



**ELABORATION OF THE NATIONAL LEGISLATION OF THE
DEMOCRATIC REPUBLIC OF TIMOR-LESTE BASED ON THE LEGAL
IDEAL IN THE CONSTITUTION OF 2002**

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ABSTRACT

The implementation of development in all aspects and the government administration of the RDTL state must always be based on the idea of a democratic state based on the rule of law. Timor-Leste there is Uma Lulik (Casa Sagrada = Sacred House) who has very deep philosophical values starting the process of finding a place, the process of elaboration until the roofing and inauguration is full of rituals. Uma-Lulik's philosophy can be studied from four perspectives, namely, philosophical, sociological, juridical and etymological perspectives. Every human from Timor-Leste, from the western of Oecusse to the eastern of Tutuala, must have Uma Lulik. Uma Lulik is a philosophical symbol of the general unity and relationship between humans, humans with nature and humans with their ancestors, which has been maintained since ancestors until now." For the people of Timor-Leste, if someone who does not have Uma Lulik will be categorized as an immigrant (lemorai, laorai) and a person who has no roots, or does not have a clear lineage (origin), the Uma-Lulik philosophy is also perceived as a place of worship to ancestors from their descendants, then the concept of Uma-Lulik can be understood as a symbol which having essential and universal elements, For the people of Timor-Leste, if someone who does not have Uma Lulik will be categorized as an immigrant (lemorai, laorai) and a person who has no roots, or does not have a clear lineage (origin), the Uma-Lulik philosophy is also perceived as a place of worship to the ancestors of their descendants.

Introduction

This research is entitled "Elaboration of the National Legislation of the Democratic Republic of Timor-Leste based on the Ideals of Law in the 2002 Constitution". From the perspective of legal scholarship, this dissertation research includes layers of legal scholarship in a broad sense, namely layers of legal philosophy, layers of legal theory and layers of dogmatic legal science. Legislation politics is essentially aimed at realizing legal certainty and justice according to legal ideals (*rechtsidee*).

The legal ideals (*rechtsidee*) of the RDTL state are reflected in the nation's expectations as stated in the state's goals, so that in carrying out all aspects of development always uphold the values of justice and legal certainty. The implementation of development in all aspects and the administration of government of the RDTL state must always be based on the idea of a democratic state based on the rule of law.

The legal ideal as stated in the preamble of the 2002 RDTL constitution is a philosophical justification. While the sociological justification relates to the demands of the expectations of the people who want an amendment to the 2002 RDTL Constitution to change the provisions of its legal norms and fill the legal vacuum in producing laws that are responsive to the expectations of the community. The justification for the juridical aspect in this research is to give views/thoughts in order to produce a law that guarantees legal certainty.

The politics of the RDTL State Legislation stems from the provisions of Article 1 paragraph (1) and Article 2 paragraph (2) of the 2002 RDTL Constitution. Article 1 paragraph (1) of the 2002 RDTL Constitution stipulates in Portuguese: A República Democrática de Timor-Leste é um Estado de direito democrático, soberano, independente e unitário, baseado na vontade popular e no respeito pela dignidade da pessoa humana ("The Democratic Republic of East Timor is a democratic, sovereign, independent and unitary State based on the rule of law, the will of the people and the respect for the dignity of the human person.")

Thus, in order to fulfill the independence of the RDTL state, the legislative politics of the RDTL state is essentially aimed at producing rule of law that are responsive in character. And according to the two constitutional provisions, until now there has been no special law regarding the hierarchy of rule of law. The absence of the stated law is a legal vacuum (*Leemten Van Normen*) or an empty norm that needs to be formed as soon as possible to fulfill the interests of legal certainty and justice, because the 2002 Constitution as a fundamental norm has provided space for the Elaboration of national legislation.

Thus the supremacy of the constitution binds all RDTL state administrators in the executive, legislative and judicial institutions to act based on the provisions of the applicable rule of laws in carrying out their respective powers, authorities, duties including law enforcement. Law enforcement and the enforcement of democratic principles in the Democratic Republic of Timor-Leste have so far caused the following problems:

First, there is a legal vacuum (*Leemten Van Normen*) so that the government and law enforcement face difficulties in determining the rule of laws that will be used in solving concrete problems. Such as the absence of a law regarding the Elaboration of legislation. Second, there are still existing rule of laws that contain vague norms making

it difficult to implement. Third, there is a conflict of norms (antinomy) vertically and horizontally between the law and the regulations below and with higher regulations.

