

Interdependence study on the relationship with the authority of state institutions in the administration of the Timor-Leste government

Gregório da Silva, Lic.Dir

ABSTRACT: Based on KRDTL 2002 article 67 there are 4 bodies of sovereignty of the state of Timor-Leste, namely the President of the Republic, the National Parliament, the Government and the Court. The four state institutions have their respective functions, duties and authorities in accordance with the provisions of the RDTL Constitution so that in carrying out governmental relations it is fully based on the constitution.

The theory of trias politica and check and balance as explained by Montesqueu that a good government has three powers, namely legislative power (making laws), executive power (implementing laws) and judicative (judging according to law). Based on article 69, the KRDTL aims to separate the powers of the four state institutions, but in terms of governmental authority, the principle of interdependence and the principles of good governance legality and checks and balances applies, normatively or according to law, none of these institutions is higher than other institutions, but mutual control. According to the results of this normative study, it shows that the Timor-Leste government in the administration of government is mutually interdependent with the aim of controlling one another and the existence of interconnected government organizations.

Interdependence of the President of the Republic with the National Parliament, Government and Courts based on KRDTL articles 74 paragraphs 1 and 2, article 85, paragraph b); c); d); e); f. article 87, paragraph a); b); d). Article 88, paragraphs 1, 2, 3, and 4. Article 100, paragraph 2, paragraph i); j); k); l). Article 133 paragraph m).

Interdependence between the National Parliament, the President of the Republic, the Government and the Court, based on article 92, article 95, paragraphs 1, 2, 3, and 4. Article 96, paragraphs 1, 2, and 3. Article 97, paragraphs 1, 2, 3, 4 and 5. Article 98, paragraphs 1, 2, 3, 4, and 5.

Interdependence between the Government, the National Parliament and the President of the Republic, based on article 103, article 115, paragraphs 1, 2, and 3. Article 116, paragraph a); b); c); d); e); f). Article 117 paragraphs, 1, 2, and 3.

Interdependence between the Court of the President of the Republic, the National Parliament of the Government based on articles 118, paragraphs 1, 2, and 3. Article 119; article 120, article 124, paragraph 1, 2, and 3.

RDTL adopts a quasi presidential or semi-presidential government system constitutionally and the principle of legality of the presidential authority is more dominant /prominent, one of which appears to be article 86 paragraph f, article 95, article 103 and article 124 paragraph 3.

Keyword: The interdependence of the administration of the Timor-Leste Government

I. INTRODUCTION

After the liberation of Timor-Leste from occupation and illegitimate occupation of the Motherland of Maubere by foreign powers, the independence of Timor-Leste, proclaimed by Frente Revolucionaria do Timor-Leste Independente (FRETILIN) on 28 November 1975, was recognized internationally on the 20th May 2002. The Democratic Republic of Timor-Leste is a democratic, sovereign, independent and united country, based on the

power of law, the desire of the people and the respect for human dignity in accordance with the provisions of article 1 KRDTL.

Based on KRDTL 2002 article 67 there are 4 state sovereignty bodies namely the President of the Republic, the National Parliament, the Government and the Courts. The four state institutions have their respective functions, duties and authorities in accordance with the provisions of the RDTL Constitution, so that when viewed from the trias politica and check and balance theory as explained by Montesqueu, a good government has three powers, namely Legislative power (making laws -law), Executive power (implementing the law) and the Judiciary (to judge according to the law). The three powers must be given to different parties. Because the accumulation of these three powers in one hand is very dangerous and can lead to inefficiency, corruption and arbitrariness, as Aristotle said that a government led by one person is not a constitutional government. The application of the concept of separation of power in modern times has combined the concept of division of power with the concept of Cheks and Balances, so that this hybrid concept is referred to as "distribution of power". This is what is adopted by the RDTL state, in this case the power is not separated (strictly) but only divided, so as to allow overlapping power.

