

## **THE AUTHORITY OF THE SECRETARY OF STATE FOR THE AFFAIRS OF NATIONAL LIBERATION COMBATANTS IN THE VIII CONSTITUTIONAL GOVERNMENT**

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### ***ABSTRACT***

Since the Establishment of the I to VII Constitutional Government of Timor-Leste, in its organic law it has always distributed authority to the Secretary of State for Combatant and Veterans to administer the rights and interests of combatants and veterans of war, although hierarchically its existence is under the Ministry of Social Solidarity. Why is that? Because it is stated in Article 104 paragraph 1 of the Republic Democratic Timor-Leste (RDTL) Constitution that the composition of the Government comprises the Prime Minister, Ministers and State Secretaries. Then in the third paragraph it is also states that the number, titles and competencies of the ministries and state secretariats will be determined by government law. However, in the VIII Constitutional Government it was the opposite, because the authority of the Secretary of State for the Affairs of National Liberations Combatants (SEALN Portuguese Abbreviation) was not clearly and firmly regulated. Therefore, the VIII Constitutional Government Establishment Law and the Law on the Establishment of the Ministry of the Affairs of National Liberation Combatants (MACLN Portuguese Abbreviation) are considered vague. To overcome this ambiguity of norms and ensure legal certainty, the Minister of MACLN issued a Decree No. 01/VIII-GC/MACLN/2020, 8th June to delegate several mandates to the Secretary of State for the Affairs of National Liberation Combatants. Based on this, the substance of the problem is 2, namely: What is the Authority of SEACLN in the VIII Constitutional Government Establishment Law? What are the Administrative Responsibilities of the Authority? This research was carried out using research normative law, through an analysis of the norms in the legislation. Based on the results of the study, it is shown that the VIII Constitutional Governance Policies are actually with a good purpose, because the Government wants to improve services to Combatants and Veterans who are still alive and living throughout Timor-Leste. It's just that the placement of the Secretary of State for the Affairs of National Liberation Combatants is contrary to Article 104 of the Constitution. It should not be the Secretary of State but as vice minister as the Assistant to the Minister. Regarding the authority of the Secretary of State in the VIII Constitutional Government Establishment Law, it is unclear and blurry. According to the theory of delegation of authority, it says that the authority delegated by the official who received the authority through attribution to the mandatory recipient, the administrative responsibility remains with the Minister as the Mandate Holder.

**Keywords:** Authority of the Secretary of State, VIII Constitutional Government.

### **INTRODUCTION**

Article 11 of the RDTL Constitution, states that the Democratic Republic of Timor-Leste recognizes and respects the resistance of the Maubere People against foreign domination and the contribution of all those who fighting for national independence. The state provides special protection to those who became disability because of war, orphans and others dependent on those

who devoted their lives to the struggle for independence and national sovereignty and protect all those who participated in the resistance against foreign occupation, under the provisions of the law. The law establishes a mechanism for honoring national heroes (Pedro Carlos Bacelar de Vanconcelhos, 2011).

Based on the contents of Article 11 of the RDTL Constitution, therefore in the the establishment of Constitutional Government II-VII, it was always stipulated the Authority of a State Secretary under the Ministry of Social Solidarity to regulate the rights and interests of combatants and veterans who involved in the struggle for independence. On April 12, 2003, the National Parliament of Timor-Leste, approved and enacted Law no. 3/2003, concerning the National Liberation Fighters. Then on July 29, 2009, the District Court made the first revision of the Law to become Law No.9/2009. And on March 23, 2011, the National Parliament made a second revision of the Law to become Law No. 2/11.

Seeing that the rights of national liberation fighters that are regulated in Law No. 2/2011, which has been revised many times by the National Parliament, and taking into account the complexity of the issues, the central government aims to improve quality of access to the provision of goods and services to the public, especially to the national liberation fighters. Therefore, in the structure of the VIII Constitutional Government, the status of the secretariat to administer the rights of the national liberation fighters was changed and its status was elevated to a Ministry which led by a Minister and assisted by a State Secretary.

The increased of the legal status to a Ministry level brings theoretical, juridical, political and sociological issues to the position of Secretary of State for the Affairs of National Liberation Combatants. Because in the Law on the Establishment of the VIII Constitutional Government, the authority of the State Secretary is considered vague as it is not regulated clearly and firmly as in the Constitutional Government II-VII..

## **METHOD**

in the process of writing this journal, the author uses a literature study, namely researching and reading the opinions of experts in reference books and several publications such as journals, dissertations, thesis and including the results of interviews with the main respondent of the ministry, which are then compiled in a scientific writing form.

