

INSTITUTIONAL RELATIONSHIP IN STATE ADMINISTRATION BASED ON THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE CONSTITUTION

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ABSTRACT

There are three state institutional powers that theoretically called as "trias politica". The distribution of powers and separation of powers with the nature of horizontal and vertical relationships can be found in state administration. The State of Democratic Republic of Timor-Leste ("DRTL") is constitutionally divided into 4 (four) state institutions in performing their duties based on the principle of separation of powers and distribution of powers by having interdependence relationships. This article attempts to elaborate the state institutional relationship issues of the President and the National Parliament of DRTL; the National Parliament and the Government of DRTL; and between the President, the National Parliament, the Government and the Court in DRTL. These legal issues were analysed by using normative legal research method with statute and analysis conceptual approaches. The result shows that each state institution is separated toward each other in accordance with its functions with coordination and supervisory relationships. Therefore, DRTL as a Rule of Law State with Constitution as its highest sources of Law implements the distribution and separation of powers in order to create interdependence relationships which triggers coordination and supervision among state institutions generally in preventing power abuse and arbitrary act.

Keywords: State Institution, Relationship, State Administration, Constitution, DRTL

INTRODUCTION

State apparatus is established in order to implement the state functions. Each state institution has its own different competencies and functions. In general, state institution consisted of 3 (three) powers, namely: the legislative, executive and judicial powers. The legislative power is the power to create Laws and Regulations. The executive power is the power to enforce such Laws and Regulations. Meanwhile judicial power is the power to defend the said Laws and Regulations. In practice, all these three powers are manifested in the form of state institutions (Ahmad Sukardja, 2012, p.126).

A state institution is a central government institution with functions, duties and authorities strictly regulated in the provisions of the 2002 Constitution of the Democratic Republic of Timor-Leste (hereinafter referred to as "DRTL's Constitution"). Hierarchically, pursuant to Article 67 of DRTL's Constitution, there are 4 (four) state institutions, namely: 1. President of the Republic, 2. The National Parliament, 3. The Government, and 4. The Court.

In relation to the above said state institutions, each state institution shall perform its activities based on its duties and functions by referring to the separation of power principle. This condition is carried out under the provision of Article 69 of DRTL's Constitution, which provides that:

“Institutions of sovereignty, in their reciprocal relationship and exercise of their functions, shall observe the principle of separation and interdependence of powers established in the Constitution”.

From the above provision, it is noted that there is interdependence relationship between those four state institutions. The said interdependence relationship is elaborated into mutual coordination and supervision in order to create check and balances situation so that there is no power abuse (*detournement de pouvoir*) between one institution with another institution.

The DRTL’s Constitution embodies the rule of law principle as reflected in its state administration. Constitutionally, Article 1 paragraph (1) of DRTL’s Constitution provides that:

“The Democratic Republic of Timor Leste 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.”

Furthermore Article 2 of DRTL’s Constitution constitutes that:

Paragraph (1), “Sovereignty rests with the people, who shall exercise it in the manner and form laid down in the Constitution.”

Paragraph (2), “The State shall be subject to the Constitution and to the law”.

From the above matters, it can be said that the state administration has the rule of law and the sovereignty of the people principles. Therefore, state institutions shall base state administration on the law and the will of the people. In addition to it, state institutions shall follow on the separation of powers principle in implementing its duties hence check and balance can be implemented as well as absolute power by one of those state institutions can be avoided.

In addition to regulating the separation of powers process, DRTL’s Constitution also regulates the authority relationship and working mechanisms between state institutions in the state administration. The sovereignty of the people principle is embodied in legislation which can be seen through the state and governmental institutional mechanisms in ensuring the legal system establishment and the democratic system implementation. From an institutional standpoint, the sovereignty of the people principle is usually organized through a system of separation of powers and distribution of powers. The separation of powers tends to be horizontal in the sense that power is separated into functions reflected in the equality of the state institutions as well as checks and balances. Meanwhile the distribution of powers is vertical in the sense that the manifestation of power is distributed vertically downward to the lower level of government.

Based on the above explained background, there three legal issues raised in this article, namely:

1. The state institutional relationship between the President and the National Parliament of DRTL;
2. The relationship between the National Parliament and the Government of DRTL; and 3. The relationship between the President of DRTL, the National Parliament, the Government and the Court in DRTL. These legal issues were analysed by using normative legal research method with statute and analysis conceptual approaches.

Hence, it is very important to conduct this research in order to constitutionally understand the state institutional relationship between those four state institutions in DRTL in performing their own duties and functions.

