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Comparative Law on the Authority of the House of Representatives (Indonesia) with the National Parliament (Timor Leste)

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Comparative Law; Authority; Parliament Indonesia; Timor Leste.

Abstract

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Methods of the Research: This research uses normative research methods and comparative law research methods.

Results of the Research: The similarity between the people's representative assembly (Indonesia) and the national parliament (Timor Leste) is that they both have the authority to formulate laws, as well as the similarity of legislative functions, budgetary functions, and oversight functions. The difference lies in the right to elect a general high counselor. In the Indonesian constitution, there is no general ministry high council election. The People's Representative Council does not have the authority to elect and appoint ministers, this is the President's authority as a prerogative right. Meanwhile in Timor Leste, the National Parliament elects the high council of general ministries.

1. INTRODUCTION

The day after independence, namely on 18 August 1945, the 1945 Constitution was successfully ratified as a constitution through the Preparatory Committee for Indonesian Independence. As a country based on law (rechtsstaat, etat de droit), of course the existence of the 1945 Constitution as a constitution in Indonesia has a long history until it is finally acceptable as a legal basis (juridische gelding) for the implementation of state administration in Indonesia.

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1. INTRODUCTION

The day after independence, namely on 18 August 1945, the 1945 Constitution was successfully ratified as a constitution through the Preparatory Committee for Indonesian Independence. As a country based on law (*rechtsstaat*, *etat de droit*), of course the existence of the 1945 Constitution as a constitution in Indonesia has a long history until it is finally acceptable as a legal basis (*juridische gelding*) for the implementation of state administration in Indonesia.

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Whereas the 1945 Constitution was drafted from May 29, 1945 to June 16, 1945 by a body, namely the agency for investigating efforts to prepare for Indonesian independence, which in this case consisted of 21 members, chaired by Ir. Soekarno and the vice chairman, Drs. Moh, Hatta, membership with 19 members consisting of 11 representatives from Java, then 3 people from Sumatra and 1 representative each from the Kalimantan region, Maluku region, and the Lesser Sunda region. Whereas the Investigating Agency for the preparations for Indonesian independence then established a special team whose task and function was to formulate a constitution for Indonesia, in this case which was later known as the 1945 Constitution. Whereas the background for the formation of the constitution (the 1945 Constitution) began with the promise of the State of Japan to provide an independence for the Indonesian people in the future.¹

But the promise was not kept by the Japanese state. The Japanese colonization of Indonesia after the Dutch colonization of Indonesia, in this case Japan always wanted to control and drain the wealth of the Indonesian nation longer. Furthermore, after Japan was defeated by the allies in world war 2, the Indonesian people were more free and free to achieve independence. After the independence of the Republic of Indonesia was achieved, the need for a constitution must be formulated immediately, so that Indonesia became a complete sovereign state, the 1945 Constitution was successfully inaugurated as a constitution by the Preparatory Committee for Indonesian Independence.²

The Indonesian freedom fighters who have realized the diversity of the Indonesian people, want unity in order to establish a state.³ Indonesia as a democratic country, with its plurality or diversity, faces quite severe challenges in the implementation of democracy, especially in the implementation of procedural democracy, namely through the implementation of general elections.⁴ The general election is a basis for selecting members of the legislature in Indonesia, which in the end if the members of the legislature have been elected, they will be given authority in accordance with the constitution.

Indonesia and Timor Leste⁵ are neighboring countries in Southeast Asia. Initially the state of Timor Leste was part of the State of Indonesia. Timor-Leste in this case is a new country in the millennium civilization, whose position is located in the east and has a long history of trying to achieve or gain independence as an independent country. Timor-Leste was once controlled by two countries, namely the Portuguese State and the State of Indonesia, before the State of Timor Leste in 2002.

