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## Legacy of Lower Heritage That Has Certified in Nagari Aua Kuniang West Pasaman District

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### Abstract

According to the provisions of Government Regulation Number 10 of 1961 in conjunction with Government Regulation Number 24 of 1997 concerning Land Registration, those entitled to receive inheritance are required to request the transfer of rights. In this case the transition is due to inheritance. In most parts of Nagari Aua Kuniang, West Pasaman District, many of the rights were transferred through inheritance, which was preceded by the making of a basis for the rights to the pusako randah land. Based on this background. West Pasaman Regency. The method of approach used in this research is empirical juridical, namely research conducted by paying attention to the legal norms that apply, then comparing it with the reality or facts that occur in the field. The results showed that the Process of Registration for Pusako Randah Land Rights in Nagari Aua Kuniang, West Pasaman Regency included fulfilling or submitting the required documents including submitting an application for first time registration, a statement of ownership of the plot of land which includes a physical statement of the plot of land, attached ranji (lineage), a statement from the Wali Nagari, a letter of approval from members of the clan and along with an identity in the form of an Identity Card. The cause of inheritance of pusako randah land in Nagari Aua Kuniang, West Pasaman Regency is because the heirs want to get legal certainty and guarantee legal protection against the pusako randah, on the other hand it occurs because it can be used as collateral for credit in the banking and also to avoid disputes over land the pusako randah. The process of transferring the certificate of ownership due to inheritance of the pusako randah land in Nagari Aua Kuniang, West Pasaman Regency was carried out after the legal incident occurred, the heirs could carry out the process by completing and providing the required documents.

**Keywords:** *Land Certificate Registration; Heirlooms; Inheritance*

### Introduction

For the Unitary State of the Republic of Indonesia, The 1945 Constitution is a constitution that exists as a "social contract" to unite different regional, ethnic, racial and religious backgrounds. The 1945 Constitution recognizes and recognizes this fact, that Indonesia was built and consisted of diverse

societies or ethnic groups.<sup>1</sup> With these differences in each region is different, especially in this case the customary law that applies in an area. Related to that, seen in Law Number 5 of 1960 concerning Basic Rules on Agrarian Principles or hereinafter referred to as the Basic Agrarian Law, seen in article 5 explains that:

"The agrarian law that applies to earth, water and space is customary law, as long as it does not conflict with national and state interests, which is based on national unity. With Indonesian socialism as well as with the regulations contained in this law and with regulations by other invitation regulations, everything by heeding the elements that rely on religious law".

Based on this, the State provides recognition of these customary laws as long as they do not conflict with national and state interests: Which in the customary law there are rights that must be protected in this case especially against customary rights. What is meant by customary rights are the highest rights and may only be owned jointly and may not be owned by individuals Related to that the state also gives recognition of customary rights in customary law communities, seen based on the 1945 Constitution (amendments) contained in article 18 B paragraph (2) states that:

"The state recognizes and respects the customary law community units along with their traditional rights as long as they are still alive and in accordance with the development of the community and the principles of the Unitary State of the Republic of Indonesia as stipulated in the Act".

Based on the above provisions, it can be concluded that national agrarian law must be in accordance with the legal awareness of many people or the rule of law that applies and lives within the community itself, the majority of which is subject to the provisions of customary law in this case the Minangkabau customary law. Where each customary law environment has rules and norms that form relationships between community members.

According to Minangkabau customary law, all land that has either been turned on or that has not been revived is communally owned by the customary law community based on a matrilineal kinship system. What is meant by Matrilineal is a kinship system that takes a line from the mother's side which will also affect the ethnicity or clan of the child being born, inheritance system and soon.

In most parts of Nagari Aua Kuniang, West Pasaman District, many of the rights were transferred through inheritance, which was preceded by making land rights "pusako randah" (low heritage). As one example of the case, Sri Astuti's mother transferred the inheritance rights to the land "pusako randah" (low heritage) which is located in Pinaga Nagari Aua Kuniang, West Pasaman Regency. Mrs. Sri Astuti inherited the land land "pusako randah" (low heritage) along with her sister, Dwi Yuliasuti Sambas, they are the heirs of Ms. Yasnimar. Which of these Yasnimar used to register a low heirloom land so a certificate was issued.

