

LEGAL ANALYSIS OF THE PRESIDENT'S DECREE CONCERNING APPOINTMENT AND APPOINTMENT OF GOVERNMENT CABINET MEMBERS

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ABSTRACT

About the legal analysis of the presidential decree concerning the appointment and inauguration of members of the government cabinet, it is convening a member of the government cabinet, about state issues, namely the philosophical question of the president must be under the Constitution, sociological issues of members of the government cabinet, one of the most important institutions also for the people of Timor-Leste. The government is planning its program to submit a proposal for discussion in the national parliament to respond to national development, the juridical issue that the constitution has regulated the president's authority to issue decrees must be based on the 2002 constitution, the political issue that the national parliament and the government have the initiative to carry out government programs under with, the theoretical problem that the prime minister wants to equip members of the government cabinet. formulation of the first problem The element of the force of law in the presidential decree of the Democratic Republic of Timor-Leste. second, Analysis of the Legal Basis of the Decree of the President of the Republic using constitutional theory as the highest norm in the RDTL State, the theory of power that every State institution has constitutional power, the theory of authority that every State in carrying out its functions and duties is following the authority outlined in the constitution and the concept of The rule of law that the RDTL State adheres to a mixed legal system adopts three legal concepts, namely the concept of law (Rechtsstaat) the concept of law (*Rule of Law*) and (*An Elementary Approach to the Rule of Law*) to explain the problems discussed. The political triad divides the institutions of state sovereignty, the legislation of each government cabinet has a *ministerial decree-law*.

This study uses a normative juridical method, with approaches including the Legislative Approach, conceptual approach, historical approach, and analytical approach, and the purpose of this research is to be able to find theoretical basic thoughts to realize the legal analysis of presidential decrees regarding the appointment and inauguration of cabinet members. Government.

The theoretical basis for the appointment of government cabinet members is as contained in article 86 letter (h) of the RDTL Constitution, which regulates the appointment, inauguration, and dismissing of members of the Government at the suggestion of the Prime Minister, according to no.2Chapter10 6, so the president of the Republic has the authority to issue decree no. 19 of 2018 based on article 106 paragraph (2) of the 2002 RDTL constitution stipulates that other

members of the Government are appointed by the President of the Republic at the suggestion of the Prime Minister.

Keywords: Legal analysis of the presidential decree on the appointment and inauguration of government cabinet members

INTRODUCTION

The 2002 RDTL State Constitution is the basis for legal norms for the formation of the norms under it and also as a way of life for the Maubere people, as stated in the preamble.

Related to the two forms above, firstly, the basis for the formation of legal norms means that every statutory regulation that will be formed or has been formed must be under the constitution, if it is not in conformity then the laws and regulations must be changed (alteration), secondly as a state view of life which means In carrying out the government of the State, both those who govern and those who are governed must comply with the 2002 RDTL constitution.

Concerning the government, some institutions are regulated in Article 67 of the 2002 Constitution, which states that the institutions of state sovereignty of the Democratic Republic of Timor-Leste consist of; executive power led by the Prime Minister, legislative power led by the President of the Parliament and judicial power led by the Supreme Court (*O Presidente da Tribunal do Recurso*), and determine the limits of the authority of these institutions in carrying out state power RDTL. are carried out according to the duties and functions of the institution.

As stated by Guido Goncalves Moniz in his 2016 Dissertation every high-level institution is led by a state official, each institution should carry out its duties and functions independently and coordinate horizontally between state institutions. The existence of these four (4) state institutions

is constitutionally regulated in Article 67, and the stipulation of principles in carrying out their duties and functions is regulated in Article 69 of the RDTL Constitution, which states that;

The institutions of state sovereignty with each other and in the implementation of their functions must comply with the principles of separation of powers and interdependence stipulated in the Constitution.

- g) Dissolving the Government and dismissing the Prime Minister if the program is rejected twice in a row by the National Parliament;
- h) To appoint, swear and dismiss members of the Government, on the recommendation of the Prime Minister, under paragraph 2, article 106;

In connection with the description of the contents of the article above, Article 86 section letter (h) confirms that Appointing, swearing-in, and removing from office Members of the Government, on the proposal of the Prime Minister, and Article 106 paragraph (2) of the RDTL Constitution confirms that, Members of the RDTL Constitution -Other members of the Government will be appointed by the President of the Republic upon the proposal of the Prime Minister.

In the process of appointment/inauguration of ministers by the President of the Republic, which relates to the authority as stipulated in the 2002 RDTL Constitution, the President of the Republic gives a decree on the Prime Minister's proposal to the

Members of the Government through Presidential Decree of the Republic number 19 of 2018 article 1. Decree (Decisions) The President about the normative inauguration of Ministers must fulfill several foundations to strengthen the decisions of the President of the Republic, namely, it must be based on sociological, theoretical, and juridical foundations and these considerations must not give rise to problems from juridical, sociological, theoretical and political aspects.

Based on the description of the background of the problem above, the writer can formulate research with the following title; "Legal Analysis of the Presidential Decree on the Appointment and Inauguration of Members of the Government Cabinet.

FORMULATION OF THE PROBLEM

Based on the description of the background problems that have been stated above, the researchers formulate several research problems as follows:

- 1) What is the element of the force of law in the presidential decree of the Democratic Republic of Timor-Leste?
- 2) How to Analyze the Legal Basis of the Decree of the President of the Republic?