Even so, the initial concept of trias politica taught from Montesqueu intended to completely separate the powers, namely between the legislative, executive and judicative powers. Therefore, the concept of a strict separation of powers is actually a constitutional theory that was previously adopted by continental European countries. Meanwhile, checks and balances came from the founding fathers of the United States, who distributed power but kept an eye on each other without one power being over another (balances), so that, in the theory of checks and balances, it is possible that this does not happen. overlapping power¹. The country of Timor-Leste adopted the trias politica and checks and balaces with the aim of the four state institutions being able to control each other, where the Presidente da Republica is a double executive who is in charge of oversight of the other executives (the Government). What is the concept of power in Timor-Leste ?.the power-sharing mechanism in Timor-Leste is fully regulated in KRDTL2002. The exercise of the division of power in Timor-Leste consists of horizontal power and vertical power. Horizontal power is the division of power according to the functions of certain institutions such as the Presidente da Republica (supervisory executive), the National Parliament (Legislative), the Government (executive executive) and the Court (Judiciary), while the power vertically is divided according to the distribution of structures, such as for example the central government (Ministry) and Municipal Government (local government) and/or Supreme Court (TR)-high court of Administration, taxation and financial examination-First level court (TDD) and other TD.

II. DISCUSSION

Based on article 69 KRDTL, 2002, there must be a separation of powers and interdependence between 4 (four) state institutions, namely the President of the Republic, the National Parliament, the Government and the court. One of the characteristics of a rule of law, which in English is called a legal state or state based on the rule of law, in Dutch and in German it is called rechtsstaat, is the characteristic of limiting power in the exercise of state power. Although the two terms rechtsstaat and rule of law have different historical backgrounds and meanings, they both carry the idea of limiting power. The restriction was carried out by law which later became the basic idea of modern constitutionalism². The application of the trias politica theory taught by Montesqueu in Timor-Leste is more directed at the division/separation of power and checks and balances. This is in accordance with the opinion that the trias politica theory in modern times has combined the trias politica theory adopted by the continental European countries and the checks and balances adopted by the United States.

¹Munir Fuady. *MODERN STATE THEORY OF LAW (Rechtstaat)*. PT Refika Aditama. Bandung: 2011. Cet.II. pp. 103-105.

²Jmly Asshiddiqie. 2019. *Introduction to Constitutional Law*. Ed.I.Cet.7 PT.Raja Grafindo Persada. Jakarta: page 281

The application of the concept of separation of power in modern times has combined the concept of division of power with the concept of Checks and Balances, so that a hybrid concept like this is called "distribution of powers". In this case the power between institutions in the country of Timor-Leste is not separated (strictly) but only divided, so as to allow overlapping powers in the future. Therefore Timor-Leste should have adopted the initial concept of trias politica from Montesquieu (France) which intends to completely separate between the powers, between the four powers mentioned above. Because the concept of separation of powers is actually a constitutional theory that was adopted by continental European countries in the past, while the concept of checks and balances originated from the founding fathers of the United States, who distributed power but controlled each other without overseeing one another. there is one power that is above other powers (balances), so that, in the theory of checks and balances, it is possible to have overlapping powers.

The four institutions of the state power of Timor-Leste are fully determined by the KRDTL, under certain interdependent articles in relation to the authority to administer the governance of Timor-Leste, namely:

1. Interdependence of the President of the Republic with the National Parliament, Government and Courts.

Based on KRDTL article 74 paragraph 1. The President of the Republic is the Head of State and the symbol and guarantor of National independence and national unity and the smooth working order of democratic institutions. and paragraph 2. The President of the Republic is the Supreme Commander of the Armed Forces.

