

## **AUTHORITY OF ADAT INSTITUTIONS IN RESOLVING CUSTOMARY LAND DISPUTES USING COMMUNITY ADAT LAW TOKODEDE IN DISTRICT LIKÍSA TIMOR LESTE**

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### **ABSTRACT**

Common Law of the Tokodede (Uku los bandu) is customary law governing the indigenous in the district Likísa Timor Leste. In the year 2017 dispute the boundary of land customary between indigenous people in the village Dato and in the village Loidahar and the problems be finished by the institutions of local traditional (Lia nain), Until now will not be the customary land disputes This study attempts to described how the customs institutions in resolving land disputes the customary Tokodede adat law in the district Likísa Timor Leste. Research methodology used that is empirical in juridical identification and the effectiveness of a law customary Tokodede dispute resolution customary in land boundaries. The research results show that customary institutions in adat law Tokodede has the authority received report dispute, form the customary, set the customary, implement the custom or the elders, make decisions or the elders, custom or customary institutions and dispute resolution the adat land. Thus existence adat law Tokodede need is retained without discrimination for containing values life and able to solve problems including customary social land issues. Required the commitment of the local government district Likisa in support of customs institutions of Tokodede consistently by making the rules of the area in strengthening the existence of customs institutions of Tokodede as a form of capacity building for part of sustainable development in district Likísa of Timor Leste.

**Keywords:** *adat law, likísa, Timor Leste*

### **INTRODUCTION**

The Land is one of the most important things in human life. Besides of the nature of materially to inherent, the land as well having value materil very high for its owners (Ahyyar Ari Gayo, 2018). Possession and the use of rights over the ground basically is not limited to relations individualistik, but also a group (communal) based on a legal binding customary the ground without (Mercy Ramadhani, 2019). The land was in customary part of unity law community customs (Iman Sudiyat, 1981).

The Land use by the community adat law as a place of rest, sustaining life and a refuge which are magical religious .Indigenous people have the right to till the land it with certain limitations (Rizal in Iswantoro, 2012) relation to the existence of natural resources which managed (Solomon, Muhammad Adli, 2019 ). The unity of the community adat law formed on the basis of three the basic principle, namely genealogical, territorial, and/or a combination of the principle of genealogical and principle of territorial (Sutrisno Purwohadi

Mulyono, 2014). Those to whom we have more than just of the traditional of the nature, so it needs protection, recognition, and respect for the presence of the customary law adatnya with a norm in a nation (Jimly Asshiddiqie, 2009: 63).

The indigenous people of east timor is the largest element across rural areas in the state of the Republic Democratic of Timor Leste. In the life of indigenous in the people, each region there are customs institutions (*lia nain*) influence in preventing social unrest and the non litigation that occurred in certain customary areas the community.

Dotted reject some from the perspective of culture tetun language, *lia nain* that were a combination two syllables namely *lia* and *nain*, having either sense in still or moving. From the side of it means silent *lia* bridge or embaga or group or the form of affairs or the action in terms of move constituting reaction to perform the function of institution or groups and the affair from the existing form as functionaries. *Nain* from the side of silence is sir or a figure or the source or native, while *nain* from side move constituting the movement elements of the culture, fine objects, and enjoyment of the flesh as a servant and in the spirit of the impersonal universe. Is in the languages of the lyric, of karma, traditional house, dish, their wealth, symbols and signs natural trust.

Adat law is to undergo development due to problems relating to the interaction of social and cultural affairs department, economic, technology, the science of and knowledge that have caused the changes in a dynamic in the community life, hence the different nations of the Timor Leste respected so much and uphold promote better behavior values and a rule of law to adat experts in local customs, because of being able to affect the norms, values and cultural practices a specific ethnic group. Adat law in the having that contain these kinds of reclining therein on couches traditional characteristics, so that a rule of law to adat experts in local customs in general by indigenous people of timor leste ascribed to the agency of a

common ancestor a has been passed from generation to generation expected to name sales agents until now there are still will continue to run.

The community problems happened in the life of social, especially pertaining to the social problems such as land dispute, affair, social jealousy, mischief youth and others. Social problems occurring in the community with an offensive criminal even led the public order must be done in by a court, national legal and civil problems would be solved through customary institutions customary by law is in any region Timor Leste specified.