### **Research Methode**

The research method is an absolute element that must be present in research and developing science. based on the function of the research is a rare sequence conducted in a planned and systematic way to obtain problem solving or answers to certain questions. The method of approach used in conducting this thesis research is a method of sociological / empirical juridical approach, also called socio legal research that is, based on the facts and problems that arise in the community environment in the inheritance of low heritage land that has been certified in Nagari Aua Kuniang, West Pasaman Regency.

<sup>1</sup> Kurnia Warman, *Agrarian Law in Compound Communities, Interaction of Interaction of Customary Law and State Law in West Sumatra*, Van Vollenhoven Institute Leiden University, KITLV & HuMa-Jakarta, 2010, page. 18.

juridical sociological legal research sociological is a study that emphasizes the science of law (juridical) but in addition it also seeks to examine the rules of law that apply in society and problems in society.

### **Result and Discussion**

#### **A. Cause of Occurrence of a Certified Low Heritage Land Transition In Nagari Aua Kuniang, West Pasaman Regency**

In the case of this study, the sample in this case the author only took 2 (two) cases, namely:

1. Sri Astuti made the transfer of inheritance rights to the low heirloom land located in Jorong Pinaga Nagari Aua Kuniang, West Pasaman Regency. Sri Astuti inherited the low heirloom land along with her sister, Dewi Yulastuti Sambas, they are the heirs of Yasnimar. Which Yasnimar is registering a low heritage land so that a certificate is issued. The inheritance is in the form of a plot of land, a certificate of ownership in the name of the Yasnimar rights holder, , area of 20,000 m<sup>2</sup>, originating from certificate of ownership number 7025, Nagari Aua Kuniang, Pasaman District, Pasaman Barat Regency measuring letter number 573/1988. Date of measurement letter July 25, 1988.
2. Nurhelmi transferred the inheritance rights to the low heirloom land located in Jorong Padang Tujuh Nagari Aua Kuniang, West Pasaman Regency. Nurhelmi and her sister Wartini and Anto Santoso are the heirs of Siti Absyah. The inheritance is a plot of paddy land, a certificate of ownership in the name of the rights holder Siti Absyah, with an area of 35,000 m<sup>2</sup>, certificate of ownership number 1320, Nagari Aua Kuniang, Pasaman District, Pasaman Barat Regency measuring letter number 166/1982. Date of measurement letter 27 September 1982.

Based on the case and also based on interviews with the mother of Sri Astuti, as residents who registered the transfer of rights in Nagari Aua Kuniang, West Pasaman District, stated that:

"The reason for this is that he and his younger brother agreed to register the transfer of rights to inheritance previously owned by his parents namely jurai Yasnimar (late). He mentioned because in the community frequent land disputes and disputes that result in disputes and conflicts that occur within a people or outside of their people. Therefore to protect the inheritance left by his parents, even though he knows the inheritance is in the form of a low-heirloom land that has been certified in the name of his parents. But to better guarantee legal certainty over the land, he will arrange the registration of transfer of rights (transfer of name) due to inheritance.<sup>2</sup>

To further explain the inheritance of the low heirloom land, so that it is clear who is the holder of the land right after the death of someone who is the owner of the certified inheritance. and replaced by people who are entitled to get it and so that the low heritage land does not fall to people who do not have the inheritance.

After interviewing Mrs. Sri Astuti, then the writer conducted an interview with another resident namely Mrs. Nurhelmi who is an heir who had registered for the transfer of rights due to inheritance, The following are excerpts from the results of the interview: stated that he and other heirs agreed to pledge the

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<sup>2</sup> Interview with Mrs. Sri Astuti, a resident who registered for the transfer of rights in Nagari Aua Kuniang, West Pasaman Regency, on Thursday 10 October 2019.

land to the bank as collateral for credit. Because in borrowing money from a bank, he needs to guarantee land certificates as collateral for his credit.<sup>3</sup>

In connection with that, what is meant by collateral seen based on law number 10 of 1998 concerning Banking is contained in article 1 number 23, that is principal collateral submitted by the debtor in the context of granting credit or financing facilities based on shari'ah principles, in accordance with the provisions stipulated by Bank Indonesia. The point is of course to guarantee various bad things that can happen when the borrower cannot pay the loan installments on time. If the borrower cannot pay it off, the item will be sold. In this case the collateral is in the form of a certificate of ownership. In making this loan, it can only be done by the owner of the property that cannot be replaced by another person. Related to that, the heirs of the heirs who left the inheritance in the form of the lower inheritance land to register the transfer of rights (behind the name) because the inheritance is on behalf of the rights holders in the certificate. In connection with the above, Based on interviews with Mr. Hendro, S.Pd as guardian of the nagari in Nagari Aua Kuniang, Pasaman, Pasaman Barat District, The causes of inheritance of low heirlooms in Nagari Aua Kuniang are:<sup>4</sup>

1. To guarantee legal protection  
Legal protection to the right holders so that they can easily prove themselves as the rights holders of a certain plot of land.
2. To guarantee legal certainty  
The heirs want to have legal certainty over the land owned by their parents to become the property rights of the heirs.

