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Law Due to Certificate Issuance Rights of Land Management (HPL) No. 1 Of 1987 The Land of Tradition (*In Dignity Justice Theory Perspective*)

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Abstract. This article provides an analysis Descriptive just about any Rights Land Stewardship (HPL) and the state of the legal regulation of HPL on community land. Research findings is that it turns out the existence of Land Management Rights, by society in general considered to be problematic from a legal setting. In view of the general public (the men in the street) there is no clear basis in the legal arrangements of the Basic Agrarian Law regarding the HAT. Problems HPL also appear as the result of legal research normative author, with mainly navigated by Justice Theory Dignity (the dignified Justice Theory) was found that the provision HAT to the Government almost be violate or conflict with the rights to other land that had previously existed. As for the other HAT referred to are the property of land under customary law. The ownership of the land under customary law was legally recognized. In this study also found that in fact the birth of HPL owned by the Government of Sorong regency which has now become the City of Sorong on the one hand is based on the claim the Government of Sorong, proposed by the elements of the local Land Office that the origin of the HPL is a conversion from HAT in West Law (Right *Erfpacht*). With this fact it can be said that the Government HPL Sorong seek refuge or shelter behind Erfpact *Verponding*. In fact, in a Court decision expressly states that the right Erfpach judges and *Erfpacht Verponding* it is not there anymore. The legal consequence is *Erfpacht* not be used as legal basis that justifies or justification for HPL. According to the Judge, HPL Sorong government owns comes from the State Land. In short it can be said that this article contains an overview of the issues HPL law above the government-owned land parcels at the same time also be claimmerupakan land belonging to indigenous peoples.
Keywords: Because of law Rights Land Stewardship; Indigenous Lands; Justice.

1. Introduction

Land Management Rights or popular / HPL is commonly known as the land rights (HAT) monopoly / only be owned or controlled by the Government. The absolute right of the Government is a type of tenure, which has begun to commonly known and considered valid admissible in Indonesian society. However, the general public (the men in the street) still doubt the existence of legal arrangements can be used as a handle for menjustidikasi where the HPL superior rights. There is still uncertainty about the legal regulation of HPL[4], In other words, there is a serious problem because of the existence HPL obscurity where legal arrangements regarding the rights in the

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[4] Evidence of still a lack of clarity about the existence of legal arrangements regarding HP can be seen for example from the many lawsuits in the Court of citizens; among others, as will be revealed through this study.

legislation in force in Indonesia; in particular the existence of the settings in the Basic Agrarian Law.

By contrast in theory perspective Dignity Justice (the dignified Justice Theory), which teaches that if people want to seek legal[5]; it must be found, such as the legislation applicable, Indonesia is a State of Law. As an expression in the Constitution of the Republic of Indonesia of 1945 (UUD 1945) Form and Sovereignty Chapter I, Article 1 (3) that: "Indonesia is a country of law".

Into the meaning in the phrase "Indonesia is a country of law" by using the theory of Justice Dignity (the dignified Justice Theory), or philosophy of law Justice dignified, it is known that a country was only deserve to be called as a state of law, among others, when all deeds , the more act of the Government and its people for salingclaim will beberadaan a right in this case particularly the rights to land, including the Management of land / HPL, the act to claim the rights it must first have been No clear basic settings.

State law always trust the assumption that the existing arrangements, including arrangements that justify the existence of any rights, including HPL belongs to the Government. Assuming like that then there should be no doubts about the existence of any seikit in the formulation of laws and regulations in force; setting and justification of the existence of certain rights, including HPL. In a state of law every existing regulations should be formulated in advance and with a well-lit in a formulation of the provisions of law; in this case, the question is the formulation of a firm in the BAL that already exist, in particular the basic rules governing the rights on the land, including HPL in Pancasila Legal System[6],

Noting social facts also revealed above, that the rule of law in legislation, in particular the BAL still contains vagueness (ambiguities), if not to say nil at all where the formulation of the provisions of the legislation regarding the existence of HPL, they are already a the urgent need to immediately find a clear ruling on the existence of the HPL, through a legal research. In other words needed urgently a scientific effort to overcome a serious juridical above, find a solution to overcome the vagueness, ambiguity where arrangements regarding the right (HPL) in laws and regulations, especially laws that apply within the Indonesian legal system.