RESULT AND ANALYSIS

1. The Relationship Between the President and the National Parliament of DRTL

Based on the DRTL's Constitution, the President holds the position both as the Head of State and the Supreme Commander of the Defence Force as a symbol of the unity of the State as stipulated under Article 74 paragraphs (1) and (2). The relationship between the President with the National Parliament can be seen through Article 85 letters (a) jo. (c) that are: 1. it is exclusively incumbent upon the President to promulgate and order the publication of resolutions by the national Parliament approving Laws and Regulations as well as announce it on the State Gazette (*Journal da Republika*); and 2. The President exercises the right of veto regarding any Laws and Regulations within 30 days from the date of their receipt in question. Furthermore, according to Article 95 paragraph (3) letter (h) jo (k) of DRTL's Constitution, President to conduct his overseas trip with the approval of the National Parliament and the National Parliament to propose to the President the submission to referendum of issues of national interest.

2. The Relationship Between the National Parliament and the Government of DRTL

From the provision of Article 95 paragraph (1) of DRTL's Constitution, it is noted that the National Parliament has the authority to create Laws related to the political basis of the State both internally and externally. In relation to the relationship between the National Parliament and the Government, basically National Parliament may authorise the Government to create law Laws which scopes are stated in Article 96 paragraph (1) DRTL's Constitution. It is also understood that under Article 95 paragraph (3) of DRTL's Constitution, the National Parliament has authority to monitor the execution of the State budget. In addition, according to Article 107 of DRTL's Constitution, the Government shall be accountable not only to the President but also to the National Parliament for conducting and executing the domestic and foreign policy in accordance with the Constitution and the Laws. Subsequently, Article 115 paragraph (1) point (d) of DRTL's Constitution regulates that the Government shall prepare the State Plan and State Budget as well as execute them following the approval from the National Parliament.

3. The Relationship Between the President, the Government and the Court

It is exclusively incumbent upon the President of the Republic to appoint and inaugurate the Prime Minister designated by the party or alliance of parties with parliamentary majority after consultation with political parties sitting in the National Parliament (Article 85 point (d) of DRTL's Constitution). Furthermore the President may declare war and make peace following a Government proposal, after consultation with the Council of State and the Supreme Council of Defence and Security, under authorisation of the National Parliament (Article 85 point (h) of DRTL's Constitution). In addition, the President may grant mercy and amnesty to the inmates after hearing the Government's suggestion. This guarantee is set forth in point (i) of Article 85 of DRTL's Constitution. In relation to the relationship with the Court pursuant to Article 85 point (e) DRTL's Constitution, the President of the Republic has the authority to request the Supreme Court of Justice to undertake preventive appraisal and abstract review of the constitutionality of the rules, as well as verification of unconstitutionality by omission.

Generally, each country has its own State institutions. State institution sometimes also called as political institution. Political institution, in Dutch is called as *Staat organen* (Firmansyah Arifin et.al, 2005, p.29). With regard to the Concept of the State Organ, Hans Kelsen, through his book entitled *General Theory of Law and State* describes that whoever fulfils a function determined by the legal order is an organ (Hans Kelsen, 2006, p.276). That is, the organs of the State are not always in the organic form. More broadly, any position determined by law

can also be called an organ, provided that the functions are in the forms of norms creating or norm applying. As Kelsen argues that “The functions, be they a norm-creating or of a norm applying character, are all ultimately aimed at the execution of a legal sanction” (*Ibid.*).

There are various types of system that can be adopted by each State in administrating its own State. It can be in the form of presidential, parliamentary or a mixed government system between the presidential and parliamentary system that commonly referred to as “quasi” system. Departing from K.C. Wheare, “A constitution is used to describe the whole of the government of a country, the collection of rules which establish and regulate or govern the government” (I Dewa Gede Atmadja, 2012, p. 180). It clearly states that the constitution is used to describe the broad system of government in a State. Based on the literature, government both defines as (a) government in broader sense and (b) government in narrow sense (*Ibid.*). Government in a narrow sense according to the Theory of *Trias Politica* by Montesquieu is understood as executive organ that organizes executive power (*Ibid.*). Meanwhile in a broad sense, the government is defined as the whole institution (State), which its existence is determined according to the Constitution of a State (*Ibid.*). Therefore, the relationship in the governmental system is the functional and authority relationships between state institutions determined by the Constitution. As already explained in the previous chapter, regardless of those four state institutions of DRTL have their own duties and functions, however, their relationship towards each other are functionally well maintained.

