

COMPARISON OF THE RDTL STATE ADMINISTRATION SYSTEM BASED ON THE 2002 CONSTITUTION WITH THE REPUBLIC OF INDONESIA'S STATE ADMINISTRATIVE SYSTEM BASED ON THE 1945 CONSTITUTION

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ABSTRACT

In writing this thesis, Comparison of the RDTL State Administration System Based on the 2002 Constitution with the Republic of Indonesia's Unitary State Administrative System Based on the 1945 Constitution, the author formulates several issues, first, the juridical problem in structuring the constitutional system of the two countries, the regulation is still limited to state institutions in making decisions. so that the existence of several authorities has a conflict with the power of other state institutions in the government system. The second sociological problem looks at the reciprocal relationship between the state, the government, and its citizens in running the government. The third is a political view that sees the adherents of the state as democracy, the fourth is a philosophical view that the mechanism for using the government system used can provide a state goal (the rule of law and is limited by the constitutional state).

And the theories used include; constitutional theory, comparative law theory, and constitutional system theory, as well as a conceptual framework, framework for thinking, in problem formulation; 1) Are there any differences and similarities between the constitutional system of the Democratic Republic of Timor-Leste based on the 2002 Constitution and the constitutional system of the Unitary State of the Republic of Indonesia based on the 194 Constitution? 2) What are the similarities and differences between the constitutional system of the Democratic Republic of Timor-Leste based on the 2002 Constitution and the constitutional system of the Unitary State of the Republic of Indonesia based on the 1945 Constitution?

The research method is normative law, types of statutory and conceptual approaches, primary and secondary sources of legal materials, techniques for collecting legal materials using card techniques and bibliographic cards, then using legal materials analysis techniques, namely descriptive analysis. More focus on a comparison of the constitutional system of Timor Leste with the constitutional system of the unitary State of Indonesia based on the 1945 Constitution.

Furthermore, from the results of the discussion, the authors formulate conclusions and suggestions as follows, (1) the basis for comparison of the government systems of the two countries can provide an overview and value conceptually by the State in implementing government, (2) applying constitutional values as in constitutional theory and constitutional theory and seeing both countries that the position of the government system in implementation is a semi-presidential system as stated in the 2002 RDTL constitutional provisions and the 1945 Constitution.

Keywords: Comparison of State Administration, State Administration of the Republic of Indonesia, State Administration of the Democratic Republic of Timor-Leste

INTRODUCTION

Since the Governments of Portugal and Indonesia entrusted the Secretary-General of the United Nations to organize and carry out a *popular consultation* to determine whether the people of Timor-Leste chose to separate or remain as members of the Unitary State of the Republic of Indonesia through the Referendum of 30 August us 1999, then It has been 22 years since the two countries separated and stood from each other as sovereign countries with the recognition of the Right to Independence for the people of Timor-Leste under the auspices of the United Nations (UN). Day by day, the recognition of the world community also guarantees the sovereignty of Timor-Leste after the United Nations announced the results of the poll in which more than 78.5% of the people of Timor-Leste chose independence from the Republic of Indonesia.

Long before the Referendum based on an agreement between Portugal and Indonesia was carried out or known as the 5 May 1999 agreement. Timor Leste is part of Portugal wherein 1511 it was discovered by European merchant groups to buy spices and other tropical natural products including sandalwood. Portugal also introduced Catholicism, establishing educational institutions to introduce the Latin script system, printing press, and formal schools to the people of Timor-Leste. Portuguese is used in worship, business, and bureaucracy, alongside Indonesian, Tetun in daily affairs. The history of the discovery of the island of Timor as a source of spices from the Portuguese did not last long, because starting in the 1642 century slowly the kings of the island of Timor began to submit to Portuguese colonialism, until the end of 1702 the capital of the new state of Portuguese Timor was formed in Lifau led by Francisco Fernandes and his troops named Topasses or Indo Portuguese-Flores) Dutch also played an important role in the

division of the island of Timor, since 1702 the Dutch established a base in Kupang, the eastern part of Indonesia and the Topasses eventually led the western part of the island of Timor (from Lifau) and controlled trade in the East.

1769, the capital city of Portuguese Timor was moved to Dili “the current capital of the country”. With the history of the Dutch leading in the west and the Portuguese in the Timor, in 1859 through the Lisbon Treaty, there was an agreement on the division of the island of Timor between Portuguese Timor and the Dutch East Indies.

This history left a system of political culture that is not small, European governments, be it the Dutch in the western part of the island of Timor and the Portuguese in the eastern part of the island of Timor, gave a continuous political and social-cultural effect. Starting from the history of government, and constitutional law to the economy and religion. From here, the people of Timor-Leste can never be separated from the history of their cultural and administrative release, this is growing with the development of the state administration system of each country after so many years, especially after 1999 through the care of the United Nations, Timor-Leste finally officially became an established country. for independence from Indonesia.

Now, 22 years later after the results of the “*popular consultation*”, Timor-Leste has become a unitary state of its own.as the closest neighboring countries and have a history of togetherness that is quite more than 20 years, it is appropriate to study again the comparison of the constitutional systems of the two countries, starting from the form of the state, the constitution they have, the form of government and the sovereign bodies of the two countries owned by them.

Based on Article 1 paragraph (1) of the 2002 RDTL constitution, clearly stipulates the form of the state and the form of government, but without realizing it at the beginning of the formation of the RDTL Constitution, it was not clearly laid down, or perhaps it did not occur to the minds of the Constituent Assembly members to determine the system. The RDTL government, in the discourse of governance, adheres to the principle of separation of powers as regulated in Article 69 of the 2002 RDTL constitution

Meanwhile, the constitutional system of the Unitary State of the Republic of Indonesia is based on the notion of people's sovereignty and the rule of law. This is reflected in the preamble to the 1945 Constitution of the Unitary State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia), as well as Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that "Sovereignty is in the hands of the people and is carried out according to the Act. -The Constitution", and Article 1 paragraph (3) which states that "the State of Indonesia is a state of law". This shows that the Indonesian state is a follower of the type of people's sovereignty and is at the same time a state of law. People's sovereignty can be interpreted as the government of the people, by the people, and for the people. which has undergone several amendments to its constitution and has celebrated its independence for approximately 70 years. Unlike Timor-Leste, it has only been 18 years since independence.

Related to the Indonesian State Administration System in the 1945 Basic Laws(after the change) has regulated the form of the state, the form of government, the system of government, high state institutions, and support institutions (*auxiliaries*). State institutions, there are 6

high state institutions, including the People's Consultative Assembly (MPR), President of the Republic (Executive Institution), People's Representative Council (DPR), Regional Representative Council (DPD), Financial Audit Agency (BPK.), the Constitutional Court (MK), the Supreme Court (MA).

The constitutional constellation of the Republic of Indonesia underwent a very basic change after the political reforms in 1998. The fall of Suharto's power after more than 30 years in power marked the start of a new chapter in the state system of the Republic of Indonesia. The dynamics of the Indonesian state administration are growing along with the reforms that are accompanied by amendments to the 1945 Constitution (UUD 1945) which is the constitution of the Unitary State of the Republic of Indonesia (NKRI).

Amendments to the 1945 Constitution were carried out as a result of some weaknesses in the 1945 Constitution, demands for reform, and the desire to strengthen Indonesia's existence as a state of law. According to Ahmad Fadlil Sumadi, in the context of strengthening the legal system, amendments are expected to be able to bring the Indonesian people to achieve the aspired state goals, the amendment to the 1945 Constitution is a strategic step that must be carried out carefully by the Indonesian people.

One of the real results of the Reformation was the change in the state administration system through a series of amendments to the 1945 Constitution which were implemented from 1999-to 2002. There are several reasons why the 1945 Constitution was amended:

First, the structure of the 1945 Constitution causes *executive heavy* because it places and gives very large powers to the holders of the

executive branch of power. Various provisions of the 1945 Constitution give authority to the President as head of state (*head of state*) and head of government (*chief of the executive*). The scope of this power is getting bigger because the President also plays an important role in the formation of laws. In the period before the amendment, the Elucidation of the 1945 Constitution further strengthened the position of the President by increasing the qualifications for the position of Mandataries of the MPR.

Second, the provisions of the 1945 Constitution do not sufficiently contain a system of *checks and balances* between the branches of government to avoid a "*concentration of powers*", abuse of power, or arbitrary actions.

Formulation of the problem

Based on the background of the problems above, the problems that the writer will examine in this thesis proposal research are:

- 1) Does the Constitutional System of the Democratic Republic of Timor-Leste based on the 2002 Constitution and the Unitary State of the Republic of Indonesia based on the 1945 Constitution have similarities and differences?
- 2) What are the similarities and differences between the constitutional system of the Democratic Republic of Timor-Leste based on the 2002 Constitution and the constitutional system of the Unitary State of the Republic of Indonesia based on the 1945 Constitution?

Legal Research Methods

Scientific research methods, one of which is in the field of law and has the characteristics of other sciences or law is *Sui Generis* or its kind, it is said to be different because science examines a norm. So the science of law is a science of its kind and has its assessment as well.

Method Concept

As stated by Soerjono Soekanto, the methodology is an element that absolutely must exist in the research and development of science. The thing that needs to be considered in determining this research method is the suitability between the problem and the method to be used in the study. Therefore a researcher must be able to choose or determine the right research method for the thing to be studied.

Procedure and Collection of Legal Materials

Legal materials are collected, then read and studied, and the legal materials are sorted to obtain legal materials that are relevant to the material discussed. Legal materials that are still general in nature are processed through conclusions, so that special legal materials are obtained.

