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Constitutional Protection of Ethnic Minority Rights in Timor-Leste: Compliance with the UN Declaration on Minorities

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ABSTRACT

This aims to determine and explain to what extent the protection of ethnic minority rights in the Constitution of Timor Leste (2002) is in accordance with or not in accordance with the principles set out in the UN Declaration on the Rights of Minorities (1992). This type of research uses normative law research. The approach method in this research is the statute approach. The data obtained in this study were analyzed using qualitative methods. Based on the results of the research, the author can conclude that the 2002 Constitution of Timor Leste regulates the protection of the rights of ethnic minorities by prohibiting discrimination on the basis of race, ethnicity and language in Article 13 (a) and requires the state to build a society that upholds respect and cooperation. The Constitution also recognizes the Universal Declaration of Human Rights, which implicitly protects the rights of minority groups, and adopts a civil law system that includes prosecution of discriminatory acts through the Criminal Code. The protection of ethnic minority rights in the Constitution of Timor Leste (2002) is generally in accordance with the principles set out in the UN Declaration on the Rights of Minorities (1992), which emphasizes the right of minorities to enjoy their culture, religion, language individually and collectively without discrimination and without detriment for the exercise of those rights. Although the Constitution of Timor-Leste does not specifically refer to the 1992 UN Declaration, the same spirit of protection of diversity and equality is reflected in the country's constitution.

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1. Introduction

Minorities have the same rights as the majority in a country. Therefore, their basic rights, whether social, political, cultural and economic, as well as religious freedom, are included in non-derogable human rights.[1] The state has the responsibility to protect these rights as stipulated in the UN Charter and specifically in Indonesia in accordance with Articles 27, 28, 29, 30, and Article 31 of the 1945 Constitution of the Republic of Indonesia.

The Constitution of the Democratic Republic of Timor-Leste or Konstituisaun has not been changed since its creation until now, so it is easy to find out the provisions of its contents which can be directly indicated as containing the contents of the rights and obligations for its citizens which are still the original ones. Determine the selected parts of this constitution will follow the mandate and concept of the rule of law as stated in Article 1 paragraph (1) which upholds the values of the concept of rechtsstaat (concepto o estado de direito demokratico) based on the wishes of the general public who uphold the dignity of each individual human being.[2]

Timor Leste is an independent country that has a long history. Before becoming independent and becoming a sovereign country, Timor Leste was part of Indonesia. East Timor itself broke away from Indonesian sovereignty on May 20, 2002.[3] In 1999, the Indonesian government, led by President B.J. Habibie, offered the province of East Timor (Timor Timur) options. These options included special autonomy for East Timor or East Timor's separation from Indonesia. Of these two options, East Timor chose to separate from the Republic of Indonesia and become an independent nation under the name of the Republic of Timor Leste.[4]

Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination defines ethnicity as a classification of people based on beliefs, values, customs, traditions, language norms, history, geography, and kinship.[5] Etymologically, the term ethnicity comes from Greek, "ethnos" which has the same meaning as nation (in English). According to the Oxford Dictionary, the term ethnicity is understood as a subgroup of a population that is nationally distinct. These differences refer to differences in culture, origin/kinship, and/or non-Western and archaic identification (as opposed to monotheistic religions). This definition itself has a broad scope, therefore, systematic and scientific efforts to build a single understanding (precise term) about what ethnicity is and how to distinguish one ethnicity from another is a problem that has not been resolved until now. However, Hylland Eriksen helps explain the ethnicity aspect from the perspective of his agents. He describes ethnicity as an aspect of social connectedness among agents who consider themselves culturally different from other members or groups, and they tend to interact minimally with other groups.[6] The key is the view from the subjective point of view of the agents, and the differences are seen from a cultural perspective. [7]

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[1] Cook, *Human Rights of Women: National and International Perspectives*; Alya, "Perlindungan Hak Asasi Manusia Pada Penanganan Kasus Kekerasan Bagi Perempuan Dan Anak Di Indonesia"; Friedman et al., "Time for a Global Human Rights Treaty for Health Equity."

