



# STATE RESPONSIBILITY IN ENFORCEMENT OF CITIZENS' CONSTITUTIONAL RIGHTS IN LAND EXECUTION CASES IN TIMOR LESTE

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## Abstract

*The purpose of this study is to explain and understand the State's Responsibility in Enforcing Citizens' Constitutional Rights in Land Execution Cases in Timor Leste. To explain and understand the Indonesian Government in this case to realize protection and justice for its citizens whose land rights are threatened or lost after the release of Timor Leste. This research uses a normative juridical legal research method. The type of approach used in this research is a case study approach. The sources of normative legal research are primary legal materials, secondary legal materials, and non-legal materials. This study uses a qualitative analysis method. Based on the conclusion that the responsibility of the Timor-Leste state in enforcing the constitutional rights of citizens in land execution cases is represented by the development of land laws to harmonize various legal regimes, namely by developing laws that combine and clarify land rights and the process of claims that are violated and recognize property rights and clarify the legal status of immovable property. The state is also responsible for protecting and upholding the rights of citizens as a whole as stated in the Constitution. The Indonesian government has sought to provide protection and justice for citizens who lost their land rights after the secession of Timor-Leste through various policies, including the establishment of the Truth and Friendship Commission to address human rights violations, and support for resolving land issues through various legal and non-legal mechanisms. However, these efforts often face challenges of legal and bureaucratic complexity, which require special and comprehensive handling from the government.*

**Keywords:** Responsibility, State, Enforcement of Citizens' Constitutional Rights

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## I. INTRODUCTION

Article 1, paragraph 3 of the 1945 Constitution of the Republic of Indonesia explicitly affirms that "The State of Indonesia is a state based on law." This constitutional provision serves as a fundamental declaration that Indonesia, *de jure*, positions itself among nations that uphold the rule of law as the cornerstone of state governance. The affirmation of Indonesia as a legal state signifies that all aspects of public authority, governance, and state administration must be grounded in and constrained by legal norms rather than arbitrary power.

This constitutional principle is further reinforced by the view of (Asshiddiqie, 2006), who asserts that the Republic of Indonesia is a state based on law that operates within a unified and hierarchical legal system, culminating in the 1945 Constitution as the highest legal authority. Consequently, all ideas, policies, and concepts in the administration of state governance must be rooted in law as the foundation of national and state life. In addition to adhering to the rule of law, Indonesia also embraces democratic principles through the concept of popular sovereignty, wherein constitutional legitimacy originates from the will of the people. The enforcement of citizens' constitutional rights in land execution cases in Timor Leste involves a complex interplay between state responsibility and legal frameworks. The state is perceived by its citizens as being indebted to them due to historical sacrifices made during the fight for independence, and there is an expectation for the state to fulfill its obligations, including in land-related matters (Butterworth, 2010).

The constitution, therefore, functions as the fundamental legal framework that guides the operation of the state. It encompasses both written and unwritten norms regulating governmental organization, the distribution and limitation of powers, and the relationship between the state and its citizens. Moreover, the constitution embodies collective agreements on the basic principles of state administration, the protection of citizens' rights, and the establishment of institutions responsible for organizing national life. The constitutional regime of state responsibility, as outlined in articles 24 and 25, provides a legal basis for holding public officials accountable for their actions, which is crucial in land execution cases (Blas, 2024). However, the practical implementation of these constitutional mandates often falls short, leading to unresolved land disputes and conflicting legal decisions (Bari, 2023).

In this context, the constitution plays a vital role in limiting governmental power to prevent arbitrariness and in ensuring the protection of human rights for every citizen. As the highest source of law within a legal system, the constitution serves as the primary reference for safeguarding justice and legal certainty. According to J. G. Steenbeek, as cited by Soemantri (2006), and grounded in social contract theory, the establishment of a state is intended to fulfill collective needs and interests that individuals cannot achieve independently. Therefore, the state bears a fundamental obligation to guarantee and protect the constitutional rights of its citizens (Faiz, 2006).

One essential characteristic of a state based on law is the fulfillment and protection of basic or fundamental human rights. Accordingly, a constitution must possess a dynamic character, capable of responding to historical developments and social change, so that it remains a living constitution rather than a static legal document. This dynamism ensures that constitutional norms continue to be relevant in addressing contemporary legal and societal challenges.

Constitutional rights encompass all rights guaranteed by the constitution, among which human rights hold a central position. Human rights are inherent to human dignity, universal in nature, and immutable. As such, they must be protected, respected, and upheld by the state and all legal institutions, and must not be neglected or arbitrarily deprived by any party.