It can be understood that the problems faced in the RDTL State in relation to the Elaboration of legislation are due to the unclear Elaboration of the National Legislation. From the explanation above, it is affected by three problems including:

Philosophical issues: the Elaboration of legislation is essentially closely related to the hope of producing rule of laws under responsive laws that guarantee legal certainty and justice. The sovereignty of the Democratic Republic of Timor-Leste requires the supremacy of law to maintain the sovereignty of the State and a government based on law, so that the law as reflected in rule of laws is the source of all sources of power in the State that must be upheld by every citizen and government. Legislation politics is essentially aimed at realizing legal certainty and justice based on legal ideals (*rechts idee*) and the goals of the State. The goals of the RDTL State are stated in article 6 of the 2002 RDTL Constitution; The legal ideals (*rechts idee*) of the RDTL state are reflected in the nation's expectations as stated in the state's goals, so that in order to carry out all aspects of development always uphold the values of justice and legal certainty. The implementation of development in all its aspects and the administration of the government of RDTL state, should always be based on the idea of a democratic state based on the rule of law, which is suitable with the provisions of Article 1 paragraph 1 of the RDTL Constitution of 2002, but until now the rule of laws that should be the source of all sources of power there is no legal certainty because there are many laws that have not been seriously considered and the philosophical elements of a legal product.

Juridical Issues: Regarding the legal issues in this research, constitutionally the principle of the Elaboration of National Legislation which is regulated in the RDTL Constitution, Preamble paragraphs 11 and 13, in Articles 6,7,8 and on the State Goals of RDTL. However, the intended provision is the occurrence of an element of norm vacuum in the Elaboration of legislation so that the application of the law is not optimal so that what the state aspires to has not been achieved in terms of the form, structure and relationships and responsibilities in the legislation, has not shown legal certainty until now.

Sociological Issues: In terms of governance administration, rule of laws that can guarantee legal certainty, justice and benefits as well as policies for the establishment of national legislation for the RDTL State which are fundamental to the life and sustainability of the RDTL State, which should be based on the constitution of 2002, are still unclear. Therefore, it has an impact on the community which can be confusing to follow which regulations, whether higher regulations or lower regulations because the hierarchy is not clear. Another impact is that there is no clear reference to the material content in government regulations.

Based on the description in the background of the problem, the problems to be studied in this dissertation are: (1) The Essence of the Elaboration of the National Legislation of the Democratic Republic of Timor-Leste in the Constitution of 2002; (2) Elaboration of the National Legislation of the Democratic Republic of Timor-Leste; (3) Criteria for Laws and Legislation under Responsive Laws

Method

The writing of this dissertation, used normative legal research methods based on empty norms/vacuumnorm related to the Establishment of National Legislation related

to the Legal Ideal mandated in the 2002 RDTL constitution. The dissertation research with the title, The Establishment of the National Legislation of the Democratic Republic of Timor-Leste Regarding Legal Aspirations in the 2002 Constitution, is a normative legal research, by collecting primary legal materials, secondary legal materials and tertiary legal materials, to obtain a normative juridical understanding equipped with theoretical justification for clarification and academic justification related to the subject matter.

With the approach used is the legal approach, conceptual approach, comparative approach and historical approach. In this type of approach, Peter Mahmud Marzuki notes that there are five (5) legal approaches in normative research, namely (Marzuki, 2017):

1. The statutory approach;
2. Legal concept analysis approach (analytical and Conceptual Approach)
3. Historical approach;
4. Comparative approach
5. Case Approach.

In this study, the interpretation used is a grammatical interpretation and a systematic interpretation. Grammatical interpretation is related to the interpretation of words in articles/articles in a law, while systematic interpretation is carried out by linking one article to another or to a number of articles, including conducting a tiered search of statutory regulations. Analysis of the three legal issues is carried out, then an analysis of legal materials is carried out with the following steps: (a). description; (b). comparative; (c). evaluation; (d). argumentation.

Result and Discussion

The Essence of The Elaboration of The National Legislation of The Democratic Republic of Timor-Leste in The Constitution of 2002

The Philosophy of Uma Lulik

Since the State of the Democratic Republic of Timor-Leste, which was proclaimed on November 28, 1975, and then restored its independence in 2002, all aspects of development, including the development of laws, especially policies in the field of legislation. In relation to the politics of legislation, it may be necessary to consider the use of *Uma Lulik's* philosophy as the philosophy of the Timor Leste which will later function as the basis and ideology of the State. *Uma-Lulik's* philosophy can be studied from four perspectives, namely, philosophical, sociological, juridical and etymological perspectives. Etymologically *Uma* means house and *Lulik* means Holy/Sacred. Thus, *Uma Lulik* literally means "Holy/Sacred House". With *Uma Lulik*, every citizen of the Democratic Republic of Timor-Leste can know their social status, whether they are of noble descent or not. The elements of *Uma Lulik's* philosophy are, 1) Religious (divinity); 2) sublime agreement; 3) The element of kinship/unity; 4) The element of Humanity; 5) The element of environment/humans and nature; 6) Elements of customs; 7) The element of Deliberation and democracy; 8) The element of help/welfare.

The Universal Values of *Uma-lulik*.

Until now, in the resolution of every dispute in Timor-Leste, *Uma Lulik* continues to play a leading role. Starting from the previous description and analysis, the *Uma-Lulik* concept can be understood as a symbol containing essential and universal

elements, namely, 1) God; 2) Humanity; 3) Democracy; 4) Unity; 5) Deliberation; 6) Customs; 7) Kinship; 8) Harmonization of environment and welfare.