Besides that, the heirs also need a certificate on their behalf to get credit facilities from the bank. Matters regarding land ownership can indeed be very sensitive and cause conflicts for all people and do not rule out the possibility of inter-brothers. Therefore, it is always warned to turn the certificate name into the property of the heirs concerned. The goal besides legalizing legality in the eyes of the law is of course to avoid things that do not want to appear in the future. According to the Basic Agrarian Law it is not enough to just make a deed but must do the process behind the name to make a certificate, to reverse the name or perusabahan name of the old owner to the recommendation of the Acting Officer Land Deed. But having a deed is enough to obtain ownership rights.

#### B. *The Process of Transferring the Title of Ownership Certificate Due to Inheritance of Low Heritage Land in Nagari Aua Kuniang, West Pasaman Regency*

Registration of the transfer of inheritance due to the transfer of ownership rights to the land is regulated in Article 42 of Government Regulation Number 24 of 1997 concerning Land Registration in conjunction with. Article 111 and 112 of the Regulation of the Minister of Agrarian Affairs, Head of the National Defense Agency Number 3 of 1997 concerning Implementing Provisions of Government Regulation Number 24 of 1997 concerning Land Registration. Seen in article 42 of Government Regulation Number 24 of 1997 concerning Land Registration, it states that:

1. For the registration of the transfer of rights due to inheritance regarding land parcels of rights already registered and ownership rights to the unit of flats as required according to the provisions referred to

<sup>3</sup> Interview with Mrs. Nurhelmi, a resident who registered for the transfer of rights in Nagari Aua Kuniang, West Pasaman Regency, on Thursday 10 October 2019.

<sup>4</sup> Interview with Mr. Hendro, as Wali Nagari in Nagari Aua Kuniang, West Pasaman Regency, on Thursday, August 29, 2019.

- in article 36, must be submitted by those who receive land rights or ownership rights to the unit of the said flats as inheritance to the land office, certificate of rights concerned, death certificate of a person whose name is recorded as the holder of his right as an heir.
2. If the plot of land which is inherited has not been registered, documents must be submitted as referred to in Article 39 paragraph (1) letter b.
  3. If the inheritance is made up of one person, the transfer of registration shall be carried out to that person based on a proof of inheritance as referred to in paragraph (1).
  4. If the recipient of the inheritance is more than one person and the time of transfer of the right is registered accompanied by the deed of distribution of inheritance which contains a statement that the right to land on the right of ownership at a particular apartment unit falls to a certain beneficiary, registration of the transfer of rights to land or ownership rights to the unit of flats is carried out to the recipient of the inheritance in question of proof as an heir and the deed of distribution of the heir.
  5. Inheritance in the form of land or ownership rights of the apartment units according to the deed of distribution of inheritance must be shared between several recipients of inheritance or when there is no inheritance distribution deed, the transfer of rights is registered to the beneficiary heirs who are entitled as their joint rights based on a letter of evidence as *ali inheritance* and / the deed of distribution of inheritance.

Transfer of ownership rights over land can occur due to legal actions and legal events. Transfer of ownership rights over land due to legal actions can occur if the holders of ownership rights over the land deliberately transfer the rights held by it to another party. While the transfer of ownership rights to land due to legal events, occurs when the holder of ownership rights to the land dies, then automatically or without the existence of an intentional legal act of the rights holder, the right of ownership is transferred to the heirs of the rights holder. Inheritance can occur because of statutory provisions or because of the will of a person who has died.