However, the practical realization of constitutional principles and human rights protection often faces complex challenges, particularly in post-conflict and border regions. The separation of Timor Timur Province from the Unitary State of the Republic of Indonesia on May 20, 2002, followed by the establishment of Timor-Leste, did not mark the end of legal and political issues between the two neighboring countries. One of the most persistent problems has been land border disputes, especially in the East Nusa Tenggara region. During the separation process, territorial boundary issues were not comprehensively addressed, resulting in prolonged disputes that continue to affect local communities.

Timor Leste, formerly known as East Timor, has remained a sensitive issue for Indonesia, particularly in relation to democracy and human rights enforcement. Rather than resolving existing problems, the separation gave rise to new legal challenges, including unresolved land border disputes that directly impact the rights and livelihoods of affected populations on both sides of the border.

Specific cases, such as the eigendom verponding land dispute, highlight the challenges in achieving legal certainty and the need for comprehensive documentation and legal processes (Alam et al., 2024). Cases involving land execution or land rights in Timor Leste frequently arise in connection with border disputes and post-referendum land law complexities. Indonesian citizens who chose to remain in or return from Timor Leste often face the loss of land and building assets, compelling them to seek legal recognition of ownership or compensation efforts that, in many instances, remain unresolved. These conditions illustrate the vulnerability of constitutional and human rights protection in border areas affected by political transition.

One such incident originated from a land conflict in the border area between Indonesia and Timor Leste, specifically in Inbate Village, Bikomi Nilulat District, North Central Timor. This area constitutes cultivated land traditionally used by local residents for agricultural purposes. The region is also closely connected to the Oecusse District, an exclave of Timor Leste situated within Indonesian territory, where access to and from Oecusse necessarily requires passage through Indonesia. This unique geographical and political configuration further complicates land governance, border management, and the protection of citizens' constitutional rights.

The type of approach used in this research is a case study. The purpose of the case study approach in normative research is to understand how legal rules or norms are applied in legal practice (Efendi & Ibrahim, 2018). The sources for normative legal research are primary legal materials, secondary legal materials, and non-legal materials. This research uses a qualitative analysis method, which is conducted by tracing legislation and library materials and then writing descriptively.

## II. RESEARCH METHOD

This research uses a normative legal research method. Normative legal research is the study of documents, in accordance with the definition of normative law, which examines documents, namely legal source materials consisting of legislation, court decisions or rulings, agreements, legal theories, and doctrines or opinions of legal experts (Muahimin, 2020).

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## III. RESULT AND DISCUSSION

### **The State's Responsibility in Enforcing Citizens' Constitutional Rights in Land Execution Cases in Timor Leste**

Following the amendment to the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) in 1999-2002, Indonesia has increasingly established itself as a constitutional democratic state that recognizes and respects Human Rights. This is stated in Article 1 paragraph (3) which explicitly states that Indonesia is a country based on law, and is then supplemented by the statement that sovereignty lies in the hands of the people and is implemented according to the Constitution as stated in Article 1 paragraph (2). Furthermore, the affirmation of Indonesia as a constitutional democratic country was then accompanied by broader and more comprehensive regulations on human rights in a special chapter, namely Chapter XI A of the 1945 Constitution of the Republic of Indonesia, which consists of Articles 28A-28J. This chapter guarantees all aspects of human rights. These include not only civil and political rights but also the right to social welfare, including economic, social, and cultural rights. Clearly, the human rights provisions in the 1945 Constitution of the Republic of Indonesia represent the state's commitment to fulfilling Indonesia's requirements as a constitutional democracy (Isra, 2014).

In Article 4 of Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles, it is determined that:

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

- b. The rights referred to in paragraph (1) of this article provide the authority to use the land in question, as well as the earth and water bodies and the space above them, only as necessary for interests directly related to the use of the land within the limits according to this Law and other higher legal regulations.
- c. In addition to the rights to land as referred to in paragraph (1) of this article, rights to water and airspace are also stipulated.

According to Effendi Perangin, land law is the totality of legal regulations, both written and unwritten, which regulate land rights, which are legal institutions and concrete legal instructions (Santoso, 2007).

Looking at the current land, the history of Timor Leste is also inseparable from Indonesia. Timor Leste, which was once the 27th Province of Indonesia based on Law No. 7 of 1976 concerning the Ratification of the Unification of East Timor into the Unitary State of the Republic of Indonesia and the Establishment of the First-Level Regional Province of East Timor, dated July 17, 1976, which was decided to integrate into the Unitary State of the Republic of Indonesia as the 27th Province. The Indonesian government plays an active role in development in various infrastructure sectors, namely building school buildings, office buildings, and housing owned by both government agencies and private companies which collaborate with each other. However, in 1999, during the administration of Bacharuddin Jusuf Habibie, the Indonesian government at that time also diplomatically offered the people of East Timor the opportunity to determine their own fate or the broadest possible autonomy by holding a referendum (election) based on the May 5, 1999 Agreement held in New York, America between the Indonesian government and the Portuguese government which had been initiated by the UN (United Nations). Where the contents of the agreement state that "Giving the people of East Timor the opportunity to determine their own destiny by holding elections".