The President of the Republic of Timor-Leste is directly elected by the people and in exercising his authority is assisted by the head of the Civil Household (chefe casa civil) article 5 and the Head of the Military Household (chefe casa Militar) article 26 Lei No.3 / 2011 de 1 de Junho. There are several tasks, functions and powers carried out by the President of the Republic which are fully based on the 2002 constitution. Constitutionally, the President of the Republic of Timor-Leste is a supervisory institution (control) of other state institutions through the competence of lifting and swearing as well as dissolving the National Parliament and the government which has received support. from the National Parliament institution itself. Thus the President of the Republic in his duties, functions and authorities is based on the KRDTL articles, among others:

- a. Article 85, the President of the Republic has exclusive authority and responsibility for: a) Promulgating laws and ordering the issuance of resolutions from the National Parliament which ratify treaties and international treaties; b) Exercise the powers that are the core of functions as Commander in Chief of the Armed Forces. c) Exercise veto power over any law within 30 days, from the date of its acceptance; d) To appoint and take the oath of the Prime Minister who has been appointed by the party or coalition of parties with a majority in the Parliament, after holding consultations with political parties that occupy seats in the National Parliament; e) Requesting the Supreme Court to carry out a preventive review and abstract review of the conformity of the rules with the KRDTL, as well as the justification for conflicts with the KRDTL due to negligence; paragraph f) To submit matters relating to the interests of the state to be decided by way of a popular consultation, as stipulated in article 66; g) Declare a state of war or emergency, with the approval of the National Parliament, after consultation with the State Council, Government and the Supreme Council for Defense and Security; h) Declare war and bring about peace at the suggestion of the Government, after consulting with the State Council and the High Council for Defense and Security, based on the approval of the National Parliament, i) Providing pardons and commuting sentences, after consultation with the Government, and j) Awarding honorary titles, awards the award certificate, in accordance with the law.
- b. Article 86 paragraph a) To chair the High Council for Defense and Security; b) To chair the State Council; c) To determine the date for the election of the President and National Parliament, in accordance with the law; d) Request an extraordinary session of the National Parliament if it is justified for reasons of urgent national interest; e) Speak to the National Parliament and to the state; f) Dismiss the National Parliament, if there is a severe institutional crisis, which prevents the formation of the Government or the adoption of the State Budget, and which lasts more than 60 (sixty) days, after consultation with political parties having seats in Parliament, and with the Council. The State, with due observance of the provisions of Article 100,

- so that the dissolution action is not declared invalid and then canceled. G) Disband the Government and dismiss the Prime Minister if his program is rejected twice in succession by the National Parliament; h) To appoint, swear and remove from office Members of the Government, upon the recommendation of the Prime Minister, under paragraph 2, Article 106 i) To appoint two members of the High Council for Defense and Security; j) To appoint the Chief Justice of the Supreme Court and delegate the Chairman of the High Administrative, Taxation and Financial Audit Court; k) To appoint the Attorney General for a term of four years; l) Appoint and dismiss Deputy Attorney General under paragraph 6, Article 133, m) Upon recommendation from the Government, appoint and dismiss the Chief of Defense Forces High Staff, Deputy Chief of Defense Force High Staff and the Chiefs of Staff of the Defense Forces, after consultation with the Chief of Staff. Defense Force High Staff for both appointments based on Decreto Lei N.º 7/2004 de 5 de Maio; n) To appoint five members of the Council of State; o) To appoint a member for the Superior Council for the Judiciary and the Superior Council for the Judiciary.
- c. Article 87 paragraph a) To declare war in a state of real or imminent attack and to bring about peace, at the suggestion of the Government, after consultation with the Supreme Council for Defense and Security and with the permission of the National Parliament or the Standing Committee of the Parliament; b) To appoint and dismiss Ambassadors, Permanent Representatives and Special Envoys, upon recommendation from the Government; c) Receiving credentials and certifying the accreditation of foreign diplomatic representatives; d) Consult with the Government to undertake any negotiation processes leading to the completion of international agreements in the defense and security sector.
- d. Article 88 concerning the power to announce and veto a bill: namely paragraph 1. Within 30 (thirty) days from the date of receipt of any bill from the National Parliament, with the aim of being promulgated as law, the President of the Republic will formally announce it. or use veto power. If so, the President, for good reasons, must submit a request to the National Parliament to request reconsideration of the bill, 2. If the National Parliament, within 90 (ninety) days, ensures that it casts its vote by an absolute majority of its members who carrying out its full function, the President of the Republic must formally announce the Bill within 8 (eight) days, starting from the date of its receipt, 3. However, a two-thirds majority (2/3) or 43 of the members present are required to ratify the Bill in the matters stipulated in article 95 if the majority exceeds the absolute majority of the members who carry out their full function, and 4. Within 40 (forty) days after receiving any bill from the Government for the purpose of promulgating it as law, the President of the Republic can formally announce the document or exercise his veto by means of a notification, in writing, stating the reasons for the veto.