## **RESULTS AND DISCUSSION**

In the discussion section of this study, it consists of 2 (two) chapters, namely:

### **1. Chapter III: The powers of the Secretary of State in the VIII Constitutional Government**

Establishment Act, which consist of:

#### **a) Legal Basis of the Authority of the Secretary of State according to the RDTL Constitution**

Article 103 which defines the Government is the organ of sovereignty

Responsible for conducting and executing the general policy of the country and is the supreme organ of the highest Public Administration ((Pedro Carlos Bacelar de Vanconcelhos, 2011). This means that all policies within the State that are related to the lives of many people, the Government as the third Highest State institution in RDTL will regulate it. The government can use all available resources to fulfill the obligations of the government in the context of fulfilling the rights of its citizens.

Then Article 104 paragraph 1 which regulates the Government states the Government shall comprise the Prime Minister, the Ministers and the Secretaries of State. And in paragraph 3 states that the number, titles and competencies of ministries and secretariats of State shall be laid down in a Government statute ((Pedro Carlos Bacelar de Vanconcelhos, 2011).

Therefore, according to the author's opinion, based on the contents of Article 104 paragraph 1 and 3 above, in fact the position of the Secretary of State for Affairs National Liberation Combatants is equal to the Minister. It is because the powers of the Secretary of State are expressly and clearly stated, the powers are attributed through the RDTL constitution. However, because the three coalition parties CNRT, PLP and KHUNTO were the winners of the General Election at that time which formed the VIII Constitutional Government, according to the Author's Opinion, the Leaders of the three Political Parties set aside the legal principles implied in Article 104 paragraph 3 above. Therefore, there are two members of government who are in charge of the affairs of the national freedom fighters but the Secretary of State has no authority.

b) Authority based on the VIII Constitutional Government Establishment Law.

Historically, the position of Secretary of State for the Affairs of National Liberation Combatants has existed in the Constitutional Government Structure in Timor-Leste from the 2nd Constitutional Government to the VII Constitutional Government. In that period, the position of Secretary of State for Combatants and Veterans was still part of the structure of the Ministry of Social Solidarity (MSS).

However, in the VIII Constitutional Government, the legal status of the Secretary of State was upgraded to the Ministry level led by a Minister, but the position of Secretary State remained in the structure of the VIII Constitutional government. Thus, causing the authority of the Secretary of State to be blurred and unclear both politically and legally.

c) Legal Basis for Delegating the Minister's Authority to the State Secretary.

Based on the VIII Constitutional Government Establishment Act and the Law on the Establishment of the Ministry of Combatants and Veterans, there is not a single Article that explicitly and clearly regulates the Authority of the State Secretary. Therefore, the two laws considered as a vague norm regarding the Authority of the State Secretary. Moreover, in the paragraph 3 of the Law for the Establishment of the Ministry of Combatant and Veterans only mentions that the Secretary of State does not have its own competence or authority, except through a decision made by the Minister of Combatant and Veterans to provide certain programs or activities to the Secretary of State to be implemented. Therefore, on 8 June 2020 the Minister issued the Ministerial Decree No.1/VIII-GC/MACLN/2020 concerning the delegation of power to the Secretary of State for National Liberation Affairs as follows:

1. Based on the provision of article 4 letter (k), Article 10 (1), Article 25, Article 36 (1) and Article 37 (b), Law no. 14/2018, August 17, with the first amendment provided by Law no. 20/2020, May 28, on the establishment of the VIII Government Structures. Article 2 of Law no. 19/2018, dated, 27 December 2018, on the law of the Ministry for the Affairs of National Liberation Combatants. Based on this Decree, the Minister has delegated to the Secretary of State several competencies, including:
  - 1.1. Matters and practices of action within the scope of power conferred on the ministry or member of government responsible who is for the Affairs of the National Liberation Combatants, which are mentioned in article 2, paragraph f) and j) on the structure of the Ministry for Affairs of National Liberation Combatants, as follows:
    - a. Implementing the Recognition and Awards program for National Liberation Combatants and heroes or Martyrs who have died during the struggle for the National Liberation;

- b. The implementation of the Veterans' Investment Fund as an activity that generates income for the survival of veterans and martyrs who struggle for national liberation.
  - 1.2. Supervise the Commission of Tribute, Supervision of Registration and Appeals or *Comissão de Homenagem, Supervisão do Registo e Recurso* on any related issues in accordance with paragraph 2, Article 25, of the Organic Law on Constitutional Government Structure VIII.
  - 1.3. Support and collaborate with the National Liberation Combatants Council which was established based on the Decree of Law no. 7/2018, March 28.
2. Report on all actions taken by the Secretary of State for the Affairs of the National Liberation Combatants within the scope of powers that provided in the previous number, from the date of each delegation to the date of issuance of the order.
3. Considering the content and scope of the order, all interventions carried out, or to be carried out, by the Secretary of State for the Affairs of the National Liberation Combatants are deemed to be carried out within the scope of the delegation of competence that is granted, without the need for any mention of any effect.
4. This Ministerial Decree comes into effect from the date of publication until the end of the VIII Constitutional Government mandate.