RESEARCH PURPOSES

Research Objectives this writing generally aims to fulfill obligations as a student of the Master of Law Program who will complete education to obtain a Master of Law degree, whereas if viewed from the formulation of the problems that have been put forward, the objectives of this research are:

- 1) To find out the element of a force of law in the presidential decree of the Democratic Republic of Timor-Leste.

- 2) To find out more about the Legal Basis of the Decree of the President of the Republic.

RESEARCH METHODS

Understanding Research Methods

Research that produces a scientific answer requires a research method. With the research method, a researcher or legal writer will know the quality of his research results. According to Peter Mahmud, "Legal research is a process to find the rule of law, legal principles, and legal doctrines to answer the legal issues faced".

In the author's opinion, the research method is a path or method that the author goes through to solve the problems at hand, so that these problems can be solved correctly, precisely, and of high quality.

TYPES OF RESEARCH

The type of research in this legal research is normative or doctrinal legal research. Terry Hutchinson as quoted by Peter Mahmud Marzuki defines doctrinal legal research as follows: "*doctrinal research-research which provides a systematic exposition of the rules governing a particular legal category analyzes the relationship between rules, explains areas of difficulty and, perhaps, predicts future development.*".

Normative legal research, which is another name for doctrinal legal research, is also known as library research or document study because this research is carried out or shown only on written regulations or other legal materials.

In essence, research is carried out by examining library materials or secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials.

Normative or *doctrinal legal research* consists of;

- a. Research in the form of an inventory of positive law.
- b. Research in the form of business principles and philosophical foundations (dogmas or doctrines) of positive law, and
- c. Research in the form of an effort to find law *in concreto* that is appropriate to be applied to resolve a particular case law.

NATURE OF RESEARCH

Nature of Research Legal science has a distinctive character, namely normative, practical and prescriptive. "As a prescriptive science, jurisprudence studies the purpose of the law, values of justice, the validity of the rule of law, legal concepts, and legal norms. As an applied science, legal science establishes standard procedures, provisions, and signs in carrying out legal activities.

APPROACH TYPE

Legal research begins by searching for legal materials as the basis for making legal decisions (*legal decision making*) on concrete legal cases.

Several approaches in normative research are;

1. Legislative Approach (*Statute Approach*) Normative research must of course use a statutory approach because what will be studied are various legal rules that are the focus as well as the central theme of research. This is useful for enriching appropriate legal considerations in dealing with the legal problems encountered, the approach of the 2002 RDTL Constitution with the RDTL state presidential decree number 19 of 2018 article 1 concerning the appointment and inauguration of government cabinet members.

2. Analytical approach (*analytical approach*)

Analysis of legal materials is to know the meanings contained by the terms used in the laws and regulations conceptually, as well as to know their application in legal practices and decisions.

SOURCE LEGAL MATERIAL

Sources of legal materials can be divided into 3, namely primary legal materials, secondary legal materials, and tertiary legal materials. In this study, the authors use legal sources, namely:

a. Primary Legal Material

The primary legal materials used consist of statutory regulations, official records, minutes of making legislation, and judges' decisions. In this study, the primary legal materials used are the 2002 RDTL Constitution.

b. Secondary Legal Material

The main secondary legal materials are textbooks because textbooks contain the basic principles of legal science and classical views of scholars who have high qualifications.

c. Tertiary Law Material

Tertiary legal materials are materials that provide instructions or explanations for primary and secondary legal materials. In this study, the tertiary legal materials used include:

(1)Indonesia Dictionary

(2)Legal Dictionary

(3)Internet sites related to Legal analysis of presidential decrees on the appointment and inauguration of members of government cabinets.

Legal Materials Collection Techniques

Material collection techniques are intended to obtain legal materials in research. The technique of collecting legal materials that support and relate to the presentation of this research is document study (library study). Document study is a tool for collecting legal

materials through written legal materials using content analysis.

THEORETICAL FOUNDATION

Constitutional Theory

The theory used in this thesis is Constitutional Theory, Theory of the rule of law, Theory of trias politics or power, Theory of authority, Theory of government, Theory of legislation, and Theory of government policy. Regarding the definition of the constitution, Hans Kelsen in his *General Theory of Law and State* says that:

The constitution in the formal sense is a certain solemn document, a set of legal norms that may be changed only under the observation of special prescriptions, the purpose of which is to render the change of these norms more difficult. The constitution in the material sense consists of those rules which regulate the creation of the general legal norms, in particular the creation of statutes.

The quote above explains that the constitution is a written basic law that contains the basis and outline of the law in the administration of the state, the place or main reference source for the process of formulating and stipulating other laws and regulations, in this case including the law regarding treaty agreements and agreements. international.

Constitutions according to Ivo D. Duchacek in Jimly Asshiddiqie are:

“ identify the sources purposes, uses, and restraints of public power. Therefore, the limitation of power is generally a general feature of constitutional material.

As a state text, the constitution contains legal sources both written and unwritten,

state objectives, uses of authority, and limitations on power.

The constitution is the highest law that gets legitimacy from the people so that the formation and changes to laws and regulations carried out by the government, must be in the interests of the people.