2. Interdependence between the National Parliament, the President of the Republic, the Government and the Court.

Under article 92 the National Parliament is the sovereign body of the Democratic Republic of Timor-Leste which represents all citizens of Timor-Leste and is given legislative, oversight and political decision-making powers. Procedures for the operational implementation of the national parliament based on Lei No.15 / 2009 de 11 de Novembro (Regimento Parlamento Nacional RDTL)

The parliamentary / legislative branch of power has 4 functions, namely (1) the regulatory function (legislation), the legislative branch of power is the branch of power which first reflects the people's sovereignty. Activities of the state, first of all, are to organize life together. Therefore, the authority to enact these regulations must first be given to the people's representative institutions or parliament or the legislature, there are three important things that must be regulated by the people's representatives through parliament, namely (i) regulations that can reduce the rights and freedoms of citizens, (ii) regulations that can burden citizens' assets and (iii) regulation regarding expenditures by state administrators, (2) control functions through regulations that can reduce citizens' rights and freedoms, among others are differentiated (i) Control of policy making. (ii) Control of policy executing, (iii) Control of Budgeting, (iv) Control of budget implementation, (v) control of government performance and (vi) control of political appointments of public officials in the form of approval or rejection or in the form of giving considerations by the Parliament, (3) the most important function of the

Parliament as a representative institution is actually the function of representation or at a u representatives themselves, (4) deliberative and conflict resolution functions (a) public debate in the framework of rule and policy making (b) debate in order to carry out supervision (c) channel diverse aspirations and interests and (d) provide peace channel solutions against social conflict³.

Based on article 69, the National Parliament is separated in power and interdependence, according to the articles of the 2002 KRDTL, among others:

- 1) Article 95 is the authority of the National Parliament, paragraph 1. The National Parliament has the authority and responsibility to make laws on basic matters relating to domestic and foreign policy. and paragraph 2. The National Parliament, exclusively, has the authority and responsibility to make laws concerning, paragraph: a); b); c); d); e); f); g); h); i); j) k); l); m); n); o); p); q). paragraph 3. The National Parliament is also authorized and responsible for: a); b); c); d); e); f); g); h); i); j); k) and paragraph 4. It is also the authority and responsibility of the National Parliament to: a); c); d) based on Lei No.15 / 2009 de 11 de Novembro.
 - 2) The powers of the National Parliament on Legislative Licensing, regulated in article 96, paragraph 1. The National Parliament can allow the Government to make laws on the following matters: a); b); c); d); e); f); g); h); i); j); k); l). paragraph 2. The Law on Legislative Licensing will determine the subject, meaning, scope and period of the license, and the license can be renewed. And paragraph 3. The Law on Legislative Licensing cannot be used more than once and no longer applies when the Government is terminated, with the end of the legislative period or by the dissolution of the National Parliament. Licensing is stated in article 96 through LEI N.º 15/2005, LEI N.º 16/2005 LEI N.º 17/2005 16 de Setembro.
 - 3) The PN's authority to initiate a law is regulated in Article 97 paragraph 1. namely and paragraph a); b); c), paragraph 2; 3; 4, and verse 5.
 - 4) The legislative body's authority to consider laws is regulated in article 98, paragraph, 1; 2; 3; 4; and verse 5.
- 3. Interdependence between the Government, the National Parliament and the President of the Republic**
- 1) In accordance with the provisions of Article 103, the Government is a body of sovereignty that is responsible for the direction and implementation of general state policies and is the highest body of Public Administration. Based on Decreto Lei No.14 / 2018 de 17 de Agosto (Lei Organico VIIIIGC) can form the organizational structure. The principles of good governance, as in the welfer state conception, the government is given the obligation to realize bestuurszorg (general welfare), therefore the government is given the authority to intervene (staatsbemoeyenis) in all people's lives. Basically, every form of government intervention must be based on prevailing laws and regulations as a manifestation of the principle of legality, which is the main foundation of the rule of law⁴. So the power of the Timor-Leste government is regulated by KRDTL and other laws so that interdependence in exercising institutional power -state institutions. The executive branch of power is the branch of power that holds the highest administrative authority of the state government. In this connection, there are three systems of government in the world: (i) a system of presidential government, (ii) a system of parliamentary government / cabinet system and (iii) a mixed system. The characteristics of a mixed system can be referred to as a quasi-presidential or semi-presidential system, Timor-Leste has the characteristics of power where the Presidente da Republica can dissolve the National Parliament, article 86 paragraph f), thus the Timor-Leste system of government is quasi-presidential or semi-presidential⁵.

³Ibid pp. 298-310

⁴Ridwan HR. 2011. *State Administrative Law*. PT Rajagrafindo Persada. Jakarta: Ed. 6. p. 229

⁵Ibid pp. 323

- 2) Government authorities based on article 115, paragraph: 1. The government is authorized and responsible for: a); b); c); d); e); f); g); h); i); j); k); l); m); n); o); p). Paragraph 2. The government has the authority and responsibility to guarantee relations with other agencies for: a); b); d); e); and paragraph 3. The government has exclusive legislative authority over matters relating to its own administration and procedures, as well as over the administration of the State, either directly or indirectly. Meanwhile, the authority of the council of ministers is regulated in article 116 "The Council of Ministers has the authority and responsibility for: a); b); c); d); e) and f), as well as the authorities of members of the Government regulated in article 117, paragraph 1. The Prime Minister has the authority and responsibility for: a); b); c); d); e), paragraph 2. The Ministers are authorized and responsible for: a); b); paragraph 3. Government Regulations must be signed by the Prime Minister and the Ministers who are competent for their respective duties.

4. Interdependence between the Court, the President of the Republic, the National Parliament and the Government in administering the Government

1. In accordance with the provisions of Article 118 jurisdiction consists of powers in the following provisions: paragraph 1. The court is a body of sovereignty with the power to enforce justice, on behalf of the people. paragraph 2. In carrying out its functions, the court/has the right to obtain assistance from other government officials. and paragraph 3. Court decisions are binding and above the decisions of any other competent party.
2. In article 119 "The court is independent or independent and only subject to the KRDTL and the law, while the authority to review the conflict with the KRDTL, which is regulated in article 120, the Court is not allowed to apply rules that contradict the KRDTL or the principles contained therein.
3. Then regarding the Supreme Court (Tribunal de Recurso) regulated in article 124 :, paragraph 1. The Supreme Court is the highest court and guarantees uniformity of law enforcement, and has jurisdiction throughout the territory of the country. paragraph 2. The Supreme Court is also authorized and responsible for enforcing justice in legal matters, as well as matters relating to KRDTL and elections. paragraph 3. The Chief Justice of the Supreme Court is appointed by the President of the Republic from among the judges of the Supreme Court for a term of office of 4 (four) years.