The issue regarding the HPL does not only arise due to lack of clarity about the legislation in force. Issues surrounding the existence of HPL is also found in the judicial practice in the Land of Papua. In the region which is also the Unitary State of the Republic of Indonesia (Republic of Indonesia) that, precisely in Sorong (West Papua), is now long overdue, various disputes regarding the issuance of certificates of HPL on the one hand and claim the public or the owner of the rights under customary law on land which has the status of the HPL. It should be mentioned that the problem of HPL

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[5] It should be mentioned here, that the use of the word "his" after the word "law" as set out above does seem odd in Indonesian grammar, but in fact a lot of the standard literature in the science of law using a pattern or structure forming the same vocabulary. For example, in literaturan about the discovery of the Law (*rechtsvinding*), among others written Professor Sudikno Mertokusumo for example, can be found the formulation of the sentence as follows: "... the discovery of the law can be said to find the law because the law is incomplete or unclear." See, Sudikno Mertokusumo, *Penemuan Hukum*: *Sebuah Pengantar*, Cetakan Pertama, Liberty, Yogyakarta, 2000, p., 27.

[6] Understanding the Legal System Pancasila, see, Teguh Prasetyo, *Sistem Hukum Pancasila* (*Sistem, Sistem Hukum dan Pembentukan Peraturan Perundang-Undangan di Indonesia*): Perspektif Teori Keadilan Bermartabat, First Edition, Nusa Media, Bandung, 2016.

arises because on the one hand terapat HPL certificate has been given to the Government, in this case the District Government of Sorong.[7]
Meanwhile, on the other hand, there are community members to claim that he had rights of ownership based on customary law on land plots by the local government in HPL-claim as such. The study found that when community members claim to have the right to land on land parcels which was also a land with local government-owned HPL was supported not only by the recognition of property rights based on customary law. Claim dimaskud community members are also strengthened by the decisions of the Court decision that has magnitude Fixed Law (Law).
Results of normative legal research on primary legal materials, namely Decision No. 04 / Pdt.G / 2010 / PN.SRG confirmed that in a Case with Bewela Robeka Plaintiffs against Defendants Edy Mubalus, the Court held that the Plaintiff is the legitimate child of the marriage between the late Julius / Kelem Bewela and Dina Mubalus. In amar Court decision that has the force of the law, Plaintiff stated: "entitled to the legacy of Indigenous Lands of Highways / Keret Bewela". But until now, the Court recognized the rights and the rights that exist in a Court decision that the Permanent Legal magnitude, its fate in limbo by the presence or HPL publication of the Government that is on it.
Legal principles, namely that every act Agency or Official State Administration must be true before the Court Decisions Law of Power Equipment (Decision Administrative Court) stating otherwise. This situation gave birth to the legal consequences in the form of uncertainty right. It said uncertainty because on the one hand the Community members feel entitled to land under customary law and regulation have been recognized in a court ruling that is binding; while on the other hand local government also feels entitled to have land parcels there because according to the local government, pengaturanya, or legal, that he can prove his ownership witha certificate HPL.

2. Discussion

2.1 HPL Status Sorong regency government

The study found the status of a Certificate of HPL which, as noted above, the overlap with ownership atastanah with Indigenous Rights which has also been recognized in a court ruling is legally binding. While HPL status Sorong regency government, which has now become the city of Sorong can be described as follows. Book Cover Soil that is still written on behalf of Irian Jaya, Sorong, Sorong sub-district, Tanjung Cassowary issued by the Office of Sub Directorate of Agrarian Sorong No. 4,697,425.
First Registration Page, from the Land Book authors studied contains the knowledge that its behalf or for the Management HPL it is local governments Sorong. Study on Land Book was also found that the Land Rights (HAT), called HPL was filed in Sorong. The HAT registration date in question, ie on 10 February 1987. Land Book was signed on behalf of the Regent Level II Sorong by Deputy Director of Agricultural Land Registration Section Chief, namely Sumardi Santoso.
Land Book with *warkah* No. 304 / SRG / 1987 was in column (c) which contains Remarks Upon Persil. Recorded in the column, in point (1): that the land rights was not a result HAT Conversion. Researcher / Writer argued that because after researching the Land Book is found that the word conversion in column (c) number (1) have been

[7] When the certificate was issued, in the new Sorong Sorong only. Conflict object is currently located within the city of Sorong, no longer Sorong.