Power Theory

The relevance of the theory of power with legal analysis of the presidential decree on the appointment and inauguration of government cabinet members, there are sub-related, among others; The terms and concepts of power, the function of power, and types of power are further described as follows;

1) Terminology Concept of Power

The term power in English is called *power*, *Macht* (in Dutch), and *pouvoir* or *puissance* (in French). In *Black's Law Dictionary*, the term power (power) means: *“The right, ability, authority, or faculty of doing something...A power is an ability on the part of a person to produce a change in a given legal relation by doing or not doing a given action”.*

In the dictionary, the word power is given the meaning of "power" (to administer, rule, and so on), ability, ability, or strength. The word power itself is given the meaning; *first*, ability or ability (to do something), strength (other than body or object); *second*, authority over something or determine (order, represent, administer, and so on) something; *third*, people who are given the authority to administer (represent and so on), *fourth*, capable, capable, strong; *fifth*, the influence (prestige, magic and so on) that a person has because of his position.

According to the author's opinion, power is the authority to do something because of the ability it has. Power is conceptualized as the

legal capacity, capacity, or authority to act, particularly in the process of delegating authority. Power in this understanding refers to the authority or right that some people have to get others to do everything they consider to be the authority.

2) Form of Power

The form and system of power always adapt to society with its customs and behavior patterns; This power is deemed necessary in society based on the fear of disintegration in society, which form of integration is maintained by a social order which is considered only able to be carried out by the ruler.

3) Power Type

Political powers or state powers (*staatsrechtelijkemacht, political powers*) are caused by the horizontal (horizontal) splitting of sovereignty (*Sovereign power*) which is called "Separation of powers" or "separation of powers" (*Separation of Powers*). and below (*vertical*) which is called "the distribution of power" or "the distribution of power" (*Distribution of Power*).

The importance of the type of power with a legal analysis of the presidential decree on the appointment and inauguration of members of the government cabinet, in the administration of the RDTL State government there are 4 institutions Countries regulated in Article 67 of the 2002 RDTL Constitution: First, Legislative power lies with the national parliament, this institution has a function regulated in Article 92 of the 2002 RDTL Constitution. Second, executive power lies with the Government as regulated in Article 103 and Article 104 of K-RDTL In 2002, the Government had the power to administer the government which lies with the prime minister and his ministers. Meanwhile, the President is part of the

executive agency but not an organizer of government in general, is only a symbol of the head of state that is regulated in Article 74 of the 2002 K-RDTL. Third; Judicial power rests with the courts as regulated in Article 118 of the 2002 K-RDTL.

Thus from what has been described, the RDTL State has 4 State institutions, the Legislative (National Parliament), Executive (President and Government), and Judiciary (Courts) institutions, which are equal in the RDTL constitutional structure in administering government. The state has different types of power as described previously. . Furthermore, to find out the type of power possessed by the RDTL legislature.

The Democratic Republic of Timor-Leste, is a democratic constitutional state, has 4 (four) state sovereign institutions, which according to Article 67 of the 2002 RDTL Constitution that, the state's sovereign institutions consist of: the President of the Republic, the National Parliament, the Government, and Court.

According to John Locke, the functions of state power include:

- 1) Legislative Functions;
- 2) Executive Functions;
- 3) Federative Functions.

About the trias politica theory, the Democratic Republic of Timor-Leste is a democratic legal state and has 4 (four) state sovereignty institutions, which according to the provisions of article 67 of the 2002 RDTL Constitution that state sovereign institutions consist of: the President of the Republic, the Parliament National, Government, and Courts. The institutions of state sovereignty in carrying out their functions must follow the principle of separation of powers, according to Article

69 of the 2002 RDTL Constitution which is stipulated in the 2002 RDTL Constitution.

Starting from the state sovereignty institution in the RDTL Constitution above, it is associated with the political triad theory, which was put forward by Montesquieu, in his book "*L Esprit des Lois*" (1748), which follows the way of thinking of John Locke, dividing power into three branches., namely (i) the legislative power as the legislator, (ii) the executive who implements the law, and (iii) the judicial to judge. This Montesquieu classification is known as the distribution of modern state power in three functions, namely: the legislative (*the legislative function*), the executive (*the executive or administrative function*), and the judicial (*the judicial function*).

Based on some of the theoretical opinions above, in the author's opinion, the three institutions have a degree that is balanced with one another. The doctrine of the separation of powers emphasizes the division of government functions. The division of functions implies that each function is not only left to a certain state institution. Many state institutions are entrusted with more than one function. In other words, each function is carried out by many state apparatuses.

2.1. Authority theory

Based on the background problems above, the writer needs Decomposition and analysis in the theory of authority, this section includes,

1. The essence of authority
2. Type of authority
3. Authority of the RDTL president in declaring a state of emergency
4. Nature of authority

1. The essence of authority

Substantial authority in the first sense is the right and power to act. In the second sense, power includes decisions, orders, and delegation of responsibilities to others.

2.2. Nature of authority

The urgency of the nature of authority with the idea of a presidential decree inauguration of the 2002 RDTL Constitutional government cabinet. Reflecting on the nature of the authority possessed by the RDTL State institutions (explained in chapter I) results in unconstitutional conflict norms that are not resolved, meaning the emergence of arbitrariness carried out by state officials regarding the formation of decisions that are contrary to the 2002 RDTL Constitution, therefore the appointment of members of the cabinet of the Constitutional government to overcome arbitrary acts of state institutions, in the sense of examining all decisions in the form of the formation of legislation in the form of the National Parliament and the Government, and guarantees constitutional rights for citizens for the actions of state administrators.