Timor-Leste in this case is a new country in the millennium civilization, Timor-Leste as an independent and sovereign State which received recognition from the international community on 20 May 2002, and is administratively assisted by the United Nations government through the United Nations agency. Transitional Administrative⁶ East Timor. The United Nations played an active role in assisting the government of Timor-Leste to become a new nation.⁷

The United Nations through the United Nations Transitional Administrative In East Timor institution, in this case during the transition period, the representatives of the United

¹ Research by I Nyoman Prabu Buana Rumiarta, Indonesia

² *Ibid.*,

³ Slamet Riyanto, et.al., "Bhinneka Tunggal Ika: Its Norming and Actualization in Democracy in Indonesia", SASI Journal, Vol. 28 Issue 4 (2022), p. 568, DOI: <https://doi.org/10.47268/sasi.v28i4.1058>

⁴ *Ibid.*, p.568

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Nations government have a mission to prepare state institutions which in turn will serve as state institutions that run the wheels of government. The mission carried out by the United Nations agency has changed to the United Nations Mission Support in East Timor which is still in the State of Timor-Leste to assist the government of Timor-Leste in certain matters and this mission will end in October 2012.⁵ The principle is administratively assisted by the United Nations government. That the United Nations has an active role in assisting the government of Timor-Leste to become a new state.

Based on the history of the formation of the constitutions of the state of Timor Leste and the state of Indonesia, it is interesting to conduct research on the constitutions of the state of Timor Leste and the state of Indonesia, in this case specifically on the legal comparison of the authorities contained in the constitution of the House of Representatives (Indonesia) with the National Parliament (Timor Leste), an authority possessed by the constitution must be carried out properly with the aim of prospering the people and the state.

There is a study related to the comparison of the law of a regulation in one country with another, namely *Tramelling The Illegal Wildlife Trading: A Comparative Legislative Analysis of China and India*⁶, the research is carried out by conducting a detailed analysis of the special provisions of the Wildlife Protection laws of the two countries. Based on the analysis, it was found that Chinese laws are the most flexible, compared to those in India.⁷ From this research it can be seen that the legal comparison of a regulation between countries can be seen that there is a flexible and inflexible regulation.

In addition, in a comparative study of laws in regulations between countries, similarities and variants of what types are regulated between one country and another can be analyzed, as contained in the study *A Comparative Analysis of the Impeachment Procedures in Nigeria and Indonesia: A Need for a Paradigm Change*,⁸ This study comparatively analyzes the impeachment procedures in Nigeria and Indonesia to suggest measures to strengthen and safeguard the procedures from abuse.⁹ In this comparative research on the law of authority of the Indonesian people's representative council and the national parliament of Timor Leste, it will also be studied and analyzed regarding the similarities and variants of what types of powers are regulated by the constitution.

Legislators and executive officials should put aside ordinary political concerns when they address constitutional questions, and should instead devote their efforts to developing a principled understanding of the constitutional provisions that bear on the problem at hand.¹⁰ In this regard, with the authority possessed by the House of Representatives or members of the legislature, they can use the authority granted by the constitution properly by taking into account the interests of the people and putting aside political interests. This

⁵ Research by Alarico Gomez, at Dili Timor Leste

⁶ Sandeep Kumar Mohanty & Soumya Prakash Patra, "Tramelling The Illegal Wildlife Trading: A Comparative Legislative Analysis of China and India", *SASI Journal*, Vol. 27 Issue 4 (2021), p. 549-560, <https://doi.org/10.47268/sasi.v27i4.597>

⁷ *Ibid.*, p. 549-560

⁸ Kalu Kingsley Anele, "A Comparative Analysis of the Impeachment Procedures in Nigeria and Indonesia: A Need for a Paradigm Change", *Lentera Hukum Journal*, Vol. 9 No. 1 (2022), p. 33-74, DOI: <https://doi.org/10.19184/ejhl.v9i1.28417>

⁹ *Ibid.* p.33-37

¹⁰ Stephen L. Carter, *Constitutional Improprieties: Reflections on Mistretta, Morrison, and Administrative Government* (USA, The University of Chicago Law Review, Vol. 57, 1990) p.357

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is of course implemented by the people's representative council in Indonesia and the people's representative council in Timor Leste.