Legal Material Analysis Techniques

In research analysis, the authors use available legal materials and books as reference materials to analyze the problems encountered with the following steps: the step of collecting legal materials in this paper is a literature study, which begins with an inventory of all related legal materials. With the main problem, then a classification of related legal materials is held and then the material is arranged systematically to make it easier to read and study. The discussion step is carried out using deductive reasoning in the sense that it starts from general legal knowledge obtained by legislation and literature, which is then implemented on the problems raised so that answers to specific problems are obtained. The discussion uses a systematic interpretation by linking government policies in the form of laws and regulations and examining the substance of one article with other articles.

LITERATURE REVIEW

Constitutional Theory

Different meanings and meanings, depending on the point of view used. This is, among other things, due to the constitution being the object of studies of various sciences, such as law and politics. Cheryl Saunders a Professor of Constitutional Law at the University of Melbourne said *"a constitution is more than a social contract...it is rather an expression of the general will of a nation. It is a reflection of its history, fears, concerns, aspirations, and indeed, the soul of the nation"*.

Regarding the definition of the constitution, KC Where stated: *"The word constitution" is commonly used in at least two senses in any ordinary discussion of political affairs. First of all, it is used to describe the whole system of government of a country, the collection of rules which establish and regulate or govern the government. These rules are partly legal, in the sense that courts of law will recognize and apply them, and partly non-legal, taking the form of usages, understandings, customs, or conventions that courts do not recognize as law but which are not less effective in regulating the government than the rules of law.... however, the word constitution" is used in a narrower sense than this. It is used to describe not the whole collection of rules, legal and non-legal, but rather a selection of them that has usually been embodied in one document or a few closely related documents. What is more, this selection is almost invariably a selection of legal rules.... The Constitution...is a selection of the legal rules which govern the government of that country and which have been embodied in a document"*.

Constitutional Purpose

Regarding the constitution, it has a specific purpose, namely to regulate, bring order, and as a buffer for the administration of the

state, as stated by James Bryce, quoted by Sri Soemantri, stating that there are three *objectives* of the formation of a constitution, namely:

- a) *"to establish and maintain a frame of government under which the work of the state can be efficiently carried on, the aims of such a frame of government being, on the one hand, to associate the people with the government and on the other hand, to preserve public order, to avoid hasty decisions and to maintain a tolerable continuity of policy."*
- b) *"to provide due security for the rights of the individual citizen as respects a person, property, and opinion, so that he shall have nothing to fear from the executive of from the tyranny of an exciting majority"*)
- c) *"to hold the state together, not only to prevent its disruption by the revolution or secession of a part of the nation, but to strengthen the cohesiveness of the country by creating good machinery for connecting the outlying parts with the center, and by appealing to every motive of interest and sentiment, that can lead all sections of the inhabitants to desire to remain united under on governments."*

Functions of the constitution

Functions of the Constitution with a comparison of the constitutional systems of Timor -Leste, and Indonesia. Regarding the function of the 2002 K-RDTL, as a basic means to oversee the processes of administering the government or it can also function as a national document and as the highest law informing the legislative system KC Where views the function of the Constitution as describing the entire system of government of a country.

Henc Van Maarseveen and Ger van der Tang described by I Dewa Gede Atmadja in his book Constitutional Theory and the State

of Law, that the use of constitutional typology is related to constitutional science regarding the three levels of constitutional theory, namely:

- a) Ranking " *general theory* ", the typology of the constitution can enrich and broaden knowledge about concepts as well as how to comprehensively describe and explain the constitution;
- b) " *Comparative theory* " rating, constitutional typology can improve and
- c) The "national *theory*" rating and constitutional typology can assist in interpreting the constitution and become a reference in determining the classification of the constitution and its legal consequences.
- d) Finally, typology is also used to distinguish the type of constitution, so that the constitution can help the process of forming a constitution, either replacing or amending it.

Constitutional Position

The constitution occupies a very crucial position in the constitutional life of a country because the constitution is a benchmark for the life of the nation and state which is full of historical facts about the struggle of its heroes. Although the constitutions found in this world are not the same as each other in terms of form, content, and purpose, in general, all of them have the same formal position, namely the Constitution as the Basic Law because the constitution contains provisions and rules regarding fundamental matters in the life of a country. and the Constitution as the Supreme Law. IDG Atmadja in the book explains the identifiable constitutional position, 3 (three) positions of the constitution of a country.

First, seen from the position of the "constitution" as " *basic law* ", it contains basic norms that direct how the government

gets the authority to organize the implementation of state power. *Second*, in terms of the hierarchy of statutory regulations, the "constitution" as the "supreme law" has a "strong" position, meaning that other legal products may not conflict with the constitution, and if they are contradictory, they must be annulled. The cancellation can be through the principle of preference, namely the legal principle " *lex superior derogate legi inferiori* " (higher laws and regulations override lower laws. Cancellation of product statements can be done through " *judicial review* " by the Supreme Court, testing of laws and regulations under the law against the law; or the Court Constitution, judicial review of the Basic Law (Constitution)

Third, the constitution as a legal and political document occupies a "special" position, in addition to the substance or material it contains basic legal norms, it also contains a birth certificate of a new country (*a birth certificate*), the inspiration to realize the ideals of the state and legal ideals, therefore constitutional norms also control other norms.

Comparative Theory of Law

Comparative law has several foreign terms, namely *Comparative Law*, *Comparative Jurisprudence*, *Foreign Law* (English term), *Droit Compare* (French term), *Rechtsgelijking* (Dutch term), and *Rechtsvergleichung or Vergleichende Rechlehre* (German term).

According to Barda Nawawi Arief in his book citing several opinions of legal experts regarding the term comparative law, among others: Rudolf B. Schlesinger said that comparative law is a method of investigation to obtain deeper knowledge about certain legal materials. Comparative law is not a set of rules and legal principles and is not a branch of law, but a technique for dealing with foreign legal elements of legal issues.

Thus, related to this title, the comparison of the constitutional system between the RDTL state and the Indonesian state which focuses on the constitution of each country aims to find out the weaknesses and strengths of the constitutional system adopted by the two countries.

Benefits of Comparative Law

According to Sunaryati Hartono, by conducting a legal comparison, benefits can be drawn, including:

- a) Universal (same) needs will lead to the same ways of organizing, and
- b) Special needs based on differences in atmosphere and history will lead in different ways.

According to Soerjono Soekanto, the usefulness of the application of comparative law is, among other things, that the research will provide knowledge about the similarities and differences between various fields of legal order and the basic understanding of the legal system.

With this knowledge, it is easier to hold unification, legal certainty, and legal simplification. The results of comparative law will be very useful for the application of law in a pluralistic society such as Indonesia, especially to find out which fields can be unified and which fields must be regulated by law between legal systems.

Purpose Comparative law

According to Randall, the purpose of comparative law is to collect various information about foreign law and to explore the experiences made in the study of foreign law in the context of legal reform. It is undeniable that a comparative study of law is carried out by studying the law outside the law that applies to the investigator. But in this way, it cannot be said to conduct a comparative study of law. Gathering materials derived from foreign laws is not the same as conducting legal

comparisons. It was only when people worked on the collected materials according to certain directions that a comparative study of law took place. Cultivation of this can be done based on desire, among others, first, showing the differences and similarities that exist between the legal system or legal fields studied.

Second, explain why such differences or similarities occur and what factors cause them. Third, provide an assessment of each system used, and fourth, find the principles of the system obtained as a result of the tracking carried out by comparing them.

Constitutional System Theory

The word system comes from the Latin *systema*. A system is a unit consisting of components or elements that are connected to facilitate the flow of information, material, or energy. The word system is widely used in everyday conversation, in discussion forums, and scientific documents. This word is used for many things, and in many fields too, so its meanings are varied. In the most general sense, a system is a collection of objects that have relationships among them. While the word state administration comes from a combination of 2 (two) words, namely governance and state. The word governance has a meaning, namely regulating and the state has the meaning, namely an area on the surface of the earth whose political, military, economic, social, and cultural power is regulated by the government in the area.

Conceptual framework

Country concept

The word "state" has two meanings. First, the state is a community or region which is a political unit. In this sense India, South Korea, and Brazil are countries. Second, the state is the central institution that guarantees political unity, which organizes and thus controls the territory. Meanwhile, in political science, the term "state" is an

agency (tool) from a society that has the power to regulate human relations in society and publish symptoms of power in society.

Roger F. Soltau for example, in his book *Introduction to Politics*, says: "Political science studies the State, the goals of the State. the state and the institutions that will carry out these goals, the relationship between the state and its citizens and the relationship between states" (*Political Science is the study of the state, its aim and purposes the institutions by which these are going to be realized, its relations with its members, and another state*)."

State Elements

A country must have three important elements, namely people, territory, and government. These three elements by Mahfud MD are referred to as constitutive elements. These three elements need to be supported by other elements such as the existence of a constitution and international recognition by Mahfud d with declarative elements.

- a) The people in the sense of the existence of a country are a group of people who are united by a sense of equality and together inhabit a certain area.
- b) The territory is an element of the state that must be fulfilled because there cannot be a state without clear territorial boundaries.
- c) The government is a state apparatus in charge of leading state organizations to achieve the common goal of establishing a state. The government, through state apparatus and instruments, establishes laws, implements order and security, and makes peace and others in the context of realizing the interests of its various citizens.
- d) Recognition of other countries; The element of recognition by other countries is only to explain the existence of a state. This is only declarative, not constitutive, so it is not absolute.

