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RESEARCH ARTICLE

LEGAL CERTAINTY IN PROVIDING CERTIFICATE OF LAND RIGHTS FROM THE MINISTRY OF JUSTICE BASED ON LAW NUMBER 13, 2017

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Abstract

The complexity of the issue of structuring land law after the independence of Timor Leste 20 years. The rise of community demands regarding land ownership rights is closely related to the principle of independence which cannot be separated from property rights, contract rights and freedom. Land rights are a separate issue for the RDTL state where there is dual ownership of certificates from the Portuguese colonial era and the Indonesian occupation of Timor Leste. This study aims to conduct a theoretical analysis of the authority of the ministry of justice in providing land rights certificates in accordance with applicable laws. This study adopts normative assumptions to indicate a critical problem in the ministry of justice which includes several literature reviews. As the final conclusion of this research, based on theoretical assumptions, it is explained that Ownership of land and buildings must guarantee legal certainty and legal protection, legal certainty and legal protection regarding land that is property rights from a juridical point of view of the subject's land status, and from a physical point of view in the form of the location, boundaries and area of land which are regulated based on statutory regulations. Invitation On the basis of the dual ownership of land titles, the RDTL government has attempted to establish various land law instruments to regulate citizens' rights to land. However, this still raises various problems, including: juridical problems, sociological problems, historical problems and political problems. So that the writing of this article can also provide clarity on land law in the country of Timor Leste.

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Introduction:-

There are several issues that have been identified in This research includes:

First, juridical issues regarding land ownership rights, in Article 7 of Law Number 13 of 2017 regulates land ownership rights, regarding individuals or groups, both citizens and foreigners (Pessoas singulares e coletivas estrangeiras).

However, this article is in conflict of norm with Article 22 of the 2002 RDTL Constitution which states that Timor Leste citizens residing or living abroad are entitled to state protection in the exercise of their rights and will be subject to obligations that do not conflict with their absence from home, because the substance of Law Number 13 of

2017 directly recognizes and regulates private property rights and does not recognize the rights of people who fled after the referendum, but on the other hand the government recognizes ownership rights to land of East Timorese citizens in other countries (*Portugal, Australia, etc.*) when viewed from a human rights perspective, the laws and regulations that have been formed do not have the value of legal certainty and do not touch the soul of people's lives.

Second, Sociological problems, land ownership rights by the community that have not been clearly described in the legislation, causing conflicts over land rights between communities, conflicts over land rights that lead to criminal acts (murder), then also creates conflicts between indigenous peoples over property rights. land. Worse still is the demands of individuals (East Timorese citizens from abroad who have land certificates with the community who have occupied the land, houses and buildings left behind during the colonial period. Therefore, to create justice for all citizens of RDTL, the government needs to consider forming clear laws and regulations that have legal certainty.

Third, Historical issues concerning land law in Timor Leste are reflected in the historical journey of land in Timor Leste, which raises complex issues, this is influenced by the nation that once colonized Timor Leste by applying the applicable land law in their country of origin, namely:

Portuguese colonial period

1. During the Portuguese colonial period) for 450 years (1522-1975) the Portuguese had made a law on land in Timor Leste under the name Carta de Lei Nomeru 1901, Dia 19 de Maio de 1901. Based on the Carta de Lei it was determined,
2. The rights to the land in question give the authority to use the land in question, as well as the body of the earth and water as well as the space above it is only needed for interests directly related to the use of the land within the limits according to this law and regulations. another higher law.
3. All land that is not certified by the Portuguese government will become the property of the government and will become the property of the colonial government in Timor Leste.
4. The property rights of foreigners in Timor Leste who do not follow this legal property rights procedure will become the property of the Portuguese colonial government in Timor Leste.
5. Customary land can be considered as land that has no owner will become land owned by the Portuguese government.¹

The legal basis for the Carta de Lei, the Portuguese colonizers in Timor Leste, was to register all land in Timor Leste, both privately owned and customary lands, so that the provisions of this law compel all the people and customary leaders in Timor Leste to be able to register their lands so that their rights can be registered. ownership of the land and in the end a certificate is given as proof of ownership.

The land registration system applied by the Portuguese colonialists in Timor Leste was more inclined to a negative registration system than a positive registration system, because the land registered at that time was less than the unregistered land, with a negative registration system for land that was already registered and had a negative registration system. certificates can still be challenged in court because certificates are not strong evidence but are not absolute, historical developments in Timor Leste during the early Portuguese colonial period had not registered land and issued land rights certificates to anyone.

As a consequence of the enactment of the Carta de Lei, many people and groups lost their ownership rights to land. The Portuguese colonial government had colonized Timor Leste for 450 years and only started to provide land certificates in 1901-1975 with a total of 2,709 certificates issued.