By comparing the laws of countries contribute to the study of comparative law in motion in other countries¹¹ Comparative law is a matter that has the concept of comparing legal systems to be able to see the similarities and differences in the context of developing law and or as a concept of carrying out legal reforms. Comparative law in this case as a science that examines the presence or absence of a similarity or difference and in this case investigates the background of these similarities or differences, knowledge of the background in question will provide a deeper and broader understanding of the essence, the development of a particular legal system and its legal institutions, as well as in comparing legal systems to be able to see the similarities and differences in the context of developing the law.

The examines the quality of regulations or laws and their implementation based on existing regulations and doctrines in society.¹² The quality of the authority granted by the constitution which is formed in a regulation as in Indonesia and Timor Leste can be observed whether it is in accordance with the interests of society.

2. METHOD

This research uses normative research methods and comparative law research methods. Normative research is focused on reviewing and researching legal materials which are secondary materials. In connection with the problem in this research, the legal materials that will be used are primary legal materials, namely the 1945 Constitution of the Republic of Indonesia and the Constitution of the Democratic Republic of Timor Leste (RDTL). Secondary legal materials are legal materials that provide information on primary legal materials in the form of legal journals, official documents, legal books, and other scientific works related to the topic of this research, namely the comparison of law on the authority contained in the constitution of the House of Representatives (State of Indonesia) with the National Parliament (State of Timor Leste). The comparative legal research method is a research methodology carried out by comparing one legal system to another, an activity in the sense of comparing the positive legal system of one nation another, in this case the legal comparison of the existing authorities. in the constitution of the House of Representatives (State of Indonesia) with the National Parliament (State of Timor Leste).

3. RESULTS AND DISCUSSION

3.1 Comparative Law

Though the study of comparative constitutional law may not quite require a defense at present, much remains to be settled. In the late 1990s and early 2000s, the question - crudely put - was whether we could compare the constitutional law of different nations. Could a comparison between rules and developments in country A and country B occur in an intelligible and meaningful fashion? Though comparative constitutional law was not

¹¹ Lena Saimeh, Comparing Islamic and International Laws of War: Orthodoxy (London, Oxford University Press, *The American Journal of Comparative Law*, Vol. 69, Issue 1, March 2021) p.139

¹² Agus Budiarto, "Legal Research Methodology Report on in Research on Social Science", *International Journal of Criminology and Sociology*, vol. 9 (2020): p. 1339-1346. DOI: <https://doi.org/10.6000/1929-4409.2020.09.154>

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new legal academy, it had declined in importance over the years, thereby requiring the field to be somewhat reborn.¹³ The term Comparative Law, in English it is called *Comparative Law*, in German it is called *Rechtsvergleichung* or *Vergeleichende Rechtslehre*, in Dutch it is called *Rechtsvergelijking*, and in French it is called *Droit Compare*.

Van Apeldoorn argues about the science of comparative law by stating that: "Laws differ according to place and time, but there is no law of a time, a nation or a state that stands alone. Comparative law states that in addition to the many differences there are also similarities between the laws of various nations. Comparative law science, of course, is not satisfied with merely recording the differences and similarities, but also seeks explanations."¹⁴ Another opinion on Comparative Law was expressed by Ole Lando in his book "The Contribution of Comparative Law to Law Reform by International Organizations," as quoted by Soerjono Soekanto who stated that: "Comparative Law is the national legal system and their comparison."¹⁵ Elsewhere in his writing, Ole Lando says that comparative law includes "analysis and a comparison of the law."¹⁶

Subekti in his book "Comparative Civil Law" states: "In studying comparative law, we do not merely want to know the differences, but what is important is to know the causes of these differences. For that we need to know the background of the legal regulations that we encounter."¹⁷ He further explained the similarities contained in various legal systems, such as in the law of inheritance and the issue of good faith, which in the end he said: "Because the rule of law is a reflection of the state of society, the comparative law lesson has many similarities with what is called the sociology of law."¹⁸ Comparative law is a matter that has the concept of comparing legal systems to be able to see the similarities and differences in the context of developing law and or as a concept of carrying out legal reforms. Comparative law in this case as a science that examines the presence or absence of a similarity or difference and in this case investigates the background of these similarities or differences, knowledge of the background in question will provide a deeper and broader understanding of the essence, the development of a particular legal system and its legal institutions, as well as in comparing legal systems to be able to see the similarities and differences in the context of developing the law. In this research article, we will examine the legal comparison of the powers contained in the constitution of the House of Representatives (Indonesia) and the National Parliament (Timor Leste).

