

## Normative Analysis of Election Law in Timor-Leste

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**Abstract:** *Discussing issues surrounding general elections and political party organization means we are talking about the involvement of citizens ara. In the context of a democratic country, one tangible form of citizen involvement is through participation in the general election process. The desires and hopes of the people are generally represented by a political party entity. In countries that practice democratic principles, the idea related to citizen participation is that citizens have the right to participate in determining leaders who will influence public policy. This study uses a normative method to analyze the legal materials used. The type of research used is normative juridical, which is a type of research conducted by studying existing norms or laws and regulations related to the issues discussed. The data sources obtained include official documents, books, and applicable laws and regulations. Based on the results of this study, East Timor's electoral law has normatively met international and modern standards, serving as a key pillar in building strong democratic institutions. However, continuous improvement in constitutional and implementation aspects is still needed to overcome political complexity and ensure the effectiveness of governance. The general legal framework for elections in Timor-Leste is in line with the basic principles of democracy and universal human rights. The country's constitution and election laws guarantee fundamental rights, although there are challenges in implementation and regulatory coherence.*

### 1. Introduction

Discussing issues surrounding general elections and political party organization means we are talking about citizen participation. In the context of a democratic country, one tangible form of citizen involvement is through participation in the general election process. The desires and hopes of the people are generally represented by a political party entity. In countries that practice democratic principles, the idea related to citizen participation is that citizens have the right to

participate in determining the leaders who will influence public policy.

Elections can also be referred to as a "political marketplace." Elections are a political marketplace where individuals or communities interact to establish a social agreement (social contract) between election participants (political parties) and voters (the people) who have the right to vote after first being involved in various political activities such as campaigns and so on to convince voters so that when they vote, they can choose one of the political parties participating in the election to represent them in the legislative and executive branches.

The country of Timor-Leste, formerly known as East Timor, is a new country that separated from the Republic of Indonesia through a referendum held in August 1999 and gained independence on May 20, 2002. The country has held two presidential elections, the first on August 14, 2002, which was won by Xanana Gusmao, and the second on April 9, 2007, which was won by Jose Ramos Horta as the second President of Timor-Leste. The presidential term of Xanana Gusmao, who was elected in the first election after Timor-Leste declared independence, ended in 2007. Xanana Gusmao was not willing to run for re-election and instead ran for the position of Prime Minister of Timor-Leste. The 2007 East Timor presidential election was a constitutional event in East Timor in determining the change of leadership of the country. This presidential election was very important considering the results of this election for the future of the East Timorese people in choosing a leader who was considered to have the character and ability to lead the East Timorese people and who would determine the direction of the government system in the future.

The Indonesian Constitution, especially after the amendments, explicitly affirms principles such as popular sovereignty, the rule of law, and the limitation of power. Meanwhile, the Constitution of the Democratic Republic of Timor-Leste (RDTL) is a fundamental document that regulates the structure of government, human rights, and the basic principles of the state. The Constitution of the Democratic Republic of Timor-Leste, which was ratified on March 22, 2002, is the highest legal document that underpins the government system and state structure of Timor-Leste.

## **2. Problem Statement**

- 2.1. How to Conduct a Normative Analysis of Election Law in Timor-Leste?
- 2.2. How does the electoral law framework in Timor-Leste align with the basic principles of democracy and universal human rights?

## **3. Research**

In this study, the method used to analyze the legal materials used is the normative method. The type of research used is normative juridical, which is a type of research conducted by studying existing norms or laws and regulations related to the issues discussed. The data sources obtained include official documents, books, and applicable laws and regulations.

## **4. Discussion**

### **1. Normative Analysis of Election Law in Timor-Leste**

We also talk about general elections, which cannot be separated from the concept of political parties. The political parties we know today emerged in the late 18th and 19th centuries in Western Europe, the result of efforts by groups outside the political sphere of power who fought to seize government positions and control government policy. cal parties are a form of change from the tradition of political activity that was originally

centered on elite groups in parliament, dominated by the aristocracy, which aimed to maintain the supremacy of the ruling class over the demands of the kings.

