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RDTL INSTITUTIONAL AUTHORITY DISPUTES BASED ON THE CONSTITUTION

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ABSTRACT

This paper will try to analyze the institutional authority disputes of the Democratic Republic of Timor-Leste. The legal study here is intended to describe law or legal science through a conceptual perspective approach and legislation approach, using constitutional theory and authority theory to justify an existing problem. The state sovereignty body, although its authority has been regulated in the 2002 RDTL constitution, in carrying out its duties and functions, each maintains its authority given by the constitution, a dispute over authority arises between the institutions of the President, the Government, the National Parliament, and the Court.

Keywords: RDTL State authority and institutional disputes

INTRODUCTION

Based on article 67 of the RDTL constitution which regulates the institutions of state sovereignty, namely: the President of the Republic, the National Parliament, the Government, and the Court, in the division of power which has been stated in article 69 on the principle of separation of powers/Separasaun Poder. So of all the state's sovereign institutions, they will carry out their duties based on applicable law, in this case, the law is the highest (Supreme of Law). The state must be subject to the law of article 2 paragraph (2).

In a juridical context, the President has the highest power in a country and has the highest position in the country as stated in the RDTL constitution in article 74 paragraphs (1) and (2) which provides a juridical definition, among others: the President of the Republic as a symbol and guarantor of independence and the President is also the supreme commander of the armed forces.

The authority of the government is also regulated in article 115 of the RDTL Constitution and is one of the state institutions which is the main and most important condition for the existence of a country, so it is not enough for a country to only have people and also have territory to build a country. Thus, the Timor-Leste system of government was formed which was integrated into the RDTL Constitution. The national parliament is; the RDTL sovereign institution that represents all citizens of Timor Leste, as a representative body, the national parliament is also the only body whose members are directly elected by citizens and have the right to vote through general elections. The National Parliament has three (3) main powers,

which are as follows: The power to make laws, the power to fiscal, and the power to make political decisions (article 92 of the constitution).

As a legislative body, we find the power to make laws in article 95 paragraphs (1) and (2) of the constitution, while the power to make political decisions is contained in article 95 paragraph (3) of the constitution. In another part, we can trace the fiscalization power of the national parliament through article 107 and article 145 paragraph (3) of the RDTL constitution, and article 118 of the RDTL constitution which discusses the duties of the court.

Formulation of the problem

From the results underlying the above, the authors formulate the problem as follows

Can RDTL State institutional authority disputes be resolved based on law?

Theoretical basis

Definition of authority

Every state administrator must have the authority to act. In this section, the theory of authority will be presented which will provide a theoretical justification for government actions carried out by each government administrator. Every government administrator who will carry out its activities requires authority. Without authority, government administrators cannot act in the administration of government, relating to the administration of government, every government administrator will take government action if it has the authority regulated in laws and regulations. Etymologically, the word authority comes from the basic word "authority" and is a translation of the English "competentie" or Dutch "bevoegdheid". In the Big Indonesian Dictionary, authority is defined as the right and power to act.

Constitutional Theory

Constitution Derived from the French language "constituer" means to form (the formation of a state or to compose and declare a state). Derived from English, "constitution" can be interpreted the same as the Constitution or Grondwet (Dutch) in a broader sense, because it includes all written and unwritten regulations that bind how the government is organized in society. Derived from the Latin "cume" and "statuere". Cume means "together with", while Statuere comes from "sta" (to form) and Stare (to stand). This means the Constitution is defined as making something stand or establish/determine. So "Constitutio" (singular) means to set something together. And “Constitutiones” (plural) means everything that has been established.

According to Herman Heller & F. Lassalle, the constitution consists of 3 parts:

1. Die Politische verfassung als gesell schaflich wirklichkeit (reflecting political life in society as a reality-political-sociological understanding).
2. Die Verselbstandigte rechtsvervassung (rules that live in society-a juridical sense).
3. Die geshereiben verfassung (text written as the highest law applicable in a country). So the Constitution is part of the Constitution.

F. Lassalle in another book defines the Constitution: 1. Sociological or political understanding (synthesis of real factors in society, such as the King, Parliament, Cabinet, Pressure Groups,

Political Parties, etc.). 2. Juridical definition (a text that contains all the buildings of the State and the joints of government.