Uma Lulik's philosophy as the source of all sources of law must be described in the rule of laws of the Democratic Republic of Timor-Leste. This is an evident from the essential and universal elements of *Uma Lulik's* philosophy as stated in paragraph 11 of the preamble to the 2002 Constitution of the Democratic Republic of Timor-Leste which dictates, "*Interpretando o profundo sentimento, as aspirações ea fé em Deus do povo de Timor-Leste*" or: "*Hodi interpreta povu Timor-Leste nia sentimentu kle'an, nia aspirasaun no nia fé ba Maromak*" (by interpreting the deep feelings, ideals and belief in God from the people of Timor-Leste).

Types of Legislation based on the RDTL Constitution of 2002

Based on the Constitution of the Democratic Republic of Timor-Leste of 2002, the following types of legislation can be identified:

1. *Constituição da República Democrática de Timor-Leste* (Constitution of the Democratic Republic of Timor-Leste 2002). Since the independence of Timor-Leste in 2002 until now, there has not been a State Fundamental Norm (*Staatsfundamentalnorm*).
2. *Leis do Parlamento Nacional (Laws of the National Parliament) and Decretos-Leis do Governo* (Decrees of laws proposed by the Government). Laws (Gesetznorm) are a form of legislation that is part of the national legal system of Timor-Leste. (The Project of Law). While the draft law originating from the government is called *Prosposta de Lei* (the Proposal of Law), but has the same position as the law.
However, the two kinds of laws that come from the national Parliament and the government differ in form, type and material. The preparation of *Projecto de Lei* by the National Parliament is based on Article (85) paragraph 2 of the Constitution of the Democratic Republic of Timor-Leste 2002. government under Article (96) of the Constitution of the Democratic Republic of Timor-Leste of 2002.
3. *Decretos do Governo* (The Decree of Government), is a form of legislation established by the government to describe and carry out statutory orders.
The *Decretos do Governo* functions as legal instruments in the administration of government. There are legal instruments in the form of decisions and regulations issued by the government of the Democratic Republic of Timor-Leste which are general, abstract and apply continuously (dauerhaftig). In addition, there are decisions that are individual, concrete, final and have legal consequences which in government practice are known as stipulations.
4. *Regulations or Decisions of Minister*.
Regulations or Decisions of Minister are more regulatory which are addressed to many parties. But apart from that there are also ministerial decisions that are approval (*beschiking*). This Ministerial Decision is more directed to very detailed technical implementing rules in one agency or department such as the Code of Ethics regulations, Prison Guard regulations, National Director regulations and other regulations/decisions.
5. *Government Resolutions*.
Government resolutions substantially to stipulate matters such as, giving Approval of the Rulainles of Procedure of the Council of Ministers, Award of Medal of Recognition. In addition, resolutions of the government functions to give approves the national policy on education and so on.

6. Resolutions of National Parliament.
National Parliament resolutions stipulate matters such as, Ratifying the United Nations Charter, granting approval of the visit of the President of the Republic abroad, election of the speaker of the National Parliament, etcetera.
7. Presidential Decrees.
In Article 85 the letters a, c, f, g, i, and j. The Constitution of the Democratic Republic of Timor-Leste stipulates those presidential decrees can be *einmalig*, meaning they are only valid once. Decisions like this are usually "decision" (*beschikking*), whose legal norms are directed to individuals, because they are concrete, final and have legal consequences, appointment the Prime Minister, appointment of the Ambassador, appointment of the President of the Court of Appeal, appointment of Cabinet Members, appointment of emergency state, etc. with the approval of the National Parliament based on the rule of the National Parliament.
8. The general guidelines of government policies and their implementation are based on the provisions of article 116 letter a of the Constitution of the Democratic Republic of Timor-Leste which is the authority of the Council of Ministers.
9. General Instructions or Implementing Regulations). The form of general instruction stipulates matters such as, The Issue and Use of Coins in Timor-Leste), Regulation on the Electoral Campaign, Code of conduct for Media Professionals, Code of Conduct for National or International Electoral Observers, Amending Regulations 190/STAE/04 and 191/STAE/04, etc.
10. Decision of Court /Jurisprudence).
It is regulated in **Article 35 paragraph (1), Article 118 paragraph (3)** of the 2002 Constitution of the Democratic Republic of Timor-Leste.
11. Ordinance of the Council of State.
It is regulated in Article 91 paragraph (1) letter e of the 2002 Constitution of the Democratic Republic of Timor-Leste.
12. Ordinance of the National Parliament.
It is regulated in Article 95 paragraph (4) letter c, Article 99 paragraph (2), Article 101 paragraph (1), (2) of the 2002 Constitution of the Democratic Republic of Timor-Leste.
13. Legislation of UNTAET, Legislation of Indonesia, Legislation of Portuguese.
It is regulated in **Articles 165, 168, 169**, of the Constitution of the Democratic Republic of Timor-Leste of 2002. The provisions of Article 165 of the 2002 Constitution of the Democratic Republic of Timor-Leste provide, "The rule of laws which is applicable in Timor-Leste shall remain applicable with respect to all aspects, except when contrary to the law or the principles contained in it". Likewise, the provisions in **Article 168** of the Constitution of the Democratic Republic of Timor-Leste of 2002 stipulate, "A government appointed under UNTAET Regulation No. 2001/28 will continue to carry out its functions until the time the first Government based on the Constitution is appointed and sworn in by the President of the Republic, as stipulated in the Act. "The provisions of Article 169 of the Constitution of the Democratic Republic of Timor-Leste stipulate, "The President elected based on the UNTAET Regulation No.2002/01 will have the power and will fulfill the mandate as stipulated in the Act".
In carrying out state activities, the State Council and Members of the National Parliament are subject to each of their ordinance. Members of the National Parliament

