EXERCISE OF GOVERNMENT AUTHORITY IN FORMATION OF LAWS IN TIMOR-LESTE

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Abstract

The Democratic Republic of Timor Leste is a democratic, sovereign, independent and united State, based on the power of law, the will of the people and respect for human dignity. In the implementation of democratic government, the power of state institutions is not only vested in one institution, but is exercised by several state agencies or institutions. The aim of dividing power in the administration of state power is so that power is not centralized in one state institution, which can result in authoritarian government and hampered people's participation in determining political decisions.

With the division of power in state administration as one of the characteristics of a democratic state, there are several bodies administering state power such as the legislative, executive, judiciary and others. In general, countries that implement a power distribution system refer to the "trias politica" theory by carrying out several variations and developments of this theory in their application.

The problem is, are the Timor-Leste State Institutions, in administering their government, in accordance with the Trias Politics Theory?

The formation of the state was based on the trias politica theory, regarding the principle of separating state power into several bodies or institutions as explained above. However, in the Timor Leste constitution regarding State sovereignty institutions is regulated in article 67 and the principle of separation of powers is regulated in article 69 of the constitution, furthermore in the implementation of the implementation of State government power in terms of the formation of laws there are two institutions, each of which has attribution of authority, both legislative and executive authority on a Constitutional (Normative) basis. However, theoretically, on what basis does the government or executive have attributional authority in forming laws? And what content material is the authority of the government? On the basis of this question, it is necessary to study more deeply the authority of State institutions in forming laws in the State of Timor-Leste.

The method used in analyzing the implementation of government authority in the formation of laws, the author uses the Normative method to justify the norms relating to the authority of State institutions in the formation of laws in Timor-Leste. And for the analysis technique, the author uses perspective analysis.

In this theoretical basis, several theories, concepts and general principles as well as the views of scholars can be put forward which are used as references for clarification and as a basis for scientific justification.

The basic idea of the division of power is to save the country from arbitrary actions by the authorities. The birth of this idea cannot be separated from the practice of absolute state administration under a ruler to the detriment of the people of a country. So state administration needs to be distributed among several different organs with different people. In this division of power, there can be cooperation between one organ of power and another organ of power in carrying out the functions of power in a country. So there is a basis for cooperation in administering government. To avoid abuse of authority and exercise control between the organs of the respective State institutions (checking and whitening).

Based on the authority in forming laws in the RDTL State, this matter is handled by two State institutions, but theoretically and normatively, the authority to form laws is the authority of the Legislative institution, while the authority of the executive institution plays a role in implementing the law, however In the RDTL constitution it is different, in fact the authority in forming laws tends to be given to the Executive. Therefore, it creates confusion among the public regarding the authority of these two institutions in forming laws.

In order to exercise state power, it must be regulated by legal norms, which form the state system. The system must provide guarantees so that all parties involved in the state, both state institutions and interest groups in society, can exercise control over the running of the state government administration system in question.

The Constitution of the Democratic Republic of Timor-Leste is a state framework that is considered ideal for a nation as stated in article 2 paragraph (2), this lays the foundations of the state system and at the same time regulates the mechanism for its implementation. Of course, the constitution cannot possibly regulate everything. The details of these basics can be further regulated in lower regulations such as laws or government regulations that regulate government administration which grow, are accepted and maintained in the practice of state government administration.

Key: ***Exercise of Government Authority In Formation of Laws In Timor-Leste***

EXERCISE OF GOVERNMENT AUTHORITY IN FORMING LAWS

A. Background

The Democratic Republic of Timor Leste is a democratic, sovereign, independent and united State, based on the power of law, the will of the people and respect for human dignity. In the administration of a Democratic government, the power of State institutions is not only vested in one institution, but is exercised by several bodies or state institutions. The aim of dividing power in the administration of state power is so that power is not centralized in one state institution, which can result in authoritarian government and hampered people's participation in determining political decisions. With the division of power in state administration as one of the characteristics of a democratic state, there are several bodies administering state power such as the legislative, executive, judiciary and others. In general, countries that implement a power distribution system refer to "trias politica" theory by carrying out several variations and developments of this theory in their application.