Inheritance is the act of transferring ownership of an object from someone who has passed away to another person he / she has appointed and / is appointed by the court as an heir. According to Article 832 of the Civil Code or *Burgerlijk Wetboek (BW)* that those entitled to become heirs are: blood relatives, both legal and outside marriage, and the husband or wife who lives the longest. Seen in Article 20 Paragraph (1) of the Basic Agrarian Law, ownership rights are hereditary, strongest rights, and fulfillment that people can have on land. The word hereditary shows that these rights can continue as long as the owner is still alive and if he dies these rights can be continued by the heirs. The hereditary means that the right of ownership to the land can continue as long as the owner is still alive and if the owner dies, the ownership rights can be continued by the heirs as long as they qualify as subjects of ownership. Strongest means that land rights are stronger compared to other land rights, does not have a certain time limit, is easily defended from other party interruptions, and is not easy to delete. The most complete means that the right to land gives the owner more authority than the other land rights, can be the parent of other land rights, and the use of the land is broader when compared to other land rights. Related to this, *sebagamana* in his book *Urip Santoso* explained that:

"In the registration of the transfer of rights due to inheritance regarding land parcels of rights that have been registered must be submitted by those who receive land rights to the land office, to register by bringing documents as proof of heirs in the form of deed of inheritance rights, or the



declaration of heirs or the heir letter, the certificate of the relevant rights, the death certificate of the person whose name is recorded as the right holder".<sup>5</sup>

If the recipient of the inheritance consists of one person, registration of the transfer of rights is carried out to that person based on a certificate of proof as an heir. If the recipient of the inheritance is more than one person and the time of transfer of the right is registered accompanied by the deed of distribution of inheritance which contains a statement that certain land rights fall to a certain inheritance, registration of the transfer of land rights is carried out to the beneficiary concerned based on a certificate of proof as heirs and the deed of distribution of the heir. Registration of transfer of rights is required in order to provide legal protection to the heirs and as information in the administration of land registration, so that the data stored and presented always shows the real situation.

In connection with this matter Based on an interview with Mr. Hendro as Wali Nagari in Nagari Aua Kuniang, Pasaman Sub-district, West Pasaman District stated that:

"The process of registering the transfer of rights due to inheritance is done on low inheritance property. And the process of siding with his rights involves siblings (siblings) known to the uncle's head of inheritance, the process is carried out by way of deliberation and family relationship between the heirs to make an Inheritance Certificate with the presence of at least 2 (two) witnesses."<sup>6</sup>

After interviewing Mr. Hendro, the writer then conducted an interview with Mr. Zuhlendri as the Chairperson of the Nagari Indigenous Density in Nagari Aua Kuniang, West Pasaman Regency, he mentioned that; According to him there is a fundamental difference in the distribution of inheritance to the registration of the transfer of rights because of inheritance between inheritance according to custom and inheritance according to Islamic law, besides being different from what is inherited according to custom and Islam also differs according to heredity (It means that in Islamic inheritance law, boys receive more inheritance than girls, while in customary inheritance it is girls who receive the inheritance).<sup>7</sup>

Furthermore he said that in the customary inheritance there are 2 (two) assets that can be inherited, namely "*pusako tinggi*" (high inheritance) and "*pusako rendah*" (low inheritance). According to him, the position of the inheritance is low compared to the inheritance of high inheritance, the problem according to him is his son and nephew explicitly which is a high heirloom and which is a low heirloom. He stated the two treasures "*tumbuhan di tunggah yang samo*", the intention is that both treasures are both present and developing in the midst of the Minangkabau custom, are both indigenous people who are actually living in the Minangkabau indigenous people. Related to that, in line with the statement Dt. Rajo Malayu as deputy chairman II of Nagari Aua Kuniang Indigenous Density, revealed that at present the inheritance of the people has been divided and many have registered the transfer of the land.<sup>8</sup>

He also stated that if the people's land had been divided, more would be registered on behalf of individuals than on behalf of clans. land originating from the recognition of the Rights (belonging to the people) registered under the name of the uncle's heir will be registered as the property of the individual member of the people. In connection with that it is determined in the regulation of the State Minister for Agrarian Affairs / Head of the National Land Agency number 3 of 1997 concerning the provisions of the implementation of [government regulation number 24](#) know [1997 concerning Land Registration](#). Based on

<sup>5</sup> Urip Santoso, Agrarian Law & Land Rights, Kencana Prenada Media Group, Jakarta, 2007. p. 90-9.

<sup>6</sup> interview with Mr. Hendro, as Mayor of Nagari in Nagari Aua Kuniang, West Pasaman Regency, on Thursday, August 29, 2019.