[2] Timor-Leste, *Constitution of the Democratic Republic of Timor-Leste*.

[3] Krustiyati, *Penanganan Pengungsi Di Indonesia: Tinjauan Aspek Hukum Internasional & Nasional*.

[4] Hägerdal, "Eastern Indonesia and the Writing of History."

[5] UU Republik Indonesia, Undang-undang (UU) Nomor 40 Tahun 2008 tentang Penghapusan Diskriminasi Ras dan Etnis.

[6] Eriksen, *Ethnicity and Nationalism: Anthropological Perspectives*.

[7] Nystuen, *Achieving Peace or Protecting Human Rights?: Conflicts between Norms Regarding Ethnic Discrimination in the Dayton Peace Agreement*.

The protection of ethnic minority rights in the 2002 Constitution of Timor Leste is a long historical experience of violence and injustice under colonialism and occupation, in which minority groups were often the victims. This Constitution was born from a strong desire to build an independent democratic state, based on the rule of law, and a commitment to universal human rights, including the protection of all races, genders, and religions, in order to prevent the recurrence of discrimination and maintain the integrity of a diverse nation.

Timor-Leste has experienced a long history of violence, injustice, and human rights violations, particularly during the periods of colonial rule and foreign occupation.[8] These experiences have left deep social trauma resulting from prolonged armed conflict and collective violence.[9] In addition, Timor-Leste is characterized by considerable ethnic diversity, making the protection of minority communities an essential component of national unity and democratic governance.[10] Historical experiences demonstrate that discrimination and injustice against minority groups have contributed to social tensions and conflict, highlighting the importance of establishing a strong legal framework to safeguard their rights. Against this background, this study examines two principal issues. First, how the 2002 Constitution of Timor-Leste regulates the protection of ethnic minority rights. Second, the extent to which the constitutional provisions concerning ethnic minority rights conform to the principles enshrined in the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.[11]

2. Method and Legal Material

This research employed normative legal research, which examines law as a system of norms by analyzing constitutional provisions, international human rights instruments, legal principles, and legal doctrines governing the protection of ethnic minority rights.[12] Normative legal research focuses on the study of legal norms, legal principles, legal systematics, legal synchronization, and comparative legal analysis through library-based research.[13] The objective of this research is to examine the extent to which the Constitution of Timor-Leste provides legal protection for ethnic minorities and to assess its conformity with the principles contained in the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

The approaches employed in this research consisted of the statute approach, conceptual approach, and comparative approach.[14] The statute approach was used to analyze the provisions of the Constitution of Timor-Leste (2002), the Universal Declaration of Human Rights (UDHR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and other relevant international human rights instruments concerning the protection of ethnic minority rights. The conceptual approach was applied to examine the legal concepts of equality, non-discrimination, minority rights, and the protection

[8] Frédéric, "Three Centuries of Violence and Struggle in East Timor (1726-2008)."
[9] Hearman, "Challenges in the Pursuit of Justice for East Timor's Great Famine (1977–1979)."
[10] Wu and Zhang, "The Impact of Language Policy on National Identity in Timor- Leste from an Incrementalism Perspective"; Cruz and Cruz, "State Responsibility in Enforcement of Citizens' Constitutional Rights in Land Execution Cases in Timor Leste."
[11] United Nations, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.
[12] Popa and Andreescu, "Legal Provisions, Courts, and the Status of Religious Communities: A Socio-Legal Analysis of Inter-Religious Relations in Romania."
[13] Muhammad, *Hukum Dan Penelitian Hukum*.
[14] Marzuki, *Penelitian Hukum*.

of vulnerable groups within the framework of international human rights law. Furthermore, the comparative approach was utilized to compare the constitutional provisions of Timor-Leste with the principles established in the 1992 UN Declaration on the Rights of Minorities in order to identify similarities, differences, and the extent of normative conformity between the two legal instruments.