This recognition is based on the fact that a political society has met the three main elements of the state (region, people, and sovereign government). Meanwhile, *de jure* recognition is an acknowledgment of the legitimacy of a country based on juridical considerations according to law. By obtaining *de jure recognition*, a country gets its rights in addition to its obligations as a member of the family of the world's nation. The rights and obligations referred to are the rights and obligations to act and be treated as a fully sovereign state among other countries.

Power State Concept

The concept of the state according to Thomas Hobbes is a state of power (*machtstaat*), a strong state based on a social contract, the starting point of Hobbes's thinking about the state departing from humans as the center of all socio-political problems. According to Hobbes, humans cannot be approached with a religious normative approach, because this approach keeps people away from social reality. The best way to approach humans according to Hobbes is to see humans as a "mechanical device" and understand them from a mathematical -geometric approach. The first figure who influenced Hobbes' thinking was Francis Bacon, who made Hobbes aware of the importance of using reason and experimental methods in the world of science. Hobbes was also influenced by Bacon's authoritarian political ideas. Hobbes was a rationalist, while Bacon was an empiricist. René Descartes also influenced Hobbes's thinking that geometry could form an idealized model of systematic knowledge. Descartes also influenced Hobbes in viewing humans. Furthermore, Galileo Galilei, who succeeded in combining theoretical knowledge with practical science in his study of the workings of the universe, gave Hobbes the idea to use the same approach in studying humans and society. The principle of motion

adopted by Galileo to understand the universe also influenced Hobbes in seeing society. Galileo thought that the universe was a giant machine. Humans have a reason, unlike animals which only have instincts. With reason, humans can reflect, calculate, and be ruled by an argument. Reason also causes humans to look for rational reasons not to destroy each other. Humans are naturally equal, humans can act solely according to their desires, namely to satisfy their desires. He will always try to find ways and ways to achieve whatever makes him happy. On the other hand, it is because of that instinct that he tries in any way to avoid anything he doesn't like. According to Hobbes, the nature inherent in humans is what gives birth to competition among humans.

Rule of Law concept

The principle of a democratic rule of law adopted by the democratic republic of Timor-Leste is affirmed in Article 1 paragraph (1) of the 2002 RDTL constitution, although it has been written in the abstract, because in a state document, especially the constitution, it should be, therefore, to better understand the concept The democratic rule of law that is embraced by the state needs to reflect on the history of the emergence of the rule of law. About the first state of law, etymologically, the term state of law or state based on law is a term that comes from a foreign language, such as "*rechtsstaat*" (Dutch), "*etat de droit*" (France), "*the state according to law*", "*legal state*", "*the rule of law*" (UK). Historically, the term rule of law has long been known and adopted in many countries since the XVIII century, this term was then popular only around the XIX century to the XX century. The concept of the rule of law at this time has become a model for countries in the world, it can even be said to be almost adopted by most countries in the world. The concept of the rule of law has been adopted by all countries as a concept that is

considered the most ideal. The principle of the rule of law prioritizes the norms reflected in the laws and regulations, while the principle of democracy prioritizes the participation of the community in the administration of government. Emerging ideas, ideals, and the idea of a rule of law, apart from being related to the concepts of "*rechtsstaat*" and "*the rule of law*", also relates to the concept of "*nomocracy*" which comes from the words "*nomos*" and "*cratos*". The word nomocracy can be compared with "*demos*" and "*cratos*" or "*cratein*" in democracy. "*nomos*" means the norm, while "*cratos*". is power. What is imagined as the determining factor in the exercise of power is the norm or law. Therefore, the term nomocracy is closely related to the idea of the rule of law or the principle of law as the highest authority.

In English terms developed by AV Dicey, it can be related to The principle of "*rule of law*" that developed in the United States and became the jargon of "*the Rule of Law, and not of Man*". What counts as a leader in the law itself, not people. In Plato's book entitled "*Nomoi*" which was later translated into English with the title "*The Laws*", it is clear how the idea of nomocracy has been developed since ancient Greece. In modern times, the concept of the rule of law in Continental Europe was developed by, among others, Immanuel Kant, Paul Laband, Julius Stahl, Fichte, and others using the German term "*rechtsstaat*".

Meanwhile, in the Anglo- American tradition, the concept of the rule of law was developed by AV Dicey's pioneering name "*The Rule of Law*". According to Julius Stahl, the concept of the rule of law which he calls the term "*rechtsstaat*" includes four important elements, namely: 1. Protection of human rights. 2. Power-sharing. 3. Government by law. 4. State administrative court. Meanwhile, AV Dicey describes the existence of three important characteristics

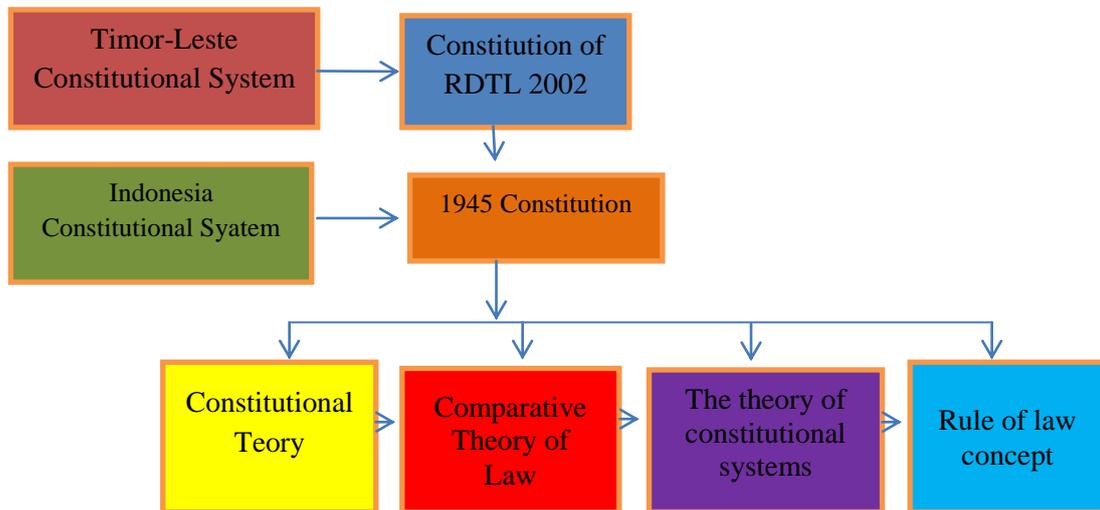
in every State of Law which he calls the term "The Rule of Law", namely: 1. *Supremacy of Law*. 2. *Equality before the law*. 3. *Due Process of Law*. The four principles of "rechtsstaat" developed by Julius Stahl above can be combined with the three principles of "rule of law" developed by AV Dicey to mark the characteristics of the modern rule of law today. In fact, by "The International Commission of Jurist", the principles of the rule of law have been added to the principle of *independence and impartiality of the judiciary*, which nowadays is increasingly felt as necessary in every democratic country. The principles that are considered important characteristics of the rule of law according to "The International Commission of Jurists" are 1. The state must obey the law. 2. The

government respects individual rights.

Impartial judiciary.

Utrecht distinguishes between the State of Formal Law or the State of Classical Law and the State of Material Law or the State of Modern Law. Formal rule of law concerns the formal and narrow definition of law, namely in the sense of written laws and regulations. While the second, namely the more recent State of Material Law, includes the notion of justice in it. Therefore, Wolfgang Friedman in his book "Law in a Changing Society" distinguishes between "rule of law" in a formal sense, namely in the sense of "organized public power", and "rule of law" in a material sense, namely "the rule of just law". laws".

Framework of thinking



In a conceptual framework, it can be described that the constitutional system of the two countries can be implemented based on the constitution and constitutional theory can explain the comparative system of constitutional law (the theory of the constitutional system) and relates to the legal system (the concept of state law).

Timor - Leste's Constitutional System Based on the 2002 RDTL Constitution

Regarding the RDTL state government

system as described in Chapter III by using the comparison method between articles and articles that are in the body of the RDTL Constitution that the system of government that has been adopted by the RDTL state is

the Parliamentary system, but in practice, the administration of the RDTL state is more known as the Semi P Residential Government System.

This is what often creates scientific debates between academics and politicians, therefore, to avoid multiple interpretations, the author borrows from CF Strong's opinion, saying that:

1. King or Queen or P the resident as head of state. The head of state is not responsible for any policies taken by the cabinet.
2. the executive is responsible to the legislature and what is called the executive here is the cabinet. The cabinet must assign or return its mandate to the head of state when parliament issues a motion of no confidence in a particular minister or all ministers.
3. In a two-party system, those appointed to form the cabinet and at the same time the Prime Minister are the heads of the political parties that win the general election, while the political parties that lose will act as opposition parties.
4. In a multi-party system, the cabinet formation must form a cabinet in a coalition, because the cabinet must have the support and of trust the parliament.
5. a dispute between the cabinet and parliament, and the head of state thinks the cabinet is on the right side, the head of state will dissolve parliament. And it is the responsibility of the cabinet to carry out general elections within thirty days (30) after the disbandment, as a result, if the political party that controls the parliament, is in the general election, the cabinet will rule. On the other hand, if the opposition party wins the general

election, the cabinet will automatically restore its mandate and the winning political party will form a new cabinet.

Constitutional History of the Democratic Republic of Timor- Leste

Historically, the birth of the East Timorese constitutional system, seen from the history

of its independence, where the independence of the state of Timor - Leste was not recognized from 1975 to 1999 and was recognized after the restoration of independence on May 20, 2002.

Looking at the constitutional history of RDTL, it is necessary to understand the importance of the constitutional experience that started from 1974 to 1999.