Adat law in the tokodede is one of adat law in the who obtain the recognition and held in high esteem their score was less than as well as already being a tradition in the manner of a all generations, in other words adat law in the this tokodede, one for tradition (lisa) a relic of their fathers sent to (Tatabei) an indigenous people of Likisa one offender exceeds another, up with others of our now that always worn by customary institutions trying to settle the case, a dispute or two decades of civil war happening in the society on the local community.

Resolution of disputes by applying tokodede adat law is more shows justice (Dominic Rato, 2015) because of local indigenous people have been considering, individual interests the, and the warring parties (Sri Warjiyati, 2018). The view of adat law more in ways collectively (Paripurna P Sugarda, 2015) exist have the competence of indigenous (rechtsgemeenschap) own resolve disputes the land adat and other problems associated with the customary in autonomous (Mahdi syahbandir, 2010) wealth material or immateriil (Sukirno, 2015). Peace arising from dispute resolution the land adat by customs institutions (lia nain) of course as a form of welfare soul supporting a security and order in the life of social and cultural community, relevant and can support integratif national development.

## ISSUE

Dotted a refuse from the explanation back over, so this study analyse and discuss how customary institutions dispute resolution authority in the adat land to people adat law Tokodede in the district Likisa, Timor Leste?

## METHODS

This study was designed as research juridical law is empirical research on identification law (law does not say) and effectiveness of the law in this case identification adat law tokodede and its effectiveness at work in the community adat law to settle land disputes customary (zainudin ali, 2009). The approach used that is, empirical legal approach which is examining laws that dikonsepan as behavior real (actual behavior), as social trend that is fundamentally not written, what happens to everyone in a relationship society works as a symptom juridical through an expression of real behavior that is experienced by the community (Salfullah, 2018). Next conceptual approach which is assessing the legal system the customs and positive laws and supports the advancement of the land rights and on a level implemented, legal norms as well as in the implementation of adat law in the area.

Methods used in the analysis is, data qualitative analysis namely decipher data free of high quality in the form of a sentence that regularly, sequential, logical, do not overlap, and effective, to facilitate data interpretation and understanding analysis use either spatially inductive and deductive reasoning (Abdulkadir Muhammad, 2004).

## DISCUSSION

### **The Authority Of The Customs In Resolving Land Disputes Customary In Community Life Adat Law Tokodede**

The result showed that the authority of the customs in resolving land disputes in the customs in community life adat law tokodede, of them received a report, dispute check out

the perpetrator, the victims and witnesses to get information, form an assembly of the customs, set customary, trial carry out a meeting elders customary/assembly, issued the ruling assembly of the customary/elders, and settle a dispute according to adat without gains and losses between the two sides. Customs institutions having the organizational structure with a clear division of tasks. There were also the coordination of regional governments to customs institutions in resolving the land dispute the customs in indigenous peoples. Indigenous people trust customs institutions in resolving land disputes customary prompting completed indigenous peoples land disputes through customs institutions customary. This would be a norm in customs institutions tokodede (lia nain). The discussion of research results as follows:

#### 1. Process Of Receiving Dispute Report

Based on interviews with the leaders of the customary (lia nain) report stated that the land dispute delivered by the feeling will be submitted to the board customary, will be recorded by the customary, then delivered to the structure of adat figures to determine with period of completion.

*Problema konaba disputa rai kultura bainhira parte sentin afeitadu no vitima mak hatu'o keizas ba organizasaun lia nain no sei regista husi secretario lia nain depois apresenta ba estrutura lia nain hodi decide tempu resolve hamutuk.*

All this time, the victims come make a report or conveying information is the problem to the secretary customary. After it was reported back to the head of the customs and members to be known for find a way completion.

*Durante ne'e parte sira nebe vitima mai halo relatoriu ka hatu'o informasaun konaba problema ba secretario lian nain mak simu. Depois mak hatu'o fali ba chefe lia nain ho membro sira hotu para hatene hodi buka dalan atu resolve.*

There were also a social issue or the land dispute the customs are the victims report to a village council, however village council recommended directly to the council customary.

*Problema social ka disputa rai kultura ne'e sei halao keizas husi parte nebe vitima ba conselho do suco, maibe conselho do suco maibe conselho do suco rekomenda kedas ba conselho lia nain.*

Pertaining to social problems and problems of the customary did not result in criminal, when your words come true among the parties from a victims always made the report to a village council, but from the village head always recommend this case to the board customary who will be responsible for. So this case when the victims make a report to the board customary, so will be accepted by sekeretaris customary to enrolled, after was reportedly to the head of the customs and its members to find a solution with the settlement of the problem.

