
The Soul of The State of The Democratic Republic of Timor-Leste

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Abstract

The Constitution of the Democratic Republic of Timor-Leste (RDTL) was born from the womb and soul of the Maubere people which flows in the veins and body of the nation of Timor-Leste through the lyrics and national anthem (Pátria-Pátria) and describes the identity of the ideals of the Maubere homeland. The basic values embodied in the face of the RDTL constitution from the soul of the state are contained in the preamble to the constitution as an embryo for realizing the ideas and notions of the state or *staatsfundamentálnorm*. This anthem is only sung in the Portuguese version and there is no Tetun version, which is one of the national languages of Timor-Leste. So, the law for me, like music for anyone who understands the lyrics will also understand the meaning of the music. Similar to the law that was born from the womb and the soul of the Maubere people which flows in the veins and body of the nation of Timor-Leste through lyrics and national anthem (Pátria-Pátria), which describe the identity of the ideals of the Maubere homeland.

Keywords: state of the democratic, Republic of Timor Leste.

I. INTRODUCTION

The Constitution of the Democratic Republic of Timor-Leste (RDTL) was born from the womb and soul of the Maubere people which flows in the veins and body of the nation of Timor-Leste through the lyrics and national anthem (Pátria-Pátria) and describes the identity of the ideals of the Maubere homeland. The concept of a rule of law state in the Constitution of the Democratic Republic of Timor-Leste, as a form of the statement contained in paragraph VIII of the preamble to the RDTL constitution of 2002, confirms that it is necessary to build a democratic and institutional culture suitable for the rule of law, in which respect for the constitution and democratically elected institutions is an unquestionable foundation. Therefore, the formation of the 2002 RDTL constitution demonstrates that the RDTL state's philosophical concept is founded on the principle of a democratic rule of law (*Estado de Direito Democratiko*). The founders of our republic aspired to this idea of a democratic rule of law "*demokratische Rechtsstaat*" and the principle of a democratic state founded on the law of "constitutional democracy" (Jimly, 2007). The term "the rule of law is a translation from English, the rule of law (Badner, 2012). or "rechtsstaat" in German terms or *etat de Droit* in French, which generally contains an identical meaning, namely legal sovereignty or legal supremacy over people and government bound by law (Palguna, 2013) even though in its birth the rule of law has differences and similarities but is the same (Luis, 2018).

The basic values embodied in the face of the RDTL state constitution from the soul of the state are contained in the preamble to the constitution as an embryo for realizing the ideas and ideas of the state or *staatsfundamentálnorm* contained in the text of the constitution in paragraph-IX "*Plenamente concientes da necessidade de se erigir uma cultura democrática e institucional própria de um Estado de Direito onde o respeito pela constituição, pelas leis e pelas instituições democraticamente eleitas sejam a sua base inquestionável,*" which reflects the character of the *democratische rechtstaat* state in implementing Timor-Leste's constitutional practices which rely on the text of the proclamation of Timor-Leste's independence by national patriots.

The foundation of the state is the history of the struggle of the Maubere people which cannot be questioned and is determined as an official state document as stated in the constitution of RDTL as

the basis of the state element; (a) *Estado de direito*, (b) *demokratiku* (c) *soberano*, (d) *unitario*, (e) *independente* dan (f) *Respeitu pela dignidade da pessoa umanu*. The essence of these state elements is a unitary unit of state elements that cannot be separated.

Based on the explanation above, it is the basic principle of the RDTL constitutional law which is included in article 1 paragraph (2) which becomes an assertion that, “*O dia 28 de Novembro de 1975 é o dia da Proclamação da Independência da República Democrática de Timor-Leste.*” The spirit of independence that was born from the spirit of the people. As stated by Jans Jaques Rosseau that the soul of the people is classified into two, namely *Volontu de tous* and *volunte de generalis*. *Volontu de tous* means that an agreement is born from the people for the state, while *volunte de generalis* is interpreted as an agreement made by the people to the government.