in preparing the Draft Legislation are only subject to the Constitution of the Democratic Republic of Timor-Leste of 2002 and the Ordinance of the National Parliament.

The legal basis for the Elaboration of rule of laws of the Democratic Republic of Timor-Leste based on the constitution is as follows:

1. Article 1 paragraph (1) of the 2002 Constitution of the Democratic Republic of Timor-Leste, namely, 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.
2. Article 2 paragraph (2) of the 2002 Constitution of the Democratic Republic of Timor-Leste namely, the State is subject to the Constitution and the law.
3. Article 92 of the 2002 Constitution of the Democratic Republic of Timor-Leste, namely, the National Parliament is the sovereign institution of the Democratic Republic of Timor-Leste which represents all citizens of Timor-Leste and is given legislative authority, supervisory and political decision-making powers.
4. Article 95 paragraph (1), (2) letter *e* of the 2002 Constitution of the Democratic Republic of Timor-Leste provides:

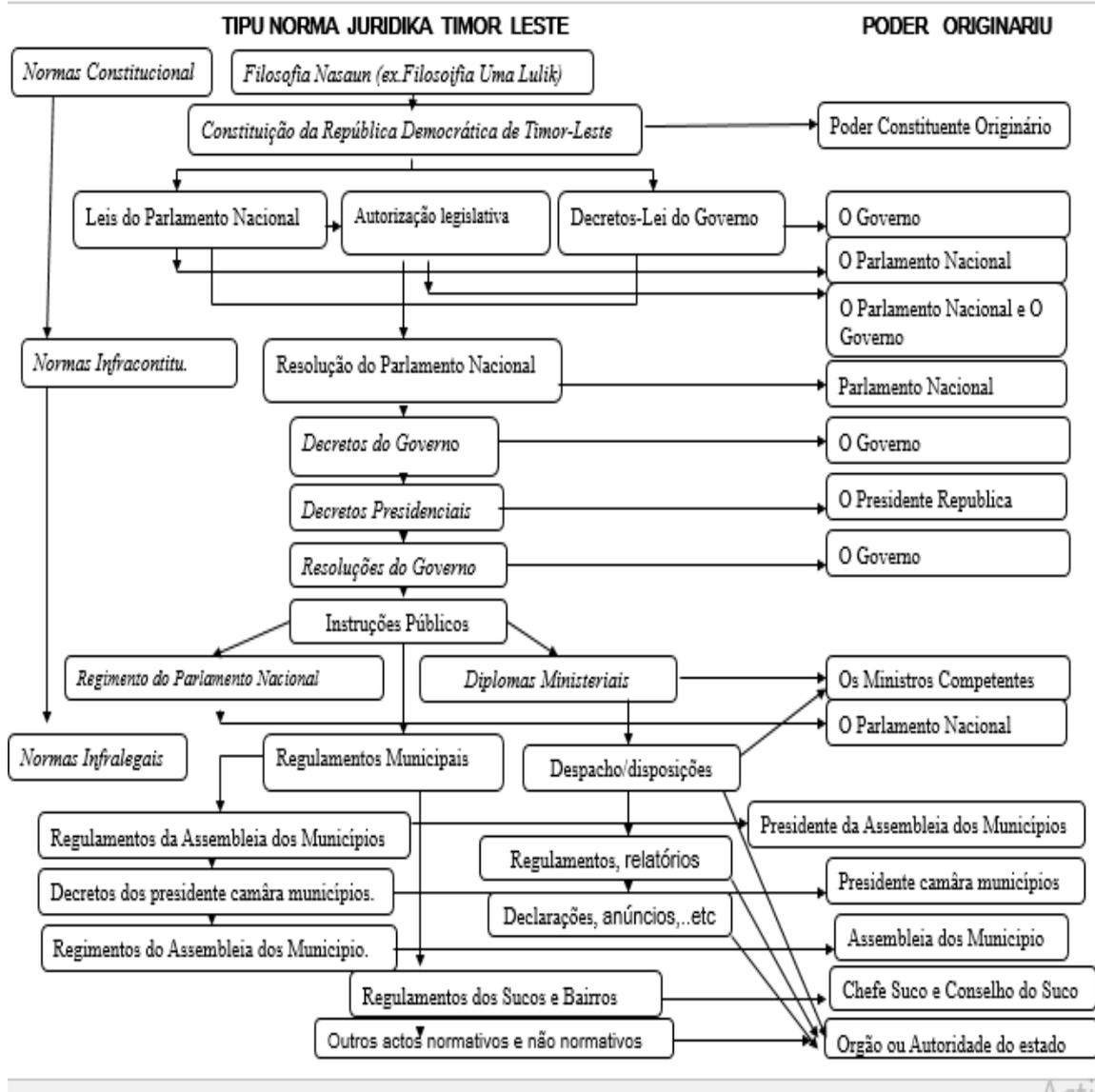
Paragraph (1) The National Parliament has the authority and responsibility to make laws on basic issues related to domestic and foreign policy.