*Konaba problema social dan problema kultura nebe mak la afeita ba kazu krimi ruma, banhira akontese entre parte sira sempre mai hato'o keiza ba conselho do suco, maibe chefe do suco sempre rekomenda kazu ne'e mai conselho lia nain mak responsabiliza. Neduni kazu ne'e banhira husi vitima mai apresenta iha conselho do lia nain , sei simu direta husi secretario kultura hodi rejista tiha, no apresenta kedas ba chefe lia nain ho membros sira hodi buka solusaun atu resolve hamutuk.*

## 2. The Formation Of The Customary

The Figures and customs (lia nain) having the authority form the tribunal customary. The formation of an assembly customary, watched the adat figures derived from head to traditional house on all small traditional house. According to tradition that adat figures derived from traditional house the head who will be chairman to instruct the adat figures by the structure that has been there. The purpose of the tribunal to the creation of a customary it is aimed at giving duties and responsibilities that each member can know the authority to resolve problems that arise each of them is in actors and the victims. This will be

implemented in the tribunal customary imparasial (independent) in completed these problems properly based on adat law tokodede.

*Atu forma assembleia lian nain sira, tenke hare husi lia nain sira husi umaulun boot to'o uma ikun sira. Tuir lisan kultura nian lia nain ida nebe husi umaulun boot mak sai chefe hodi ko manda lian sira seluk tuir estrutura nebe iha. Objetivu husi forma assembleia lian nain para bele fahe knaar no responsabilidade hodi bele hatene ida-idak nian kompetensia hodi resolve problema nebe akantese entre parte sira. Assembleia lia nain sira sei hatudu imparasialidade hodi resolve problema hirak ne'e ho lolos tuir duni lei kutura tokodede nian.*

The process of its formation by inviting the the leaders of customary sit with to form the council customary and trust full of to adat leaders terbesar of traditional house oldest who led the leaders of customary other are in structure council customary this. The reason was structure it coming originally from their fathers so that are not allowed to change in any, if it is not will have torture and misery. What has been marked by their fathers need to worshipped, peremptory and remain respected to this day.

*Konvida lia nain sira tuur hamutuk hodi forma conselho lia nain no tau fiar tomak ba lia nain boot mai husi uma lisan ulun mak bele dirije membro lia nain sira nebe tuur iha conselho lia nain ne'e. Tamba estrutura nebe ne'e hahu nanis kedas husi avo beiala sira nebe labele naran muda arbiru deit lae sei hetan sofre no terus. Buat hirak nebe beiala sira tau marka ona, presiza hahi, hanai no respeito nafatin to'o ohin loron.*

### 3. The Determination Of The Trial Customary

The customary at first listen to report description of both the parties that pose a problem, after that preparation together from the leaders of the customs and would finish through tokodede adat law.

*Julgamento kultura ba dahuluk sei rona informasaun husi parte rua nebe hamosu problema, depois mak tetu hamutuk husi lia nain sira no tesi tuir lisan kultura lei tokodede nian.*

The implementation of the trial customary, the leaders of the customs will invite the parties to the dispute and the witnesses come and sit on the mat that have been set to start the

surrender of betel nut cash worth \$ .25, Palm wine one bottle and a cigarette or tobacco to be given a second to the leaders of the customs.

*Bainhira komesa halao julgamento kultura, lia nain sira sei konvida parte sira nebe halo problema disputa rai ho sasin sira mai tuur iha lode biti, posi mam (Buti-meo, Tabako, nao). Lia fuan nakloke husi lia nain boot/chefe, depois hahu halo mediasaun resolve problema disputa rai kultura ne'e. Rona informasaun husi parte sira nebe disputa no sasin sira, depois lia nain sira estuda problema ne'e ho didiak, depois decide tuir lisan kultura uku ho bandu tokodede nian.*

On the implementation of the customary this, the leaders of the local government had invited (village of the village and the village head) including the village police officials (Bimpolda) to take part in prepared to address this problem. The said started from the village head or representing by giving authority figures customary to start the customary. In the customary the trial customary the words start with customary with the opening of the biti tokodede lode, posi mam-buti iso no meo iso have party to the dispute each give \$.25.00 (money up to two hundred and fifty rupiah) tuak a bottle and cigarettes to customs figures completed this problem. The leaders of customary provide opportunities for the victim and a witness to convey his information, give a chance to the investors to give his information also. After hearing from each parties, will study and customs figures balancing together and judge berdasarkan tokodede adat law.