In connection with the implementation of the power of the State government in terms of authority in the formation of laws, it is related to the implementation of the power of the government of the State of Timor-Leste, that the State of Timor-Leste is a Democratic State which is based on a State of law which is a Constitutional Democracy in which it adheres to the State of Rechtsstaate law and The Rule. of Law.

The formation of the state was based on the trias politica theory, regarding the principle of separating state power into several bodies or institutions as explained above. In the Timor Leste constitution, state sovereignty institutions are regulated in article 67 and the principle of separation of powers is regulated in article 69 of the constitution. Furthermore, in the implementation of the implementation of state government powers in terms of forming laws, there are two institutions, each of which has attribution of authority, both legislative and executive authority on a Constitutional (Normative) basis. However, theoretically, on what basis does the government or executive have attributional authority in forming laws? And what content material is the authority of the government? On the basis of this question, it is necessary to study more deeply the authority of State institutions in forming laws in the State of Timor-Leste.

Based on the Tris politica theory, state power consists of three types of power: first, legislative power or the power to make laws (in new terms it is often called rule making functions); secondly, executive power or the power to implement laws (in new terminology often called rule application function); thirdly, judicial power or the power to adjudicate violations of the law (in new terms it is often called the rule adjudication function). The purpose of the Trias Politics theory is that these powers (functions) should not be handed over to the same person, when power is only held by one person, abuse of power will occur by the party in power. Therefore, the power of State institutions needs to be distributed among several people or institutions, so that they supervise each other, in this way it is hoped that the human rights of citizens will be better guaranteed.

Based on the description above, it is a problem for the community regarding the authority of the two institutions in carrying out their respective functions, because the division of power is not yet clear or still creates unclear norms.

B. Research Methods

The method used in analyzing the implementation of government authority in the formation of laws, the author uses the Normative method to justify the norms relating to the authority of State institutions in the formation of laws in Timor-Leste. And for the analysis technique, the author uses perspective analysis.

C. Theoretical Foundation

In this theoretical basis, several theories, concepts and general principles and views of scholars can be put forward which are used as references for clarification and as a basis for scientific justification or justification. These theories and concepts are as follows;

1. Theory of separation of powers

Theory of Separation of Powers", or Trias politica put forward by Montesquieu; that the relationship between law and political institutions needs to be adapted to the environment (history, geography, especially the climate in which the society lives. According to the Trias Politica Theory of its adherents, Montesquieu, this can be stated as follows:

1. Laws and political institutions must be adapted to the environment – history, geography, and climate – in which people live. There are no definite rules and no form of government that applies to all societies (relativism)
2. The most appropriate form of government is the government that best suits the character of the people who inhabit that area.
3. In the classification of government, there are three types of government, namely: republic, monarchy and despotic. A republic can be a democracy, when sovereignty is handed over to all popular institutions, or an aristocracy, when supreme power is handed over to only some members of society. Monarchy is constitutional government by one person, while despotism is arbitrary power by one person which does not tolerate interference from the existence of an aristocracy or some intermediary power that stands between the ruler and the people and acts as an enforcer. To avoid political tensions and war, law is needed, be it the law of nations which regulates relations between independent nations/states, civil law which regulates relations between individuals, and political law which regulates and determines the relations between rulers and the people.
4. A country that is suitable for maximizing freedom and balancing equality is a country where the government's legislative, executive and judicial powers are separated separately so that civil law can be made according to the needs of all parts of society.

The basic idea of the division of power is to save the country from arbitrary actions by the authorities. The birth of this idea cannot be separated from the practice of absolute state administration under a ruler to the detriment of the people of a country. So state administration needs to be distributed among several different organs with different people. In this division of power, there can be cooperation between one

organ of power and another organ of power in carrying out the functions of power in a country. So there is a basis for cooperation in administering government. To avoid abuse of authority and exercise control between the organs of the respective State institutions (checking and whitening).

Based on the ideas above, it can be traced that the Constitution of the Democratic State of Timor-Leste, recognizes the principle of division of powers regulated in article 67 of the RDTL constitution, which states that state sovereignty can be divided into four institutions (organs) of state power consisting of the President of the Republic, the National Parliament , Government and the country's high court. And the principle of separation of powers is regulated in article 69 of the RDTL constitution. The sovereign institutions that play a role in making laws and regulations in the country of Timor-Leste, there are 2 (two) institutions that have the authority to make laws and regulations, namely: the organ of legislative power and the organ of executive power, both institutions have the attribution authority to make laws and regulations. invitation in the country of Timor-Leste.