The legal materials used in this research consisted of primary, secondary, and tertiary legal materials. Primary legal materials included the Constitution of Timor-Leste (2002), the Universal Declaration of Human Rights (1948), the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, and other relevant international legal instruments. Secondary legal materials comprised books, scientific journal articles, legal commentaries, and scholarly writings concerning constitutional law, international human rights law, and minority rights. Tertiary legal materials included legal dictionaries, encyclopedias, and other reference materials supporting the interpretation of legal concepts.

Legal materials were collected through a comprehensive literature study by identifying, reviewing, and examining constitutional provisions, international legal instruments, and relevant academic literature. The collected legal materials were subsequently analyzed qualitatively using descriptive-analytical methods through legal interpretation and comparative analysis. The analysis focused on identifying constitutional guarantees for ethnic minority rights, examining the implementation of the principles of equality and non-discrimination, and evaluating the conformity of the Constitution of Timor-Leste (2002) with the principles embodied in the 1992 UN Declaration on the Rights of Minorities.

3. Result and Discussion

3.1 The 2002 Constitution of Timor-Leste provides for the protection of the rights of ethnic minorities

The 2002 Constitution of Timor-Leste essentially guarantees human rights and fundamental freedoms for all citizens, although it does not explicitly provide for specific protections for ethnic minority groups.[15] The constitution's primary focus is on ensuring equality before the law for all citizens, regardless of ethnic background, race, religion, or gender. Furthermore, Timor-Leste is a party to various international human rights instruments that prohibit all forms of racial discrimination, particularly the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).[16] Participation in these conventions strengthens the state's commitment to protecting ethnic minority groups through binding international legal standards.

The protection of ethnic minority rights in the 2002 Constitution of Timor-Leste is normatively understood as a guarantee of the principles of equality and non-discrimination, realized through the creation and implementation of laws and regulations.[17] This normative approach positions all groups in society, including ethnic minorities, as legal subjects with equal rights and protection from potential oppression or discriminatory treatment in a

[15] Timor-Leste, *Constitution of the Democratic Republic of Timor-Leste*.
[16] United Nations Human Rights, "Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979."
[17] Hau, *The Mirror of the Constitution of the Democratic Republic of Timor-Leste in the Tourism Law Frame*.

pluralistic society. This concept aligns with universal human rights principles, which are then implemented through the applicable national legal system.

Normatively, the protection of ethnic minority rights refers to the principle that every individual and group has equal standing before the law, regardless of their ethnic origin.[18] Therefore, all forms of discrimination based on ethnic identity must be prevented and prohibited.[19] Through this normative approach, the 2002 Constitution of Timor-Leste seeks to ensure that the principles of equality and justice are embodied in a legal framework capable of providing protection to vulnerable and marginalized groups, thereby creating equality in society.

The normative approach also emphasizes the importance of a written legal framework within the constitution that recognizes and protects the rights of ethnic minority groups. This normative implementation is realized through the development of laws and regulations designed to prevent and address potential violations of minority rights, guarantee respect for societal diversity, and promote an inclusive, harmonious, and cohesive social life.

Although the 2002 Constitution of Timor-Leste does not contain a provision explicitly mentioning the term "ethnic minority," it does provide protection for all citizens by guaranteeing equal rights without distinction of race, gender, or religion. This provision indirectly includes protection for ethnic minority groups and aligns with the principles contained in the United Nations Universal Declaration of Human Rights. Thus, the constitution lays down fundamental principles that guarantee equal rights while providing protection against all forms of discrimination.