Pertama, the independence of Timor - Leste from Portuguese colonial rule, started with the flower revolution that occurred on 25 April 1974 in Portugal led by General Salazar who was dissatisfied with the monarchy system before it was applied to the Portuguese government. The revolution that occurred was not wasted by the youth of Timor-Leste at that time.

History begins in 1974, after experiencing the "Flower Revolution" that toppled the Salazar regime, Portugal began the process of decolonization of all its colonies based on the principle of self-determination. On 27 July 1975, Portugal's Law Number 7 of 1975 stipulates the holding of general elections in Portuguese Timor to form a People's Assembly in 1976. This People's Assembly will then form a new government and Portugal will hand over its powers to the new Timor. in October 1978.

This decolonization process was met in Portuguese Timor with the formation of political parties, each with its aspirations. The three largest political parties are União Democrática Timorense (UDT) which wants

gradual independence through “progressive autonomy” under Portugal, Frente Revolucionária do Timor Leste Independente (Fretilin) which wants immediate independence, and Associação Popular Democrática de Timor (Apodeti) which wants integration. autonomous with the Republic of Indonesia. Recently, smaller political parties have also emerged, including Klibur Oan Timor Ascustomn (KOTA), and Partido Trabalhista (Labor Party).

Second, the formation of the 1975 constitution, the constitution formed by the Fretilin party through the National Political Commission stipulates the Constitution as the highest law after Timor-Leste declared its independence on 28 November 1975, although it was only unilaterally enforced by the government at that time, back at the beginning the formation of the 1975 constitution, which had been drafted by several members of the CPN. The aim is to prepare Timor-Leste as a state and must have a constitution.

In January 1975, UDT and Fretilin formed a coalition based on the principles of independence, rejection of integration with Indonesia, and the formation of a transitional government consisting of representatives from both parties. However, this coalition failed to overcome the differences that arose among supporters of each party and then broke up in May 1975. The situation then quickly deteriorated, leading to open clashes between supporters of the two parties.

Third, Establishing a State Institution following the 1975 Constitution. On 11 August 1975, UDT with the support of the Portuguese Timorese police commander launched an armed movement, occupied some government facilities, and arrested and detained hundreds of Fretilin leaders. Fretilin with the support of the sons of East

Timorese members of the Colonial Army, launched a counter-offensive against UDT on 20 August 1975. The attention of the Portuguese central government turned to other matters, and as the situation worsened, on 26 August 1975, the Governor of Portuguese Timor Mário Lemos Pires fled to the island of Ataúro with the remaining group of government officials. As a result of this armed conflict, UDT members fled to Indonesian territory in early September 1975 and Fretilin remained in control of the area. Three other parties, Apodeti, KOTA and Trabalhista followed UDT across the border. They brought thousands of people into Atambua, NTT.

Fourth, is the formation of a government structure. The Fretilin struggle with the people for independence continued until the formation of the Provisional Government of East Timor (PSTT) on 17 December 1976. Fretilin continued to fight against the PSTT, the majority of which were members of UDT and Apodeti. On 17 July 1976 East Timor officially became the 27th province of the Republic of Indonesia with the ratification of Law Number 7 of 1976 by President Soeharto. The entry of East Timor into Indonesia made it more difficult for Fretilin to liberate East Timor. The entry of the Indonesian military movement made Fretilin even more miserable. Fretilin's struggle had to be paid for with the lives of its fighters, including indigenous people who were victims of Indonesian military atrocities.

Fifth is the invasion of the Indonesian government. The Fretilin party together with the people continued to fight against the Indonesian government until the popular consultation was held in 1999. The popular consultation was the result of the struggle of the entire people, especially Fretilin, to show the international world that various human rights violations had occurred during the Indonesian occupation. Based on the

results of the popular consultation, East Timor officially separated from Indonesia and became an independent and internationally recognized country on 20 May 2002.

Sixth, the struggle for independence The long history of Timor - Leste has written a historical record of the struggle for Fretilin as the political party that pioneered independence which is very close to the hearts of the people. In the Timor Leste Constitution, the unofficial translation of the preamble states that:

After the liberation of the People of Timor Leste from colonialism and the illegal occupation of the Motherland of Maubere by foreign powers, the independence of Timor Leste, was proclaimed by the Revolutionary Front for Free Timor - Leste (FRETILIN) on 28 November 1975, was internationally recognized on 20 May 2002.

The drafting and promulgation of the Constitution of the Democratic Republic of Timor - Leste was the culmination of centuries of resistance by the people of Timor - Leste, which escalated after the invasion on 7 December 1975. The struggle against the enemy, which was initially under the leadership of FRETILIN, was expanded to become a comprehensive form of political participation, particularly after the formation of the National Council for the Maubere Resistance (CNRM) in 1987 and the National Council for the Resistance of the Timorese People (CNRT) in 1998.”

Seventh, youth and women demonstrations in 1991. Historically, on 12 November 1991, pro-independence groups held a mass for the death of Sebastiao Gomes at the Motael Church, Dili. After the mass, a crowd of approximately 2500 people marched to the Santa Cruz cemetery. This funeral event later became a pro-independence demonstration at the Santa Cruz cemetery.

The funeral ceremony activity turned into a demonstration by a pro-independence group that led to clashes between the demonstrators and the security forces.

It started with the mass of the body of Sebastiao Gomes at the Motael Church, then the time to deliver the body to the Santa Cruz cemetery, while some people joined in the middle of the trip and some were waiting to join the Santa Cruz cemetery. Then banners were raised calling for UN involvement in East Timor, support for Xanana Gusmao, and self-determination. The demonstration contained a provocative element, resulting in clashes and shootings by security forces. The shooting began as the demonstrators arrived at the Santa Cruz cemetery. Soldiers opened fire with automatic weapons at unarmed demonstrators (Commission de Acolhimento Verde De Reconciliation).

Eighth, the agreement between Portugal, Indonesia, and Timor - Leste led by the United Nations in 1975, when the Flower Revolution took place in Portugal and the last Governor of Portugal in Timor - Leste, Lemos Pires, did not get an answer from the Central Government in Portugal to send reinforcements to Timor - Leste, which was in the midst of a civil war, Lemos Pires ordered to withdraw the Portuguese soldiers who were still holding out in Timor - Leste to evacuate to Pulau Kambing or known as Pulau Atauro. After that FRETILIN lowered the Portuguese flag and declared Timor - Leste as the Democratic Republic of Timor - Leste on 28 November 1975. According to an official report from the United Nations, during his 3 months in power when there was a government vacuum in Timor - Leste between September, In October, and November, Fretilin massacred about 60,000 civilians (most of whom were supporters of the integration faction with Indonesia). In an interview on 5 April 1977 with the *Sydney Morning Herald*, Indonesian Foreign Minister Adam Malik said that "the death

toll stands at 50,000 or perhaps 80,000". Shortly thereafter, pro-integration groups declared integration with Indonesia on November 30, 1975, and then asked for Indonesian support in taking over Timor-Leste from Communist-leaning FRETILIN.

When Indonesian troops landed in Timor - Leste on 7 December 1975, FRETILIN accompanied by thousands of people fled to mountainous areas to fight the Indonesian troops. More than 200,000 of these residents later died in the forest due to aerial bombardment by the Indonesian military and some died of disease and starvation. Many also died in the city after surrendering to the Indonesian army, but the International Red Cross Team that worked with these people was unable to save all of them.

Apart from the victims of civilians in the forest, there were also massacres by the radical group FRETILIN in the forest against more moderate groups. So many FRETILIN figures were killed by fellow FRETILIN while in the forest. All of these stories are retold by people like Francisco Xavier do Amaral, the First President of Timor - Leste who declared Timor - Leste's independence on 28 November 1975.

If General Wiranto (at that time Lt.) did not save Xavier in the hole where he was imprisoned by FRETILIN in the forest, so maybe Xavier could no longer be the Chairman of the ASDT Party in Timor Leste. Besides Xavier, there was also a FRETILIN sector commander named Aquiles who was declared missing in the forest (most likely killed by the FRETILIN radical group). Commander Aquilis' wife is now in Baucau and is still asking other FRETILIN commanders in control of the Eastern sector at that time about her husband's whereabouts.

During the civil war in Timor - Leste over a period of 3 months (September-November

1975) and during the 24 years of Indonesian occupation (1975-1999), more than 200,000 people was declared dead (60,000 people officially died at the hands of FRETILIN according to UN official reports). The rest died at the hands of the Indonesians during and after the invasion and some died of starvation or disease. The CAVR results state that 183,000 died at the hands of the Indonesian military due to chemical poisoning from napalm bombs and mortars.

Ninth, UNAMET 's responsibilities, The realization of the right to self-determination is the right solution for the conflict in East Timor from the colonial period to the period of integration with Indonesia. The realization of the right to self-determination was achieved through a popular opinion poll facilitated by UNAMET. The realization of this right brought East Timor into a new state in the millennium century with the name of the Democratic Republic of Timor Leste. Conflict resolution through the realization of the right to self-determination has the effect of escalating conflict and impartiality controversy that is alleged to be against UNAMET. This controversy became one of the issues debated post-referendum. UNAMET was accused of siding with pro-independence and trying to separate East Timor from Indonesia. The undeniable fact is that the presence of UNAMET fulfills the basic needs of the East Timorese people in a conflict situation. East Timor became the arena of international political battles.