This is a representative of the face of the RDTL state in the system and practice of administering the state, so that the people have complete sovereignty. Sovereignty only in the hands of the people is the goal of the RDTL state which strictly defends and guarantees state sovereignty with the argument of *Salus Publica Supreme lex Isto*. That is, the interests of the people are the highest law. This is also emphasized in the contents of the RDTL constitution. The Democratic Republic of Timor-Leste also adheres to the principles of national independence, the right of all nations to self-determination and independence which has been *de facto* recognized by the people of Maubere. Although, unilaterally proclaimed through FRETELIN (Revolutionary Front for an Independent Timor-Leste) by Francisco Xavier do Amaral as the first president with the ideology of Pátria Maubere. Then, ensouling the national anthem Pátria which was composed by Francisco Borja da Costa and composer Afonso de Araujo in 1975 and became the national anthem of Timor-Leste in 2002. This anthem is only sung in the Portuguese language version and there is no Tetum version, which is one of the national languages of Timor-Leste. As such, it is law for me but for some it is just music. Anyone who understands the lyrics will also understand the meaning of the music. It is the same as the law that was born from the womb and the soul of the Maubere people which flows in the veins and body of the nation of Timor-Leste through the lyrics and the national anthem of the Pátria and describes the identity of the ideals of the Maubere homeland. The aims research is to know the implementation of UU No. 2/2007 is not effective and to describe the UU No.2/2007 met the expectations of the people of Timor-Leste.

III. RESULT AND DISCUSSION

3.1 The Implementation of UU No. 2/2007 is Not Effective

The State of Timor-Leste is a state of law; as mandated in paragraph XI of the preamble to the constitution of RDTL which explicitly says, “it is necessary to build a democratic and institutional culture that is appropriate for a rule of law country, where respect is for the constitution and for democratically elected institutions.” This is a foundation that cannot be questioned. Therefore, the national parliament as a state institution has legislative, supervisory and political decision-making authority, as stipulated in the constitution of RDTL in article 92. By authority, the national parliament has the authority to determine state symbols, such as flag, coat of arms and national anthem as stipulated by the RDTL constitution, in Article 14 paragraph (1) and (2) which explains that:

- 1) The national symbols of the Democratic Republic of Timor-Leste are the flag, coat of arms and national anthem.
- 2) National emblem and anthem will be determined by law.

This has also been stipulated in Law No. 2 of 2007 in article 1 paragraph (1) concerning the National Symbol and then in paragraph (3) it also emphasizes that the National Symbol is an attribute of the state executive, as well as respect for it, following the order shown in previous number.

In positivism, when referring to the progressive legal theory of search, liberation and enlightenment that law is actually written as human behaviour based on the philosophy that law is for humans and not vice versa. The legal paradigm for humans makes them feel free to seek and find the right formats, thoughts, principles and actions to realize the goals of law, namely justice, prosperity and concern for the people. Based on this description it can be understood that what is meant by renewal is not textually but contextually. As emphasized by Prof. Dr. Sajipto Raharjo that progressive law is a series of radical actions by changing the legal system (including changing legal regulations if necessary) so that law is more useful, especially in raising self-esteem and guaranteeing human happiness and welfare. The Maestro said that progressive law is a law that carries out liberation, and

searches for identity from that law both in the way of thinking and acting in law, so as to be able to let the law just flow to complete its duties to serve humans and humanity, because, legal progressivism teaches that law is not a king, but a tool to describe the basis of humanity which functions to give grace to the world and humans. So, it can be assumed by the author that:

- 1) Having the great goal of human welfare and happiness, as stated in the constitution of RDTL in article 6 concerning the goals of the RDTL state.
- 2) Contains strong human moral values that were born from the womb of the Maubere people in their whole soul, body and spirit.
- 3) Progressive law is a liberating law covering a very broad dimension that does not only move in the practical realm but also in theory. Therefore, the spirit of the national anthem of the *pátria-pátria a nossa nacao*, it must truly liberate from the shackles of colonialization who seem to still have tyrannical reasoning in the mind, body and soul of the Maubere people.
- 4) It is critical and functional in pulse and blood of Mauberealismo.