<sup>7</sup> interview with Mr. Yulhendri. Dt. Putiah as the Chairman of the Nagari Indigenous Density in Nagari Aua Kuniang, on Thursday 30th August 2019

<sup>8</sup> interview with Mr Dencah., Dt. Rajo Malayu as Deputy Chairman of the Nagari Indigenous Density II in Nagari Aua Kuniang, on Thursday, August 30, 2019

the ministerial regulation, the Inheritance Certificate is one of the main evidences to show the relationship between the heirs of the deceased and their heirs, so based on the statement, the name can be carried back to the heirs.

In the process of registering the transfer of inheritance rights to land is low because of inheritance in Nagari Aua Kuniang, Pasaman District, West Pasaman Regency in this case the Certificate of Inheritance must be made in advance which for example is Yasnimar who is the heir of a low heirloom land which will bequeath to his children On behalf of Sri Astuti and Dwi Yuliasuti Sambas, which when in making the inheritance certificate involves siblings (siblings) and is known by the head of inheritance uncle. The inheritance is in the form of a land title for the name of Yasnimar rights holder, an area of 20,000 m<sup>2</sup>, originating from the certificate of ownership number 7025, Nagari Aua Kuniang, Pasaman sub-district, West Pasaman regency, measuring code number 573/1988, the date for measuring 25 July 1988.

During the process of the Inheritance Certificate, the heirs, Sri Astuti and Dwi Yuliasuti Sambas, brought all the documents needed for the management of the making of the Inheritance Certificate to be submitted to the General Affairs Office at the Nagari Guardian Office, Aua Kuniang, in order to immediately arrange the registration of the transfer of land rights to pusako because the heir can be done. After the Certificate of Inheritance was completed, it was signed by 2 (two) witnesses, known by Wali Nagari in Nagari Aua Kuniang, Pasaman Subdistrict, West Pasaman Regency and strengthened by the subdistrict head in Pasaman District, West Pasaman Regency. Based on this inheritance certificate, the process of transferring the inheritance of low inheritance land was registered at the West Pasaman District National Land Agency office.

Based on the discussion that the author has described above, it can be concluded that the registration of the transfer of inheritance rights to land is low because inheritance is more registered in the name of the individual member of the people. even on personal behalf even if it is left to the people concerned. High treasures that have been divided will become low heirlooms, If the inheritance remains low intact is not divided and bequeathed again. The change in position of high pusako assets and low heirlooms has been revealed by M. Nasroen, in his book *Kurnia Warman* that;

"Between communal rights (belonging to the people) and individual rights in Minangkabau follows a continuous cycle. High heirlooms can turn into low heirlooms, on the other hand low heirlooms are slowly becoming heirlooms. "<sup>9</sup>

Based on the description above, gradually from the communal nature (common rights) leads to the individual nature, especially in ownership of pusako land. which has begun to lead to individual life, so that the transfer of rights to high pusako land is no longer sacred, but it has gradually become a normal thing for the community.

One reason for ending one's ownership of land is because of death. Because the existence of this legal event resulted in the transfer of assets of the person who died, both material and immaterial wealth to the deceased heir. With the death of this person there will be an heir, heir and wealth. The transfer of ownership rights to land is regulated in Article 20 paragraph 2 of the Basic Agrarian Law that is ownership rights can be transferred and transferred to other parties. The notion of the word "switch" is a transfer of rights because the owner of the rights has passed away, so the rights themselves become transferred to their heirs. Article 20 paragraph (2) of the Basic Agrarian Law states that land rights can be transferred and can be transferred.

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<sup>9</sup> Kurnia Warman. a, *Op.cit.*, p. 45.



Transfer of ownership rights over land can occur due to legal actions and legal events. Transfer of ownership rights over land due to legal actions can occur if the holders of ownership rights over the land deliberately transfer the rights held by it to another party. While the transfer of ownership rights to land due to legal events, occurs when the holder of ownership rights to the land dies, then automatically or without the existence of an intentional legal act of the rights holder, the right of ownership is transferred to the heirs of the right holder. The registration of the transfer of rights referred to in this discussion is the transfer of ownership rights over land due to inheritance. In connection with that according to Effendi Perangin, in his book states that:

"However, an heir cannot directly control and carry out the name of inheritance, to carry out the name of inheritance must be with an inheritance certificate"