Tenth, during the referendum and the administration of UNTAET during the UNTAET period in Timor - Leste land issues were managed by the institution established during the UNTAET administration in Timor - Leste. The agency tasked with overseeing land issues in Timor - Leste is *The National Directorate for Land and Property / DNTP* UNTAET and the UNTAET government has also issued various regulations aimed at regulating land in Timor - Leste as follows:

1. UNTAET Regulation Number 1 of 1999 dated 27 November 1999 concerning the Authority of the UNTAET Transitional Administration in Timor - Leste.
2. UNTAET Regulation No. 27 of 2000 concerning Temporary Prohibition on the sale and purchase of land in East Timor by Indonesian Citizens who do not Permanently Live in East Timor, as well as Indonesian Legal Entities.
- e) Formation and debate on the formation of the 2002 Constitution by 12 political parties and 1 independent in Assembleia Constituent.
- f) Approval and Ratification of the RDTL Constitution
- g) Enforcement of the RDTL Constitution and Restoration of Independence

Eleventh, preparation for the Restoration of Independence in 2002

The problem of land during the independence period is getting more complex because this happened inseparable from the 2 previous governments, namely: the Portuguese colonizers and the Indonesian occupation of Timor - Leste with the September 1999 operation by the Militia and the TNI as a result of the results of the popular consultation conducted in Timor Leste. by UNAMET. When Timor - Leste was under the provisional government of the United Nations through the UNTAET mission in charge of preparing the government of Timor - Leste to become an independent country, on 20 May 2002 Timor - Leste was recognized by the international community for its independence day on 28 November 1975.

- a) Establishment of a Constitutional Commission based on the decision of the head of government of Camel et al . number 3 of 2001
- b) election in 2001 according to Untaet regulation number.... 2001
- c) Election of A assemble Council members _2001 Constituent Assembly
- d) Formation of Assembleia Constituent based on Untaet regulation number 2 of 2001

History can be seen from the 2002 RDTL Constitutional Basic Law, and the form of government of Timor - Leste is SemiPresidential, meaning that the President is the Head of State and the Prime Minister is the Head of Government. Thus starting from independence, Timor-Leste adheres to a democratic state system, meaning that the state recognizes basic human rights.

As a democracy, Timor-Leste's form of state is a Republic with a Semi - residential Government System. The head of state is led by a president and the head of government is led by a prime minister, where in the provisions of the RDTL Constitution in Article 1 paragraph 1; The Democratic Republic of Timor-Leste is a democratic, sovereign, independent, and united constitutional state, based on the will of the people and respect for human dignity, from the provisions of Article 1, it can be described through the functions of State institutions in the provisions of Article 69 concerning the powers of State institutions, b. Both the President and the Prime Minister both have 5 (five) years of office.

Meanwhile, the Prime Minister will be appointed by the parliamentary majority party or coalition of parliamentary majority parties, then appointed and inaugurated by the President of the Republic, after consultation with the political parties occupying seats in the National Parliament (East Timor Constitution 2002 P origin 106 paragraph 1).

The Democratic Republic of Timor-Leste adheres to a unicameral system in the government system, namely, there is only one legislative body called the National Parliament (Parlamento Nasional). The National Parliament consists of a minimum of 52 (fifty-two) and a maximum of 65 (sixty-five) members.

Historically, Timor-Leste's First Cabinet was formed on 30 November 1975 after Fretilin unilaterally proclaimed Timor-Leste's independence on 28 November 1975, in which Nicolau Lobato was elected Prime Minister. But this cabinet only runs for 9 days. This is because, on December 7, 1975, Indonesia annexed and controlled Timor-Leste.

Structure D in State Institutions Super Political Structure

Super Structure of Political System as an atmosphere of political life government in a country. In the State of the Democratic Republic of Timor-Leste, the Superstructure of the Political System itself is stacked on the Trias Politica where Timor-Leste has 4 (four) state institutions, namely the President, National Parliament (legislative), Governo (executive), Tribunal (judicative) as stated in Article 67 2002 Constitution.

Political Infrastructure

Political System Infrastructure is power groups politics in people's lives that are formed and participate actively. There are 6 (six) components of the Political System Infrastructure, namely (1) Political Parties, (2) Interest Groups, (3) Pressure Groups, (4) Political Communication Media Groups, (5) Political Figures, and (6) General Elections.

Structure in State Institutions

According to Article 69 of the 2002 Constitution, the Government of Timor-Leste adheres to a semi-presidential system of government and is based on a separation

of powers system. This principle is used by four state institutions, namely, the President of the Republic, the National Parliament, the Government, and the Judiciary. The government as an executive institution has the power to enforce laws.

In the Timor - Leste constitutional structure, state institutions are divided into three institutional levels, namely:

1. State institutions were established based on the Constitution, Government, Presidential Regulations, and Presidential decrees;
2. State institutions were established based on the 2002 RDTL constitution, but regarding the authorities, functions, and duties regulated by laws and regulations, PNTL, F-FDTL, Minister of Public, Central Bank, PDHJ ;
3. State institutions established by law include KAK, Public Funds (CFP), Elisaun National Commission (CNE), and PSIK.

The position of these institutions is not within the realm of the executive, legislative, or judicial branches of power. However, neither can these institutions be treated as private organizations or non-governmental organizations which are more often called government NGOs or NGOs. Auxiliary state institutions at first glance are non-governmental like NGOs because they are outside the executive government structure.

The concept of state institutions does not necessarily come from or see the views of Hans Kelsen because Hans Kelsen's view of state institutions is a narrow definition of institutions. In a broad sense, state institutions are identical to individuals who carry out certain functions or positions in the context of the state. The individual can be said to be a state institution because it

carries out the function that creates the law and the function of applying the law.

In addition, another factor that triggers the formation of auxiliary state institutions is the tendency in contemporary administrative theory to shift regulatory and administrative tasks to become part of the tasks of independent institutions. In connection with its nature, John Alder classifies this 1 type of institution into two, namely:

1. *Regulatory*, which functions to make rules and supervise private relationship activities;
2. *Advisory*, whose function is to provide input or advice to the government. Jennings, as quoted by Alder in *Law, Constitutional and Administrative*, mentions five main reasons behind the establishment of auxiliary state institutions in a government, the reasons are as follows:
 1. There is a need to provide cultural services and personal services that are expected to be free from the risk of political interference;
 2. There is a desire to regulate politics; a market with non-regulation
 3. The need for regulation regarding independent professions, such as the professions in the fields of medicine and law;
 4. The need to procure regulations regarding technical services;
 5. services that are semi-judicial in nature and function to resolve disputes out of court (alternative dispute resolution).

An English philosopher John Locke (1632 - 1755) separated power basically into three parts that have their respective duties. The power of the institution, directly or indirectly, must stand alone. According to John Locke, power is divided into executive institutions (*power*), legislative institutions (*legislative power*), and federative institutions (*executive federative power*).

The *separation of powers* proposed by John Locke has general functions, namely ;

1. **Legislative institutions** _ _

An institution that functions as a maker of laws and fundamental state regulations that are the basis for implementing the performance of executive institutions. The legislative field cannot be transferred to anyone or any institution, because legislative power is a manifestation of the people's delegation to the state.

2. **Executive E Board**

The executive agency functions as the implementer of the laws that have been established by the Legislature. In John Locke's understanding, as the implementing agency for laws and regulations established by the legislature, the executive director also has a function as a supervisory or judicial body.

3. **Federative Institution** _

Institutions related to foreign relations issues, determining war, peace, leagues, and alliances between countries as well as transactions with foreign countries. Locke did not include federal power in the executive power for practical reasons. To keep the power running well, then each state institution or institution must be held by a different person. This federative power is considered important because it is influenced by the political situation between nations that are very prone to wear.

Form of State Democratic Republic of Timor - Leste

The form of the State is Unity. The Tetun language in East Timor or officially Timor - Leste, Tetun language: *East Timor*, or officially the Democratic Republic of Timor-Leste (Portuguese: *República Democrática de Timor-Leste*, Tetun: *Repúblika Demokrátika Timor-Leste*),

previously known as East Timor, is an island nation in Southeast Asia, this country is to the north of Australia and the eastern part of the island of Timor. In addition, the territory of this country also includes the islands of Kambing or Atauro, Jaco, and the exclaves Oecussi Ambeno in West Timor.

East Timor was colonized by Portugal in the 16th century and was known as Portuguese Timor until 28 November 1975, when the Revolutionary Front for the Independence of Timor-Leste (FRETILIN) declared the territory's independence. Nine days later, the State of Indonesia invaded and later annexed East Timor. East Timor was declared the 27th province by Indonesia the following year. The Indonesian occupation of East Timor was marked by decades of intense conflict between separatist groups (especially FRETILIN) and the Indonesian military.

From history or historically that the State of Timor-Leste, seen from the form by adhering to the form of the State as;

Democratic State: Meaning; A democratic model of government based on people's sovereignty or basing its power on the people's choice or will through the mechanism of general elections (elections) that take place in an honest, free and fair manner. By implementation Timor -L Este that; Republica Democratica de Timor-Leste (RDTL) or commonly referred to as the State of Timor-Leste is the youngest country in Southeast Asia and is one of the independent countries in the XXI century. This is because, although on 28 November 1975 Fretilin unilaterally declared independence for Timor-Leste, Timor-Leste's independence was only officially recognized as an independent and sovereign state on 20 May 2002 after 83% of the people of Timor-Leste elected Xanana Gusmão as President of Timor. -Leste

through elections on April 14, 2002; means open implementation. Based on the RDTL constitution article 62 paragraph (1) paragraph (2).

State: It means; a country where the reins of government ultimately branch from the people, not from the principle of aristocratic descent, and often led by a president (Constitution RDTL article 1)

Unitary State: Meaning; a sovereign state organized as a single entity, where the central government is supreme and the subnational units exercise only powers chosen by the government center to delegate.