## **2. Chapter IV Administrative Accountability of the State Secretary's Authority in the VIII Constitutional Government.**

Theoretically, responsibility contains two aspects, namely internal aspects and external aspects. Internal aspects of accountability are only realized in the form of reports on the implementation of power. Accountability with external aspects is accountability to the third parties, if the exercise of that power causes suffering or loss (Sowoto, 1990).

Based on that theory, the practice of the State Secretary in administrative accountability uses internal accountability to the Minister. From the results of the interview with the Minister for the Affairs of National Liberation Combatants, he explained that when he received the trust of the Prime Minister to serve as Minister, his request to the Prime Minister was that the previous Secretary of State should not be replaced with new person, for the following reasons:

1. Several programs of the VIII Constitutional Government which have been approved by the National Parliament, have been implemented by the Secretary of State, before the Minister was sworn-in as a Minister. The Secretary of State also exercised the Authority as well as Acting Minister to substitute the Minister at the beginning of the formation of the VIII Constitutional Government.
2. The Secretary of State is also a Veteran with 24 years of service in the jungle as FALINTIL during the struggle for the independence.
3. Fund mobilization of the amount of US\$ 30 per month from all Veterans for the veteran's capital purposes has been carried out since the Ministry for the Affairs of National Liberation Combatants under the leadership of the Secretary of State. According to the Minister, the Secretary of State who knows better and has controls over the implementation of that program.

## **CONCLUSION**

Based on the discussion above, the author can draw 2 conclusions, as follows:

1. Authority of the Secretary of State for the Affairs of National Liberation Combatants. Whereas in the Delegation Theory, the Secretary of State has the Authority that is attributed constitutionally as it is regulated in Article 104 paragraphs 1 and 3.

Where the two articles states that:

Paragraph 1 that the government comprise of the Prime Minister, Ministers and State Secretaries.

Paragraph 3 that the number, titles and authorities of the Ministries and State Secretariats will be determined by Government law.

2. Accountability of SEACLN.

Whereas although the Constitution states that the Secretary of State has powers that are attributable by law, in the implementation, SEACLN's powers are not clear. Because SEACLN only implementing the mandate of the Minister. Although in the Constitution the Secretary of State has the same political rights as the Minister.

Therefore, this study shows that the SEACLN's Authority and Responsibilities are unclear and contradictory to Article 104 of the Constitution and Law no. 14 of 2018, dated 17 August 2018, on the establishment of the VIII Constitutional Government and the Law no. 19 of 2018, dated 17 December 2018, on the establishment of Ministerio Para Os Assuntos de Combatentes da Libertação (MACLN)..

## REFERENCES

- Arifin P. Soeria Atmadja, Arifin. 1986. Mekanisme Pertanggungjawaban Keuangan Negara, Gramedia, Jakarta.
- Burlian, Paisol. 2014, Kewenangan Kepala Daerah Menurut Undang-Undang, Palembang: NoerFikri Offset.
- Budiardjo, Miriam. 2013, Dasar-dasar Ilmu Politik, Gramedia Pustaka Utama, Jakarta,
- Belinfante, S.D., 1983. Beginselen Van Nederlandse Staatsrecht Samsom Uitgeverij, Alpen aan den rijn. Nederland.
- Carlos Bacelar de Vanconcelhos, Pedro, 2011, Constituição Anotada RDTL, Braga: Empresa Diário do Minho, Lda.
- Depenheuer, Otto. 1999. Governmental Liability, in "Comparative Studies on Governmental Liability in East and Southwest Asia", edited by Yong Zhang, Kluwer Law International.
- Fajar, Mukti dan Yulianto Achmad, 2010. Dualisme Penelitian Hukum. Normatif dan Empiris, Pustaka Pelajar, Yogyakarta.
- FockemaAndrae, S.J., 1951, RechtsgeleerdHandwoordenboek (J.B. Woiters' Uitgeversmaatschappij n.v., Groningen)
- HR, Ridwan, 2006, Hukum Administrasi Negara, Jakarta: Rajawali Pers.
- H Merki, Peter. 1967, Continuity and Change, New York Harper and Row.
- Ismatullah, Deddy dan Asep A. Sahid Gatara, 2020. Ilmu Negara Dalam Multi Perspektif, Pustaka Setia, Bandung.
- Ismatullah, Deddy dan Asep A. 2007, Sahid Gatara, Ilmu Negara Dalam Multi Perspektif, Bandung: Pustaka Setia.
- Ilmar, Aminuddin, 2014, Hukum Tata Pemerintahan, Jakarta: Kencana.
- Kusdarini, Eny, 2019, Asas-Asas Umum Pemerintahan Yang Baik Dalam Hukum Administrasi Negara, Yogyakarta: Uny Pres.
- Mahmud Marzuki, Peter. 2009. Penelitian Hukum, Kencana Prenada Media Group, Jakarta.
- Mulyosudarmo, Suwoto. 1990. Kekuasaan dan Tanggung Jawab Presiden RI, Disertasi, UNAIR) Surabaya.
- Makhfudz, M.2013. Hukum Administarasi Negara, Graha Ilmu, Jakarta.
- Nomensen Sinamo, Nomensen. 2010. *Hukum Administrasi Negara*, Jalan Permata Aksara, Jakarta.
- Rahman, Fathur, 2018, *TEORI PEMERINTAHAN*: Malang-Indonesia, UB Press

