.

This shows that, indeed, after the certification of customary land, the transfer of customary land from sellers to buyers has increased, which will result in a daily decrease or reduction in the existence of customary land.

2. The Occurrence of Transfer of Rights to Customary Land of the Community in Lima Puluh Kota Regency

Transfer of rights to customary rights As mentioned above, four emergencies allow customary land to be transferred, namely: 1) *Maik tabujua di tengah rumah*; 2) *Rumah gadang katirisan*; 3) *Gadiah gadang indak balaki*; 4) *Membangkih batang terandam..*

In fact, according to custom, the transition conditions are only for temporary transfers, namely only to be mortgaged, because customary land cannot be bought and sold: "*jua indak dimakan bali, gadai indak dimakan sando*". The reason why custom prohibits the sale of this community's customary land is because:

1. Customary land is obtained from inheritance where the inheritor does not know its origin (the property is questionable). We only inherit it without knowing how to get it.
2. Customary provisions only allow us to take advantage of customary land, and we must preserve and pass it on.
3. Customary land, including the customary land of a tribe, is a symbol of unity; customary lines say "the existence of pusako / customary land, determining the existence of sako / association " habih pusako mako lupalah sako, meaning that if customary land is used up in a community under customary law, it will result in the loss of the community. The community in question is a clan or tribe.

This shows the importance of protecting and preserving customary land

to prevent the disappearance of the people or tribe.

Based on the research's location, the transaction of buying and selling customary land of the community took place, as was found in Nagari Solok Bio-Bio and Nagari Situjuah. The stone which was stated it was proven that the customary land of the people was sold because:

1. On the land located in Nagari Solok Bio-Bio, Harau District, Mrs. Mahdalinar was the person who sold her land; after the author asked why the land was sold, Mrs. Mahdalinar answered that because of economic difficulties, she did not have the capital to open a food stall, so some of the money from selling the land was used for capital to open a food stall and her child also needed money for college, so some of it was used for her child's college fees. After the author asked why she certified her land. Mrs. Mahdalinar answered that there was no intention to certify this community's land. Still, because this land would be sold, the person buying it asked for the certificate even though her land was not yet certified. The prospective buyer offered to certify the land and was willing to cover the costs needed to certify the land with the agreement that the expenses he incurred would be deducted later from the price of the land he bought. Mother required money from the sale of the land and was also helped to certify the land.

From the research results above, it can be seen that:

- a. The sale of customary land occurs due to economic pressures or economic factors.
 - b. Buyers are more interested in buying land if the land has a certificate.
2. Furthermore, in Nagari Situjuah Batua, Situjuah Limo Nagari District, Mr Nilwan sold his customary land because of economic pressure before this land was sold to Mr Tomi. This land had been mortgaged to Mr Tomi for 5 years; because Mr Nilwan needed money to trade, he offered Mr Tomi to buy his land. Mr Tomi was willing to buy on the condition that the land had a certificate. Because Mr. Nilwan did not have the money to certify the land, Mr. Nilwan increased the amount of his mortgage to Mr. Tomi. After the certification was completed and the certificate was issued by the National Land Agency, the sale and purchase process was carried out at the local Notary's office, and the name was changed to the Lima Puluh Kota Regency Land Agency Office.

From the two research results above, it can be seen that the transfer of rights to customary land, especially customary land of the Near Clan, is caused by:

- a. Due to economic pressure factors;
- b. The customary land of the community has been certified.

This will undoubtedly result in the people's customary land becoming less and less in existence or existence daily. This is supported by the results of interviews with the Head of Harau Village; it was stated that in its development, the existence of a land certification program, including

customary land, has had an impact that with the certification, there is an increase in benefits to the value of the land. As in the Theory of Utilization, the utilitarianism school of thought believes that the purpose of the law is to provide benefits to as many people as possible, which can also be interpreted as *happiness*.

Based on the results of the interview with Yudi, Secretary of the Harau Village Head, the land has been certified. It is in his name, so he is free to do anything with the land with a certificate of ownership. There are several reasons why this customary land is being bought and sold:

1. Economic demands;
2. Used to;
3. Extinct.

Land buying and selling can happen depending on the clan. Buying and selling can occur if the *niniak mamak* and the clan members agree to sell the land.