*Bainhira atau halao julgamento kultura nian, lia nain sira sei konvida parte sira nebe halo problema, testamunha, husi autoridade suco (chefe do suco no chefe Aldeias) inklui OPS (Oficial polisia suco) hodi hola parte hotu iha fatin nebe prepara ona para hahu resolve problema ne'e. Hahu kedas intrudusan husi chefe do suco banhira marka presenza ou nia representante, depois mak lia nain chefe komesa intrudusaun ho lia kultura nian hodi hahu ho nahe biti no tau mama (buti iso no meo iso-istila tokodede) katak husi parte rua nebe disputa ida-idak tenke tau osan \$.25.00, tua butir ida-ida no segaru, hodi entrega ba lia nain sira para komesa resolve problema ne'e. Lia nain sira sei fo tempu parte vitima atu hatu'o uluk nia informasaun inklui testamunha, depois mak fo fali tempu parte suspeito atu hatu'o mos nia informasaun. Depois mak lia nain sira tetu hamutuk informasaun nebe mai husi parte sira no sei decide tuir lei kultura tokodede nian.*



#### 4. The Elders Customary/Assembly Meeting

The implementation of the meeting between the leaders of the customary or the council customary, will dipimpin by adat leaders oldest or chairman of the customs in order to ask the opinion of the leaders of the customs about the issue that has been resolved, how to sever of sanctions on the parties to the dispute.

*Realiza enkontru entre lia nain sira ou conselho lia nain sira, sei dirije husi lia nain boot ou lia nain chefe hodi husi opiniaun husi membros lia nain sira konaba problema nebe resolve tiha ona, oinsa mak decide hodi fo sansaun ba parte sira nebe hamosu disputa.*

The council will do a dipemimpin directly by a figure of traditional house oldest (large) to solicit opinions is a member of adat figures. The leaders of the customary analyzed on the land dispute that has already been settled with the aim of menyeimbang and decided not to burden the only one but equal weight and the same light (when sanctions based on familial, the blood of men and women, brother and sister ).

*Conselho lia nain sira halao enkontru ne'e dirije direta husi lia nain umaulun (boot) hodi husu hanoin nebe lolos husi membros. Lia nain sira analiza konaba problema disputa rai nebe resolve ona hodi tetu no foti decisaun nebe labele fo todan deit ba parte ida, maibe todan-todan hotu no kmaan-kmaan hotu (sei fo multa karik tuir familai, ina-ama, mane-heu no maun ho alin).*

The implementation of the rules handed down by the meeting of the board will be headed directly from the head of the customary of will smite the great house ( soa lagana (a term of tokodede)) for the purpose of conducting an assessment on the the task and responsibility of the leaders of adat experts in local customs. The distribution of duty and responsibility to the leaders of adat experts in local customs and also the doing of the future evaluation of a matter of dispute that has already been settled. Identification of a social issue who have yet to be worked, how contrive or dig up or to deal with the problem on being able to recreate the union of and peace in between the community adat experts in local customs.

*Realiza enkontru conselho lia nain ne'e, dirije direta husi chefe lia nain, husi uma ulun (soa lagana) ho objektivu halo evaluasaun ba knaar no*

*servisu membros lia nain sira nian. Fahe knaar no servisu ba membro lia nain sira. Halo evaluasaun ba problema disputa nebe mak resolve tiha ona. Identifika problema social nebe seidauk resolve, oinsa mak halo planu hodi resolve problema hirak ne'e, para hametin fila fali unidade no paz entre comunidade kultura.*

The implementation of the traditional meeting the leaders of the customary, more to evaluate and focus on the issue that has already been settled and problems pendent. Matter that has been accomplished hence adatnya sanctions should be decided jointly by the leaders of the customary with is firmly based on adat law tokodede, while problems pendent how to find a solution to can solve the society can live harmonious and quiet.