Inheritance of ownership rights to land must still be based on the provisions of the Basic Agrarian Law and the Implementing Regulations. The recipient of the transfer of ownership of the land or the holder of the new land must be an Indonesian citizen in accordance with the provisions of article 9 of the Basic Agrarian Law and article 21 paragraph (1) of the Basic Agrarian Law that only a single Indonesian citizen can have ownership rights, by not distinguishing opportunities between men and women who have the same opportunity to obtain a right to land and to get benefits and results, both for themselves and their families. According to the provisions of **Government Regulation Number 24 of 1997 concerning Land Registration**, those who are **entitled to receive inheritance are required to request the registration of the transfer of rights** within a period of 6 (six) months after the death of the person who originally owned the title without violating the provision that receiving ownership of land must be in accordance with the Basic Agrarian Law article 21.

Based on interviews with Mr. Almarjan as Head of the Office of the National Land Agency of West Pasaman Regency, states that: Registration of the transfer of rights due to inheritance is required in order to provide legal protection to the heirs and for the sake of order administration of land registration, so that the data stored and presented always shows the current state. The process of inheritance occurs due to the death of a person by leaving a number of assets, both material and immaterial without distinguishing between movable and immovable property.<sup>10</sup>.

He also stated that if you want to make a return name you can submit an application to the National Agency's Land Office, that is by registering the transfer of rights (transfer name) for land that has been registered (certified). Transfer of ownership rights over land due to inheritance must be registered by the heirs, Regarding who is entitled to become an heir, it is regulated in the customary law that applies to the testator. Registration of the transfer of rights due to inheritance is required in order to provide legal protection to the heirs and as a strong proof of the validity of the transfer of ownership rights. Also to provide legal certainty to the heirs in control of the land.

Furthermore, registration for the transfer of ownership rights over land due to inheritance that must be carried out by the party who obtained the title of ownership as inheritance is regulated in Article 42 paragraph (1) and (2) Government Regulation Number 24 of 1997 which reads as follows:

1. For the registration of the transfer of rights due to inheritance regarding land parcels of rights already registered and ownership rights to the unit of flats as required according to the provisions referred to in article 36, must be submitted by those who receive land rights or ownership rights to the unit of the apartment concerned, death certificate of a person whose name is recorded as holding his rights and certificate of proof as heir.

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<sup>10</sup> Data from interviews with Mr. Almarjan as Head of the Office of the West Pasaman Regency National Land Agency, on Wednesday 4 September 2019.

2. If the plot of land which is inherited has not been registered, documents must also be submitted as referred to in Article 39 paragraph (1) letter b.

Related to that, according to the provisions of article 61 paragraph (3) Government Regulation Number 24 of 1997, namely:

"For registration of the transfer of rights due to inheritance submitted within 6 (six) months from the date of death of the testator, there is no registration fee."

Maintenance of land registration data in the form of registration of transfer of rights due to inheritance is specifically regulated in Article 111 of the Regulation of the Minister of Agrarian Affairs / Head of National Land Agency Number 3 of 1997 concerning Implementing Provisions of Government Regulation Number 24 of 1997. Article 111 Paragraph (1) Regulation of the Minister of State of Agrarian / The Head of the National Land Agency said that:

Inheritance registration for the transfer of land rights or Ownership Rights of Flats is submitted by the heirs or their proxies by attaching:

- a. Certificate of land rights or certificate of ownership over Flats in the name of the heir, or if the land has not been registered, proof of ownership as referred to in Article 24 of Government Regulation Number 24 of 1997;
- b. Death certificate in the name of the right holder stated in the certificate concerned from the Village Head where the heir lived at the time of death, hospital, health worker, or other authorized agency;
- c. Proof of inheritance which can be in the form of:
  - 1) Inheritance of the testator;
  - 2) Court decision;
  - 3) Determination of judge / Chief Justice;
  - 4) Certificate of Inheritance;
- d. Written power of attorney from the heirs if the person submitting the application for the transfer of rights is not the heir concerned;

The process of transfer of rights or transfer of name is a process that can be evidence of the transfer of rights due to inheritance. Provisions regarding inheritance are regulated in Government Regulation No. 24 of 1997 and Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency No. 3 of 1997, namely:

1. If the recipient of the inheritance consists of one person, registration of the transfer of rights is carried out to that person based on a certificate of proof as an heir (Article 42 paragraph (3) Government Regulation Number 24 of 1997);
2. If the recipient of the inheritance is more than one person, and there is no division of inheritance, then the transfer of rights is carried out to the heirs as joint ownership (Article 111 paragraph (4) Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency No. 3 of 1997 Jo. Article 42 paragraph (6) Government Regulation No. 24 of 1997). And further distribution of rights can be carried out in accordance with Article 51 of Government Regulation Number 24 of 1997;
3. If the recipients of the inheritance want to divide the common property rights into the rights of each shared holder, must be registered based on the Deed made by the Authorized Actor of the Acting

Authority of Tanah according to the prevailing regulations which proves an agreement between the joint rights holders regarding the distribution of the joint rights (Article 51 paragraph (1) Government Regulation Number 24 of 1997).