For more in depth understandings, the authority details of each state institution in DRTL are briefly described in the below description.

a. President of the Republic

President of the Republic is elected through a universal, free, direct, secret and personal suffrage (Article 76 paragraph (1) of DRTL’s Constitution). Constitutionally, the duties and functions of the President of the DRTL are as follow:

- i. President of the Republic as Head of State
- ii. President of the Republic as a symbol of the State
- iii. President of the Republic as a symbol of unifying the State
- iv. President of the Republic as Supreme Commander of the Armed Forces.

In general, the President subjects to the determined competencies set forth under Article 85 letter (a) – (j) of DRTL’s Constitution in performing its functions. Those competencies shall include:

- i. Promulgating Laws and order the publication of resolutions by the National Parliament approving agreements and ratifying international treaties and conventions;
- ii. Exercising competencies inherent in the functions of Supreme Commander of the Defence Force;
- iii. Exercising the right of veto regarding any Legislative products within 30 days from the date of their receipt;
- iv. Appointing and inaugurating the Prime Minister designated by the party or alliance of parties with parliamentary majority after consultation with political parties sitting in the National Parliament;
- v. Requesting the Supreme Court of Justice to undertake preventive appraisal and abstract review of the constitutionality of the norms, as well as verification of unconstitutionality by omission.
- vi. Submitting relevant issues of national interest to a referendum as laid down in Article 66;

- vii. Declaring the State in the state of siege or in the state of emergency following authorisation of the National Parliament, after consultation with the Council of State, the Government and the Supreme Council of Defence and Security;
- viii. Declaring war and creating peace following a Government proposal, after consultation with the Council of State and the Supreme Council of Defence and Security, under authorisation of the National Parliament;
- ix. Granting mercy and amnesty to the inmates after hearing the Government's suggestion;
- x. Awarding honorary titles and merits in accordance with the Laws.

The above competencies contained in Article 85 of DRTL's Constitution reflects that currently the President of the DRTL has only those competencies which are constitutionally restricted. Hence, President only serves positions as Head of State, symbol of the State, symbol of unifying the State and Supreme Commander of the Armed Forces with no executive power in the sense that the President does not enforce the Laws as the executive. The difference is that the President's election process is performed in a direct, free, and secret manner.

b. National Parliament

In administrating its State, the DRTL adopts the theory of *Trias Politica* proposed by Montesquieu. According to such theory, legislative institution is a State institution that has function to create Law. Article 92 of DRTL's Constitution stipulates that National Parliament is the organ of sovereignty of the DRTL that represents all Timorese citizens and is vested with legislative supervisory and public decision making powers. This article indicates that the National Parliament of DRTL has three main functions, namely:

- 1. legislative;
- 2. supervisory;
- 3. public policy decision making.

Similar to the President, the National Parliament also subject to the list of competencies under Article 95 paragraph (2), (3) and (4) in performing state administration. It is exclusively incumbent upon the National Parliament to make Laws on:

- i. The DRTL's borders in accordance with Article 4;
- ii. The borders of the territorial waters, the exclusive economic area and of the rights of Timor Leste to the adjacent area and the continental shelf;
- iii. National symbols in accordance with item 2 of Article 14;
- iv. Citizenship;
- v. Rights, freedoms and guarantees;
- vi. The status and capacity of the person, family law and inheritance law;
- vii. Territorial division;
- viii. General election and the referendum system;
- ix. Political parties and associations;
- x. The status of Members of the National Parliament;
- xi. The status of holders of power in the State institution;

- xii. The bases for the education system;
- xiii. The bases for the health and social security system;
- xiv. The suspension of constitutional guarantees and the declaration of the state of siege and the state of emergency;
- xv. The Defence and Security politics;
- xvi. The tax politic;
- xvii. The budget system.

The National Parliament also incumbent to:

- i. Ratify the appointment of the President of the Supreme Court of Justice and of the High Administrative, Tax and Audit Courts;
- ii. Deliberate on progress reports submitted by the Government;
- iii. Elect one member for the Superior Council for the Judiciary and the Superior Council for the Public Prosecution;
- iv. Deliberate on the State Budget Plan and the execution report thereof;
- v. Monitor the execution of the State budget;
- vi. Approve and announce agreements and ratify international treaties and conventions;
- vii. Grant amnesty;
- viii. Give consent to trips by the President of the Republic on State visits;
- ix. Approve revisions of the Constitution by a majority of two-thirds of the Members of Parliament;
- x. Authorise and confirm the declaration of the state of siege or the state of emergency;
- xi. Propose to the President of the Republic the submission to referendum of national interest issues.
- xii. In addition to the above competencies, the National Parliament also required to:
- xiii. Elect the President of the Parliament and other members of the Chair;
- xiv. Elect five members for the Council of State;
- xv. Prepare and approve its Rules of Procedure;
- xvi. Establish Permanent Committee and other parliamentary Committees.