Parliamentary State: It means;

1. There is a separation between the Head of State and Head of Government. However, there is no separation between executive and legislative powers.
2. Both the executive and are in Parliament. The executive ranks are members of parliament. Hence this system is called a parliament.
3. The head of government is the head of the majority power in parliament. The Head of State only has symbolic power outside the executive and legislative branches.

The form of the state is the boundary between a sociological review and a juridical review of the state. Sociological review if the State is seen as a whole (*Ganz Heit*) without looking at its contents, while juridically if the Statereview is only seen from its content or structure. Meanwhile, legally, if the Statereview is only seen from its content or structure.

Form of government

Timor - Leste is a sovereign country with a democratic republican government system and uses a semi-presidential form of

government, meaning the president is the head of state and the prime minister is the head of government. And the implementation of the RDTL State government is based on the powers of State institutions including the President, Parliament, Government, and Courts, from this system of government, Timor - Leste applies to control of the state administration system as the powers granted by the 2002 RDTL Constitution. And in the implementation of the Residential Semi P System the; Semi Presidential system is a system of government that combines both systems of government: presidential and parliamentary.

Starting from the system of government, there are characteristics of this semi-residential government that the State of Timor - Leste has implemented until now, such as:

1. From the Presidential
The executive power of the President is appointed based on the people's democracy and is elected directly by them or through the people's representative body.
And the President has the prerogative (privilege) to appoint and release ministers who lead in departments and non-departments.
2. From Parliament Headed by a, The prime minister is only the head of government while the head of state is headed by the president, thus, ministers are only responsible for legislative power. Therefore, the executive power is responsible for the legislative power. executive power can be dropped by the legislature.

In implementing the system of government in Timor Leste, the semi-presidential system of government has the following advantages:

1. The executive body is more stable in its location because it does not depend on parliament.
2. The term of office of the executive body becomes clearer with a certain period. For example, the term of office of the President of the United States is four years, the President of the Philippines is six years and the President of Indonesia is five years
3. The cabinet work planner is easily adjusted according to the period of his tenure.
4. The legislature is not a place for regeneration for executive positions because it can be assigned by outsiders, including the parliament itself.
 - a. Disadvantages of Presidential Government System:
Executive power is outside the direct supervision of the legislature so that it can make absolute power.
 - b. The accountability system is not clear.

Decision-making or public policies are generally the results of bargaining between the executive and the legislature so that indecisive decisions can occur. Decision-making takes a long time, as is the current conflict between Timor Leste's state institutions.

RDTL Government System

Moving on from the 2002 RDTL Constitution, it is not explicitly explained, but to find out the system of government adopted by the RDTL state, can be traced constitutionally through the articles listed or affirmed in the body of the RDTL Constitution, then using the general government system theories. explained by experts.

Based on the constitutional dogma, applying the powers of state institutions based on the provisions of the RDTL constitution that;

President	Article 74 of the RDTL Constitution that; The President of the Republic is the Head of State, the symbol and guarantor of national independence and unity The state, is the regulator of the running of democratic institutions.
National Parliament	Article 92 of the RDTL Constitution that; The National Parliament is the sovereign body of the Democratic Republic of Timor - Leste, representing all citizens of Timor - Leste with legislative, supervisory, and political decision-making powers.
Government	Article 103 of the RDTL Constitution that; The government is the sovereign body of the State which is responsible for controlling and implementing the general politics of the State and is the highest body of the General Administration.
Court	Article 118 of the RDTL Constitution that; Paragraph (1) The court is a sovereign body with the authority to enforce the law, on behalf of the people. Articles 123, 124, and 126 of the 2002 RDTL constitution
The authority of State Institutions rests with the RDTL Constitution	Moving on from the power of each state institution, referring to the provisions of the RDTL Constitution, where the authority and power can be followed up by the constitution.

Based on the explanation of the constitutional dogma above, if it is related to the constitutional theory said by CF Strong "The constitution can also be said to be a collection of principles that regulate the power of government, the rights of the governed (the people), and the relationship between the two, a constitutional expert British nationals.

The classification of state forms is based on various aspects of the state such as state buildings, constitutions, representative bodies, or executive bodies. There are five criteria put forward by CF Strong to determine the form of a state, namely:

- 1) Seeing the country how it is built, is it a unitary state or a union state
- 2) Seeing how the constitution is, is it located in a text or not
- 3) Regarding the representative body, how it is structured, who has the right to sit there
- 4) Looking at the executive body, whether he is responsible to parliament or not, whether his term of office is certain or not

- 5) What are the laws that apply in that country?

CF Strong also stated about 3 (three) main materials regulated in the constitution, including:

1. Government Power.;
2. Ruled rights (human rights); and
- 3 The relationship between the ruler and the ruled.

System State Administration of the Unitary State of the Republic of Indonesia Based on the 1945 Constitution State History Republic of Indonesia

The journey of the Indonesian state administration since independence on August 17, 1945, has experienced ups and downs both in ideas, arrangements, and applications. Historically, the dynamics of the constitutional history show that in Indonesia several constitutions have been enacted: the 1945 Constitution, the RIS Constitution, the 1950 Constitution, the 1945 Constitution, and now the 1945 Constitution as a result of the amendments in 2000 – 2002.

In the various constitutions, Indonesia has experienced or tried to become a united state (RIS), although later it returned to being the Unitary Republic, Indonesia has experienced a parliamentary government system, guided democracy, and presidential government. This dynamic picture shows that the constitution has always been the basis for changes in the state administration of a country. In the constitutional history of a country, the constitution is used to regulate and at the same time limit the power of the state.

However, the 1998 Reformation that took place in the Republic of Indonesia brought a fundamental change to the structure of the State Administration of the Republic of Indonesia. During the Reformation period, there was a desire of the people to renew the constitution of the Republic of Indonesia, namely the 1945 Constitution of the Republic of Indonesia (UUD 1945). This desire is based on the socio-political, legal, and economic dynamics that occurred during the 1998 reformation which wanted the goals of independence to be realized, namely: Protecting the entire Indonesian nation to promote the general welfare, educating the nation's life, and participating in carrying out world order based on independence based on the 1945 Constitution.

Each element has the nature of attraction, cohesive; so that the form of the totality of the unit is maintained intact in its consistency". The notion of the system can also be associated with the constitutional system which is defined as a constitutional arrangement, namely everything related to state organizations, both regarding the composition and position of state institutions concerning their respective duties, functions, and authorities as well as relations with each other.

State Institution Structure Republic of Indonesia

The constitutional system of the Republic of Indonesia according to the 1945 Constitution does not adhere to any state system but is a distinctive system according to the personality of the Indonesian nation. In the structure above, we see that the composition of the Republic of Indonesia's state institutions before the amendment to the 1945 Constitution was different from after it was amended several times. Thing that differentiate is the position of Representative Consultative Assembly whereas before the amendment of constitution 1945 is institution highest in structure. However, after the amendment constitution, 1945 is as constitution highest upheld in Indonesia. Position MPR equivalent with an institution which other. Before the amendment constitution in 1945, there is the existence of DPA was known as Board of Consideration of the Country, but after the amended DPA abolished, DPA removed then function and authority is no longer relevant.

After the change of constitution 1945 be formed Board of Representative Area. DPD does not replace the role of the DPA after the 1945 Constitution was amended but as along arm from the central government to the regions then it is represented by the DPD, isn't it? As State considerations in determining direction policy.

Indonesia is experiencing the dynamics of very rapid constitutional development. Two main things become urgent agendas after these developments, namely the checks and balances system agenda between state institutions and the demands for clean governance, especially the administration of government that is free from elements of corruption, collusion, and nepotism. The check and balances system agenda between state institutions can be seen by the shift in

supremacy, from the supremacy of the People's Consultative Assembly to the supremacy of the constitution. Since the reformation period, the People's Consultative Assembly is no longer the highest state institution so all state institutions have an equal position in the checks and balances system.

The concept of triaspolitica put forward by Montesquieu in its development has become the basis for state administration in various countries. In the experience of the Indonesian state administration, the term "separation of power" tends to be connoted with Montesquieu's opinion in absolute terms. The three functions of power in Montesquieu's view must be distinguished and separated structurally into organs that do not interfere in each other's affairs (Jimly, 2009: 285). One of the demands for state institutions in administering a clean government was born because the people have had bad experiences with government regimes that are full of elements of corruption, collusion, and nepotism.

Authority in State Institutions

Every country certainly needs state organs or institutions to run the government structure to achieve the country's goals. State institutions themselves are formed in several sections based on different functions and responsibilities while carrying out their duties. Quoting from the book *State Institutions (In the 1945 Constitution of the Republic of Indonesia)* Laurensius Arliman S, Hans Kelsen, there are two definitions of state institutions in a broad sense and a narrow sense.

First, the institution in a broad sense, namely every individual or organization that has a specific function to achieve the goals of the state. Second, in a narrow sense, each individual can be said to be an organ or state institution if he has a certain legal position to do something on behalf of the state.