Based on interviews with Mrs. Meliza Poni, as the ticket window clerk of the Transitional Registration Office of West Pasaman District Land Office said that:

"In arranging the registration of the transfer of rights in this case because the inheritance can be done directly by the heirs to come directly to the West Pasaman District Land office or can ask for help through the Land Deed Making Official"<sup>11</sup>.

Registration of the transfer of rights due to inheritance is also determined regarding the determination of a tax. With the knowledge of how large a parcel of land, then based on this it can be determined the amount of tax that must be paid by someone. The existence of an inheritance tax on Land and Building Rights is regulated in Act Number 21 of 1997 Act No. 21 of 2000, replacing the transfer of tax ordonantie, Standblad 1924 Number. 291 The Obligation of Land and Building Rights inheritance is taxation to the heirs, in connection with the transfer of land and building rights from the testator to his heir.

Related to this, based on an interview with Mr. Heru Gunawan Putra, as Head of the Land Law Relations Session stated that:

"In the case of inheritance tax that is imposed on heirs, it can be seen based on the Selling Value of the Obtaining Object which is if the Selling Value of the Acquisition Object the Rp. 300,000,000 (three hundred million rupiahs) and below, the heirs are not subject to tax with prior provisions to arrange for a tax exemption certificate at the Pratama Express Tax Office in Bukittinggi. If the Sale Value of the Objects is Rp. 300,000,000 (three hundred million rupiah) above, the heirs will be taxed as much as 5% of the excess of Rp. 300,000,000. (three hundred million rupiah).<sup>12</sup>

In the process of registration and registration of the transition (transfer of title) land rights, The National Land Agency has established a service system or registration mechanism at the land office, so that the registration process is more effective and efficient the National Land Agency has implemented the ticket window system, namely:

1. Counters I regarding service information;
2. Counter II concerning submission of application documents;
3. Counter III concerning delivery of fees / payments;
4. Counters IV regarding product delivery.

According to Meliza Poni, basically, the registration procedure for the transfer of ownership because inheritance is generally the same. As previously stated above the requirements or completeness of the documents that must be fulfilled by the applicant for the registration of the transfer of rights (transfer of name) due to inheritance to the West Pasaman District Land Office. Applicants can come

<sup>11</sup> interview with the mother of Meliza Poni, as the ticket window clerk of the West Pasaman Regency Kantah registration section, on Wednesday 4 September 2019.

<sup>12</sup> Data from interviews with Mr. Heru Gunawan Putra, as the Head of the Land Relations Session of the West Pasaman Regency land law, on Wednesday 4 September 2019.

directly to the counter window registration clerk by submitting the requirements for the registration of the transfer of rights (behind the name).

Based on an interview with Sri Astuti who is an heir along with his younger brother Yulastuti Sambas who inherited from the Yasnimar jurai as heir to the Malay tribe. He revealed that he had arranged the registration of the transfer of rights (behind the name) certificate on behalf of Yasnimar (late) as the jurai of the rights holder in his certificate.<sup>13</sup> According to him as one of the heirs of the descendants of the jurai of Yasnimar, said that the heirs of the descendants of the jurai of Yasnimar agreed to reverse the name (transfer of ownership due to inheritance) of the land land registered under Yasnimar (deceased) as the rights holder. The heirs of the Yasnimar descendants agreed to make a return on behalf of the members of Yasnimar (Aisha's female descendants). He further explained to make arrangements based on the agreement of the people.

After all the management requirements have been completed and given to the ticket window clerk II. And window counter II also checks the completeness of the application file, If the application file is complete, the ticket window II officer will issue a receipt for the application file Receipt of the Application File containing about:

1. Receipt of application files and application documents;
2. Details of fees, payment orders and receipt of registration at window III.