Timor-Leste is one of the countries that embraces democracy and has held several general elections to elect members of the legislature and three direct elections for the president and vice president. These elections have become more frequent because with the establishment of direct regional head elections, governors and deputy governors as well as regents and deputy regents are also elected directly through elections. Along with the holding of elections for regional heads, legislative members and the president, problems in the implementation of elections have often occurred. The problems in the elections are so diverse that many parties have taken them to court, resulting in disputes over the election results.

The administration of Timor-Leste began with a clear system of government that served as a reference in the process of forming and implementing the government, so as not to cause interpretation among the institutions of the Democratic Republic of Timor-Leste (RDTL), especially the Timor-Leste system of government, in order to understand the system of government used by the Timor-Leste government. The government is one of the state institutions that functions to administer the state (executive institution) and is responsible for directing and implementing general state policies. It is the highest general government body, as stipulated in Article 103 of the RDTL Constitution, which defines the government as: the sovereign body that is responsible for directing and implementing general state policies and is the highest general government body.

Therefore, the system of government is reviewed from the Constitution of the Democratic Republic of Timor-Leste, Article 67 concerning State Institutions: The institutions of state sovereignty consist of the President of the Republic, the National Parliament, the Government, and the Courts. Then Article 69 on the Principle of Separation of Powers: State institutions, in relation to one another and in the exercise of their functions, must follow the principles of separation of powers and interdependence as stipulated in the Constitution. From the three articles above, the author explains that: in the context of analyzing the East Timorese system of government, it adopts a parliamentary system because state authority is regulated in the Constitution. However, the above articles form the basis for the implementation of the system of government due to the limitations of authority between state institutions. Thus, these articles guarantee a balance or equality of authority in the implementation of the system of government. However, since the restoration of Timor-Leste's independence, the structure of government has been very effective due to the majority of the winning party or coalition of parties having the following authorities:

1. A state based on the rule of law (*rechtsstaat*).
2. Constitutional system. Dual executive
3. The highest state power is in the hands of Parliament, which adopts the legal principle: *salus populi suprema lex esto*
4. The prime minister functions as the highest administrator of the state government under the supervision of the national Parliament because the prime minister is elected by a majority vote in Parliament.
5. The President is accountable to the National Parliament.
6. Ministers, deputy ministers, and secretaries of state are assistants to the Prime Minister and are accountable to the national parliament.

7. The powers of the head of state are limited.
8. The state budget is absolutely controlled by the national parliament and is only approved and ratified by the head of state, who also has the power to veto the state budget proposed by the national parliament.
9. The head of state (president of the republic) can dissolve parliament and has the right to veto and appoint and reject cabinet proposals submitted by the prime minister.
10. The government can obtain permission from the national parliament to draft legislation in accordance with the needs of the government.

Law Number 7 of 2006, dated December 28, establishes a set of legal principles and norms governing the process of electing the President of the Republic. To ensure the implementation of this election process and four years have passed since the last election, this amendment considers several aspects, such as a review of the previously unexpected situation and the current situation of the country. The current reality of the Covid-19 global pandemic also requires consideration of the organization of the election process to anticipate and prevent risky situations in an event that has a significant national impact.

Regarding the acceptance of candidacies, it is explained that the decision rests with the Chief Justice of the Supreme Court, which can be appealed to the entire assembly. Regarding opening hours, a difference is applied between polling stations and voting centers, which have longer opening hours. Considering that the right to vote is a fundamental right that must be applied universally and equally, the prerogative granted to certain categories of civil servants, when working outside the voting area, is extended to social communication professionals, so that they can exercise their right to vote wherever they are assigned.

The Timor-Leste Election Law passed in 2006 (Law No. 5 of 2006, Law No. 6 of 2006, and Law No. 7 of 2006) is generally considered to comply with international standards and principles for free, fair, and transparent elections.

The following is a comparison of the main aspects of these laws with international standards:

**1. Compliance with International Standards**

- a. General Principles: The laws establish key electoral principles that are in line with international human rights law, such as *the International Covenant on Civil and Political Rights* (ICCPR), including the rights to universal, free, direct, equal, secret, personal, and periodic suffrage.
- b. Clear Regulatory Framework: There is a clear separation of roles and responsibilities between the technical electoral administration body (STAE - *Secretariat Technical for Electoral Administration*) and the supervisory body (CNE - *National Electoral Commission*). This is considered conducive to a credible electoral process, in line with international best practices.
- c. International and National Observation: The law allows for the presence of national and international observers, whose role is regulated by a code of ethics to ensure the transparency and accountability of the electoral process.