According to CF Strong a set of organizing principles; The power of government in a broad sense, the rights of the governed, and the relationship between the government and the governed, including human rights. "The state and the constitution are two institutions that cannot be separated from one another, Sri Soemantry". This statement can remind us that without a constitution the State cannot exist. Constitution is the basic law (Droit Constitucional) of a State,

Hawgood in his book Modern Constitution Ring 1787 stated that there are nine kinds of State Forms which at the same time designate the forms of their constitution. However, from that only three forms of the State are taken, namely;

1. Spontaneous state (Spontane state). This constitution is called the Revolutionary Constitution.
2. Negotiation state (Parlamentaire Staat), the constitution is called the parliamentarian constitution.
3. Derivative state (Algeide state). Its constitution is called the Neo-national constitution.

Authority theory

When talking about authority, it can be seen that several definitions of authority based on the concept are as follows: Authority or authority is a term used in the field of public law, but in fact, there is a difference between the two, authority is: what is called "formal power", the power that comes from the power granted by the Act or the legislature, because it is the power of a certain group of people or power over a certain area of government or government affairs that are unanimous. Meanwhile, authority only concerns a certain part of the authority, namely the right to give the government the power to obey.

Several scholars who gave their opinions regarding the theory of authority, which were put forward by FAM Stroink and JGSteenbeek put authority as: "the right which contains the freedom to do or not to take certain actions or to demand other parties to take certain actions and obligations contain the obligation or not to take certain actions"

As quoted by Philipus Mandiri Hadjon, "the term authority or authority is often equated with the Dutch term, namely Bevoegdheid". In law, authority or authority is used as a concept of public law, while (bevoegdheid) is used as a concept of public and private law. As a concept of public law, authority or authority consists of at least three components, namely influence, legal basis, and legal conformity.

How to obtain authority in legislation can be traced theoretically: as H. D Van Willem Konijnenbelt has said, classifying how authority is obtained, namely:

1) Artibutie: toekening van een bestuursbevoegheid door een wetgever ann een bestuursorgaan (attribution is the granting of government authority by legislators to government organs)

2) Delegatie: overdracht van een bevoegheid van ene bestuursorgaan aan een ander (delegation is the delegation of government authority from one government organ to another).
3) Mandate: een bestuursorgaan laat sijn bevoegheid names hues uitoefenen door een ander (meaning a mandate occurs when a government organ allows its authority to be exercised by another organ on its behalf).
1) So, in theory, authority is always used in the concept of public law, then the same thing was also stated by Philipus Mandiri Hadjon, authority can be obtained in three ways, namely: Attribution, Delegation, and Mandate.

While F. A. M Stroink and JG Steenbeek, argue: "There are only two ways organs obtain authority, namely: attribution and delegation. Attribution relates to the delegation of a new authority, while delegation concerns the delegation of existing authority (by organs that have obtained attributive authority) to other organs, so delegation is logically always preceded by attribution.

Regarding the mandate, FA M Stroink and JG Steenbeek said that the mandate did not result in any change in authority, because there were only internal relations, such as the minister and employees making certain decisions on behalf of the minister, while juridically the authority and responsibility remained with the ministerial organs. The employee decides technically while the minister decides juridically.

In the organizational structure of state institutions, what generally happens is the delegation of authority, state institutions are formed based on the Constitution which is then further regulated in law so that an authority regulated in the rule of law cannot overlap or contradict each other. The authority obtained from the provisions of the laws and regulations may not be canceled or transferred to other institutions.

In addition to talking about the issue of authority and understanding of authority, we will briefly look at some of the definitions of positions and authorities from several legal scholars below based on Logeman's explanation that: the state is an organization of positions in which constitutional law explains that the position is seen as a person. (Personal) and positions in state organizations intended to achieve national goals by the division of tasks and authorities of each position.

Meanwhile, according to AM Donner, he saw constitutional law from the other side, he explained that constitutional law was the key and the pinnacle of the legal system. From the two theories above, it can be said that the organization of positions in which the constitutional law describes the position as a person (personal) and the position is to achieve national goals under the division of duties and authorities of each and constitutional law is the key and the pinnacle of the legal system.

RESEARCH METHODS

Definition of Method

According to *Johnny Ibrahim***,** the method comes from the word (English: *method,* Latin: *methods,* and Greek: *methodosi), meta* means after/above, while *hodos* means away. Van

Peursen, translating the meaning of the method literally, at first the method was defined as a path that must be taken into Investigation or research takes place according to a certain plan.

Types of research

In this writing, the researcher uses a type of research that is juridical normative with the consideration that it moves from a descriptive analysis research system to laws and regulations that refer to the RDTL institutional authority dispute.