Volume 6 Issue 1, March 2019 : 165 – 172

crossed. In a column written by letter (c) it is also known, especially in scoring (2) that the land it comes from the State Land titling.[8]

Selanutnya, from research on Land Book dimaskud, known from *warkah* column contained subparagraph (d). Daam the column contained information that the Granting contemplated above is based on the Decree of the Minister of Interior No. SK.76 / HPL / DA / 1985 dated August 20, 1985.[9] The caption below says that once there is compensation or money required that accompany publication of the Decree of the Minister of Internal Affairs. Compensation or money required was composed of state Importation of two million nine hundred and eleven hundred and twenty-eight rupiah and Subangan YDL of one million four hundred fifty five thousand five hundred and sixty-four.

Land Book as intended and have imaged above, in particular in the section or page containing the Registration of Transfer of Rights, Other Rights and abolition, known to contain the information: that of plots of land, as noted above, has been performed twice separation of rights. The separation of the first rights, namely an area of 33 240 m2. The separation was due to lead the rest of the HPL area is an area of 220.527m2. In the second separation HPL land area that later became an area of 217 686 m2.[10]

2.2 HPL Status Behind that Sheltered *Erfpacht Verponding*

In order to reveal the theoretical juridical issues behind the title of this article, as noted above, it should be noted that currently there are serious legal issues in Sorong. Given that, as has been stated also telahada certificate issuance HPL local government-owned, and that HPL was also by some parties considered to take refuge in a former West Land rights, namely a right *Erfpacht*. In order to understand the definition of the concept of the shelter, then the following should be noted as follows understanding. As has become public knowledge, the right *Erfpacht* is a type of land rights from Western law set forth in the Second Book of the Code of Civil Code. Since the enactment of the

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[8] The fact that received of the results of this study clearly conflict with other facts, which were also found based on scientific research juridical, that the same parcel controlled by proprietary rights under customary law. See, Decision No. 04 / Pdt.G / 2010 / PN.SRG confirmed that in a Case with Bewela Robeka Plaintiffs against Defendants Edy Mubalus.

[9] At first glance it appears that the Decree of the Minister of Interior No. SK.76 / HPL / DA / 1985 dated August 20, 1985 has become the basic justification for local government, the local governments, or local government Dati II, Sorong to be sure that HPL was coming from the State Land and not derived from conversion Western rights (*Erfpacht*). The Government was now no longer the district, however, as noted above, has become the City of Sorong. There is concern that because of issues of mutual claims each has the right to land on the same parcel; lest the City of Sorong, who do not know menau with the land rights issue later today is passive, it will not take any action with respect to the existence of HPL, as noted above.

[10] It should be mentioned here, that the results of this normative juridical research discovered through primary legal materials were researched and analyzed that HPL land belonging to local governments that have been split or separation that the total area is 253 812 m2. Land with a total area of the same at the same time also be a claim by the community members, as parties to the Decision No. 04 / Pdt.G / 2010 / PN.SRG, who confirmed in a Case with Bewela Robeka Plaintiff against Defendant Edy Mubalus a freehold land under customary law. There was tension between members of the public on the one hand, which felt right and legitimate to claim rights to the land (HAT) for the same field and justified by the decisions of the Court decision that has binding; however there is on the other hand, the local government felt entitled to claim that land with the same parcel is a land with HPL status of the Government because there is evidence ownership, the Certificate of Land (HPL).

BAL, the regulations on the right to the Land West set out in Book II of the Civil Code is revoked and declared no longer valid.

Facts show that the so-called *Erfpacht* right, is popular in Sorong known as *Erfpacht Verponding* No. 1 of 1951. The use of the concept of the rights of *Erfpacht* shelter that has spawned an interesting research problems to be researched or studied more in depth. Said to be interesting, because it should have been in a state of law, as noted above, should HPL Sorong regency government, which has now become the city of Sorong, no refuge in a proof of ownership of the West. For proof of ownership it has no legal basis were abolished in the Indonesian legal system, when BAL is enforced. Supposedly, the law states, HPL above the shelter at Positive law or land rights according to the BAL. However, as already stated above that the arrangements regarding HPL existence itself seems still vague, then the problem becomes more complex.