The legal basis for protecting ethnic minorities in Timor-Leste rests on two main aspects. First, the principles of equality and non-discrimination, which underpin Timor-Leste's Constitution as a state based on the rule of law.[20] The Constitution recognizes the fundamental rights of every person in accordance with the principles contained in the Universal Declaration of Human Rights, ensuring that every individual is guaranteed equal treatment before the law without distinction of race, gender, or religion. Second, Timor-Leste's commitment to various international human rights treaties, particularly the International Covenant on Human Rights (ICERD), directly provides protection against all forms of racial discrimination and reinforces the state's obligation to guarantee respect for the rights of ethnic minority groups.

The implication of these constitutional provisions and international commitments is that ethnic minority groups in Timor-Leste receive legal protection from all forms of unfair or discriminatory treatment. The guarantee of equality before the law and the prohibition of discrimination, both in the constitution and international legal instruments, provide a strong legal basis for the protection of their rights. Furthermore, although the constitution only provides a general framework for protection, the Timor-Leste government has the constitutional basis to establish more specific laws and policies to guarantee, strengthen, and develop protection for the rights of ethnic minority groups in accordance with the needs and dynamics of a multicultural society.[21]

[18] Guterres and Maschietto, "The Path to Peace and Democracy: The Case of Timor-Leste."
[19] Kindornay, Ron, and Carpenter, "Rights-Based Approaches to Development: Implications for NGOs"; Alston, "The Populist Challenge to Human Rights."
[20] Hau, "The Soul of The State of The Democratic Republic of Timor- Leste."
[21] Henick, "Nation Building in Timor-Leste: National Identity Contests and Crises."

3.2 Protection of the Rights of Ethnic Minorities in the Constitution of Timor Leste (2002) in Accordance with the Principles Set Out in the UN Declaration on the Rights of Minorities (1992)

The protection of ethnic minority rights in the 2002 Constitution of Timor-Leste is essentially in line with the principles set out in the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities (UN Declaration on the Rights of Minorities), although there are differences in the level of regulation and implementation mechanisms. Conceptually, minority groups exist in almost every country in the world and are an important part of enriching the diversity of societies. Minority identity is understood as a concept encompassing both subjective and objective elements, with individual self-identification being a crucial aspect. The United Nations definition of a minority, as set out in the 1992 Declaration, focuses on four main categories: national, ethnic, religious, and linguistic minorities. These four categories are not always fixed but often overlap, so that a minority group's identity can encompass more than one category simultaneously.

Within the framework of international human rights law, minority groups have the right to enjoy all human rights guaranteed in the nine core human rights instruments on an equal basis with other groups. The framework for protecting minority rights established by the United Nations emphasizes several key elements: protection of the existence of minority groups, the principle of non-discrimination, the right to enjoy and maintain one's own culture, religion, and language, the right to participate effectively in cultural, religious, social, economic, and public life, the right to participate in decision-making processes, the right to form and maintain their own organizations or associations, and the right to maintain cross-border relations and contacts with groups sharing the same identity.[22] Although the conditions of minority groups vary widely across countries, one common characteristic is the continued prevalence of discrimination, resulting in marginalization and social exclusion. Therefore, increasing the effective participation of minority groups and eliminating various forms of exclusion can only be achieved through respect for diversity and consistent implementation of international human rights standards.[23]

Research findings indicate that the protection of ethnic minority rights in the 2002 Constitution of Timor-Leste is generally consistent with the principles contained in the 1992 UN Declaration on the Rights of Minorities, as both uphold the principles of equality before the law and the prohibition of discrimination. However, there are differences in the level of regulation and implementation mechanisms. The Timor-Leste Constitution places greater emphasis on the basic principle of non-discrimination as the foundation for protecting human rights for all citizens, while the UN Declaration provides more detailed guidelines on the rights that must be guaranteed to minority groups, including the right to freely practice their own culture, religion, and language, as well as the right not to be subjected to forced assimilation.

The similarities between the 2002 Constitution of Timor-Leste and the 1992 UN Declaration on the Rights of Minorities are evident in several key principles. First, both affirm the importance of the principle of equality and non-discrimination, namely that no one should be subjected to discriminatory treatment based on ethnicity, origin, or other status. This principle serves as the primary foundation for ensuring the protection of minority groups in

[22] Silva, Palmer, and Cunha, *Econ. Divers. Contemp. Timor-Leste*.