The judicial branch of power is a pillar in the modern state power system. In Timor-Leste, the fourth function of power is often called "judicial" power, hence the Dutch Judikatief. In English, apart from the terms legislative and executive, the term judicative is not known so that for the same meaning, the terms judicial, judiciary or judicature are usually used. In the modern state system, the branch of the judicial power or the judiciary is a branch that is organized separately. Therefore, said by John Alder, "The principle of separation of powers is particularly important for the judiciary. It may even be possible, because Montesqueu himself was a judge (French), in his book, "L'Esprit des Lois", he dreamed of the importance of an extreme separation between the legislative, executive and especially judicial branches of power⁶.

III. KESIMPULAN

The concept of interdependence between the power of state institutions in the administration of the Timor-Leste Government, namely the President of the Republic (Control), the National Parliament (Legislative), the Government (executive) and the court (adjudicating according to law) is fully regulated in KRDTL 2002 and is in accordance with the principle of legality.

The application of the trias politica theory from Montesqueu France which was previously adopted by continental European countries and the check and balances theory from the founders of the USA has been combined into a division / separation of powers between the powers of state institutions, which was later adopted by Timor-Leste.

⁶ Ibid p. 310

Interdependence of the President of the Republic with the National Parliament, Government and Courts based on KRDTL article 74 paragraph 1 and paragraph 2, article 85, paragraph, b); c); d); e); f. article 87, paragraph a); b); d). Article 88, paragraph 1, 2, 3, and paragraph 4. Article 100, paragraph 2, paragraph i); j); k); l). Article 133 paragraph m)

Interdependence between the National Parliament, the President of the Republic, the Government and the Court, based on article 92, article 95, paragraph 1, 2, 3 and paragraph 4. Article 96, paragraph 1, 2, and paragraph 3. Article 97, paragraph 1, 2, 3, 4 and paragraph 5. Article 98, paragraphs 1, 2, 3, 4, and 5.

Interdependence between the Government, the National Parliament and the President of the Republic, based on article, article 103, article 115, paragraph 1, 2, and paragraph 3. Article 116, paragraph a); b); c); d); e); f). Article 117 paragraph, 1, 2, and paragraph 3.

Interdependence between the Court of the President of the Republic, the National Parliament of the Government based on article 118, paragraph 1, 2, and paragraph 3. Article 119; article 120, article 124, paragraph 1, 2, and paragraph 3.

RDTL adopts a quasi presidential or semi-presidential government system constitutionally and the principle of legality of the presidential authority is more dominant / prominent, one of which appears to be article 86 paragraph f, article 95, article 103 and article 124 paragraph 3.

BIBLIOGRAPHY

BOOKS:

- [1.] Jimly Asshiddiqie. 2019. Introduction to Constitutional Law. Ed.I.Cet.7 PT.Raja Grafindo Persada. Jakarta
- [2.] Munir Fuady. Modern Law State Theory (Rechtstaat). PT Refika Aditama. Bandung: 2011. Cet.II.
- [3.] Ridwan HR. 2011. State Administrative Law. PT Rajagrafindo Persada. Jakarta: Ed. 6.
- [4.] **CONSTITUTION:**
- [5.] 2002 Constitution of the Democratic Republic of Timor-Leste.
- [6.] Lei No.3 / 2011 de 1 de Junho, Organica Presidencia da Republica.
- [7.] Lei No.15 / 2009 de 11 de Novembro, Regimento Parlamento Nacional RDTL
- [8.] LEI N.º 15/2005, de 16 de Setembro, Lei de Autorização Legislativa em Matéria de Processo Penal
- [9.] LEI N.º 16/2005 de 16 de Setembro, Lei de Autorização Legislativa em Matéria Penal
- [10.] LEI N.º 17/2005 de 16 de Setembro, Lei de Autorização Legislativa em Matéria de Processo Civil
- [11.] Decreto Lei No.14 / 2018 de 17 de Agosto Lei Organico VIII Governo Constitucional
- [12.] Decreto Lei N.º 7/2004 de 5 de Maio, Lei Orgânica Falintil-FDTL