3.2 Comparative of Law on the Authority of the House of Representatives (Indonesia) with the National Parliament (Timor Leste).

The inevitability of comparativism as a matter means that every pronouncement of foreign law and every comparative law must stand as a comparativist.¹⁹ This section will

¹³ Madhav Khosla, "Is a Science of Comparative Constitutionalism Possible?" , *Harvard Law Review*, Vol. 135, No. 8 (2022) p.2111, <https://harvardlawreview.org/wp-content/uploads/2022/06/135-Harv.-L.-Rev.-2110.pdf>

¹⁴ L.J. van Apeldoorn, Introduction to Law/Pengantar Ilmu Hukum (Pradnya Paramita,Edisi Revisi,Jakarta,2008) p.434

¹⁵ Soerjono Soekanto, *Comparative Law/Perbandingan Hukum* (Alumni , Bandung, 1999) p. 26.

¹⁶ *Ibid.*,

¹⁷ Subekti, *Comparative of Civil Law/Perbandingan Hukum Perdata* (Pradya Paramita,Edisi Revisi,Jakarta,2006) p. 8.

¹⁸ *Ibid.*,

¹⁹ Pierre Legrand, *A Tractation on the Comparison of Laws* (London, Oxford University Pers, *The American Journal of Comparative Law*, Vol. 65, Issue 1, July 2017) p.132

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explain the legal comparison of the authority of the House of Representatives (Indonesia) and the National Parliament (Timor Leste). Whereas at a glance it can be seen that there are differences in the designation of the legislative state institutions between Indonesia and Timor Leste, in Indonesia it is called the People's Representative Council and in Timor Leste it is called the National Parliament. Indonesia is a constitutional state governed by the rule of law according to Article 1(3) of the Indonesian Constitution,²⁰ Constitutional law in Indonesia regulates the people's representative assembly. The People's Representative Council of the Republic of Indonesia (DPR-RI), generally called the People's Representative Council (DPR) is one of the high state institutions in the Indonesian constitutional system which is a people's representative institution. The House of Representatives consists of members of political parties participating in the general election who are elected through general elections.

Under the constitution of the Republic of Indonesia (the 1945 Constitution), the House of Representatives is required to carry out three functions: Legislation, Budgeting, and Oversight. These three functions are carried out within the framework of people's representation, where each Member of the Council is obliged to prioritize the interests of the people they represent (constituents) so as to make them "People's Representatives". In the 2019-2024 DPR membership period, 575 members of the people's representatives who sit in the People's Representative Council, from 80 Electoral Districts have been elected. The elected members of the Council serve to represent the people for 5 years, except for those who cannot complete their term of office. Members of the Council who resign in the middle of their term of office will be replaced by other Legislator Candidates (who take part in Legislative Elections) through change between times. To be elected as a Member of the Council, prospective legislators must be at least 21 years old with a minimum educational background of high school and an Indonesian citizen who is physically and mentally healthy. Candidates for members of the House of Representatives are also required to come from political parties (no independent candidates). Before taking office, members of the House of Representatives must take an oath/promise jointly guided by the Chief Justice of the Supreme Court in a plenary meeting of the House of Representatives. Meanwhile, Interim Substitute Members take oaths/promises guided by the leadership of the House of Representatives, which is also held in the plenary meeting of the House of Representatives.