[23] Tauli-Corpuz, *Visit to Timor-Leste: Report of the Special Rapporteur on the Rights of Indigenous Peoples*.

a pluralistic society. Second, both recognize the existence of individual and collective rights. The UN Declaration explicitly states that members of minority groups can exercise their rights both individually and collectively. This principle is also fundamentally aligned with the general framework of human rights protection that underpins the Timor-Leste Constitution, although it does not explicitly recognize the collective rights of minority groups.

Besides these similarities, there are also several fundamental differences between the two instruments. The first difference lies in the level of specificity of the provisions. The UN Declaration on the Rights of Minorities, an international legal framework designed to protect vulnerable groups, contains far more detailed guidelines on how minority rights can be exercised, including the right to independently maintain their cultural, religious, and linguistic identities. In contrast, the Timor-Leste Constitution only establishes general principles regarding equal rights and the prohibition of discrimination, without providing specific provisions regarding the rights of ethnic minorities.[24] The second difference relates to the context in which they were formulated. The Timor-Leste Constitution was born in a post-conflict situation and the process of forming a new state, thus placing greater emphasis on establishing an inclusive, democratic foundation for the state and guaranteeing equality for all citizens.[25] Meanwhile, the UN Declaration on the Rights of Minorities provides additional guidelines on rights that must be specifically respected and protected to ensure diversity is maintained, minority group identities are preserved, and community life is not fragmented by discrimination or marginalization.

Thus, the 2002 Timor-Leste Constitution has laid a strong foundation for the protection of ethnic minority rights through the application of the principles of equality and non-discrimination as part of human rights guarantees.[26] However, the 1992 UN Declaration on the Rights of Minorities provides a more comprehensive protection framework, as it sets out in greater detail the rights that must be promoted and protected so that minority groups can actively maintain their cultural, religious, and linguistic identities. Therefore, the provisions of the UN Declaration can serve as an important complement to the implementation of the Timor-Leste Constitution, strengthening legal protection for ethnic minorities and ensuring the realization of an inclusive, pluralistic, and diversity-respecting society.[27]

4. Conclusion

The 2002 Constitution of Timor-Leste provides for the protection of the rights of ethnic minorities by prohibiting discrimination on the basis of race, ethnicity and language in Article 13(a) and obliging the state to build a society that upholds respect and cooperation. The Constitution also recognizes the Universal Declaration of Human Rights, which implicitly protects the rights of minority groups, and adopts a civil law system that includes prosecution of discriminatory acts through the Criminal Code.

The protection of ethnic minority rights in the Constitution of Timor Leste (2002) is generally in accordance with the principles set out in the UN Declaration on the Rights of

[24] Bertelsmann Stiftung (BTI), *Country Report — Timor-Leste*.

[25] do Santos, "Customary Law in Timor-Leste."

[26] Cruz and Quintas, "Pengaruh Konstitusi Timor Leste Terhadap Perlindungan Hak Asasi Manusia Dalam Konteks Pascakonflik."

[27] Barreto, Mok, and Guterres, "The Cultural Identity and Traditional Food in Timor Leste"; Mills et al., "Livelihood Diversity and Dynamism in Timor-Leste; Insights for Coastal Resource Governance and Livelihood Development"; Ray, Oliveira, and Lauria, "Navigating Fragility and Civic Engagement: Youth in the Evolving Democratic Landscape of Timor-Leste."

Minorities (1992), which emphasizes the right of minorities to enjoy their culture, religion, language individually and collectively without discrimination and without detriment for the exercise of those rights. Although the Constitution of Timor-Leste does not specifically refer to the 1992 UN Declaration, the same spirit of protection of diversity and equality is reflected in the country's constitution.

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