3.2 UU No.2/2007 met the expectations of the people of Timor-Leste

The Democratic Republic of Timor-Leste also adheres to the principle of national independence, the right of all nations to self-determination and independence which has been de facto recognized by the people of Timor-Leste, even though it was unilaterally proclaimed through FRETELIN (Revolutionary Front for an independent East Timor) by Francisco Xavier do Amaral as the first president with the ideology of Pátria Maubere which ensouls the national anthem Pátria created by Francisco Borja da Costa and composer Afonso de Araujo in 1975 and this song was made the national anthem in 2002. As stipulated in law no. 2 of 2007, in article 5 paragraph (1). This anthem is only sung in the Portuguese language version and there is no Tetum version, which is one of the national languages of Timor-Leste. As such, it is law for me but for some it is just music. Anyone who understands the lyrics will also understand the meaning of the music. It is the same as the law that was born from the womb and the soul of the Maubere people which flows in the veins and body of the nation of Timor-Leste through the lyrics and the national anthem of the Pátria and describes the identity of the ideals of the Maubere homeland. This was confirmed in theory by Prof. Dr. Satjipto Rahardjo that good law is law that is born from the womb of the people so that people can love and maintain the resilience of the law (Raharjo, 2010).

Legal reform, often only discussed as legal reform. Literally legal reform means a mere change in the statutory system. The word legal comes from the word *lege* which means laws or legal materials that have been specifically formed into rules that have been confirmed or positive as formally applicable legal rules. Thus, legal reform will take place as a legislative activity which generally involves the thoughts of political people and or as far as possible also the thoughts of the professional elite who have access to lobbying. The movement of the law reform process which limits its discussion to the renewal of positive statutory norms only proves the strong nature of legal positivism in the current development of law in Timor-Leste, but in the RDTL constitution, it has set limits on the review of laws. This is as stipulated in the RDTL constitution in Article 96 regarding legislative permits in paragraph (2) which explains that the law regarding legislative permits will determine the subject matter, meaning, scope and validity period of the permit, and the permit can be renewed.

In connection with the contents of this clause, it is further regulated in article 166 concerning the National Anthem which explains that until the time when the national anthem is legalized by ordinary law in accordance with paragraph (2) of article 14, the melody of the Pátria-Pátria of Timor-Leste “*A Nossa Nacao*” which will be sung at all official events. If observed lexically there is ambiguity in the content and provisions of norms and regulations from the provisions of existing articles theoretically it can be observed by the author in the view of Prof. Dr. Sajipto Raharjo, that reality is the basis of knowledge “*hat recht hintk achter de feiten,*” which means that the law is teetering to follow reality, then “*mutatis mutandis*” we can also say that “*wetenschap hintk achter de feiten.*” It means that science is teetering in behind reality. So, knowledge is for reality, not the other way around. If reality is for science, then that reality will be manipulated so that it fits with existing knowledge and theory (Raharjo, 2010).

The nature of legal positivism thought is a dark road for the future of legal reform, and makes law isolated from the social dimension of society. So, it is not surprising that the function of

legislation as a starting point for legal reform often puts forward conflicts of political interest through the arguments of legislative procedures rather than reflecting substantial. So, progressive law is free from the domination of liberal law types which are not always suitable to be applied to countries that already have a system of society that is different from the system of society of origin of modern law. In this case, it is Europe. So, the concept of progressivism originates from a human perspective so that it seeks to change a law that is devoid of conscience into a moral institution.

IV. CONCLUSION

When examined in more depth, basically the author is trying to find answers from a theory and concept, which are not so dominant in RDTL rule of law practitioners. Even though, it directly states the elements of the basic values contained in the face of the constitution of the Democratic Republic of Timor-Leste (RDTL). As the soul of the state is contained in the preamble to the constitution of RDTL in the Text in Paragraph IX. In this element, the people of Timor-Leste have not ensoul the national anthem “Pátria-Pátria,” as stated in the Constitution of RDTL in Article 14. One of the factors is that the language in the National Anthem is not Timor-Leste’s mother tongue, but Portuguese. From this language factor, it can be concluded that the people of Timor-Leste do not reflect the character of a Democratic state in implementing Timor-Leste’s constitutional practices which rely on the Text of the Proclamation of Independence of Timor-Leste by state patriots.

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Regulations:

1. The Constitution of the Democratic Republic of Timor-Leste 2002.
2. Law No. 2 of 2007