The Timor Leste government can adopt previous regulations that were in effect in Timor Leste referring to Article 165 of the 2002 RDTL Constitution which states that: "Laws or regulations previously in force in Timor Leste will remain in force until there are changes and will not conflict with the Constitution or the principles contained therein". UNTAET Regulation No. 1 of 1999, Article 3, paragraph 1, which stipulates that: "Until such time as they are replaced by UNTAET regulations or regulations issued by democratically established State institutions in Timor Leste, the laws that were implemented in Timor Leste before 25 October 1999, will continue to be applied in Timor Leste, as long as these laws do not conflict with existing International Legal Standards".

The laws currently made by the Timor Leste government cannot guarantee legal certainty regarding land ownership rights for its citizens. The East Timorese government also encountered obstacles because it was difficult to determine which regulations would apply in East Timor considering the influence of the previous governments (Indonesia and Portugal). The territorial boundary dispute between the two countries is in the Noel Besi Citrana area, North Netamnanu Village, East Amfoang District, Kupang Regency, East Nusa Tenggara. The disputed area still has sterile status, meaning it may not be used or built on by either country. However, Timor Leste unilaterally built a number of permanent buildings in the disputed area, such as an agricultural office, meeting hall and so on.

The Indonesian government strongly protested Timor Leste's actions, which immediately sent a protest note to the Timor Leste government. As is known, East Nusa Tenggara (Indonesia) and Timor Leste share similar customs and traditions and have been related for generations since they were still part of the Unitary State of the Republic of Indonesia. In the territorial dispute negotiations, both the Indonesian and Timor Leste governments have agreed to respect customary law in their respective unresolved segments. The agreement made by the two countries is in accordance with the joint agreement between the Indonesian government and the Democratic Republic of Timor Leste (Timor Leste) as stated in the Provisional Agreement (PA) between the two countries.

In the matter of territorial disputes, the Government of Timor Leste and the Government of Indonesia have actually attempted to discuss the problem, especially in the East Nusa Tenggara region which directly borders Timor Leste. At the beginning of Timor Leste's separation from the Unitary State of the Republic of Indonesia, this problem had actually emerged, but in fact, the two countries had not found common ground in resolving the problem. The issue finally resurfaced when Timor Leste built permanently in the disputed area, specifically in the Noelbesi-Citrana area, North Netamnanu Village, East Amfoang District, Kupang Regency, East Nusa Tenggara. The Indonesian Ministry of Foreign Affairs has sent a note of protest to Timor Leste regarding the development. Indonesia's protest note

concerns the status of the existence of buildings and activities of the Timorese community in the Unresolved Segment Noelbesi-Citrana (state practice), but until now Timor Leste has not responded to Indonesia's protest note.

The issue of boundary confirmation and mapping of disputed areas must be resolved quickly by the two countries, considering that the two countries have a less than harmonious history, when East Timor wanted to separate from the Unitary State of the Republic of Indonesia. Before East Timor's independence, the region was part of the Unitary State of the Republic of Indonesia (NKRI) and its 27th province. For approximately 23 years, from July 17, 1976, to August 30, 1999, East Timor was an inseparable part of Indonesia under the 1975 Balibo Agreement. East Timor was the province that received top priority for development by President Soeharto at that time until the province separated from Indonesia.

Since August 30, 1999, East Timor has become an independent and separate country under the auspices of the Unitary State of the Republic of Indonesia through a referendum conducted by the United Nations (UN) witnessed by the Australian Government and the Indonesian Government. The results of the referendum in East Timor showed that 79 percent of the East Timorese people who were entitled to vote wanted independence and separation from Indonesia, while 21 percent of the East Timorese people still wanted to be part of Indonesia with the broadest possible autonomy. In the referendum, the people of East Timor themselves chose two options: the first option: independence and separation from Indonesia, and the second option: remaining part of Indonesia with the broadest possible autonomy. The concept of control and ownership of land rights in the UUPA explains the position of the State as the ruler of land rights, which has the authority to distribute ownership rights to everyone, in this case only Indonesian citizens. Every person who has ownership rights to the land must also manage the land well for their own needs and those of their family, and not harm the community or the state.