There are various types of certificates issued in Timor Leste by the Portuguese colonial government, such as: Propriedadepereita (ownership rights), Afforamento (land lease rights for 20 years with the possibility of becoming property rights if the land is leased for 40 years), Arendamentu (trade contracts) land for the mass of time for ± 30), Occupacao (right to use land based on tradition or make a contract for 5 years), Venda (right to control by building a house). More certificates were issued to parties, namely: the Catholic Church, Sociendade Agricola Patria e Trabalho/SAPT (Farmers' group), kings who were close to the colonizers, Portuguese and Timorese descendants (Mistissu), and traders of Chinese descent and Timor.²

¹ www.fundasaunmahein.com Carta de Lei Nomeru 1901, Dia 19 de Maio de 1901

² Journal of FundasaunMahein, Number 8 edition dated July 12, 2010.

Illegal occupation of Portuguese Timor by the Indonesian government

The illegal occupation of the territory of Portuguese Timor by the Indonesian government has implemented the applicable land law in Indonesia, based on:

- a. 1945 Constitution, Article 33 paragraph 3.
- b. Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles.
- c. Government Regulation Number 24 of 1997 concerning Land Registration.

Land registration in Timor Leste was only started in 1980-1999 so that at that time 4,400 land certificates had been issued. Certificates issued in Timor Leste which are given to: Individuals, Groups, Catholic Church/religious organizations, business groups, State companies, Government of Indonesia in Timor Leste. With certificates: Ownership Rights, Cultivation Rights, Building Use Rights, Use Rights, and Lease Rights³.

1999-2019 Independence Restoration Period

The period after the Restoration of Independence of Timor Leste, the government has issued and ratified Law No. 1 of 2003 concerning legislation that specifically regulates immovable property through Lei No. 1 / 2003, de Marco Regime Juridico dos Bens Imoveis I parte : Titularidade dos Bens Imoveis (Law Number 1 of 2003 concerning Immovable Assets and Property), Relics of the Portuguese and Indonesians as well as foreigners in Timor Leste and Law Number 13 of 2017 concerning the regime especial para a definição da titularidade dos bens imóveis (Special regulation for the definition of property rights to land) but has not yet fully implemented the law because it is still waiting for the establishment of the Land Commission (Comissão de Terras).

This law aims to clarify the juridical situation of land ownership with various dimensions of the right to private ownership as regulated in Article 54 of the Constitution of the Democratic Republic of Timor Leste. The process of regularization of ownership of immovable property as regulated in this Law is fundamental to ensuring peace and the social and economic development of the country.

The solution adopted takes into account the history of Timor Leste over the last decades and has been informed by the accumulated knowledge over many years of research and public consultation on land issues to ensure a balance between the various positions that exist in East Timorese society.

Based on the historical and legal situation of Timor Leste, the main purpose of this law is to clarify the legal status of land and to promote distribution of and access to land. clarification of land rights is carried out through prior recognition of land rights. In fact, the constitution and other laws further require the safeguarding of the formal rights of the people of East Timor which were legally granted during the previous administration. Articles 54 and 165 of the RDTL Constitution, Law no. 2/2002 August 7, which received the previous law, as well as Law no. 1/2003 March 10, for State-owned land, requires recognition of these rights. In turn, the determination of community land rights is taken from the limit set out constitutionally in Article 54 Paragraph 4, which prohibits foreign nationals from obtaining land rights.

In addition to the previously formalized recognition of rights, this law establishes informal property rights, with a view to redressing injustices practiced prior to Timor-Leste's Restoration of Independence, due to the lack of formalization of rights.

These informal land rights correspond to traditional and individual rights to land, enabling those who previously did not obtain a certificate of their land rights, can now apply for it on the same terms as those who previously had their land title formalized. In this regard, the current law operates the formalization of these rights through their registration.

Promotion of land distribution is carried out through the recognition of land rights to owners of this land or to holders of rights other than land, in accordance with criteria established by law. Centralized land ownership and administration is avoided, giving many private parties the opportunity to have legally recognized land rights and become independent in the management of their land.

³ www.fundasaunmahein.com 8th edition 2010

Access to land is guaranteed in two ways: on the one hand through the creation of land registrations, enabling the emergence of a safe and transparent market for land and building sales; on the other hand, by clarifying State-owned assets, it allows the State to better manage its assets, which can be distributed to those who otherwise do not have access to land.

The law also establishes criteria for dispute resolution and the principle of compensation when there is duplication of rights. In fact, there are situations where, based on the allocation of rights by different administrations or by applying the criteria provided for in this law, there will be more than one legal declarant for the same immovable property. In such cases, the law establishes criteria for dispute resolution and prescribes compensation payments to parties whose ownership rights are not recognized to compensate for the loss of their rights.

The law also recognizes community ownership and creates a community protection zone figure. Although some aspects of these figures will need to be condensed in future legislation, it has been ensured that the rights of communities to claim their land and buildings and to see their community lands are recognized, and the principles to guide the regulation of the area of community protection.

Special care has also been taken to adapt the law to international legal instruments to which Timor-Leste is a party, such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the UDHCR and ICESCR Conventions.