- d. Judicial System: The law establishes the role of the High Court (later to become the Supreme Court) in validating and proclaiming election results, ensuring an independent mechanism for legal dispute resolution.
- e. Proportional Representation: For National Parliamentary elections (Law No. 6 of 2006), the law adopts a proportional representation system (*D'Hondt* method) with a single national constituency and a parliamentary threshold to prevent excessive party fragmentation. This is an internationally recognized method for ensuring broad political representation.

## 2. Areas Requiring Attention

Although compliance is generally good, several reports and analyses from organizations such as *the Judicial System Monitoring Programme* (JSMP) and other observers identify areas for improvement or potential challenges in implementation:

- a. Dispute Resolution: Although judicial mechanisms exist, institutional capacity and the speed of dispute resolution can be practical challenges observed in implementation.
- b. Technical Provisions: Some procedural details, such as the distance that police must maintain during election-related demonstrations or aspects of overseas voting (which were subsequently proposed for amendment in 2023), require further adjustment or clarification over time to ensure full consistency with current international operational standards.

In summary, Timor-Leste's 2006 electoral legal framework laid a strong foundation in line with universal democratic principles, which became the basis for the successful conduct of subsequent elections in the country.

## 2. Compliance of the Electoral Legal Framework in Timor-Leste with the Basic Principles of Democracy and Universal Human Rights

Compliance with and enforcement of election laws is one of the standards of democratic elections. Free and fair elections are evident from the resolution of any election violations. The electoral legal framework in Timor-Leste consists of the constitution, as well as specific laws for presidential and parliamentary elections, and political party laws. The electoral law has been amended several times and regulates the electoral system, candidate lists, and political party funding.

In the context of general elections, there is interaction between candidates and the people as voters. A candidate will win because he or she is supported by a large number of votes. Thus, candidates will always try to get votes from the people, and on the other hand, the people will vote for candidates who suit their interests. Likewise, the people of Timor-Leste will elect leaders whom they consider capable of leading the people of Timor-Leste and fulfilling their interests.

In order to gain an understanding of the general elections for the President, parliament, village chiefs (*chefe de suco*), and hamlet chiefs (*chefe de aldeia*) in Timor-Leste, we use the legal framework of the 2002 Constitution of the Democratic Republic of Timor-Leste and various specific election laws. The legal framework for the presidential, parliamentary, village chief (*chefe de suco*), and hamlet chief (*chefe de aldeia*) elections in Timor-Leste is regulated separately based on the Constitution of the

Democratic Republic of Timor-Leste. The following are the legal details for each type of election:

### 1. Presidential and Parliamentary Elections

The election process at the national level is regulated by specific laws and supervised by independent bodies, namely the National Election Commission (CNE) and the Technical Secretariat for Election Administration (STAE).

- a. Presidential Election Law: Governed by Law No. 7 of 2006 on the Election of the President of the Republic (amended several times, including in 2007, 2011, 2012, and 2016).
  1. The president is elected directly by the people through universal, free, secret, and personal voting for a five-year term, which can be renewed once.
  2. The election system uses an absolute majority system, which means that if no candidate obtains more than 50% of the votes, a second round will be held between the two candidates with the most votes.
- b. Parliamentary Election Law: Governed by Law No. 6 of 2006 on National Parliamentary Elections (amended by Law No. 7 of 2011 and Law No. 9 of 2017).
  1. Members of the National Parliament are elected through universal, free, direct, equal, secret, personal, and periodic voting for a five-year term.
  2. Elections are conducted based on a party list system with proportional representation, where seats are allocated based on the percentage of votes received by political parties or coalitions.

### 2. Election of Village Heads (*Chefe de Suco*) and Hamlet Heads (*Chefe de Aldeia*)

Elections at the local level are governed by different laws and focus more on community structures.