*Halao enkontru asembleia lia nain sira nian liu-liu atu halo evaluasaun no hare fila fali ba problema nebe resolve tiha ona no problema hirak nebe seidauk resolve. Konaba problema nebe resolve ona oinsa ho nia sansaun tenke decide hamutuk husi lia nain sira tuir lolos lisan kultura tokodede nian, maibe problema nebe seidauk resolve buka dalam para bele resolve tiha problema hirak ne'e para nune comunidade sira bele moris iha harmonia nia laran no hakmatek.*

#### 5. The Award Elders Customary/The Tribunal Customary

The decision taken jointly by the leaders of the customs that the issue of the land dispute this custom. has done itThe leaders of the customs will decide to actually based on adat traditions tokodede, that is wrong large parties will give sanction a lot of while the party harm small make small sanctions. But because of a dispute over the boundary of the customs of the village loidahar and village dato as the party of blood brothers and sisters, men and women so it would give sanction based on blood hence of the men will give you the one pig, one glove fruit tais and rice and female offspring will give you one goats, cash worth \$ .100 and palm wine one dos.

*Decisaun foti hamutuk husi lia nain sira katak problema disputa baliza rai kultura ne'e resolve hotu ona. Lia nain sira mak decide lolos tuir lisan kultura tokodede nian, katak ida nebe mak sala boot sei fo multa barak no ida nebe mak sala kiik sei multa ituan. Maibe hare katak disputa baliza rai kulura entre suco Loidahar no suco Dato hanesan Ina-ama no mane-heu, ne'eduni ina-ama sei multa fahi ida, tais no fos no mane-heu sei multa bibi ida, \$.100 no tua kaiza ida.*

The decision taken by the council customary, this neutral the impartial one, but because the land dispute customary is blood descent from the men and women, according to tradition tokodede mak will give sanction to meet each and to reconcile as blood descent from the men and women.

*Decisaun nebe foti husi conselho lia nain ne'e netro duni, la inklina ba parte ida maibe tamba problema disputa rai kultura mai husi ina-ama, mane-heu nebe tuir lisan tokodede nian mak sei fo multa hodi simu malu, dame malu hanesan umane-mane foun.*

According to adat law is a gigantic size tokodede (los bandu tokodede - language fo tokodede) the decision of the of adat figures to be true and just and impartial on the one hand even though parties is their families by showing disinterestedness/impartiality. The leaders of a spotlight and customary having the power/charismatic authority because when they judge wrong, they was also afraid against the force and an even higher authority who and high above a force of nature.

*Tuir lei kultura tokodede (uku los bandu tokodede) dicisaun nebe lia nain sira foti tenke lolos ka justu no sira rasik labele apoiu ba parte ida maske parte ne'e sira nia familia. (sira tenke hatudu sira nia imparcialidade). Lia nain sira iha kbiit popularidade no kbiit karismatika tamba bainhira sira foti decisaun sala, sira mos tauk kbiit no forsa ida nebe as liu sira mak Nai leten as no kbiit natureza.*

On the issue of the land dispute is customary been resolved by the leaders of the customs to be settled nor was continued, because the decision taken by the leaders of the customs is a absolut and really based on the custom tokodede. Because the adat leaders this represents ancestors very sacred and no other parties will play a decision of them back. The parties in a dispute desirous against the ruling of the adat leaders, the adat leaders his arms and orders parties go in solving the problem with others and elsewhere. When the issue under return to the figures adat will not solve it because parties in a dispute disrespect for a decision on adat leaders.

*Konaba problema kultura sira nebe durante ne'e resolve husi lia nain sira tenke hotu duni no sei la kontinua tan, tamba decisaun nebe foti husi lia*

*nain sira ne'e absolutamenta tuir lolos kedas lei adat tokodede nian. Tamba lia nain sira ne'e repersenta beila sira nebe lulik duni no laiha parte atu kontra fila fali decisaun nebe mai husi lia nain sira ne'e. Parte sira nebe disputa ho hanoin hakarak kontra entaun lia nain sira sei foti liman no haruka sira ba resolve problema ho ema seluk iha fatin seluk. Bainhira problema ne'e lori fila mai lia nain sira sei la resolve tamba parte sira disputa la respeita decisaun nebe husi lia nain sira.*

## CONCLUSION

Based on the research have concluded that customary institutions in adat law tokodede possesses rights in dispute resolution the adat land to people adat law Tokodede in the District Likisa of Timor leste, dispute, are received report form the customary, set the customary, implement the custom or the elders, make decisions or the elders, custom or customary institutions and of completed dispute the adat land.

## SUGGESTIONS

The existence of the custom tokodede should be maintained without discrimination because the custom containing values life and able to solve problems including the problem of land social custom in supports the development in the district Likisa of Timor Leste. Required commitment of the regional government district Likisa in favor of customs institutions Tokodede consistently with making the region to strengthen the existence of a custom Tokodede as a capacity building part of sustainable development in the District Likisa of Timor Leste.

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