So, with the State of Timor Leste adopting the UUPA, 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 authority over land rights based on UNTAET Regulation No. 1 Concerning the Authority of the Transitional Government in Timor Leste. The government's role in addressing land issues in Timor-Leste is crucial. However, the state, as the land rights authority, has yet to distribute various land rights fairly and equitably to the Timorese people. Many Timorese remain without land to support their families. Furthermore, Aristotle's theory of justice is divided into five types: commutative justice, distributive justice, natural justice, conventional justice, and corrective justice. Only two types of justice are considered relevant to this research:

Commutative justice is justice that relates to the equality received by everyone regardless of their merits. Essentially, everyone should be treated equally, regardless of their perspective. Conventional justice is justice that binds citizens because it is decreed by a special authority. This justice emphasizes customary rules or decisions that citizens must follow, issued by a certain authority. In essence, a citizen can uphold justice by obeying the laws and regulations in force within the government system. Therefore, justice is a form of ideal moral truth regarding something, whether it concerns objects or people. Every human being deserves fair treatment under the law. The laws enacted by the Timor-Leste government must be perceived as fair by everyone, ensuring that they are not only perceived favorably by the government but also by the public, who are subject to these regulations. What the people of Timor Leste need now is legal certainty to be able to resolve existing disputes, and justice is also needed so that no party feels disadvantaged by the regulations or laws made by the government.

The responsibility of the Timor-Leste state in enforcing the constitutional rights of citizens in land execution cases is represented by the development of land laws to harmonize various legal regimes, namely by developing laws that combine and clarify land rights and the process of claims that are violated and recognize property rights and clarify the legal status of immovable property. The state is also responsible for protecting and upholding the rights of all citizens as stipulated in the Constitution. State Responsibilities in the Context of Land Rights:

1. Legal Framework Development: The Government of Timor-Leste is tasked with developing a land law that will combine land rights from various legal regimes into one consistent system.
2. Establishment of Claim Guidelines: The State is responsible for establishing guidelines for the claims process regarding prosecution and taking in violation of property rights.



3. Recognition of Ownership Rights: Through laws such as Law No. 13/2017, the state aims to recognize and grant first ownership rights to immovable property and clarify its legal status.

#### The Role of the Constitution in Protecting Citizens' Rights:

1. Article 22 of the Constitution: The Constitution of Timor-Leste guarantees the right of citizens abroad to enjoy state protection of their rights.
2. General Responsibilities: Article 28I paragraph (4) of the constitution affirms the state's responsibility to provide protection, enforcement, advancement and fulfillment of Human Rights (HAM), which includes the right to property.

#### Challenges and Solutions:

1. Complex Legal System: Timor-Leste uses a civil law system and is still developing its judicial system, with international advisors and donor support.
2. The Need for Legal Harmonization: The existence of various legal regimes for land requires harmonization and alignment efforts in order to create a consistent land rights system.

### **In this case, the Indonesian government provides protection and justice for its citizens whose land rights are threatened or lost after the separation of Timor Leste**

Indonesia, an archipelagic nation, encompasses more than just one island. With its numerous islands, Indonesia also shares borders with other countries. The existence of borders with other countries is caused by various factors, such as parts of Indonesia seeking to break away from Indonesia. Some regions seeking to break away from the country and establish their own state result in areas becoming border areas with Indonesia. One of the territories that once broke away from Indonesia is Timor Leste, which is now its own country. The border between Indonesia and Timor Leste is a historical event in Indonesia. This also includes history during the Dutch colonial period in the Timor region. When the Dutch entered Indonesia to colonize, the Timor region was divided by the Dutch into two regions, namely East Timor with its center in Dili, and West Timor with its capital in Kupang. The Dutch divided the two regions around the 17th century. This division was later stipulated in the Treaty of 1904.

In 1701, regarding the dispute over the two regions, the Portuguese proclaimed East Timor as part of their colonial territory. Along with this, the Netherlands also claimed the island of West Timor as part of its territory. From 1963, Dutch ships landed on Timor. From these landings, the sandalwood trade began. The return of the Dutch in that year resulted in the domination of the Portuguese who were colonizing Indonesia at that time being reduced. This also resulted in a reduction in the sandalwood trade by the Portuguese, which resulted in a struggle for trade dominance between the Portuguese and the Dutch (Hadiwinata, 2009). From this change, there was competition between two European countries, namely Portugal and the Netherlands. History records that Indonesia once lost one of its provinces, East Timor. The struggle for interests and the emergence of various agreements were the strong underpinnings of the journey of former East Timorese Indonesian citizens who chose to endure poverty in Indonesia.