- a. Local Election Law: Governed primarily by Law No. 2/2004 (known as *the "Suco Law"*) and later Law No. 9/2016 on Community Leader Elections, which regulates the election process for *chefe de suco* and *chefe de aldeia*.
- b. Process:
  1. *Chefe de Suco* and members of the *suco* council (*Conselho de Suco*) are elected directly by universal, free, secret, personal, and periodic suffrage.
  2. *Chefe de Aldeia* are elected in aldeia assembly meetings (*Assembleia de Aldeia*), where residents elect *chefe de aldeia* and delegates to the Suco Council.
  3. This law encourages the participation of women in leadership roles in the community, including as candidates for *chefe de suco* and *chefe de aldeia*.

In summary, the legal framework in Timor-Leste distinguishes between national-level elections, which are political and party-based, and local-level elections, which are more community-based leadership elections, each governed by specific laws.

The legal framework for elections in Timor-Leste is based on the country's Constitution, which incorporates the fundamental principles of democracy and universal human rights, and is reinforced by specific electoral laws.

1. Constitution (2002): This is the supreme law that guarantees human rights, including the right to vote and voting secrecy. Article 63 states that the direct and active

participation of men and women in political life is a fundamental instrument of the democratic system.

2. Universal Suffrage: The Constitution and related laws provide for universal and equal suffrage for citizens to elect their government through free, fair, and periodic elections.
3. Gender Equality: Election laws require that at least one-third of candidates on political party lists be women, promoting non-discrimination in access to political positions.
4. Election Management Bodies: Elections are organized by independent bodies that oversee election administration, including the STAE (Technical Secretariat for Election Administration) and the CNE (National Election Commission).
5. Specific Laws: This framework is further regulated by specific laws, such as Law No. 6 of 2006 on National Parliamentary Elections and Law No. 7 of 2006 on Presidential Elections, which have been amended several times.
6. International Monitoring: Elections in Timor-Leste are routinely observed by international monitoring missions, which generally assess the process as free, fair, transparent, and peaceful, demonstrating compliance with international standards.

Reaffirming the importance of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which establish that the authority to govern must be based on the will of the people as expressed in periodic and genuine elections.

Recognizing and supporting the fundamental principles relating to free and fair periodic elections that have been recognized by States in universal and regional human rights instruments, including the right of everyone to take part in the government of their country, directly or indirectly through freely chosen representatives, to vote in such elections by secret ballot, to have the same opportunity to be a candidate in elections, and to express their political views, individually or in association with others.

Recognizing that every State has the sovereign right, in accordance with the will of its people, to freely choose and develop its own political, social, economic, and cultural system ly without interference from other States in accordance with the Charter of the United Nations.

The legal framework for elections in Timor-Leste is generally in line with the basic principles of democracy and universal human rights. The country's constitution and election laws guarantee fundamental rights, although there are challenges in the implementation and coherence of regulations.

**The main points of compliance include:**

1. Constitutional Guarantees: The Constitution of Timor-Leste incorporates broad human rights guarantees, including the right to vote universally, equally, freely, directly, secretly, privately, and periodically.
2. Universal Suffrage: The right to vote is granted to all citizens, without discrimination based on race, color, gender, social status, political beliefs, or other conditions.

3. Multiparty System: Electoral law supports a multiparty system, allowing for the organized expression of the will of the people and the democratic participation of citizens in government.
4. Gender Equality: The constitution explicitly requires the law to promote equality in the exercise of civil and political rights, as well as non-discrimination on the basis of gender in access to political positions.
5. Regular and Credible Elections: Elections are held regularly, freely, and fairly, with civilian authorities exercising effective control over security forces, as observed by international reports.

**However, several challenges have been identified:**

1. Scattered Regulations: The electoral legal framework is scattered across several laws that are not coherently organized, causing ambiguity in the oversight responsibilities of the National Electoral Commission (CNE).
2. Need for Amendments: There are recommendations to amend the constitution to clarify the division of powers and avoid overlapping authorities between state institutions.

## 5. Conclusion

- 5.1. Electoral law in Timor-Leste has normatively met international and modern standards, serving as a key pillar in building robust democratic institutions. However, continuous improvement in constitutional and implementation aspects remains necessary to overcome political complexity and ensure effective governance.
- 5.2. The general legal framework for elections in Timor-Leste is in line with the basic principles of democracy and universal human rights. The country's constitution and election laws guarantee fundamental rights, although there are challenges in implementation and regulatory coherence.

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