Here, in the background to better understand the research problems that arise it is necessary to first meaning or understanding Right Business or *Erfpacht* Rights which became a shelter of HPL Government, as noted above, as follows.

Article 720 of the Civil Code stipulated that the Right Business or *Erfpacht* Rights is a right material. The material rights granted to the beneficiary in a range or period of time to enjoy fully the usefulness (use) or enjoyment of an item. In the law that is enjoyed object categories of use or enjoyment that is a fixed object owned by another party, in this case, the question is land owned by others.

Erfpacht, the parties are entitled to enjoy the land belonging to another person burdened with the obligation to pay what is called the tribute. Duration of tribute payments to landowners was done every year (annual). The purpose of the tribute payments referred to, is none other than a sign of recognition to the rights holder for the land whose use enjoyed it. Material rights on this land should have happened because of a contractual relationship or legal deed / agreement between the landowner and the parties are granted the right by the owner to enjoy its benefits (use) of land owners, as set out in Book III of the Civil Code of the lease.

There are two forms of tribute that can be paid to the owner of the land, in the land *Erfpacht* system enjoyed by the utility. The first form of tribute, namely money. As for the second form of tribute, that results or earnings. civil actions[11] which spawned Right Business or *Erfpacht* Rights, should be published. How to publish a civil action, in this case the agreement, by writing in the book will register that records the authentic act legal act which gave birth or the birth of *Erfpacht* that the Land Office. A copy of the deed that has been written in the register deed is also stored at the Land Office.[12]

Noting the ever known juridical meaning of the Right Business or *Erfpacht* Rights, as noted above, emerging issues, namely how can a postscript HPL and factually a relatively strong government rights in the fact that is well known for this; even in the case that the facts set out below take refuge on a pedestal land rights are relatively

[11]Intended to civil action here is the Mass of the lease; or other agreements.

[12]The issue is a copy of the recorded deed that gave birth to their legal acts *Erfpacht* that, if made public, then it should be published and can be accessed freely. However, in practice, in the case raised in this research, which record the deed of legal acts were not announced. Instead they said to deed it is stored in a place called the Safety Box. The place was located and controlled by the local Land Office. Deed that records the legal act, never presented in advance before the Court of Justice. Interesting to note here, if the deed was inaccessible, then of course, will be easily identified by anyone (indigenous or traditional leaders who represent) the Dutch contractual agreement to eventually give birth to *Erfpacht* question.

less strong, partly because the period of limited rights in the Right Business or *Erfpacht* Rights.
An interesting legal facts should be mentioned here. The fact it is the Supreme Court of the Republic of Indonesia No. 419PK / PDT / 2017. The ruling is a court ruling that is still relatively new because it was issued a year ago, before this article is drawn up. In the Judgment found interesting consideration of the Panel of Judges of the Supreme Court to investigate and adjudicate and decide Case Revision No. 419PK / PDT / 2017's. Presented in a 29 page copy of the Official Decision meant that: Right *Erfpacht Verponding* No. 1 of 1951 dated October 1, 1951 it is no longer there.
Supreme Court Justice Council conclusions was contrary to the facts that have been revealed in previous trials. In trials previously revealed through a testimony given by the clerk of the Land Office in the area of the disputed it were, that the deed which record the birth rights of *Erfpacht Verponding* No. 1 of 1951 dated October 1, 1951 the reality is not the same as what was raised the Judge above. Deed, according to sworn testimony, no. According to the witness in question, certificate / document was stored in a Safety Box are controlled by the local Land Office.[13]
Noting the nature of the right *Erfpacht* as has been stated above, it is only logical to put forward a juridical analysis result that should have the right to *Erfpacht* it is a land rights are temporary; only right that arises as a normal contractual relations, namely the lease with administrative privileges Land enrolled in the Colonial. *Erfpacht* Rights was born because of a legal act with the land owner, or holder of property rights to land, according to customary law is stronger. In this case, in the case of government-owned land HPL in Sorong, Papua, society generally believes that the right of the stronger it is the right of indigenous peoples, land rights that already exist based on customary law and later held by individuals within indigenous communities dimaskud. As noted above, the Indigenous Land Rights recognized even in a Court decision binding.