From the above explanation, it is noted that the National Parliament is a state institution which has powers in the formation of Laws, supervisory and public policy decision making. As the consequence, the National Parliament has the power to require accountability to Government in relation to the implementation of Laws which are approved and executed by the executive institution. As Hans Kelsen's argument, an organ, in this sense, is an individual fulfilling a specific function. The quality of a person as an organ is formed by its function. He is an organ because and in so far as he performs a law-creating or law-applying function (Hans Kelsen, *Op.Cit.*, p.277). This indicates that an organ of the State can be said individually to perform a function in accordance with the function given in terms of law-creating or law-applying.

c. Government

Government is the sovereign body of a State that is responsible for the control and implementation of the general policies of the State and is the supreme body of the General Government.

As per Article 115 paragraph (1) of the DRTL's Constitution governs that the Government of DRTL has the following authorities: (a) defining and implementing the general policy of the State, following the approval by the National Parliament; (b) guaranteeing the exercise of the fundamental rights and freedoms of the citizens; (c) ensuring public order and social discipline; (d) preparing the State Plan and the State Budget and execute them following the approval by the National Parliament; (e) Regulating economic and social sector activities; (f) preparing and negotiating treaties and agreements and entering into, approving, acceding and announcing international agreements which do not fall under the competence of the National Parliament or of the President of the Republic; (g) defining and implementing the foreign policy of the State; (h) ensuring the representation of the DRTL in the international relations; (i) leading the social and economic sectors of the State; (j) leading the labour and social security policy; (k) guaranteeing the defence and consolidation of the public domain and the property of the State; (l) leading and co-ordinating the activities of the ministries as well as the activities of the remaining institutions under to the Council of Ministers; (m) promoting the development of the co-operative sector and the support for household production; (n) supporting private enterprise initiatives; (o) taking actions and making all the arrangements necessary to promote economic and social development and to meet the needs of the Timorese people; (p) exercising any other competencies as provided by the Constitution and the Law.

In addition to the above stated authorities, the Government also has another authorities towards other institutions according to Article 115 paragraph (2) the DRTL's Constitution, namely: (a) submitting bills of the Laws and draft resolutions to the National Parliament; (b) proposing to the President the war or peace declaration; (c) proposing to the President the state of siege or the state of emergency declaration; (d) proposing to the President the submission to referendum of relevant issues of national interest; (e) proposing to the President the appointment of ambassadors, permanent representatives and special envoys.

Government is one of the State institutions with the function to enact Laws that have been approved by the national parliament. In State administration, the government institution operates in accordance to Laws. It indicates that the government is appointed by the parliamentary majority and its responsibility to parliament. It is in line with the government formation that depends on the parliamentary majority as in the character of the Parliamentary Government system, namely (I Dewa Gede Atmadja, *Op.Cit*, p.180-181): (1) the Head of State (President or King/Queen) does not hold position as the Head of Government, because he is only a symbol (unifier of the nation); (2) the Head of State shall not be held accountable for the State administration, known as "King can do no wrong" (the King is not to be blamed); (3) the power of government, in real, is held by the Prime Minister who leads a cabinet; (4) the Cabinet either jointly or individually responsible to parliament (House of Representatives); and the Cabinet may be dropped by the parliament through vote of no confidence; and (5) as a response, the cabinet may be requested by the Head of State to dissolve parliament (House of Representatives) on the grounds that parliament is not representative anymore.

d. Court

In general, court is the sovereignty body with the authority to enforce the Laws on behalf of the people. In carrying out its functions, the court is entitled to receive assistance from other government officials. Court decision is absolute to be exercised and is above the policies of any ruler.

The judiciary institution is one of the state institutions that exercise function to administer justice and impose sanctions on every citizen who takes action against the Law. In the case of DRTL's state administration, in the event of arbitrary acts of the government apparatus and the misuse of authority committed any State institution or State apparatus, the judiciary institution is the one who has full authority to administer the judiciary and impose sanctions on such acts. As quoted from Montesquieu's book "the Spirit of Law", judiciary power claiming that such power should be exercised by juries. Montesquieu expects that judicial powers are fully granted to judges to conduct the judicial proceedings.