Paragraph (2) letter *e* stipulates, that the National Parliament has exclusively authority and responsibility to make laws related to "Rights, freedoms and guarantees" The authority to initiate legislation based on the Article 97 paragraph (1) of the 2002 Constitution of the Democratic Republic of Timor-Leste provides, belongs to:

- a. Members of Parliamentarian;
- b. Factions in Parliament;
- c. Government.

Meanwhile, the provisions of Article 5 paragraph (3) of the Law of the Democratic Republic of Timor-Leste No.1/2002 concerning the publication of Acts), stipulates, "All regulations of act may be promulgated in the State Journal (Jornal da República)".

Constitutionally, the 2002 Constitution of the Democratic Republic of Timor-Leste Article 1 paragraph (1) yo Article 2 paragraph (2) provides, "The Democratic Republic of Timor-Leste is a democratic, sovereign, independent and united State, based on the force of law, the will of the people and respect for human dignity". The provisions of Article 2 paragraph (2) are as follows "The State is subject to the Constitution and the law". Starting from the concept of the state of law/rule of law, it clearly shows that the rule of law in the Anglo-Saxon rule of law system and the principle of legality in the Continental European model of law are upheld in the Democratic Republic of Timor-Leste.



Legal Ideal in the Preamble of the Constitution of 2002 in Relation to the Elaboration of the National Legislation of the Democratic Republic of Timor Leste Philosophical Thoughts

The greatest difficulty in the presentation of law is not to show how common sense sees right, but to disperse the false or distorted image that many people accept as true portraits, the common understanding of jurists full of distorted images, concepts that have emerged as the result of science, neutral and disinterested, as well as have strong ideological connotations. In studies that introduce law, this ideological dimension of legal must be emphasized, which creates a scientific pseudo-concept which includes the rationality of political choices which are translated into statutory norms. In order to highlight the ideological function of legal science, and the legal concepts that contribute to the justification and maintenance of certain models of social and political organization. To criticize must go through the legal ideology contained in a nation's philosophy, as said by Petrus C.K.L Bello, that the law must continue to be criticized based on the moral principles contained in Pancasila, so that the law can ensure the creation of social justice and welfare for all the people. Because after all, the

purpose of the law is "*Salus Populi Suprema Lex*" the welfare of the people is the highest law." (Bello, 2013)

Pancasila as an ideology, goal, and idea has the same position as the *grundnorm* proposed by Hans Kelsen. Because Pancasila as a *grundnorm* contains noble moral values so that it is believed to be able to lead the Indonesian people to realize their goals (Wasitaatmadja, 2015). Thus, Pancasila is the basic norm for the Elaboration of legislation in Indonesia. Therefore, in the future, the Uma-lulik philosophy needs to be used as the basis of the State, the way of life of the people of Timor Leste and as a source of all sources of law as is the case with the Pancasila philosophy in Indonesia.

"The conception of (Kelsen, 1990) about the basic norm is, a postulate which cannot be ignored, which is the aim of all legal purposes. The postulate is regarded as the basic norm functions as a basis, as well as a goal that must be considered by every applicable law or statutory regulation. Pancasila as the source of all sources of law for Indonesian, implies that the implementation of the state's goals is to protect the human rights of the entire community as well as individual freedoms and social justice.

As a comparison, it is expected that the values which are the legal ideals of the Republic of Indonesia, can be used in the Democratic State of Timor Leste as a comparison to complete thoughts related to the arrangement and Elaboration of legislation of this country. The legal ideals contained in the preamble of Constitution of the State of RDTL, basically contains the fundamental values of the State related to the struggle of the people of Timor Leste. Therefore, the legal ideals of the State of RDTL, as contained in the preamble of constitution of the State of RDTL, are expected relevant in this dissertation research, composed with five principles of Pancasila which are basically based on four principles of legal ideals (*recths idee*), namely:

1. Protecting all elements of the nation (nation) and the integrity of the nation.
2. Realizing social justice in the economic and social fields.
3. Realizing people's sovereignty (democracy) and a state of law.
4. Creating tolerance on the basis of humanity and civility in religious life (Shidarta, 2019).