3. Closing

Following the conceptual thinking about the nature of the right *Erfpacht* as noted above, as the conclusion of analysis; it should not be excessive if born assumption that indigenous peoples should have been the one who has to take legal actions or legal relationship with the Dutch. Perhaps, the legal relationships in the form of a land use agreement or lease with the Dutch. The aim was that the legal relationship with Netherland using indigenous land for the sake of carrying out activities or business activities / petroleum mining them.[14] If this assumption is correct, and thus it means that the right to use indigenous land (the right to use / *Erfpacht*) by the Dutch, it came from the legal relationship lease-meyewa with local indigenous people, then fairatau

[13] See description in footnote 9 above.
[14] Common knowledge that the activity of the Dutch at the time the oil is Dutch company. There is information that is generally known in the community, can also be evidenced by the agreement made in Dutch that since the activity of Oil Mining Company of the Dutch company needed the land to pass oil pipeline. Indigenous peoples do allow oil pipelines that pass through their land areas. However, in order to Oil Mining Companies Netherlands was able to use traditional lands for oil pipelines traversed not held the tenancy agreement between the Dutch company with the Indigenous Peoples. The existing agreement is an agreement on compensation for the plants harvested in the lands of trees or the various plants, there must be bypassed oil pipelines.

reasonable and equitable dignity (dignifid justice)[15]if the law burdensome obligations to the beneficiary *Erfpacht* that the right was returned to indigenous communities; when it was due.

Or, if a legal act of return that never happened, perhaps for reasons of maturity has not been completed (wait 20 years since the enactment of the BAL) but BAL had already cleared the rights Southwestern *Erfpacht* it; it makes sense that people say that if the supposed land rights *Erfpacht* it automatically adat.Kembalinya right back to the community is caused void due to provisions of the Act (public policy / BAL). In this case, perhaps, land ownership was returned to the descendants of the people adatyang acts or legal relationships and give birth earlier *Erfpacht*.

However, in reality, as shown in the picture above, what is fair or rasonable or fairness in law (dignified justice) it never happened. There is never a *Erfpacht* land returned it to the local indigenous people are entitled. There was never a firm is also recognition that the *Erfpacht* land should automatically have returned or will be returned to the indigenous peoples are entitled. Instead, what happened instead was the emergence of HPL on behalf of the Government of Sorong regency; which is based on the certificate, HPL was not derived from conversion but come from the Land Negara.Mana might Soil with Indigenous Rights sudden-claim as State Land or Land of the Free State. Thus, the public then found the Government HPL Kaupaten Sorong which has now become the city of Sorong that shelter behind the right *Erfpacht Verponding* No. 1 of 1951 dated October 1, 1951 that "fictitious". Meanwhile, in the Trial Judgment has been established as an indisputable proof that the existence of *Erfpacht Verponding* No. 1 of 1951 dated October 1, 1951 can never be proven,[16]and can never be presented in court.

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[16]Up until now never been proven there are documents called *Erfpacht* Verponding No.1 of 1951. Anyway, even if it can be shown on the face of the judge that the correct document Verponding *Erfpacht* 1 of 1951, it should be seen who signed an agreement that gave birth *Erfpacht* Verponding 1 Year 1951. If there is still a period of the date of enactment of the BAL can be extended up to 20 years. However, the document called *Erfpacht* Verponding 1 of 1951 was "never ad", only according to the principle of "he" is the word the witness of the Land Office already put forward in Case above. There was never any agreement between indigenous Papuans with Dutch side is pleased with the use of the land. The existing agreement only compensation agreements existing plants on the land of indigenous peoples made by De Inspecteur van Financien I, Hoofd van de Inspectie Hollandia.Ada saying that the document *Erfpacht* Verponding 1 of 1951 which, according to the witness of the Land Office Safety Box in the right does exist, but the agreement document that gave birth was not recorded *Erfpacht* legal act performed by a person entitled to, in this case the head of the local Indigenous community. Precisely the agreement was conducted by the Sultan of Ternate with the Dutch government. Thus, so long as the document *Erfpacht* Verponding 1 of 1951 was not able to prove its existence, it will be very difficult if HPL District Government, now Kota Sorong that shelter behind a document that is "fictitious" or no existence.

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