2. Authority Theory

The researcher put forward this theory with the aim of discussing and analyzing the government's authority in proposing draft legislative regulations, in this case to analyze "what is the basis of the government's authority in determining content material which is the authority of the government as well as the mechanism for determining and ratifying proposed legislative regulations. Conceptually, the term authority or authority is often equated with the Dutch term "bevoegdheid" (which means authority or power). Authority is a very important part of Governance Law (Administrative Law), because the new government can carry out its functions on the basis of the authority it obtains. The legitimacy of government actions is measured based on the authority regulated in article 115 of the 2002 RDTL Constitution. Regarding authority, it can be seen from the State Constitution which provides legitimacy to Public Bodies and State Institutions in carrying out their functions. Authority is the ability to act granted by applicable law to carry out legal relations and actions

In the literature of political science, governmental science, and legal science, the terms power, authority, and authority are often found. Power is often simply equated with authority, and power is often interchanged with the term authority, and vice versa. In fact, authority is often equated with authority. Power usually takes the form of a relationship in the sense that "there is one party who rules and another party who is ruled" (the rule and the ruled).

Based on the definition above, there can be power that is not related to law. Power that is not related to law is called by Henc van Maarseven a "blote match", while power that is related to law by Max Weber is called rational or legal authority, that is, authority based on a legal system is understood as rules that have been recognized. and obeyed by society and even reinforced by the State.

In this writing, the focus of the study is only on the government's authority in forming Draft Laws, but the problems that will arise are doubts regarding the procedures for Legislative Laws proposed by the government and the government's authority to propose initiative proposals

for Draft Laws, therefore clarity is needed regarding the substance or content of what is regulated in the draft law. Because if there are no clear restrictions on the authority to make legislation by the government, then this will give rise to problems such as;

a) Confusion for the Government and Parliament regarding the limits of the legislative authority of these two institutions;

b) The granting of authority to the Government must be clear so that it does not result in either the authority of the National Parliament or the authority of the Government in making Draft Laws.

3. Government Theory

Government comes from the word "order" which after adding the prefix "pe" becomes government, and when adding the suffix "an" becomes government, in this case the difference between "government" and "government" is because the government is the body or organization concerned, whereas Government means the matter or matters of government itself. The word command itself has at least 4 (four) elements contained in it, namely; There are two parties involved, the first is the party who rules, called the ruler or government, the second is the party who is governed, namely the people, there is a relationship between the two parties (Syafiie, 2011: 61).

In general, government can be defined as an organization that has the power to make and implement laws and regulations in a certain area. The government is an organization that has:

1) The governing authority of a political unit;

2) The power that governs a political society;

3) Apparatus which is a government body that functions and exercises power;

4) The power to make laws and regulations, to handle disputes and discuss administrative decisions with a monopoly on legitimate power

The government's objectives include external security, internal order, justice, general welfare and freedom. Not much different from the opinion of S.E. Finer sees the government as having continuous activities (process), the territory of the country where the activities take place (state), the officials who govern (the duty), and the methods or methods and systems (manner, method, and system) of the government towards its people. This opinion is different from R. Mac Iver, who views government from the perspective of the political science discipline, "government is the organization of men under authority... how men can be governed". That is, government is an organization of people who have power... how humans can be governed. So the science of government for R. Mac Iver is a science of how men can be governed (a science of how men are governed).

The need for government stems from the fact that humans need to live in communities, and personal autonomy must be maintained in these communities. A country that has a very large area and complexity will usually have levels of government: local, regional and national. In relation to the definition of government, it really depends on each government system, including:

1) **Monarchy (Monarchy)**
   Monarchy is a government led by someone who has passed it down from generation to generation. Monarchy comes from the Greek words monos, which means one, and archein, which means government. Monarchy is a type of government where the king is the head of state. Monarchy or the royal system of government is the oldest system in the world. At the beginning of the 19th century, there were more than 900 royal thrones in the world, but this decreased to 240 in the 20th century. Meanwhile, in the eighth decade of the 20th century, only 40 thrones still existed.
2) **Despotism (Despotism),** Despotism is a government led by only one leader and all the people are considered servants.
3) Dictatorship (Dictatorship), A dictatorship is a government led by someone who has complete power over the people and the country.
4) Oligarchy (Oligarchy), An oligarchy is a government led by a small group of people who have common interests or are related to each other.
5) Plutocracy (Plutocracy), Plutocracy is a government that originates from the highest class or wealthy group.
6) Democracy (Democracy), Democracy is a government where the people hold power. Democracy can be direct (direct democracy) or through representation (representative democracy). Democracy is a form or mechanism of a country's government system as an effort to realize popular sovereignty (citizen power) over the country to be carried out by the government of that country. One of the pillars of democracy is the principle of trias politica which divides the three political powers of the state (executive, judicial and legislative) to be realized in three types of state institutions that are mutually exclusive (independent) and are in equal rank with one another. Alignment and independence of these three types of state institutions is needed so that these three state institutions can supervise and control each other based on the principle of checks and balances.
7) Theocracy (Theocrary). A theocracy is a government led by religious elites.

Based on the government system above, if we examine the Timor-Leste government system, it is observed that the Timor-Leste government system model is Oligarchy and Theocracy. Because since Timor-Leste's independence on May 20 2002 until now, the government has been controlled by political elites and people who have capital in political parties. So the system implemented by Timor-Leste is a party system (Patridarismo system). The consequences of this party system have an impact on the process of nation and state development, because every political party that wins an election, that party forms its own program which is different from the old government, ultimately there is the term disassembly and reassembly in the government system.

4. Theory of Law Formation

The term legislation is used to describe the process and techniques for compiling or making all State Regulations, while the term Legislative Regulation is to describe all types or kinds of State Regulations. In another sense, Legislative Regulations are a term used to describe various types (forms) of regulations (written legal products) that have general binding force made by authorized officials or institutions.

Based on the theory of law formation above, it relates to the Authority of the National Parliament of Timor-Leste, as regulated in Article 92 of the Constitution of the Democratic Republic of Timor-Leste that, the National Parliament is the sovereign institution of the Democratic Republic of Timor Leste which represents all citizens of Timor Leste and is given the authority legislative, monitoring and political decision making.

D. Discussion

Constitutionally, the granting of authority to form legislation to these two institutions still causes confusion. This confusion is caused by the fact that the constitution of the Democratic Republic of Timor-Leste which regulates the authority to form legislation is unclear or creates unclear norms.

In public law, authority is related to power. Power has the same meaning as authority because the power possessed by the Executive, Legislative and Judiciary is formal power. Power is an essential element of a State in the process of administering government in addition to other elements, namely: a) law; b) authority (authority); c) justice; d) honesty; e) bestarian wisdom; and f) virtue. Power is the core of State administration so that the State is in a state of movement (de staat in beweging) so that the State can take part, work, have capacity, achieve and perform in serving its citizens. Therefore the State must be given power. According to Miriam Budiardjo, power is the ability of a person or group of people to influence the behavior of another person or group in such a way that behavior is in accordance with the desires and goals of that person or state. In order for power to be exercised, a ruler or organ is needed so that the State is conceptualized as a collection of positions (een ambten complex) where the positions are filled by a number of officials who support certain rights and obligations based on the subject-obligation construction.

According to Phillipus M. Hadjon, if you look closely there is a slight difference between the term authority and the term "bevoegheid". The difference lies in the legal character. The term "bevoegheid" is used in the concept of public law as well as in private law. In the legal concept, the term authority or authority should be used in the concept of public law. Furthermore, Ateng Syafrudin believes that there is a difference between the meaning of authority and authority, it is necessary to distinguish between authority (authority, gezag) and authority (competence, bevoegheid). Authority is what is called formal power, power that comes from the power granted by law, while authority only concerns a certain "onderdeel" (part) of authority. Thus, power has two aspects, namely the political aspect and the legal aspect, while authority only has a legal aspect. This means that power can come from the constitution, it can also come from outside the constitution (unconstitutional), for example through a coup or war, while authority clearly comes from the constitution.

Within authority there are authorities (rechtsbe voegdheden). Authority is the scope of public legal action, the scope of government authority, not only includes the authority to make government decisions (bestuur), but also includes authority in the context of carrying out tasks and granting authority and the distribution of authority is primarily stipulated in statutory regulations.

