

Legislation Performance Approach Through The Formulation of Regional Policy in East Nusa Tenggara

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Abstract

The policy of Victor Laiskodat as the Governor of East Nusa Tenggara has highlight public attention since the obligation to start learning hours at 05.00 WITA (Central Indonesia Time) because the government has improved the allocation of education funds on East Nusa Tenggara Province is 34% of the Regional Revenue and Expenditure Budget. Besides that, the policy of the Regent of North Central Timor prohibits smoking and eating betel nut as well as requiring the demolition for smoking and eating betel nut facility. Those policy then bring up an issue about conception regulation policy as well as performance of legislation in East Nusa Tenggara. This research has formulated with normative study, supported by legislation approach, analysis and conceptual approach, and the facts approach, then the author finds the final results and recommendations that the policy does not meet the criteria intended in a policy regulation and even resulting conflicting norms while legislative performance in East Nusa Tenggara Province is still needs to be improved, especially in the aspect of understanding basic legal concepts and policy.

Keywords: *Legislative performance; East Nusa Tenggara; North Central Timor; Government Official; Regulations Policy*

INTRODUCTION

The Province of East Nusa Tenggara (NTT) was legalized in 1958¹ with spans an area of 48,718.10 km which covers 21 districts and 1 city. In 2018, Victor Laiskodat and Josef N. Soi were elected become Governor/Deputy Governor of East Nusa Tenggara Province then start to push discourse tourist region and developing of human resources in East Nusa Tenggara. ² This gets more interesting when problematic policy is carried out for the sake of achieving his objective leadership. ³ The

formulation of local official behavior in East Nusa Tenggara a number of time final become A attention for circles academics and practitioners affected multidisciplinary policy that. Paradigm of leadership in East Nusa Tenggara is not only experienced at levels Province but also on Regency level especially in the North Central Timor Regency lead by the Regent Djuandi David and his Deputy Eusabius Binsasi. The policy of East Nusa Tenggara Governor which became highlight is obligation to go to school at 05.00 Central Indonesia Time for High School students⁴, as

¹ Isakh Manubulu, *Economy Tourism Coagulation in Bali Island Regarding The Policy of COVID-19*, 2020.

² Marianus Kleden, 2020, “*Preferensi dan Voting Behavior di Kalangan Mahasiswa Unwira Menjelang Pemilihan Umum Gubernur Provinsi NTT 2018*”, Jurnal JAP UNWIRA, Vol. 1, No. 1, h. 3.

³ “Laiskodat Di Panggung Refleksi Kritis 4 Tahun Kepemimpinan Victory-Joss | Koran NTT,” diakses pada 24 Juli 2023 dari [https://koranntt.com/2022/09/26/laiskodat-di-](https://koranntt.com/2022/09/26/laiskodat-di-panggung-refleksi-kritis-4-tahun-kepemimpinan-victory-joss/)

[panggung-refleksi-kritis-4-tahun-kepemimpinan-victory-joss/](https://koranntt.com/2022/09/26/laiskodat-di-panggung-refleksi-kritis-4-tahun-kepemimpinan-victory-joss/).

⁴“Gubernur NTT Viktor Laiskodat Terapkan Kebijakan Masuk Sekolah Jam 5 Pagi, DPR Tak Setuju: Masih Banyak Cara Lain – Su ara.Com,” diakses pada 24 Juli 2023 dari : <https://www.suara.com/news/2023/02/28/162818/gubernur-ntt-viktor-laiskodat-terapkan-kebijakan-masuk-sekolah-jam-5-pagi-dpr-tak-setuju-masih-banyak-cara-lain>.

well as making it difficult to obtain a consent letter for divorce for Civil Servants, the same goes for policy of Djuandi David establish *Surat Edaran No. 130/21/BU* about Prohibition Smoking and chewing betel nut in office buildings, schools and neighborhoods Surrounding.⁵

This Phenomenon then bring up an assumption about the performance of making policy at the local area that impact the practice of the rule of law '*rechtstaat*'⁶ in Indonesia. Existence from *rechtstaat* present as exponent⁷ of state power '*machtstaat*' as well *restraint*⁸ against paradigm authoritarianism in a democratic country. In other words, the existence of Article 1 Paragraph (1) of the Indonesia Constitution 1945 does not only as A *legal terms* on material constitution, but rather as a way to understand the purpose, source as well as the restrictions power to understand full authoritarianism during the new orde in Indonesia . Government Official has been given the authority to determine intersecting policies directed with his position but also have to notice legal jurisdiction that has determined. This Provision referring to Article 3 Point F of the Law of Indonesia Republic Number 30 of 2014 concerning Government Administration which determines the basic ideas for implementation of regulation as well as run the General Principles Of Good Governance. In the line with this, Sidharta gave explanation about function conservative law namely to preserve and maintain "what has achieved"⁹ so that can

encage arbitrary action from the government official which potential can damage conservative function of law.