This matter describes that, in reality, there are also people who buy and sell customary land of this community even though customs have prohibited it. As seen with the *Living Law theory*, according to Eugen Ehrlich, the development of law is centred on the community itself, not on the formation of law by the state, judges' decisions, or the development of legal science. (Eugen Ehrlich, 1936) Society is the primary source of law; this is what Eugen Ehrlich said. Living law dominates life itself, even though it has not been included in the proportion of law. This can be seen in the development of new laws in the field of customary law amid society, where customary land that previously could not be bought and sold can now be bought and sold as long as there is an agreement

from the community members. This can be seen as a living law today in society. Also, according to the adage of customary law, " custom is used new, cloth is worn out, " customary law develops in line with the legal needs of society, so what is customary today is what is patterned by society in the current community behaviour.

Based on the results of the interview with Mr Firdaus, Chairman of KAN Harau, the transfer of customary land can only occur because of the four things mentioned above. However, now, because of the development of the times, it has also begun to shift. Because of life's difficulties, some people have changed hands through grants or sales. This cannot be denied; this happens with the development of the times. This is also because the land has a certificate of ownership so that sales can be carried out.

Next, look at the authority of KAN, namely, related to the letters or documents needed to register the land for the first time. Namely the Certificate of the Village Head. This letter is issued by the Village Head, with a procedure where it must be signed first by the Mamak Kepala Waris, Mamak Kepala Kaum, Head of KAN, and then the Village Head. In its implementation, KAN does not directly sign this letter but also first ensures whether this letter has been approved and signed correctly. So the clan, in the name of one of the clan members, becomes the property, usually represented by the Mamak Kepala Waris, known as the clan's leader, and then sells it.

Based on the results of the interview with Mr. Lakon Siska, the Head of Situjuan Banda Dalam Village, who was

also researched, in the 2021 PTSL program, many land registrations were received, around 400 plots, but until now, some have not been completed, and around 90 files whose information is unclear. Information from the BPN asked for proof of submission to be brought, but the community concerned could not show evidence of submission. Because there is no proof of submission, this is an obstacle.

The Village Head believes that what weakens the certificate is the handover from the *Niniak Mamak* to the *Induak*, which is based only on control. Whoever controls the land or house is made with the signature of the *niniak mamak*. So, some have migrated, and of course, they do not have homes in the villages. Now, those who are able or well-off are given certificates, and those who are less able do not have certificates. So, the weakness of this certificate is that the village government cannot control it, and likewise, the *mamak* cannot control it. Because people already have certificates, so if they want to buy and sell land, they can immediately take care of it at the Notary/PPAT office.

The opinion of the village head, related to the land sale and purchase, is also not reasonable; the village also tries not to let the land out (not to sell it outside), but because of the economic situation. Many have reasons for "*mamelok rumah gadang*", but after observing only a few repairs, the land is sold at a high price. Another factor that can also cause buying and selling is because it is extinct.

Based on the results of the interview with Rahmawati Boty Notary/PPAT Lima Puluh Kota, the sale and purchase of land

or transfer of land rights can be made before the PPAT, the Land Deed Making Officer or, from now on, referred to as PPAT is a public official and usually works as a Notary or who has graduated from a specialisation in Notary and Land Affairs (now Master of Notary) and has passed the PPAT exam and was appointed based on a Decree from the Minister of State for Agrarian Affairs/Head of the National Land Agency for a particular work area. When facing a Notary/PPAT, some requirements are required, namely:

1. Certificate ;
2. *Photocopy* of the ID cards of the seller and buyer (husband and wife);
3. Family card (both parties);
4. Original PBB and PBB payment receipt;
5. Original receipt;
6. Seller's NPWP or tax obligation number;
7. Site plan;
8. Photo of the location map using the coordinate point application (GPS photo camera application);
9. BPJS (Social Security Administration health) of the buyer/seller.

This shows the importance of maintaining and preserving customary land to prevent the loss of the rights of the community or tribe. Indeed, there has been a Transfer of Rights to the Customary Land of the Community in Lima Puluh Kota Regency.

CONCLUSION

Based on the results of the research and discussion conducted, it can be concluded that:

1. Provision law custom forbids customary land for sale and purchase as stated in the provisions, *jua indak*

di makan bali, gadai *indak di makan sando*, meaning it cannot be sold or purchased, except for pawning. However, customary land, especially the community's customary land, has been sold a lot.

2. Based on the results of a study, a transition right on land customary law race occurred in Lima Puluh Kota Regency. The authors in both samples proved that customary land can be bought and sold, one of the causal factors being economic factors. This process is made more accessible because the land has a certificate.

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