About the nature of the authority of the RDTL State institutions through the formation of a presidential decree regarding the inauguration of members of the constitutional government cabinet, it is necessary to understand the nature of government authority as Indroharto revealed the nature of government authority; which are bound, facultative, and free, especially with the authority to make and issue decisions (*besluiten*) and stipulations (*beschikkingan*) by government organs, so it is known that there are decisions that are bound and free:

First, on the authority that is bound, which occurs when the basic rules determine when and under what circumstances that authority

can be used or the basic rules more or less determine the content and decisions that must be taken.

Second, facultative authority occurs if the relevant state administrative agency or official is not obliged to exercise his authority or more or less there is still a choice, even though that choice can only be made in certain cases or circumstances as stipulated in the basic regulations.

Third, free authority, namely: occurs when the basic regulations give freedom to the state administrative agency or official to determine for himself the content of the decision to be issued or the basic regulation provides the scope of freedom to the state administrative official concerned. In the author's opinion, there are three characteristics of authority, including binding, facultative and free authority used by government organs to administer the government.

Based on the three powers, independent authority related to state administration by RDTL State institutions is often misused even though the legality principle (explained in the next sub) which is emphasized in Article 2 paragraph (2) of the 2002 RDTL Constitution, means that every action taken by state administrators must be following applicable law.

Rule of Law concept

The Democratic Republic of Timor-Leste is a state based on the law (*Rechtsstaats*), not a state based on mere power (*Machtsstaat*). Based on the above theory, in the author's opinion, all regulations are sourced from the constitution, the constitution also recognizes written law and unwritten law which reads in article 2 paragraph (4). It includes the understanding of the recognition of the principle of the rule

of law and the constitution, the adoption of the principle of separation and limitation of powers according to the constitutional system regulated in the 2002 RDTL Constitution, and the guarantees of human rights in the Constitution, the principle of an independent and impartial judiciary. impartiality that guarantees equality of every citizen under the law in Article 16 paragraph (1) of the 2002 RDTL Constitution, and guarantees justice for everyone, including against abuse of authority by those in power. In other words, what leads in the administration of the state is the law itself by the principle of *the Rule of Law, and not of Man*, which is in line with the notion of *democracy*.

To the legal analysis of the Presidential Decree concerning the inauguration and appointment of members of the government cabinet, firstly in the administration of the state, the law becomes a command in the case that in the implementation it must reflect on the law, secondly, that the power of state institutions must be based on law but only power, because in Article 2 paragraph 2 of the 2002 RDTL Constitution confirms that the State is subject to the Constitution and other laws.

To realize the sovereignty of the people and the law, the concept of the rule of law must be implemented. According to AVDiocy, the rule of law requires the government to have power under the law (*the rule of law*), there are three main elements in it, namely:

- 1) *supremacy of law*,
- 2) *Equality before the law* and
- 3) *Constitutional Based on Individual Rights*.

In line with AVDiocy, the concept of the rule of law according to Friedrich Julius Stahl has the following characteristics:

- a) There is the protection of human rights
- b) Separation or division of powers to guarantee human rights
- c) Government based on rules
- d) State administrative court in dispute.

Based on the above theory, in the author's opinion, the protection of human rights must be protected, because it is constitutionally affirmed in article 29 paragraph (1) of the right to life and also regarding the separation of powers based on article 69 which reads about the division of power.

Government System Theory

In connection with the background problem above, the author uses the theory of government systems to justify the problem. The explanation and analysis in this section include Presidential Government System, system, parliamentary government, and mixed government system.

Presidential Government System

Whereas in a parliamentary system of government, the position of the cabinet is highly dependent on parliamentary support, in a presidential system of government the position of the President is not influenced by the support of parliament or representative bodies. In this system, the executive election is carried out by the people either directly or through the *electoral college*.

Parliamentary Government System

According to Alan R. Ball quoted by Sri Soemantri, the characteristics of a parliamentary government system are as follows:

- a) *There is a nominal head of state whose functions are chiefly formal and ceremonial and whose political influence is small. This head of state may be a monarch, as in the United Kingdom, Japan, or Australia, or a*

president this in West Germany, India, or Italy.

- b) *The political executive, the prime minister, the chancellor, etc, together with the cabinet, is part of the legislature and can be removed by the legislature if the legislature withdraws its support.*
- c) *The legislature is elected in varying periods by the electorate, the election date being chosen by the formal head of state on the advice of the prime minister or chancellor.*

From the opinion above, it can be seen that in a parliamentary system of government, the head of state (king, president, or other names) only has formal and ceremonial power so the political influence is very small. In this system, the real executive is held by the prime minister and the ministers (cabinet) formed by the legislature.

Mixed Government System

In addition to the two types of government systems above, there are models of government systems that have both parliamentary and presidential systems of government. Sri Soemantri gave the term mixed or combined government system for the government system,

According to BagirManan about the mixed system of government, "the similarities are only in the mixed form, while the substance is completely different".

"(i) The forms of mixed systems vary from country to country; (ii) Mixed forms can show presidential (presidential) or more prominent parliamentary characteristics".

Legislation Theory

Legislation to the state lies in guaranteeing the rights of citizens in the goals of the state so that efforts to achieve state goals carried out by the government do not create,

override or violate the rights of citizens, the enforcement and protection of these rights must be guaranteed, regulated and stated in the legislation.

Definition of Legislation

Before knowing the meaning of legislation, it is necessary to first understand the meaning of the law. The existence of unwritten law in the Timor-Leste constitution is recognized in Article 2 paragraph (4) of the 2002 RDTL Constitution which states that "The state recognizes and respects Timor-Leste norms and customs which do not conflict with the Constitution and any other laws, particularly about customary law."