The balance and institutional relations are determined by the principle of the TriasPolitica or the triad in politics in the form of division of tasks and authority between the executive as the executor of government, the legislature as the maker of laws, and control over the government, and the judiciary as the party that must decide the resolution of conflicts in the division of tasks. , and determine sanctions for violations of the law. However, in the state system, the political balance is determined first of all by the balance between various political institutions. Political balance is another word for the balance of power, while the *balance of power is primarily the balance between political institutions, the balance of power, first of all, means a balance between political institutions.*

In English, to mention state institutions, the term political institution is used, while in Dutch terminology, the term staat organ is used, while in Indonesian it is used state institutions, state bodies, or state organs. In the Big Indonesian Dictionary, the term institution defines, among others (1) the origin (which becomes something); future (animals, animals, and plants); (2) the original form; (3) reference; bond; (4) agency (organization); (5) established patterns of human behavior. The dictionary gives examples of phrases that use the word institutions, namely government institutions which are defined as government agencies in the executive environment. So the word government is replaced with the state, meaning state agencies in all state government circles (executive, legislative, judicial). Furthermore, in Andrea Fockema's Legal Dictionary translated by SalehAdiwinata et al, the word organ is defined as follows;

First, equipment, equipment is a person or assembly consisting of people who based on the law or articles of association are authorized to express and realize the will of

a legal entity. Both countries and lower government agencies have equipment ranging from the king (president) to low officials, these officials can be considered as equipment, but this word is more widely used for high government bodies and government councils that have greater authority. represented regularly and definitely.

By definition, the state apparatus or commonly referred to as state institutions are institutions established to carry out state functions. Based on classical theories regarding the state, there are at least several important state functions such as the function of making laws and regulations (legislative function), the function of implementing regulations or the function of government administration (executive function), and the function of adjudicating (judicial function). Conceptually, the purpose of holding state institutions or state equipment is not only to carry out state functions but also to carry out actual government functions.

System Government of the Republic of Indonesia

Judging the term government system comes from a combination of two words, System and Government. First, The word system is a translation of the word system (English) which means arrangement, order, network, or method. While the government comes from the word government, which comes from the word command. So in a broad sense, the government is an act of governing carried out by the legislative, executive, and judicial bodies in a country to achieve the objectives of state administration.

The government system is defined as a complete order consisting of various components of government that work interdependently and influence each other in achieving the goals and functions of government. According to Aristoteles, the

system of government is to divide the form of government according to the number of people who rule and the nature of the government into six, namely: monarchy, tyranny, democracy, aristocracy, oligarchy, and republic.

CF Strong explains government in a broad sense as the activities of public bodies consisting of executive, legislative, and judicial activities in achieving the goals of a country, and in a narrow sense, that government is all forms of public agency activities and only consists of executive bodies.

Principles of the Indonesian Government

The main points of the Indonesian State Government System according to the 1945 Constitution before the amendments were contained in the explanation of the 1945 Constitution regarding the seven main keys of the State Government System are as follows :

- a. Indonesia is a country based on the law (rechtsstaat).
- b. The highest state power is in the hands of the People's Consultative Assembly, hereinafter referred to as the MPR.
- c. Constitutional System _
- d. The president is not responsible for the DPR
- e. The President is the highest state government administrator under the MPR.
- f. The minister of state is an assistant to the president, the minister of state is not responsible to the DPR.
- g. The power of the head of state is not limited. Based on the seven main key systems of government, the Indonesian government system according to the 1945 Constitution adheres to a presidential system of government.

In the presidential system, the president has a relatively strong position and cannot be overthrown due to low political support. However, there are other ways to control the president, if the president and/or vice president commit certain violations, they can be dismissed through the mechanism regulated in the 1945 Constitution.

Differences and similarities between the two countries' administration systems

The state certainly has a government system that can be implemented based on interests in terms of administering the state administration, for the states of Timor-Leste and Indonesia implement the government system that;

ANALYSIS OF THE GOVERNMENT SYSTEM Timor -Leste with Indonesia _

<p>Indonesian State Government System</p>	<p>Constitutionally, Indonesia adheres to the Presidential P Government System which is a Republican State Government System in which the executive power is elected through general elections and is separated from other powers such as the legislature and the judiciary. And have their respective powers, and structurally the Republic of Indonesia has state institutions including; President and Vice President, People's Consultative Assembly where there are DPR and DPD, Courts. In maintenance The Indonesian State Government System which becomes the power in the state is the law, if viewed from the State of Indonesia it is a legal state, but in its application, the power of law can be emphasized in the state institutions that have been stipulated in the 1945 constitution.</p>
<p>Implementation of the Government System of the State of Timor - Leste</p>	<p>The basis for administering the RDTL government is based on the Preamble <i>and</i> Article 1 paragraph (1) of the Constitution. Article 1 paragraph (1) states "The Democratic Republic of East Timor is a democratic, sovereign, independent and unitary State based on the rule of law, the will of the people, and the respect for the dignity of the human person. (RDTL is a Democratic, sovereign, independent and united State based on the rule of law, the will of the people, and respect for human dignity)."</p>
<p>Organizer difference Government</p>	<ul style="list-style-type: none"> - The Democratic Republic of Timor - Leste, _ is a country with a System Semi Presidential Government while the Unitary State of the Republic of Indonesia constitutionally adheres to Residential P Governance System - Government affairs in Timor - Leste are carried out by the Prime Minister who is assisted by the Ministers, while government affairs in Indonesia are carried out by the President and Vice President. - The Prime Minister of Timor - Leste is elected from a multi-party based on the majority vote of the majority coalition, while the President and Vice President of Indonesia are elected by the people through an election based on a valid absolute vote.
<p>House of Representatives System</p>	<ul style="list-style-type: none"> - State House of Representatives for the Democratic Republic of Timor - Leste is Unicameral i.e. the National Parliament - Meanwhile, the Unitary State of the Republic of Indonesia has a Bicameral Representative Council System, namely the People's Representative Council (DPR) and the Regional Representative Council (DPD).
<p>Equality of governance</p>	<ul style="list-style-type: none"> - The form of state in both countries is the Republic. - Government system; <ol style="list-style-type: none"> a) The Head of State is a President b) Election of President and Vice President through elections with a term of office of 5 years. c) The president is directly elected by the people through elections. d) The President of the Republic is the Commander in Chief of the Armed Forces. e) Power in the Judicial field; The president has the power to pardon and grant a reprieve.

Administration of the Government of the Democratic Republic of Timor - Leste

The state is the highest organization, and that organization is a working system of state equipment that constitutes a whole, a working system that describes the relationship and division of tasks and obligations between each state equipment to achieve a certain goal.

The implementation of the Timor - Leste State Government System is based on the provisions of the 2002 RDTL Constitution article 69 (Separation of Powers Principle) that state sovereign institutions, to each other and in the implementation of their functions, must adhere to the principles of separation of powers and interdependence set out in the Constitution. Glancing at the separation of powers in the administration of the Timor - Leste State Government System, structurally, the authority of State institutions can interpret the powers they have, but in decisions on the public interest, State Institutions can look at the provisions limiting their respective powers. -each based on the basic law.

Meanwhile, from the point of view of the nature of the state, the state is a container rather than a nation created by the state with territorial boundaries to achieve the ideals or goals of its nation or it can also be said that the goals of the state are related to the nature of a state. Likewise, Aristotle's opinion is that the state is formed and maintained because the state aims to organize a good life for all its citizens.

The goal of a country is the ideal ideals of a country that the country wants to realize through the procedures or systematic legal instruments that exist in that country. According to Roger Soltau, the state aims to enable its people to develop and carry out their creativity as freely as possible.

In general, in this world, there are two kinds of known legal traditions, namely *Continental Law* (Germany, *Netherland*) and *Common Law* (USA (*generally*), *United Kingdom*), but there are also countries that try to combine the two legal traditions (Mixed). (South Africa and the USA in their national governments- Continental law). Based on the legal traditions owned by each country coupled with the development, ideas of the state, and the goals of the said citizens, the concept of the rule of law is slightly different between a country with a *common-law tradition* and a country with a *continental law tradition* (*modern law*). *Roman Law*), although both have views of the same country (Individualistic).

The State of Timor -Leste is a country that was formed to have the noble task to realize the country's goals. State tasks are divided into three groups. First, the state must protect residents within its territory. Second, the State supports or directly provides various services for people's lives in the social, economic, and cultural fields. Third, the state becomes an impartial arbiter between conflicting parties in society and provides a judicial system that guarantees basic justice in social relations. A country is considered to have independence and sovereignty over its citizens and their affairs as well as within the boundaries of its territorial territory. State sovereignty is an important element in ensuring the existence of a State.

Division or Separation of Powers

The division of power is a guarantee for the upholding of the rule of law in the life of the state and is a requirement to be included in the state constitution. In the state administration, the division of power is often known as the "TriasPolitica" concept by Montesquieu.

The concept of Trias Politica is a normative principle that powers should not be delegated to the same person to prevent abuse of power by those in power. This means that the Trias Politica concept offers a concept of state life by performing a separation of powers which is expected to be mutually exclusive in an equal position, so that they can control each other and balance each other out (*checks and balances*). In addition, it is expected to limit power so that there is no concentration of power on one hand which will later give birth to arbitrariness.

According to Montesquieu, a state that adheres to the notion of democracy requires the separation of state power into the organs of the Executive, Legislative, and Judiciary. The executive power is in charge of implementing the law, the legislative power is in charge of making laws and the judicial power is in charge of adjudicating violations of the implementation of the law.

Almost all countries in the world apply the TriasPolitica concept, including Timor-Leste. To determine whether the Timor - Leste government system applies the TriasPolitica concept or not, it can be seen in the Timor-Leste state constitution, namely the 2002 RDTL Constitution. The concept of TriasPolitica applied in the Timor-Leste government system is not pure. Before, the division of power in the government system was not only the Executive (President), Legislative, and Judiciary. In addition to these 3 (three) functions, they are further divided into Constitutive powers and Examiner Powers.