Based on the attribution power set forth in the DRTL's Constitution, every state institution exercises general government with the aim of achieving the General Government Administration to exercise the public interest in respecting the fundamental rights and interests of citizens as well as constitutional rights. The General Government is established to avoid bureaucratization, bring all activities closer to the community and ensure effective participation of stakeholders in its management. The limitation of power by the separation of powers is the basis of the prevention of power abuse and the power holders' arbitrary action. Basically, the administration of general government by the DRTL's state institutions aimed in: firstly, preventing power abuses come from each function as well as avoiding the intervention of one institution against one another; and secondly, the existence of mutual coordination and functional constitutional relationship between the state institutions associated with the State in a state of emergency and the submission of state expenditure budget that was rejected by the national parliament. With regard to the framework of the state institutions, DRTL's Constitution affirms that DRTL is a rule of law State which has the consequence that every attitude, policy and behaviour of its state officials and citizens shall be in accordance to the Laws. At the same time this provision also aims to prevent the arbitrariness and arrogance due to the power in hand, whether committed by state officials or citizens. In a rule of law State, Law shall hold the highest command in the state administration. What really leads in the state administration is the Law itself in accordance with the principle of "the rule of law, and not of man" in line with the notion of "nomocratie" which means the power runs by the Law, "nomos" (Ni'Matul Huda, 2014, p.141)

In running the general government, the government system plays important role. There are several characteristics of parliamentary and presidential government systems that only seen in terms of functional and authoritative relationships between legislative and executive powers (I Dewa Gede Atmadja, *Op.Cit.*, p.188). Behind it, Tim Koopmans sees in terms of the relationship of the judiciary and political institutions (legislative and executive bodies) in the separation of powers according to the *Trias Politica* theory of Montesquieu. The essence of Tim Koopmans' opinion is that there are two models of government systems, namely: parliamentary and constitutional models. Both models refer to the constitutional doctrine of the United Kingdom and the United States.

The characteristic of the parliamentary model is the adoption of the sovereignty parliament doctrine or the parliament supremacy which is characterized by two things as follow:

- a. No reval authority means no body exceeds the legislative authority; and

- b. Legal authority means the legislative has authority to create Laws that cannot be asked for the process of judicial Review or cancelled by any agency. The regulations created by the executive body shall subject to the Laws.

Meanwhile on the other side the characteristics of the constitutional model shall include the following:

- a. Instead of the sovereignty parliament doctrine or the parliament supremacy, the doctrine of check and balance is recognized.
- b. Laws are created under the authority of legislative institution which contents cannot in contrary to the Constitution; and
- c. The judiciary bodies (Supreme Court or Constitutional Court) may conduct judicial review, annul the Laws and Regulations (legislations of the legislative body and the regulations of the executive body) if it is in contrary to the higher law (*Ibid.*, 188-189).

Based on the parliamentary and constitutional models, it can be assumed that the DRTL is a State that follows constitutional model. The National Parliament of DRTL is a state institution that serves as legislation, so that any Law established by the parliament shall not in contrary to the Constitution. Therefore, it can be concluded that the national parliament of DRTL is a constitutional legislative institution.

CONCLUSION

DRTL is a Rule of Law State with Constitution as its highest sources of Law. In the administration of the State, Laws which become sources related to the policy and decision of the legislative, executive and judicial institutions shall subject to the Constitution and the Laws in concern. According to Article 67 of DRTL's Constitution, in the state administration the distribution of powers is distributed vertically into four (4) state institutions. As for the separation of powers, it can be seen through Article 69 of DRTL's Constitution where every state institution shall perform their activities based on their own duties and functions in a horizontal functional relationship in accordance with the Constitution. This horizontal relationship indicates that in the administration of the State any power of the State is granted an attribution restriction by the DRTL's constitution through the regulated competences of which each state institution shall refer to the check and balance principle. It aims to avoid the occurrence of power abuse and arbitrary acts. The power referred to in the administration of the DRTL is as stipulated in the DRTL's Constitution that is sovereignty and power are entirely in the hands of the people and the legal responsibility lies with the people. Thus, general government is run by Law, Law as command and Law as a limiting power (government by the law not by man). DRTL adopts a semi-presidential system. In the running of its general government, the state institutions shall base on the separation of powers. As for the decision or policies making process shall be in accordance with the Constitution and Laws as part of the Rule of Law principle adopted by DRTL. Therefore in the end there will be so called as interdependence relationship which leads to coordination and supervision among state institutions in accordance with the DRTL's Constitution.

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