Government policy theory

Policy or *policy* is related to planning, decision making and formulation, implementation of decisions, and evaluation of the impact of implementing these decisions on many people who are the target of the policy (target group). The policy is a tool or instrument to regulate the population from top to bottom.

ELEMENTS OF LEGAL POWER IN DECISIONS OF THE PRESIDENT OF THE REPUBLIC OF

Elements of Legal Justice in the Decree of the President of the Republic.

The emphasis on considerations or proportions in Aristotle's theory of justice can be seen from what he does that the equality of rights must be the same among the same people. It is true that on the one hand, it is true to say that justice also means equal rights, but on the other hand, it must also be understood that justice also means unequal rights. So Aristotle's theory of justice is based on the principle of equality. In the modern version of the theory, it is formulated with the expression that justice is carried out when equal things are needed

equally and unequal things are treated unequally.

Aristotle distinguishes justice into distributive justice and commutative justice. Distributive justice is justice that demands that everyone gets what is their due, so it is proportional. Here what is considered fair is if everyone gets what is their right proportionally. So distributive justice is concerned with the determination of rights and the fair distribution of rights in the relationship between the community and the state, in the sense of what the state should give to its citizens.

The rights granted can be in the form of undivided goods, namely mutual benefits such as protection, public facilities both administrative and physical, and various other rights, that citizens or citizens can enjoy without disturbing the rights of others in the process. the enjoyment. In addition, divided goods are rights or objects that can be determined and can be given to meet the individual needs of citizens and their families, as long as the state can provide what its citizens need fairly, or in other words. where there is distributive justice, then the situation will approach the so-called state where social justice is achieved for the community.

On the other hand, commutative justice is concerned with the issue of determining fair rights among equal human beings, both between physical and non-physical persons. In this connection, an association or other association as long as it is not in the sense of the relationship between the institution and its members, but the relationship between the union and the association or the relationship between the union and other physical human beings, the determination of fair rights in this relationship is included in the meaning of commutative justice.

The object of the rights of the other party in commutative justice is what belongs to someone from the beginning and must return to him in the process of commutative justice. The objects of these property rights vary from physical and moral interests, relationships, and qualities of various things, both familial and economic in nature, the result of physical and intellectual work, to things that were not previously owned or owned but later obtained through legal means. These all give obligations to other parties to respect them and provide sanctions in the form of compensation if these rights are reduced, damaged, or made not function properly.

In the concept of distributive justice, questions or problems arise about when these rights arise and how they are distributed, whether they should be equitable or should be proportional. In contrast to commutative justice which arises from the rights that originally existed in a person or which he obtained legally in the commutative justice process, basic distributive justice or the acquisition of these rights arises solely from a situation where a person is a member or citizen of a country. Those who are not citizens should benefit except in reciprocal relations, especially in international relations between modern countries, so that a foreigner can also enjoy the rights or other facilities of a country he visits.

In the author's opinion, the elements of legal justice in the presidential decisions of the republic, there are two kinds of justice, namely distributive justice and commutative justice, distributive justice is a presidential decision that only applies to some members of the constitutional government VIII Governo cabinet; commutative justice is the decision of the president of the republic regarding members of the government

cabinet must be applied in general, meaning that every prime minister submits a proposal to the president of the republic regarding the appointment and inauguration of members of the government cabinet must use the same and fair decision.

Presidential decision form

A declaratory decision is a decision that does not change existing rights and obligations, but merely states these rights and obligations (*rechtsvavaststellendebeschikking*). A decision has a declaratory nature when the decision is intended to determine the binding of a legal relationship or the decision is intended to recognize an existing right, whereas when the decision creates or abolishes a legal relationship or the decision creates a new right that was not previously owned by a person whose name is listed in that decision, it is called a constitutive decision (*rechtscheppendbeschikking*).

Decisions in State administrative law

This decision has already stated that the administrative law of the State is the law relating to the government or the administration of the State. State administrative law contains regulations made by legislators (*whatever*) and some are made by the State administration itself. In making laws and regulations, which are the contents of state administrative law, legislators and state administration can take historical materials from various legal systems that have existed at certain times and places, taking into account social factors that live and develop during society, and fill laws and regulations with positive values that become the *rechtsidee* of the community.

Decision-making conditions

State administrative decision-making must pay attention to several requirements so that

the decision becomes legal (*rechtsgelding*) and has the power of law (rechtskracht) to be implemented. The conditions that must be considered in making this decision include material requirements and formal requirements.

a. Material requirements consist of:

- 1) Government organs that make decisions must be authorized;
- 2) Because the decision is a statement of will (*wilsverklaring*), the decision must not contain juridical deficiencies (*greenjuridichegebreken in de wilsvorming*), such as fraud (*bedrog*), coercion (*dwang*) or bribery (*omkoping*), misguidance (*dwaling*);
- 3) The decision must be based on a certain situation (situation).
- 4) other regulations and the content and purpose of the decision must be by the content and objectives of the basic rules.

b. Formal requirements consist of:

- 1) The conditions specified for the preparation of the decision and related to how the decision is made must be met;
- 2) The decision must be given the form that has been determined in the laws and regulations which are the basis for the issuance of the decision;
- 3) The conditions relating to the implementation of the decision must be met;
- 4) The period that must be determined between the occurrence of the things that caused the decision to be made and the announcement of the decision must be considered.