If we adhere to the principle that "...independence is the right of all nations..." in line with the 1945 Constitution, then the Indonesian citizens of former East Timor should also be given attention and experience true independence. In reality, the situation for former Indonesian citizens of East Timor in East Nusa Tenggara is not entirely the same. They still struggle with welfare issues. Before fleeing, they could have had a better life. Working as fishermen in Dili, for example, these refugees could earn between Rp 200,000 and Rp 300,000 per month. Meanwhile, the wages for casual labor are only around Rp 100,000 per month. The facilities and physical condition of the house they live in are also very minimal. With much of the wood rotting, electricity was only installed after protests from the displaced residents. The land ownership of the residence was unclear at the time. The house they occupied was a relocation residence, free of charge and without a land certificate.

The Indonesia-Timor Leste border dispute remains unresolved, encompassing land boundary issues and land claims in border areas such as Naktuka, as well as disputes over the management of river water resources that form natural boundaries. This issue frequently triggers local tensions, such as the shooting of an Indonesian citizen by Timorese authorities in August 2025, and stems from overlapping border management authorities and differing interpretations of the Portuguese colonial-era boundary. The Indonesian government is striving to protect and provide justice for citizens whose land rights are threatened or lost following the separation of Timor Leste through the resolution of border

disputes through negotiations and international legal efforts to reach a fair agreement, as well as programs to restore community rights such as transmigration programs and infrastructure development in border areas.

Efforts to realize just laws must be comprehensive and sustainable. Some possible measures include, firstly, strengthening the law itself. Conduct a review of existing laws and regulations to ensure that they are fair and non-discriminatory. Complex and convoluted regulations must also be simplified to make them easily understood and accessible to the public. Second, improve the professionalism of law enforcement. Law enforcers, such as judges, prosecutors, and police, must possess high integrity and professionalism. They must be kept free from political power and interference. In addition, they also need to be equipped with adequate knowledge and skills so they can carry out their duties professionally. Third, and no less important, is increasing public legal awareness. The public needs to be educated about their rights and obligations as citizens. This can be achieved through various legal education programs, such as legal counseling, seminars, and workshops. By increasing public legal awareness, it is hoped that they will be more proactive in fighting for their rights and fighting against injustice. Fourth, building a strong legal culture. Society must be accustomed to respecting and obeying the law. This culture must be instilled from an early age through education and character building. Problems must be resolved peacefully and civilly.

The Indonesian government has sought to provide protection and justice for citizens who lost their land rights after the secession of Timor-Leste through various policies, including the establishment of the Truth and Friendship Commission to address human rights violations, and support for resolving land issues through various legal and non-legal mechanisms. However, these efforts often face challenges of legal and bureaucratic complexity, which require special and comprehensive handling from the government.

#### Indonesian Government Efforts:

1. Establishment of the Commission of Truth and Friendship (CTF): Through the CTF, established jointly with Timor-Leste, the government is seeking facts and providing recommendations to address human rights violations and their impacts, including land rights issues.
2. Legal and Non-Legal Support: The government supports the resolution of land disputes through court channels and negotiations, especially for those living on the border between Indonesia and Timor Leste.
3. Handling of Dual Citizenship Issues: The government also handles cases of citizens who have dual citizenship or who live in both regions (Indonesia and Timor Leste) to ensure their rights are fulfilled.

#### Challenges Faced:

1. Legal Complexities: Land dispute resolution involves differences in legal systems between Indonesia and Timor Leste, as well as the interpretation of land ownership documents.
2. Complex Bureaucracy: Handling cases requires coordination between various government agencies and lengthy procedural adjustments.
3. Dual Identity Problem: Some citizens face difficulties in choosing citizenship and land rights due to their unclear status.

The Important Role of Courts and Negotiations: "Despite these obstacles, the government continues to push for the resolution of land conflicts in the courts, both in Indonesia and Timor Leste, as well as through bilateral negotiations between the two countries".

## IV. CONCLUSION

The responsibility of the Timor-Leste state to uphold citizens' constitutional rights in land execution cases is represented by the development of land laws to harmonize various legal regimes, namely by developing laws that combine and clarify land rights and the process for violating claims, recognizing property rights and clarifying the legal status of immovable property. The state is also responsible for protecting and upholding the rights of citizens as a whole as stipulated in the Constitution.

The Indonesian government has attempted to provide protection and justice for citizens who lost their land rights after the secession of Timor-Leste through various policies, including the establishment of a Truth and Friendship Commission to address human rights violations, and support for resolving land issues through various legal and non-legal mechanisms. However, these efforts often face challenges of legal and bureaucratic complexity, requiring specialized and comprehensive government intervention.

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