Picture 1 : The Parliament Building of the Indonesian People's Representative Council²¹

²⁰ Denny Indrayana, "Indonesian Constitutional Reform 1999-2002: An Evaluation of Constitution-making in Transition", *Asian Law Review*, Vol. 5 No. 1 (2009), p. 65

²¹ Photograph : Tri Aljumanto

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⁷ The authority of the House of Representatives in Indonesia is based on the provisions of the constitution of the Republic of Indonesia, namely the 1945 Constitution in Chapter VII concerning the House of Representatives, Article 20, 20A, 21 & 22. The authority of the people's representative council in Indonesia, related to the function of legislation, has the duty and authority to formulate a national legislation program, namely preparing and discussing draft laws, establishing laws together with the President and approving or disapproving government regulations in lieu of laws (which are submitted President) to be enacted into law. The authority budget function, has duties and authorities, namely giving approval to the draft law on the state revenue and expenditure budget (submitted by the President) and following up on the results of audits on the management and accountability of state finances submitted by the agency. Auditing state finances and giving approval for the transfer of state assets as well as for agreements that have a broad impact on people's lives related to the burden on state finances.

The authority supervisory function, has duties and authorities, oversees the implementation of laws, the state revenue and expenditure budget and government policies, besides that it has the authority to discuss and follow up on the results of supervision submitted by the regional representative council regarding the implementation laws regarding regional autonomy, formation, expansion and amalgamation of regions, management of natural resources and other economic resources, implementation of the state revenue and expenditure budget, taxes, education and religion. The duties and powers of the people's representative council in Indonesia also have several authorities, including absorbing, collecting, accommodating and following up on people's aspirations and giving approval to the President to declare war or make peace with other countries, appoint and dismiss members of the Judicial Commission. Giving advice to the President in terms of granting amnesty and abolition as well as appointing ambassadors and accepting the placement of other ambassadors, choosing members of the financial audit agency taking into account the considerations of the regional representative councils, giving approval to the judicial commission regarding the candidates for Supreme Court judges who will be appointed as Supreme Court judges by the President and elect 3 (three) constitutional judges to be submitted to the President.

¹⁹ The National Parliament is one of the four high institutions in the Democratic Republic of Timor Leste (RDTL) which is an institution that has the authority to make laws or legislation, oversight and political policies. There are 65 members of the legislature or members of the national parliament in Timor Leste who are elected for a term of five years through an election that is direct, general, free, secret and individual.



Picture 2 : Timor Leste Government Building²²

²² Photograph : Maubere

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¹⁹ The National Parliament of Timor Leste has the duties and powers that are regulated in the Constitution of the Democratic Republic of Timor Leste (RDTL) Article 95, Chapter II, Title III, Part III, among others as follows: ²³ It is incumbent upon the National Parliament to legislate on the basic issues of the country's domestic and foreign policy. The National Parliament, exclusively, has the authority and responsibility to make laws regarding the borders of the Democratic Republic of Timor-Leste, pursuant to article 4, The limits of territorial waters and the exclusive economic zone and Timor-Leste's rights to the contiguous zone and continental shelf, National symbols, pursuant to Article 14(2); Citizenship Rights, freedoms and guarantees, State and capacity of persons and family and succession law, The territorial division, The electoral law and the referendum regime, Political parties and associations, Statute of Deputies, Statute of holders of State bodies, ⁸ the foundations of the education system, The bases of the social security and health system, The suspension of constitutional guarantees and the declaration of a state of desitio and a state of emergency, Defense and security policy, Fiscal policy and Budgetary regime.

¹⁵ In addition ⁸ the National Parliament of Timor Leste has related authorities, It is also responsible for: Ratify the appointment of the President of the Supreme Court of Justice and the election of the President of the Superior Administrativ ⁸ Fiscal and Audit Court, Decide on the Government activities report, Elect a member to the Superior Council of the Judiciary and the Superior Council of the Public Ministry, Decide on the State Plan and Budget and the respective execution report; and. Supervise the budget execution of the State, Approve and denounce agreements and ratify international treaties and conventions, Grant amnesties, Give assent to the visit of the President of the Republic on a State visit, Approve ⁸ revisions to the Constitution by a two-thirds majority of Deputies, Authorize and confirm the declaration of a state of siege and a state of emergency to propose to the President of the Republic that questions of national interest be subject to a referendum.