LEGAL BASIC ANALYSIS OF THE PRESIDENT'S DECREE OF THE REPUBLIC

Legal Basis of RDTL Presidential Decree.

The legal basis is based on the 2002 RDTL Constitution the president is elected by the

Government Cabinet members through the prime minister's proposal based on article 86 and article 106 paragraph (2) of RDTL Presidential Decree number 19 of 2018, This change in the meaning of the concept of justice goes hand in hand with the tendency to withdraw justice issues from the region. consideration of subjective values that are not guaranteed, and to establish them on the solid foundation of a certain social order. " justice " in this sense means legality; a general rule is "fair" if it is applied to all cases in which, according to its content, this rule must be applied. A general rule is "unfair" if it applies to one case and does not apply to another similar case. And this seems "unfair" without regard to the value of the rule of law itself. Justice in this sense corresponds to, and is required by, every positive law, be it the positive legal order. This justice is justice "based on the law" or "not based on the law," meaning that the act is by or not by a legal norm that is considered invalid by the subject who judges it because this norm is included in a positive legal order. In the author's opinion, the President of the Democratic Republic of Timor-Leste, the inauguration of the VIII (eighth) government cabinet members in 2018 was "unfair" if applied to the eighth government cabinet members, stating that 9 (nine) people had cases, but no cases were recorded in court. , even though the case has been tarnished, the judiciary functions, to consider, the VII (seventh) government in 2017, the prime minister proposes the names of the cabinet members of the government of the President of the Democratic Republic of Timor-Leste be directly elected and appointed members of his cabinet with that, the presidential decree based on the constitution but not applied in all cases.

4.1.1. The powers of the president who affirm the 2002 RDTL Constitution

The authority of the President of the Democratic Republic of Timor-Leste has been affirmed. Starting from the provisions of the 2002 RDTL State Constitution, Article 85, Article 86, and Article 87, which show that there are overlapping arrangements between state institutions regarding the authority of the President, stating that the state is in a state of emergency, emergency, standby, or state of war. This is very ironic if it is traced based on the position of the President as the Head of State, as it is regulated in Article 74 paragraph (1) and paragraph (2), the President as the head of state and the Supreme Commander of the Defense and Security forces and Article 85 letter (b) namely: "Exercise the authority which is the core of the functions as commander of the armed forces" and the provisions of Article 117 letter (d) Keep reporting to the President of the Republic on matters concerning the Government's policies at home and abroad; According to Carl Schmitt, the constitution is a joint decision or consensus about the nature and form of a political unit (*eineGesammtentscheidungüber Art und Form einerpolitischenEinheit*), which was agreed upon by the nation.

This regulation of Article 85 letter (b) can be interpreted as directly giving absolute authority to the President to act as the Supreme Commander, which can be understood as the highest leadership position in the National Defense and Security Forces. However, this authority was hampered by the provision of Article 86 letter (h) "To appoint, inaugurate and dismiss members of the Government at the suggestion of the Prime Minister, based on no. 2 Article 106 "A regulation like this eliminates the composition of the President's authority as the supreme commander. Such arrangement creates vague norms and conflicting norms between Article 74 paragraph (1) and

paragraph (2) and Article 85 letter (b) with the provisions of Article 85 letter (g). Some literature found opinions about authority and authority. PrajudiAtmosudiro stated that authority is power over a certain group of people or a certain field of government (or field of affairs).

The power of the president to make decrees (decisions)

The President's authority to make decrees, his authority comes from the 2002 RDTL Constitution, In connection with the description in Article 86 section letter (h) confirms that Appointing, swearing, and removing from office Members of the Government, on the proposal of the Prime Minister, and Article 106 paragraph (2) The Constitution of the RDTL stipulates that, other Members of the Government shall be appointed by the President of the Republic upon the proposal of the Prime Minister.

In the process of appointment/inauguration of ministers by the President of the Republic, which relates to the authority as stipulated in the 2002 RDTL Constitution, the President of the Republic gives a decree/decision on the Prime Minister's proposal to the Members of the Government through the Decree of the President of the Republic. Presidential decrees relating to the normative inauguration of Ministers must fulfill several foundations to strengthen the decisions of the President of the Republic, namely, they must be based on theoretical, sociological, and juridical foundations and these considerations must not give rise to problems from theoretical, juridical, sociological and political.

Based on article 86 above letter (h), the authority of the RDTL president emerges to stipulate that his decree comes from article 106 concerning the Appointment of "nomeasaun" paragraphs (1 and 2). In

connection with the contents of the paragraph described above, it is in the author's opinion that the RDTL state began from the promulgation of the RDTL constitution on May 20, 2002, from the first legislature (I) to the fourth legislature (IV). government cabinet members are elected through the prime minister's submission, never canceling the government cabinet members proposed by the prime minister, in 2017 the prime minister proposed a government cabinet member, the RDTL president was immediately elected and appointed but the prime minister proposed a government program in accordance with article 108 The 2002 RDTL Constitution regarding the government program "governoniaprograma" paragraphs (1 and 2), To discuss in the national parliament the program does not pass Article 109 of the 2002 RDTL constitution concerning Considerations of Government Programs "apresiasaunbagovernoniaprograma", paragraph (3) then the government overturned article 100 of the 2002 RDTL constitution regarding the looting According to "Disolusaun" paragraphs (1 and 2), the president dissolves the 2018 national parliament to process the general election, the party winning the parliamentary majority alliance AMP has accumulated the three majority winning CNRT parties with 22 seats, KUNTHO with five (5) seats and PartiduLibetasaun Popular (PLP) with eight (8) seats, a total of 35 seats in the AMP parliamentary majority alliance, the winning party appointed the prime minister from the PLP party to lead the government, with that the prime minister nominate members of the government cabinet based on article 86 of the 2002 RDTL Constitution on Authority over Relations with Other Body letter (h) is still related to article 106 of the 2002 RDTL Constitution regarding the appointment of paragraph (2) regarding the contents of the article above, according

