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East Timorese Parliament passes new legislation on the Applicable Subsidiary Law

On Tuesday this week (30 September 2003) the National Parliament of East Timor passed a Law clarifying the subsidiary law applicable in East Timor. The Law clearly and unequivocally provides that Indonesian Law is the subsidiary law in East Timor with force from 20 May 2002 onwards.

The law was passed by a majority of 62 votes, with 10 votes against. As required by the Constitution, the law passed by Parliament must now be promulgated by the President within 30 days before it can come into force.

“The passing of this Law will bring some certainty back to the legal system in East Timor. Now, we hope there will be no more application of different laws in different courts.” – said JSMP

The initiative for passing this law came as a response to a controversial decision of the Court of Appeal in the case of Armando dos Santos on 15 July 2003. In this decision, the Court of Appeal was of the opinion that the subsidiary law in East Timor is Portuguese law and not Indonesian law, as had been generally understood.

The Court of Appeal decision was not well accepted by East Timor’s judicial community and courts at the District level continued to apply Indonesian law while the Court of Appeal applied Portuguese Law.

Even though the passing of this legislation is a positive step, JSMP is aware that it will not solve all the uncertainties related to the issue of subsidiary law. This is because the legislation is only effective from the date of East Timor’s independence in 20 May 2002.

“There is still a grey area in relation to the subsidiary applicable law for the period before 20 May 2002, including the period of Indonesian occupation. Not too far in the future, courts in East Timor might be faced with the question as to what should be the applicable law in the period not covered by this recently passed legislation. When this happens, uncertainty might reign again. We believe that National Parliament missed the opportunity to clarify the issue of the subsidiary law in a comprehensive manner.”

For further information, see JSMP Report on the Case of Armando dos Santos at <http://www.jsmp.minihub.org>

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