- Ridwan, 2002. *Hukum Administrasi Negara* (Yogyakarta: Ull Press)
- Ridwan HR, Ridwan. 2014. *Hukum Adminitrasi Negara*, PT RajaGrafindo Persada, Jakarta.
- Sedarmayanti. 2012. *Good Governance*, Mandar Maju, Bandung.
- Setiawan, R. 1986, *Pokok-Pokok Hukum Perikatan*, Binacipta, Bandung.
- Undang-undang N. ° 14 /2018, 17 Agosto, tentang: Orgânica do VIII Governo Constitucional.
- Undang-undang N.° 19 /2018, 27 Dezembro, tentang: Orgânica do Ministério Para Os Assuntos dos Combatentes da Libertação Nacional.
- Undang-undang N.° 20 /2021, 10 Novembro, tentang Premeira Alteração Ao UU N.° 19/2018, 27 Dezembro, tentang Orgânica do Ministério Para Os Assuntos dos Combatentes da Libertação Nacional.
- Undang-undang N.o 3/2006, 12 Abril, tentang Estatuto dos Combatentes da Libertação Nacional.
- Undang-undang No. 9/2009, 29 Julho, tentang Primeira alteração da UU n.° 3/2006, 12 April tentang (Estatuto dos Combatentes da Libertação Nacional).
- Undang-undang N. ° 2/2011, 23 Maret, tentang Segunda Alteração da Lei n. ° 3/2006, 12 April, (Estatuto dos Combatentes da Libertação Nacional).
- Asnan, Riyono. Moderasi Negara dalam Konflik Dualisme Kepemimpinan Partai *GOLKAR Periode 2014-201*, Seminar Nasional Sosiologi, Vol. 2 Tahun 2021, Mahasiswa Program Doktoral Sosiologi FISIP UI Angkatan 2020.
- Asshiddiqie, Jimly, 1999, Konstitusi Sebagai Landasan Indonesia Baru Yang Demokratis, (Pokok Pokok Pikiran tentang Perimbangan Kekuasaan Eksekutif dan Legislatif Dalam Rangka Perubahan Undang Undang Dasar 1945, Makalah, Disampaikan Dalam Seminar hukum Nasional VII, Badan Pembinaan Hukum Nasional, Departemen Kehakiman RI, Jakarta.
- Gandara, Moh, 2020, "Kewenangan Atribusi, Delegasi Dan Mandat," Dalam Khazanah Hukum, Volume 2. No. 3:92-93. Program Pasca Sarjana UIN Sunan Gunung Jati, Kota Bandung-Jawa Barat.
- Erwiningsih, Winahyu. Peranan Hukum Dalam Pertanggungjawaban Perbuatan Pemerintahan, Jurnal Ilmu Hukum, Vol. 9, No. 2, FH UII, Jogjakarta, 2006,
- Nosanchuk, Erickson. *Understanding Data Second Edition*, Oxford, McGraw Hill House
- Rhoni Arbaben, Agus. Makalah: Pengertian Kewenangan Sumber-sumber dan Kewengan Membentuk Undang-undang.
- Sowoto. 1990, "*Kekuasaan dan Tanggung Jawab Presiden*", Disertasi, Universitas Airiangga. Surabaya.