to the author's opinion that members of the government cabinet proposed by the prime minister to the eighth legislature VIII the president of RDTL has authority over relations with other bodies, but the president who appoints members of the government cabinet nine people were dismissed on the grounds that there was a case but there was no clear justification from the judiciary.

Republican President Francisco GuterresLúOlo inaugurated the Constitutional Government (*VIII Governo*) led by Prime Minister TaurMatanRuak in a ceremony that took place on 22 June 2018 at the Lahane Presidential Palace Grand Building, in Dili.

The Prime Minister emphasized that the Government is confident "in the mobilization project and the orientation of its strategic vision, which is expressed in the quality, integrity and commitment of the structure of the Government currently taking office" and that "it intends to be the engine of change and transformation of this society".

TaurMatanRuak also ensures that "development of human resources, creation of basic infrastructure, diversification, and expansion of the economic sector, as well as strengthening of good management practices, transparency and accountability" are areas that are considered fundamental to (*VIII Governo*) Constitutional Governance.

The President of the Republic in his speech guaranteed the "necessary institutional collaboration with the Government and with other sovereign bodies, in promoting the values and practices of good governance, contributing to the success of the national social and economic development process".

According to the author's opinion, the president appoints and inaugurates based on the submission of the prime minister article 86 letter (h) and Article 106 paragraph 2, the presidential decree number 19 of 2018 article 1. To elect, appoint and inaugurate members of the government cabinet.

Relative Authority of the President of the Republic in enacting Decrees

Starting from the provisions of the 2002 RDTL State Constitution, Article 85, Article 95, and Article 115, which show that there are overlapping arrangements of authority between state institutions relating to the President's authority, declaring the state in a state of emergency, standby or the state in a state of war.

This is very ironic if it is traced based on the position of the President as the Head of State, as it is regulated in Article 74 paragraph (1) and paragraph (2), the President as the head of state and the Supreme Commander of the Defense and Security forces and Article 85 letter (b) namely: "Exercise the authority which is the core of the functions as commander of the armed forces" and the provisions of Article 117 letter (d) Keep reporting to the President of the Republic on matters concerning the Government's policies at home and abroad; According to Carl Schmitt, the constitution is a joint decision or consensus about the nature and form of a political unit (*eineGesamtentscheidungüber Art und Form einerpolitischenEinheit*), which was agreed upon by the nation.

This regulation of Article 85 letter (b) can be interpreted as directly giving absolute authority to the President to act as the Supreme Commander, which can be understood as the highest leadership position in the National Defense and Security Forces. However, this authority was hampered by

the regulation of Article 85 letter (g) "Declaring a state of war or a state of emergency, with the approval of the national parliament, after consulting the State Council, Government and the High Council for Defense and Security.". Such arrangement creates vague norms and conflicting norms between Article 74 paragraph (1) and paragraph (2) and Article 85 letter (b) with the provisions of Article 85 letter (g). Some literature found opinions about authority and authority. PrajudiAtmosudiro stated,

Authority to appoint, appoint, dismiss Government cabinet member

The authority of the RDTL president's decision to appoint members of the government cabinet based on the 2002 RDTL constitution, article 86 paragraph (1) letter (h) To appoint, inaugurate and dismiss members of the Government on the proposal Prime Minister, based on no.2 Article 10 6; reads that other members of the Government are appointed by the President of the Republic at the suggestion of the Prime Minister, Presidential Decree (*Decrit*) number 19 of 2018 article 1 President of the Republic Francisco GuterresLúOlo inaugurate the Constitutional Government (*VIII) Governo*) led by Prime Minister TaurMatanRuak during a ceremony which took place on 22 June 2018 at the Lahane Presidential Palace Building, in Dili Timor-Leste.

After the inauguration of members of the Government, Prime Minister TaurMatanRuak, in his speech stated that the Government (*VIIIGoverno*) embarked on its mission "at a decisive moment for the development, modernity, and progress of this relatively young democracy, in the fulfillment of the lofty goals of sustainable development and the grand national goal of

transforming "Timor-Leste, into a Rich, Strong, and Safe Country".

The Prime Minister emphasized that the Government is confident "in the mobilization project and the orientation of its strategic vision, which is expressed in the quality, integrity, and commitment of the structure of the Government currently taking office" and that "it intends to be an engine of change and transformation of society."

The President of the Republic in his speech guaranteed the "necessary institutional collaboration with the Government and with other sovereign bodies, in promoting the values and practices of good governance, contributing to the success of the national social and economic development process".