"On that basis, the concept of open ideology is essentially related closely to efforts in achieving general welfare of society. In this regard, the ideals of law is expected to be a source of inspiration in formulating of policy of the Elaboration of legislation of Timor Leste. The law is sourced from the ideological aspect as the value of the basic norm, then that value will have a normative nature, which contains hopes, ideals, (*das sollen*).

Thoughts relating to the Elaboration of Legislation

Elaboration of the National Legislation of the Democratic Republic of Timor Leste Based on the Goals of Law in the Constitution of 2002. The philosophical content of the goals of the RDTL nation contained in the preamble of constitution and the goals of the state is actually a fundamental thought that contains the goals of law and the existence of law.

In this regard, (Usfunan, 2004) said that in a society that adheres to a non-liberal philosophy, the law is limited or determined by two supports, namely justice and legal certainty. On this support, the society is arranged in an orderly manner and in its modern form the law is formed based on the idea of change and stability. The orderliness of society is set forth in a rational organization that follows the instructions and teachings of the state of law. In that state of law, everything is determined on the basis of the legal idea of "*rechtsidee*" which is based on justice and certainty.

The legal philosophy of the nation of the Democratic Republic of Timor Leste as stated in the preamble of the constitution and the objectives of the RDTL, which determines the legal ideals of the RDTL nation (*rechtsidee*). Based on the *rechtsidee*, a written basic law and an unwritten basic law are then established. The written basic law is said to only be about basic instructions. While the unwritten basic law is aimed at state administrators, in carrying out their functions and duties in the administration of the RDTL government.

Harmonization and Synchronization of Laws

In creating the synchronization and harmonization of positive law in the Democratic Republic of Timor Leste (RDTL), the Elaboration of the national legislation /legislation of the RDTL State must be carried out properly based on concepts and theories related to the Elaboration of good laws. Theoretically the urgency of Stufenbau's theory in this research is very important to prevent conflicts of legal norms (antinomies). The aim is that in the Elaboration of national legislation of the RDTL State, avoiding the possibility of a conflict of legal norms in this case between the Law and the RDTL Constitution and the legislation under it in stages.

The reason is that the harmonization of the hierarchy of rule of laws aims to guarantee legal certainty and prevent conflicts of legal norms (antinomy). Because according to Hans Kelsen's theory of legal norms (stufenbau theory), lower-level legal norms have binding power if they are sourced and based on higher legal norms. In carrying out government functions, public services, and development in all aspects, clear legislative political directions are needed. Therefore, the Elaboration of good legislation (legislation) in order to create harmonization and synchronization of the national legislation of the Democratic Republic of Timor Leste.

Good rule of laws, as stated by I.C. Vander Vlies, must fulfill the formal and material requirements. Formal requirements include, the principle of clear objectives, the principle of the right institution, the principle of the need for regulation and the principle of consensus; while the material requirements include, the principle of correct terminology and systematic, the principle of being known, the principle of equal treatment in law, the principle of legal certainty and the principle of law enforcement. These principles mean that the laws that are made must have clear objectives in solving government problems and as a basis for the government. This is because the rule of laws that are made must fulfill sociological requirements based on people's support and use clear terminology of legal language, non-discriminatory and the resulting laws can provide solutions.

Elaboration of The National Legislation of The State Of RDTL

The State Government System in the Elaboration of Legislation

The urgency of the government system in this study, namely to examine and understand how far the involvement of the House of Representative in this case is the RDTL National Parliament and the government (executive) in the Elaboration of legislation at the national level, namely the Law.

The notion of government is, a way, process, government action. Thus, the system of government implies a process of interdependent cooperation. When one part does not function properly, then it can affect the whole activity. For example, the valve function of a car, which, if damaged, does not work, will cause any rental car, no matter how expensive, to run.

Carl J. Friederich, as quoted by Moh. Kusnardi and Harmaily Ibrahim (Kusnardi & Ibrahim, 1998), the system is a whole, consisting of several parts that have a functional relationship to the whole, so that the relationship creates a dependency between the parts, as a result if one part does not work properly it will affect the whole of an object.

The discussion about the system of government is essentially focused on discussing the distribution of power and the relationship between state institutions that exercise the powers of the state, in order to carry out the interests of the people. The relevance of this view is closely related to the cooperation between the legislative body and the executive body of the RDTL State in the Elaboration of national legislation (Laws).

Development of Legislation for the Portuguese Colonial Period in 1515

a. Development of the Legislative Elaboration of the Royal Age before 1515

Before the Portuguese colonial people came to Timor-Leste to trade, the people of Timor-Leste were able to live a peaceful life even though at that time there was no positive legal system in Timor-Leste as it is today, where the legal system has been codified.

Although at the time of the kingdom there was no written legal system, but at that time the people of Timor-Leste already had an unwritten legal system, which was known as *Uzu Kustumi* or Customary Law. *Uzu Kustumi* or Customary Law is a legal system known in the social life in Timor-Leste and other Asian countries. The source of customary law is unwritten legal regulations that grow and develop and are maintained with the legal awareness of the people. Because these regulations are not written and develop, then customary law has the ability to adapt and be dynamic. In addition, it is also known that customary law communities are a group of people who are bound by their customary law order as joint citizens of a legal alliance because of the similarity of residence or on the basis of descent.