It is also incumbent upon the National Parliament to elect its Chairman and other members of the board, elect five members to the state council, develop and approve its rules of procedure, and constitute the Standing Committee and create the remaining parliamentary committees. Modern constitutional theory deals almost exclusively ²⁰ with the mechanisms for controlling the exercise of public power. The authority of the House of Representatives or members of the legislature granted by the constitution is closely related to public affairs, in this case controlling the exercise of public power. This is of course implemented by the people's representative council in Indonesia and the people's representative council in Timor Leste.

The absence of a compromise between the executive and the legislature, conflicting policy directions between political parties that control the executive and legislature, and political affiliations lead to procedural abuse. Likewise, the inclusion of a restrictive impeachment procedure in the amendments to the 1945 Constitution of 2002, ²⁴ the importance of an arrangement for limiting executive and legislative authority in the constitution, if it is related to legislative authority in Indonesia and Timor Leste, the procedure for limiting authority is an important matter.

²³ In ; 2009 RDTL Constitution, Timor-Leste

²⁴ Hotman P Sibuea, et.al., "The Comparisons of Indonesian and Philippine Impeachment Models in the Presidential Government System", *Journal of Legal, Ethical and Regulatory*, Issue 4 No. 2 (2022), p.25

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Legislative authority granted by law can be made possible to buy authority, then tantamount to corrupt acts of law, the judiciary which should be the last hope of the common people²⁵ in the context of the authority possessed by the legislatures of Indonesia and Timor Leste if realized with authority then the law remain as a basis for imposing sanctions even though members of the legislature are state officials.

Whereas in the context of legal politics it is clear that law is a tool that works in a certain legal system to achieve state goals or ideals. Therefore, the purpose of legal politics is how to determine laws that lead to the renewal or abolition of existing legal norms and how to implement these legal norms.²⁶ If it is associated with the purpose of granting legislative authority by the constitution, it can be seen that legal politics is all forms of authority possessed by legislative organs as a legal system to achieve state goals.

Country given authority by constitution/constitutional.²⁷ If it is related to the authority of the people's representative council in Indonesia and the national parliament in Timor Leste, then the constitution in that country provides the authority or authority that plays a role in carrying out the government functions of a country. ²⁰ The basis of a constitutional review of the basic structure of democracy,²⁸ the election of members of the people's representative council in Indonesia and the election of members of the national parliament in Timor Leste are based on a democratic structure, so that the constitution in that country gives authority to carry out government functions in the legislature.

4. CONCLUSION

This section will explain the legal comparison of the authority of the House of Representatives (Indonesia) and the National Parliament (Timor Leste). Whereas at a glance it can be seen that there are differences in the designation of the legislative state institutions between Indonesia and Timor Leste, in Indonesia it is called the People's Representative Council and in Timor Leste it is called the National Parliament. The number of members of the House of Representatives of the Republic of Indonesia is 575 members, while the number of members of the National Parliament of Timor Leste is 65 members. The similarities between the people's representative council (Indonesia) and the national parliament (Timor Leste) are that they both have the authority to formulate laws, as well as the similarity of legislative functions, budget functions and supervisory functions. The difference lies in the right to elect the general high council. In the Indonesian constitution, there is no election for the high council of the general ministry. The people's representative council does not have the authority to choose and appoint ministers, this is the authority of the President as a prerogative right. While in Timor Leste, the National Parliament conducts elections for the high council of the general ministry.

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²⁵ Stephen Azubuike, "The Court is the Last Hope of the Common Man", *S Legal*, 10, (2021)

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²⁷ Lopez, Enrique Guillen, *Judicial Review in Spain: The Constitutional Court* (Loyola of Los Angeles Law Review, Vol. 41, 2008) p.531.

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