Francisco GuterresLúOlo also congratulated "voters and all walks of life who through voting enabled the strengthening of democracy, peace, and stability, spreading the name of Timor-Leste in the region, in ASEAN, and around the world". The inauguration ceremony was attended by individuals from Timor-Leste and the international community, representatives from the diplomatic corps and non-governmental organizations, among other distinguished guests. In the author's opinion, the president of RDTL has free authority to be elected by members of the government's cabinet to appoint and inaugurate based on the proposal of the prime minister through article 86 letter (h) the president is elected through article 106 paragraph (2), then a presidential decree (decree) appears number 19 of 2018 article 1.

Roihan A. Rasyid, Absolute power (absolute authority) means court power related to the type of case or type of court or court level, in contrast to the type of case or type of court or other levels of court, for example,

Religious Courts have power over marriage cases for those who are Muslims while those who are non-Muslims are under the jurisdiction of the General Court.

In the author's opinion, the legal source of the RDTL presidential decree on the appointment of government cabinet members, the source of the decision is the 2002 Timor-Leste Democratic Republic of Indonesia Constitution, hence the emergence of presidential decree number 19 of 2018 article 1. chapter II on presidential authority starting from article 85 Authority is the exclusive authority of the President, Article 86 Authority over other bodies, article 87 Authority in international relations, article 88 Announcements and Vetoes except article 89 regarding Presidential Actions there is no internal authority which is clear in article 89.

The President's Right To Establish Decrees

The President of RDTL has the right to make decrees/decisions based on the 2002 Constitution has given clear authority in chapter II which explains the authority and Title I General principles Article 62 Rights and exercise of political power reads that Political power belongs to the people and is exercised based on the Constitution RDTL 2002 Article 28 Right to self-defense paragraph (1) reads All citizens have the right not to obey and refuse illegal orders or orders that violate their rights, obligations, and guarantees. And paragraph (2) reads that every citizen is also guaranteed the right to self-defense under the law, Title II Rights, Freedoms and Personal Security Article 29 Right to life paragraph (1) reads that the right to human life cannot be contested. And paragraph (2) reads that the State recognizes and guarantees the right to life.

The principle of imputation (responsibility and obligation) of the president to enact a decree

The President of the Democratic Republic of Timor-Leste has a responsibility to all the people who live throughout the territory of RDTL, in a welfare state, it is the duty of the president of RDTL to live comfortably and peacefully.

The legal basis of absolute authority

The 2002 RDTL Constitution In chapter II on the powers of article 85 (Authorities) the President of the Republic has the authority and responsibility exclusively for the letter (b) which reads that “Exercise the authority which is the core of the functions as Commander of the Armed Forces.” Meanwhile, according to PhilpusHadjon, that authority can only be obtained in two ways, namely attribution or delegation.

The definition of attribution refers to the original authority based on the 2002 RDTL constitution article 85 which reads that the President of the Republic has exclusive authority and responsibility, article 86 reads regarding (Authority in Relations with Other Bodies) For his relationship with other bodies, the President of the Republic is responsible and authorized the provisions of the Law.

Types of Authority

Authority can be distinguished according to its source, importance, territory, scope, and according to government affairs. Authority according to its source is divided into two types, namely:

1. Personal authority and
2. Official authority.

Personal authority, namely the authority that comes from intelligence, experience, values or norms, and the ability to lead. While the official authority is the official authority

received from the authority above it. In the author's opinion, that official authority is officially an experience in the future, it can provide an opportunity to be a personal authority

CLOSING

5.1. Conclusion

Based on the results of the analysis of the problems above, the authors can provide the following conclusions:

1. The element of legal force in the decision of the President of the Republic based on the RDTL Constitution article 86 letter (h) reads that to appoint, inaugurate and dismiss members of the government at the suggestion of the prime minister, based on no 2 articles 106 the president has the power based on the RDTL Constitution article 106 paragraph (2) reads that other member of the government are appointed by the President of the Republic at the suggestion of the prime minister;
2. The legal basis for Presidential Decree No. 19 of 2018 Article 1 which states that elect, appoint and inaugurate, Article 2 states that this Decree shall come into force on June 22, 2018.self publish,President of the Republic,Francisco Guterres Lú OloSigned at the Nicolau Lobato Presidential Palace, Dili, on the 21st of June 2018.

The President of the Republic based on the 2002 Constitution Article 85 the president defends human rights, sociologically members of the government cabinet are important for society, and politics carried out by the government must be based on the 2002 RDTL Constitution.

Suggestion

From the results of this scientific paper, as the author explains the legal analysis of the

presidential decree regarding the appointment and inauguration of government cabinet members following the provisions of the 2002 RDTL Constitution, members of the government cabinet who are elected, appointed, and inaugurated by the president are still presumed innocent (*todo o arguido se presume inocente até á condenação judicial definitiva*) article 94 reads that Parliamentary immunity can be revoked according to the provisions of the national regiment :

1. To the Institution of the President of the State of RDTL which has the authority to elect, appoint and inaugurate members of the government's cabinet against the prime minister's proposal, as a vague norm the President of RDTL issued decree no. 19 of 2018 based on the 2002 RDTL Constitution.
2. Suggest to government agencies and the National Parliament to revise article 106 of the presidential decree, which is considered a vague norm because it is used to vote to be appointed and inaugurated.

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II. LAWS AND REGULATIONS

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Article 1 paragraph 1 of the 2002 RDTL constitution

Initially, this was only contained in the explanation of the constitution of the Democratic Republic of Timor Leste in 1975. After the 1975 constitution was amended in 2002, this was explicitly regulated in the body, namely in article 154 paragraph (1) of the 2002 constitution. Presidential Decree no. 19 years 2018.

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