Meanwhile, after the Executive (President), Legislative and Judiciary, the Examiner's power still exists As a consequence of a democratic country that uses the principle of *checks and balances*, there is a balance of power between the branches of power, namely that each power can be supervised

by another power (supervision function). Supervision is an activity aimed at ensuring that state administrators are by the plan or can be interpreted as an activity aimed at guaranteeing the attitude of the government to run under applicable law.

The administration of State government by RDTL State institutions is based on Article 69 of the 2002 RDTL Constitution, substantially this article contains several meanings, first, based on the theory that Montesquieu said the separation of powers has formal and material meanings. If the separation of powers is formal, then the powers of institutions are not regulated concretely in a constitution or the constitution, but if the division of power is material, the powers of state institutions are regulated concretely in the constitution. Associated with the State of Timor - Leste adheres to a material power-sharing system because the powers of State institutions are regulated in the RDTL Constitution, and are different from the RDTL system .theformal separation of powers adopted by Indonesia, where the powers of state institutions are not explicitly explained but are followed up by statutory regulation.

The two institutional interdependencies, in Montesquieu's theory, want state institutions to be strictly separated from each other, but because of the development of modern states and the many needs of the state, the trias political theory is no longer used.

Arrangements and Authorities in the Timor - Leste Constitutional System

Constitutionally, the Democratic Republic of Timor - Leste has three state institutions in which there are main institutions, a second institution, and a third institution that support each other in the administration of government, but in the administration of Timor - Leste there are duties and functions of state institutions, from The provisions of the RDTL Constitution article 69 concerning

the separation of powers, state institutions from this article, can be seen in the arrangement of the duties and authorities of State institutions, some are directly regulated by the 2002 RDTL Constitution while State institutions are constitutionally outlined, but regarding authority, function and authority are regulated by laws and regulations. Then also state institutions that are born by legislation and constitutionally are not explained

First, state institutions whose authorities are directly or concretely regulated in the Constitution, the President of RDTL have three powers, namely :

- a) The original authority is regulated in Article 85 of the 2002 RDTL constitution
- b) Exclusive authority is regulated in Article 86 of the 2002 constitution
- c) The authority to conduct relations with other institutions is regulated in Article 87 of the 2002 RDTL Constitution

In addition to the authority possessed by the president of RDTL, he also has the right of veto as regulated in Article 88 of the 2002 RDTL Constitution. Regarding the veto power, the special right granted by the Constitution to reject and ratify proposed laws and regulations by the national parliament. The word special here does not mean that the President arbitrarily uses his rights, but there is an institutional relationship between the president, the parliament, and the court when a law that is not passed by the president is returned to the national parliament or asked the consideration of the supreme court to conduct a review as regulated in Article 85, 88, 126, 149 The 2002 RDTL constitution

The two institutions of the National Parliament have three functions as stipulated in P of origin 92 of the 2002 RDTL Constitution.

- a) Oversight function
- b) Political decision-making function
- c) The function of the formation of laws and regulations as stipulated in Article 95 of the 2002 RDTL Constitution, concerns the authority to form laws and regulations.

Third, government institutions that have the authority to administer the government in general as regulated in Articles 103, 115 of the 2002 RDTL Constitution, also have the authority to propose draft laws and regulations to the national Parliament for permits granted as regulated in Article 96 2002 RDTL constitution.

Fourth, the judiciary under Article 123 of the 2002 RDTL Constitution, the Supreme Court is the culmination of the RDTL judiciary as regulated in Article 124 of the RDTL Constitution, then the authority of the Supreme Court is regulated in Article 126 of the 2002 RDTL constitution, but so far the absence of a court Supreme Court as the highest judiciary of the RDTL State while its functions and authorities are delegated to the Court of Appeal as regulated in Article 164 of the 2002 RDTL Constitution and Article 110 of Law Number 11 of 2004

Relations between RDTL State Institutions in GOVERNMENT

The state as an association living together from the community is to have political power, regulate relations, to cooperate in society to achieve a certain goal living in a certain area.

The opinion of Harold J. Laski is that the State is a society that is integrated because it has a coercive authority that is legally higher than the individuals or groups that exist within the State, to achieve common goals. A society is called a state if the way of life that must be obeyed by both individuals and groups is determined by an authority that is binding and coercive.

The principle of implementing state government cannot be separated from the principle of the rule of law as stated in the chapter, the principle of legality is the basic principle for the administration of the government as regulated in Article 2 paragraph 2 of the 2002 R DTL Constitution. The administration of Timor - Leste was adopted as a semi-presidential system of government with the administrators of this system of government being able to understand.

Relations between State Institutions in Organizing government _Indonesia

Relations Between State Institutions Based on the amendments to the 1945 Constitution, state institutions can carry out their functions and authorities, coordinating with other state institutions to create *checks and balances* for good governance.

Relations between the President and the House of Representatives

The President has the authority by attribution according to the 1945 Constitution as the highest authority holder over the Army, Navy, and Air Force, but this authority is further limited by the Representative Consultative Assembly wherein in a state of declaring war, the president must remain with the approval of the DPR, as further regulated in Article 10 and Article 11 of the 1945 Constitution. Likewise, With the authority to appoint Ambassadors and Consuls, the President will pay attention to the considerations of the DPR as stipulated in Article 13 of the 1945 Constitution.

In addition to the linkage and distribution of authority between the MPR and the President, attributively the 1945 Constitution gives several prerogatives to the President as quoted from the book on State Administrative Law and Indonesian Administrative Court Law by Quarterly Point.

Relations Between State Institutions

The institution of state sovereignty can be seen from the 2002 RDTL Constitution by exercising power reciprocally, as in the provisions in article 69 that separation of powers can be carried out by, determining basic legal provisions, therefore, in the theory of separation of powers, to understand institutions or State organs more deeply, we can approach them from Hans Kelsen's view of the concept of the State Organ in his book General Theory of Law and State.

Hans Kelsen explained that “Whoever fulfills a function determined by the legal order is an organ. This means that the state organs are not always organic. Besides organic organs, more broadly, every position determined by law can also be called an organ, as long as its functions are norm creating and/or norm applying. “These functions, be they of a norm creating or of a norm applying character, are all ultimately at the execution of a legal sanction.

From the point of view of Hens Kelsen's opinion, it can be analyzed that the relations carried out by State institutions in carrying out their duties and functions, but the relations carried out State institutions, each task can be determined by law, this explains that the application.

Differences and Similarities of Implementation Systemstate administration Both Countries

<p>Indonesian State Government System</p>	<p>Indonesian constitutionally adopts a presidential system of government which is a republican system of government in which executive power is elected through general elections and is separated from other powers such as the legislature and the judiciary. And have their respective powers, and structurally the State of Indonesia has state institutions including; President, Parliament, Government, and Courts In the administration of the Indonesian state government system, the power in the state is the law, when viewed from the state of Indonesia is a legal state, but in its application, the power of law can be emphasized in state institutions that have been stipulated in the 1945 constitution.</p>
<p>Implementation of the Government System of the State of Timor -Leste</p>	<p>Based on the Constitution, the government of Timor-Leste adheres to a Semi - Presidential Government System with a separation of powers system, so that there are four high-ranking state institutions, namely the President of the Republic, the National Parliament, the Government, and the Judiciary. The government as an executive agency has the power to enforce laws.</p>
<p>Differences and similarities between government administrators of the two countries</p>	<ol style="list-style-type: none"> 1. affairs in Timor Leste are carried out by the Prime Minister, while Government in Indonesia is carried out by the President and Vice President 2. The constitution of Timor Leste is based on the Portuguese Constitution while the Indonesian Constitution is based on a single constitution formed in 1945 3. The Prime Minister of Timor - Leste is elected by a multi-party based on the majority vote of the majority coalition, while the President of Indonesia is elected by the people through an election based on a valid absolute vote.

CONCLUSION

As the problems stated in the previous chapter, the researcher concludes that the two systems of governance of the Timor Leste state and the Indonesian state are;

1. System of the Democratic Republic of Timor - Leste is based on the 2002 RDTL Constitution with a Republican Unitary State Administrative System Indonesian based on the 1945 Constitution means;
 - a) -Leste's constitutional system is a System Semi - residential, where the separation of powers lies with the President and the Minister and is ratified by the state legislature based on the 2002 RDTL constitution.
 - b) The Indonesian state government system is semi-residential and also adheres to the principle of power-

sharing, meaning that this system is adopted based on the history of the previous Indonesian state government.

- c) In conclusion, these two countries adhere to the same Government System, only the way of implementing the government system is different but certain implementations are based on Basic Laws.
2. Implementation With the Systemstate administration between Republics _Democratic Timor - Leste based on the 2002 Constitution with the State Administration System for the Unitary State of the Republic of Indonesia based on the 1945 Constitution
3. Country

As an organization that has goals to develop horizontally, in conclusion, the two countries of Timor-Leste and Indonesia are generally very different, only that Timor - Leste can adopt the Government System used by the State of Indonesia.

1. The system of government of the State of Timor- Leste is semi-presidential
2. The system of government of the Republic of Indonesia is Presidential.

Suggestion

From the conclusions above, it can be suggested that the two problems of the government system of the State of Timor Leste and the Republic of Indonesia are of them;

1. Democratic Republic of Timor -L este
The State of Timor - Leste can change the Semi - Presidential Government System to the Presidential Government System with the aim that; power is only on the President so that it can be applied according to the goals of his country.
2. State of the Republic of Indonesia
Indonesia is one of the developing countries where the bureaucratic government system uses a residential system but is not pure in the application of a residential semi-permanent system, Indonesia can also use a parliamentary system where this system can provide benefits as stipulated in the 1945 Constitution.

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