In connection with the description above, the State of Timor-Leste is a State based on the Rule of Law, as regulated in article 1 paragraph (1) of the RDTL Constitution, so the administration of the State cannot be separated from the nature of the administration of the State. RDTL adheres to the principle of separation of powers based on article 69 of the Constitution of the Democratic Republic Timor-Leste, in relation to the RDTL State institutions, there are 4 (four) institutions, including: the President of the Republic, the National Parliament, the Government and the Judiciary as regulated in article 67 of the RDTL Constitution.

The role of State institutions in administering the State has been outlined in the constitution of the Democratic Republic of Timor-Leste as follows; The National Parliament is the sovereign institution of the Democratic Republic of Timor Leste, representing all citizens of Timor Leste with legislative, supervisory and political decision-making authority.

Based on article 92 of the Constitution of the Democratic Republic of Timor-Leste and then the National Parliament delegated legislative authority to the government to make laws that regulate crimes and determine sanctions and procedures for their implementation, which are regulated in article 96 paragraph (1) of the RDTL Constitution. Second; Executive Institution; has the authority to implement laws and regulations made by the legislative body (national Parliament), this is regulated in article 115 of the RDTL Constitution.

Third; judicial institution; is an independent institution to maintain laws and regulations, based on article 126 of the RDTL constitution. It needs to be explored that in article 69 of the RDTL Constitution regarding the principle of separation of powers with Montesque's theory regarding the division of power in a State into three State Sovereign Institutions, however in the State of Timor-Leste the principle of division of powers regulated in article 69 contains four (4) State sovereign institutions consisting of; The President of the Republic as head of State has his own institution, the National Parliament as a Legislative institution, the Government as an Executive institution and the Courts as a Judicial Institution. These four (4) institutions have their respective authorities and carry out their roles and functions without interference between one another, but the four institutions influence each other. Because of the mutual influence between these institutions to mutually control one institution and another institution to ensure good and clean government (Good Govenmment and Chaeking and Balance). However, constitutionally legislative authority according to the Constitution of the Democratic Republic of Timor-Leste is handled by two legislative institutions consisting of the legislative and executive institutions.

Based on article 92 regarding the definition of National Parliament. Article 95 concerning the authority of the National Parliament along with the contents of the Laws which are the authority of the National Parliament, Article 96 concerning the licensing of legislation from the

National Parliament to the government accompanied by the contents of the Laws and 115 paragraph (3) concerning Exclusive authority in the formation of Laws to regulate procedures implementation of government, both directly and indirectly.

E. Conclusion

In order to exercise state power, it must be regulated by legal norms, which form the state system. The system must provide guarantees so that all parties involved in the state, both state institutions and interest groups in society, can exercise control over the running of the state government administration system in question. The implementation of government power in a democratic country, the role and position of the community cannot be separated from their participation in the process of making public policy, even if not directly in the process. However, in democracy, the people involve themselves indirectly in giving their authority through political parties to express their aspirations in the national parliament.

Based on the authority in forming laws in the RDTL State, this matter is handled by two State institutions, but theoretically and normatively, the authority to form laws is the authority of the Legislative institution, while the authority of the executive institution plays a role in implementing the law, however In the RDTL constitution it is different, in fact the authority in forming laws tends to be given to the Executive. Therefore, it creates confusion among the public regarding the authority of these two institutions in forming laws. Especially law enforcers, they are confused about which laws should be the authority of the legislative body and which laws should be the authority of the Executive body?

The exercise of government authority in forming laws theoretically means that the authority to make laws in a country is the authority of the legislative body. However, constitutionally in the RDTL Constitution. State institutions that have the authority to make laws are the legislative institution and the executive institution. As regulated in the RDTL Constitution explained above.

F. Recommendations

Based on the results of the analysis above, the author can recommend to the authorities in Timor-Leste government administration as follows:

1. To the legislative body; In the future, it is necessary to form an independent institution to draft legal content material, both legal content material from the national parliament and legal content material from the government. This can make it easier for both institutions to prepare time to discuss the draft law being drafted. by the National Legislative Institution.
2. To Executive institutions; In the future, before making policies to implement laws, it is necessary to pay attention to laws that really respond to the needs of society, this is because many policies that are decided by the government often conflict with the needs of society, so that the legal products that are made are not responsive. (Responsive).

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