Even though the legal system is written and codified but at that time the people can live their lives well and can run a social system that can be judged to have more high noble values because at that time the community held a legal system that was considered more permeated and recognized in his mind is customary law. Customary law can be categorized into two, namely customary law which is religious in nature/divine and worldly customary law, the leader of worldly law is LIURAI/King and the leader of ritual is called *Makaer Lulik*/ Priest (theocratic). In Timor -Leste has 45 local kings who are independent in ruling their territory.

b. Development of Legislation for the Portuguese Colonial Period in 1515

The legal system used before the 17 July 1975 integration included the Portuguese legal system in the form of the Western legal system (Civil Law) and the original legal system (Customary Law). Before Timor-Leste was colonized by the Portuguese, the law used to resolve any disputes that occurred in the community was using customary law. At that time, customary law was enforced by almost all people in Timor-Leste because customary law was highly respected by the people at that time. During the Portuguese colonial era, Timor-Leste (Timor Portuguese), as an Overseas Country (Ultra Marino), all legal products were issued by the Central Government in Portugal, all regulations issued were only regarding Civil Law, Criminal Law as well as regarding the Customary Land Law, and in Dili as the capital there is no Regional Legislative Body to issue a Regulatory Product for the Elaboration of Laws.

c. Development of Legislation for the Age of Integration with Indonesia in 1975

In 1976 the Provisional Government of East Timor (Timor-Leste) was formed and the Regional Representative Council in East Timor was formed. At that time during the New Order era, the Regional Government was not free to form a legal product like the 1998 Reformation era in Indonesia, when all legal products were issued by the Regional Representative Council and local governments are controlled and oriented from the center, the regulations issued are offensive (maintaining security).

d. Progress of Legislation for the UNTAET Transition Period 2000-2002

During the transition period of the United Nations in Timor Leste from 2000 to 2002, all legal products issued by UNTAET were administrative purification and security and other regulations were enforced by Indonesian rule of laws based on UNTAET Regulation number 1 of 1999, in part III it determines : “Section 3 Applicable law in East Timor “ Until replaced by UNTAET regulations or subsequent legislation of democratically established institutions of East Timor, the laws applied in East Timor prior to 25 October 1999 shall apply in East Timor insofar as they do not conflict with the standards referred to in section 2, the fulfillment of the mandate given to UNTAET under United Nations Security Council resolution 1272 (1999), or the present or any other regulation and directive issued by the Transitional Administrator.

e. Development of Legislation Elaboration in the Era of Independence in 2002

The history of legal development in Timor-Leste is also inseparable from the application of laws from the successor or colonial countries, and during the Integration Period until Timor-Leste becomes a state which was in a transitional period under the UN administrative government, UNTAET, still recognized all enforcement of laws of colonial heritage as in UNTAET Regulation Number 25/1999 explains that the laws that have been in force are still valid as long as they do not contradict with the constitution and standard principles of international law, as well as in the Timor Leste Constitution, article (165) states that “Laws that were in force in Timor Leste are still valid before the changes and does not contradict with the Constitution of Timor Leste and the basic principles that have been established”

Each country has its own laws, as well as Timor-Leste. However, considering that this country has just been independent, it is not possible to make its own laws in a very short time. To avoid a legal vacuum, based on the principle of concordance, legal rules that have been in force before, will continue to be used as long as they do not contradict with the RDTL Constitution and the principles contained in it.

GOOD LEGISLATION

Criteria Of Good/Responsive Legislation.

Good legislation in this section, according to the author, is a form of legislation of which contents meet the expectations of the people affected by these legislations because they guarantee legal certainty and justice.

"The basis notion of philosophical, sociological, and juridical as noted by Sovia Hasanah, is that it is always contained in the main idea in the consideration of a statutory regulation which essentially functions as a consideration and reason for its Elaboration, of which writings are placed sequentially from philosophical, sociological, and juridical. Philosophical elements are defined as considerations or reasons that illustrate that the regulations formed take into account the views of life, awareness, and legal ideals. To produce a good legislation are needed the considerations of philosophical, sociological and juridical carefully.

In relation to the basis of philosophical, sociological and juridical, Budiyo noted: (Dkk, 2015)

- a) Philosophical basis, relating to the values of the nation's view of life, human rights, democracy, and justice.
- b) Sociological basis, a legislation relating to general beliefs, public legal awareness, values and laws that live in society.
- c) The juridical basis in the Elaboration of legislation is related to regulations that have a juridical basis and guarantee legal certainty.

Harmonization of Legislation.