Fourth, Problem political concerning the formation of land law (Political legislation). That the government through the ministry of justice (*DGTP/diretor Geral de Terras e Propriedades*) certainly has the authority to form implementing regulations for the land law, but this has stalled due to conflicting laws and regulations proposed by the government to the president that have not been approved by the president, such as the draft Law on the Land Commission. Whereas the establishment of the Land Commission has been stated in Law Number 13 of 2017. Thus, the government (DGTP) faces a situation of stagnation in carrying out legislative politics, which then conditions the ministry of justice in uncertainty in the use of land law.

After Timor Leste received recognition from the International Community on 20 May 2002, the government established an institution under the Ministry of Justice, namely the Institution: *Direção Geral de Terras, Propriedades* (DGTP). So that this institution functions to register land, issue certificates and resolve land conflicts that occur in Timor Leste based on the law in force in Timor Leste.⁴

Methodology:-

The methodology used in this research is normative assumption which includes literature review and research.

Discussion:-

In relation to the existence of Law number 13 of 2017, hierarchically the legislation is under the 2002 RDTL constitution, because this Law is an elaboration of Articles 54 and 58 of the 2002 RDTL constitution, then it has also given significant implications for the community, however, it can be seen from the enthusiasm of the community who contributed to the registration, identification of land rights.

Furthermore, this law also clearly stipulates the authority of the national land agency in carrying out its duties and functions to serve the community. function. The second regulates the rights to land owned by the state.

In fact, the government "may" use its authority to divide the law into several forms, first, the form of a law regarding the classification of land rights throughout Timor-Leste, second, establishing a separate regulation regarding the authority of the cadastra in registering and identifying rights to land. land and its ownership, thirdly, the establishment of laws and regulations regarding an independent commission on land tasked with resolving land issues disputed by the community in general.

Then the law does not meet the standards for the formation of good legislation, the first reason is, it does not clearly regulate the ownership rights of land owned by the church, because if you look at the reality the church owns a very

⁴ Law No. 13 of 2017 concerning Specific regulations for the definition of property rights to land

large land in this country. Therefore, the government needs to consider reviewing Law No. 13 of 2017. Second, the regulation regarding customary land rights, as a norm, is still very general and not concrete, therefore the government needs to look at establishing a land law specifically regarding community rights. The specifics of customary cultural land, even though it has been confirmed in Article 2 paragraph 4 of the 2002 RDTL constitution.

Based on Article 54 of the RDTL Constitution and Law Number 13 of 2017 Article 6 concerning Ownership of rights to immovable property above can guarantee a legal certainty for the state of Timor Leste.

Guarantees of legal certainty are needed in overcoming the ownership of land rights in Timor Leste, law enforcement in principle must be able to provide benefits or be useful for the community to achieve justice. what is considered useful is not necessarily fair, and vice versa what is considered fair is not necessarily useful for society. In such conditions, society requires legal certainty, namely the existence of regulations that can fill the ambiguity of legal norms.

The concept of control and ownership of land rights in the land law explains how the position of the State as the ruler of land rights, which has the authority to distribute property rights to everyone, in this case only citizens of Timor Leste. Everyone who has ownership rights to the land must also manage the land properly for his own and his family's needs, and not harm the community in general or the State in the social use of the land.

So with the existence of the land law or commonly called the agrarian law, there will be legal certainty to guarantee ownership of land rights for every citizen of Timor Leste and the State can also position itself as the ruler of land rights. Based on the 2002 RDTL Constitution concerning the Authority of the Government of Timor Leste, the role of the government in dealing with land issues in Timor Leste is very important. However, until now the State as the ruler of land rights has not been able to distribute various types of land rights to the people of Timor Leste fairly and equitably. There are still many residents of Timor Leste who have not received land/land to live with their families.

In the author's opinion, Law Number 13 of 2017 has not been able to guarantee legal certainty and justice for citizens of Timor Leste, because Law Number 13 of 2017 has been approved and promulgated by the President of RDTL, but the Government through the Ministry of Justice has yet to provide certificate of land rights, which is caused by limited human resources in carrying out public services, especially in the land sector and the limitations of technical personnel and limited facilities and infrastructure.

Conclusion:-

Based on the analysis and description that the author has described in previous chapters, it can be drawn several conclusions as answers to the problems studied, namely:

1. Ownership of land rights for the citizens of Timor Leste according to the RDTL Constitution is still weak and cannot fully guarantee property rights for its citizens and has not been able to provide legal certainty to its citizens considering that the government is facing obstacles because it is difficult to determine which regulations will apply in Timor Leste given the influence of from previous Governments (*Indonesia and Portugal*).
2. It has not been able to provide legal certainty to its citizens considering that the government is facing obstacles because it is difficult to determine which regulations will apply in Timor Leste given the influence of the previous Governments (*Indonesia and Portugal*).
3. The state as the ruler of land rights has not been able to distribute various types of land rights for the people of Timor Leste fairly and equitably.
4. Land issues in Timor Leste Must be a shared responsibility The active role of the State and supported by human resources can be capital in building a strong legal foundation to provide legal certainty and legal justice for the people of Timor Leste.

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Scientific work

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Laws And Regulations

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- c) Law Number 13 of 2017 concerning special regulations for the definition of land ownership rights
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