After the applicant makes payment at Counter III, the counter clerk will issue proof of registration and payment which will be used by the applicant to take a certificate of ownership under the name (transfer of ownership due to inheritance). For more information on typing the certificate. The recording of the transfer of rights as regulated in Article 105 mentioned above, in terms of recording the transfer of ownership due to inheritance can be concluded:

1. The name of the old right-holder (heir) will be crossed out in black ink and initialed by the Head of the Land Office or appointed Officer.
2. The name of the heir, as the holder of the new right to land will be written on the pages and columns in the land book and certificate, by affixing the date of registration, signed by the Head of the Land Office or appointed official and the official stamp of the Land Office.

Still interviewing Meliza Poni, after typing the certificate has been completed to continue submitting the certificate at the counter IV by the applicant or registrant by showing a certificate of land registration by the applicant to the counter IV. And the window clerk checks the certificate and matches the Certificate of Ownership on the certificate and the certificate, if it is suitable and appropriate, the window clerk will submit the certificate to the registrant.

Based on the description above, registration of transfer of ownership due to inheritance is in line with the theory of legal protection and the theory of legal certainty used in this research. Land registration aims to provide legal certainty and legal protection to right holders so that they can easily prove themselves as holders of rights to a plot of land. By registering land, it will become clear the subject of rights holders, area and boundary of the land. Besides that, the process that was passed in the registration of the transfer of rights due to inheritance of the inheritance was low by registering and certifying the land. On the other hand according to Minangkabau customary law the land is communally owned by all members of the Tribe, Tribe and Nagari. Regarding communal rights, it can be seen in article 1 paragraph

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<sup>13</sup> interview with Sri Astuti as heir, who takes care behind the name Nagari Aua Kuniang, West Pasaman Regency



(1) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency, namely:

"Communal rights to land, hereinafter referred to as communal rights are common property rights over the land of an indigenous community or common property rights over land granted to communities within a certain area."

Besides that, there is also a push that leads to the emergence of individualism in terms of land tenure and ownership patterns, because the concept of ownership of land rights in the Basic Agrarian Law refers to the recognition of individual rights. This is clearly not in accordance with the principle of communal land ownership in the Minangkabau community.

### Conclusion

1. Causes of Low Heritage Land Inheritance Occurs in Nagari Aua Kuniang, West Pasaman Regency because the heirs want to get legal certainty and guarantee legal protection for the inheritance, on the other hand it occurs because it can be used as collateral for credit in banks and also to avoid disputes over the low heirloom land.
2. The Process of Transferring the Name of Certificate of Ownership Due to Inheritance of Low Heritage Land in Nagari Aua Kuniang, West Pasaman Regency carried out by fulfilling the completeness of the documents that must be completed by the management, namely in the form of a request for inheritance, Death certificate from the testator, Photocopy of the heir's family card and heir (for the heirs who are already married), Photocopy of identification card of the testator and heir, Photocopy of witness identity card of at least 2 (two) people, Photocopy of land and building tax goes on, Certificate of inheritance Tax exemption letter, Certificate of acquisition of land and building rights and the last certificate to be called.

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#### 2. Interview

Data from interviews with Mr. Almarjan as Head of the Office of the West Pasaman Regency National Land Agency.

Data from interviews with Mr. Heru Gunawan Putra, as the Head of the Land Relations Session of the West Pasaman Regency land law.



Interview with Mr Dencah., Dt. Rajo Malayu as Deputy Chairman of the Nagari Indigenous Density II in Nagari Aua Kuniang.

Interview with Mr. Hendro, as Mayor of Nagari in Nagari Aua Kuniang, West Pasaman Regency.

Interview with Mr. Hendro, as Wali Nagari in Nagari Aua Kuniang, West Pasaman Regency.

Interview with Mr. Yulhendri. Dt. Putiah as the Chairman of the Nagari Indigenous Density in Nagari Aua Kuniang.

Interview with Mrs. Nurhelmi, a resident who registered for the transfer of rights in Nagari Aua Kuniang, West Pasaman Regency.

Interview with Mrs. Sri Astuti, a resident who registered for the transfer of rights in Nagari Aua Kuniang, West Pasaman Regency.

Interview with Sri Astuti as heir, who takes care behind the name Nagari Aua Kuniang, West Pasaman Regency

Interview with the mother of Meliza Poni, as the ticket window clerk of the West Pasaman Regency Kantah registration section.

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