Opinion of (Mahendra, 2010), said there are 6 (six) factors that cause disharmony in the legislation as follows:

- a. Elaboration is carried out by different institutions and often at different times;
- b. Officials who have authority to form rule of laws change either because they are limited by the term of office, transfer of duties or replacement;
- c. The regional approach to the Elaboration of legislation is stronger than the systems approach;
- d. Weak coordination in the process of Elaboration of legislation involving various agencies and legal disciplines;
- e. Public access to participate in the process of Elaboration of legislation is still limited;
- f. There are no good and definite methods, standard methods that bind all institutions authorized to establish legislation.

Thus, it can be understood that the disharmony of legislation is basically due to the fact that it was created by different institutions without coordination, which was added by the presence of officials who establish the legislation one after another so that nothing was permanent.

Urgency of ROCCIPI Approach in Drafting Legislation.

ROCCIPI, (Seidman et al., 2001) which is an acronym for the concepts: Rule, Opportunity, Ability, Communication, Interest, Process and Ideology (Behavior - value system) introduced for the first time by Robert Seidman. The ROCCIPI approach is a method used to identify problems, analyze benefits and analyze consequences.

ROCCIPI functions normatively to carry out proper identification of both Government Officials who are related to a statutory regulation (Implementing Agency/IA). ...make empirical observations, in order to strengthen the argument as a conceptual and juridical justification. The function of the ROCCIPI method in this study is to identify problems from a statutory regulation that will be formed. The ROCCIPI approach academically has the following functions. to carry out conceptual-theoretical justifications, constitutional and juridical justifications and carry out sociological justifications to find out how far the community supports a draft legislation.

Function, Purpose and Urgency of Academic Manuscripts.

Academic manuscripts are the manuscripts of research results or legal studies and other research results on a certain problem that can be justified scientifically regarding the regulation of the problem in a Draft Law, Draft Provincial Regulation, or Draft Regency Regulation as a solution to the problem and the legal needs of the community.

The objectives of the preparation of an academic manuscript are: (Usfunan, 2017)

1. To examine problems related to a draft of legislation.

2. Formulate matters to be researched normatively and or empirical legal research if necessary.
3. Formulate philosophical, sociological, juridical considerations or foundations related to the formation of a draft legislation.
4. Formulate the objectives, scope of regulation, scope, and direction of regulation in a draft legislation.
5. As a guideline that contains the reasons for the need for the preparation of draft legislation.

Conclusion

The essence of the Elaboration of national legislation, the elements of the Uma Lulik Philosophy concept need a study deeply so that this concept can be used as a basis for the implementation of development in all aspects of development in the Democratic Republic of Timor-Leste, because it contains the philosophy of the nation and in developing the legal system of the Democratic Republic of Timor-Leste, the Uma Lulik philosophy can be used as a basic norm (groundnorm) as well as a legal ideal because, it can be used as a basis, source and guideline or the Uma Lulik philosophy as a source of all sources of law, must be spelled out in the law regulations of the Democratic Republic of Timor-Leste.

The Elaboration of National Legislation determines the direction and forms of the law that is aspired to "ius constituendum" and positive law as the law currently in force in a country "ius constitutum". Enforcement of democratic principles in a transitional country such as the Democratic Republic of Timor-Leste,

Good rule of laws are rule of laws that fulfill the expectations of the people affected by these law regulations because they guarantee legal certainty and justice. In order to produce good national legislation products, planning and preparation of rule of laws must be carried out carefully by using the ROCCIPI approach in drafting legislation.

REFERENCES

- Bello, P. C. K. L. (2013). *Ideologi hukum: refleksi filsafat atas ideologi di balik hukum*. Insan Merdeka.
- Dkk, B. (2015). *Buku Ajar Paracaangan Perturan Perundang-Undangan*. FH Unilai.
- Kelsen, H. (1990). *General theory of norms*.
- Kusnardi, M., & Ibrahim, H. (1998). *Pengantar Hukum Tata Negara Indonesia*.
- Mahendra, A. A. O. (2010). *Harmonisasi Peraturan Perundang-Undangan"*, Artikel *Hukum Tata Negara dan Peraturan Perundang-Undangan*. Jakarta: Media Publikasi Peraturan Perundang-undangan dan Informasi Hukum
- Marzuki, M. (2017). *Penelitian Hukum: Edisi Revisi*. Prenada Media.
- Seidman, A., Seidman, R. B., & Abeysekere, N. (2001). *Legislative drafting for democratic social change*. Kluwer Law International BV.
- Shidarta. (2019). *Bahaya Pendidikan Hukum Sebagai Indoktrinasi Ideologis Kaum Bigot*.
- Usfunan, Y. (2004). *Orasi Ilmiah, Dalam Rangka Pengukuhan Guru Besar Tatap Dalam Bidang Hukum Tata Negara*.
- Usfunan, Y. (2017). *Kegunaan Naskah Akademik Dalam Perancangan Peraturan Perundang-undangan*. Bimtek Perancangan Peraturan Perundangan Bagi Anggota DPRD Kabupaten Jayawijaya.
- Wasitaatmadja, F. F. (2015). *Filsafat hukum: Akar religiositas hukum*. Jakarta: Prenada Media Group.