Approach Type

The type of approach used in this paper is the *Statute approach.*

The Legislative Approach (*Statute approach)* is an approach where the use of legal rules and legal principles is the focus and at the same time the central theme of writing. Therefore, in this paper, the author will conduct a study of the legislation and legal principles relevant to the *Dispute on the institutional authority of the Democratic Republic of Timor-Leste.*

Source of Legal Material

a. Primary Legal Material

In this paper, the primary legal materials are used, namely;

1) the Constitution of the Democratic Republic of Timor Leste;
2) Constitution

b. Secondary Legal Material

Secondary legal materials are legal materials that explain primary legal materials.

c. Legal Material Analysis Techniques

To solve and answer the problems studied, in analyzing legal materials the author can take steps such as the stage of collecting legal materials through library studies.

RESULTS AND DISCUSSION

RDTL's State institutional authority dispute

Based on article 67 of the RDTL constitution which regulates the institutions of state sovereignty, namely: the President of the Republic, the National Parliament, the Government, and the Court, In the division of power which has been stated in article 69 concerning the principle of separation of powers/Separasaun Poder, then from all the institutions of state sovereignty, it will carry out its functions based on applicable law, in this case, the law is the highest (law supremacy). The state must comply with the constitution and the law in article 2 paragraph (2).

In connection with the above, the authors analyze the laws and regulations on institutional authority disputes for RDTL State institutions. The authority possessed by State institutions is the original authority granted directly by the legislation in the case of the RDTL constitution.

Disputes on the authority of the RDTL president and the court

The president is the holder of executive power who has the duties and authorities as well as responsibilities as stipulated in article 85 of the RDTL Constitution and as head of state and the supreme commander in chief of the armed forces as stipulated in article 74 of the RDTL Constitution, but apart from developing these duties and authorities the president also has

various powers and authorities to achieve the basic objectives set out in article 6 of the RDTL Constitution.

Starting from the teachings of Montesquieu's trias politca, the president has the executive power to run the law. Legislative power is in the hands of parliament. In relation, the RDTL Constitution practices the teachings of trias politica but uses the principle of separation of powers as stated in article 69 of the RDTL Constitution. Therefore, the president only has powers that are exclusive as stipulated in article 85 of the RDTL Constitution. The power of the president has the power to grant pardons, abolition, amnesty, and rehabilitation. This power is often referred to as the president's prerogative power. Because all of these powers are regulated in the RDTL constitution.

Courts as state institutions that carry out their duties under article 118 of the RDTL constitution and courts are also independent institutions in carrying out their duties based on the Constitution and the law. Based on the above, the authors analyze in depth the authority of the president in article 85 letter (f) and Article 86 letter (h) of the 2002 RDTL constitution. corruption, which becomes a dispute in the case of an alleged corruption case is the duties and functions within the authority of the judiciary based on law.

Disputes over the authority of the Government and the National Parliament.

The government is the sovereign body of the State as well as the highest general governing body in the state of Timor-Leste under the provisions of article 103 of the RDTL Constitution. Article 108 concerning government programs in paragraphs (1) and (2) provides an explanation that;

1. Once appointed, the Government should develop its program, which includes the objectives and tasks to be carried out, the actions to be taken and the main political guidelines to be followed in the areas of government activity.
2. Upon approval by the Council of Ministers, the Prime Minister will, within thirty days after the inauguration of the Government, submit the Government Program to the National Parliament for consideration.

Whereas in article 109 paragraph (3) if the national parliament rejects the government's program requiring an absolute majority of the members who are on duty, in this case, there is no detailed explanation in the article above regarding the period for the government to re-submit the second program. time. In connection with this, the two institutions each maintain their functions based on the constitution, so disputes arise between institutions.

CONCLUSION

From the results of the existing discussion, the author sees that the provisions of article 67 of the RDTL constitution which regulates the institutions of state sovereignty, namely: the President of the Republic, the National Parliament, the Government, and the Court, In the division of power which has been stated in article 69 on the principle of separation of powers/Separasaun Poder, then of all the state's sovereign institutions will carry out their functions based on applicable law, in this case, the supreme law (law supremacy).

Based on the above, the writer concludes that the president of the republic used his authority to reject 9 people from the eighth government structure because he was suspected of being in a corruption case, which became a dispute in the case that the alleged corruption case was the duties and functions within the authority of the judiciary based on law. And the program proposed by the government to the national parliament is based on the provisions of article 109 paragraph (3) of the RDTL constitution if the national parliament rejects the government's program requires an absolute majority vote of the members who are on duty, in this case, there is no detailed explanation in the article mentioned above. against the period for the government to re-submit the program a second time.

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II. Legislation

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