Importance evaluation against SE No. 130/21/BU TTU (Circular Letter of Chief Regency of North Central Timor) is supported by a several factor which can be seen in point 2 SE No. 130/21/BU TTU about the prohibition for every local government organs should not provide smoking facility (also have a functioned as place for eating betel nut), whereas Article 115 Paragraph (1) PP No. 19 of 2003¹⁰ concerning Security Cigarettes for Health which determines the obligation to provide smoking rooms. Interestingly, SE No. 130/21/BU TTU was present when the Government encourage the implementation of Article 7 paragraph (1) Law No. 12 of 2011 concerning Formation of Statutory Regulations where applies *preference principle* as boundaries to identify power tie among a statutory regulations. Other problem following by SE No. 130/21/BU TTU is *staatsregelings*¹¹ precisely set policy with function *reglementary*¹². The enforcement of this regulation bring up a theoretical conflict because the position of Circular Letter in Indonesia as *pseudo wetgeving* should be in line with PERKAP ANRI No. 2 of 2014 concerning The Official Document Management Guideline¹³ which is different with the Statutory Regulation in Article 7 paragraph (1) Law No. 12 of 2011 who has arranged to applies in a way of *in abstracto*¹⁴. From its nature, Circular

⁵ Isakh Manubulu, 2021, "*Kritik Larangan Menyirih Dan Merokok Terhadap Surat Edaran Bupati TTU*," diakses dari <https://doi.org/10.13140/RG.2.2.12545.17768>. (selanjutnya disebut Manubulu-Larangan BUP TTU).

⁶ *Vide* Pasal 1 ayat (1) UUD 1945.

⁷ Exponent is a basic description of the strength of a number/variable.

⁸ Restraint is used by Ivo Duchacek to describe the use of the constitution as a means of limiting power, see Ivo D. Duchacek, 1987, "Constitution and Constitutionalism", in Blackwell's Encyclopedia of Political Science, ed. Bogdanor and Vernon, Oxford, p. 142.

⁹ Isakh Benyamin Manubulu, 2023, "*506 Tahun Jejak Otonomi Di Pulau Rote, Jilid 1*."

Tersesat Dalam Pemahaman Nusak," Kupang, Tangguh Denara Jaya, h. 44. (selanjutnya disebut Manubulu III).

¹⁰ PP is mention for regulations of the government of the Republic of Indonesia whose the level of hierarchy is much higher than regional or even regency regulations.

¹¹ Theoretically, *staatsregeling* is correctly regulates only for the government official, in this case, the circular should only be addressed to state civil servants in North Central Timor Regency.

¹² This is type of rule which can be addressed to the public.

¹³ Regulations of The Head of The National Archives of The Republic of Indonesia.

¹⁴ Mean for abstract point of view.

Letter is a *baleidsregel* who tend to tie internally because not formed based on general will '*volonte generale*' but based on statement of the '*wilferklaring*' belief of Official Government.

Regulation policy born from a legislative process has rationalized as normative behavior '*mores normae habitus*' of government official, it implies an impression that the legality only intended to strength majority of political party.¹⁵ This becomes an important problems because one of metaphysical premise introduced by Luc J. Wintgens is legality by etatism.¹⁶ He also explain that law is not always become politics determinant,¹⁷ law can also become interdeterminant so then the law is not only understood as the political *resultant* however limited by the constitution and laws.¹⁸ The policy of North Central Timor and the Governor of East Nusa Tenggara determined a premature considerations which politicaly can reduce its acceptability in the society.¹⁹ This Principle emphasize that the quality of legislation not simply determined by the Government Official but also public *recognition*. As a products made by the ruling organ '*bevoeght*' and constitute statement of belief '*wilferklaring*' then the policy should not contain lack juridical/ juridical deficiencies. Policy must form in a *vorm* and proper the *procedures* in accordance with content and purpose from it prior policy.

Based of that background, there is a few necessary things amongs the policy of Governor of East Nusa Tenggara and Chief Regency of North Central Timor, *Firstly*, SE No. 130/21/BU TTU uses the term 'odor rotten' as well claimed

can give rise to "psychoactive and cholinergic effects light",²⁰ was enforced not only to Civil Servants but also applies to guests and all implementing community activity under North Central Timor Regency. Same things has been practice by the Governor of East Nusa Tenggara who enforced obligation to start learning hours at 05.00 WITA (Central Indonesia Time) which impactfull for other schools participating to apply this policy; *Secondly*, the policy of Chief North Central Timor Regant and Governor of East Nusa Tenggara is a '*Willferklaring*' whos lead by strong politics beliefs and based on principles of free will '*vrijbaleid*' so this research is prepared an an effort to understand that policy regulation with the title *Legislation Performance Approach Through The Formulation Of Regional Policy In East Nusa Tenggara* which is aimed of 2 problems including (1) What is the concept of regulation policy? (2) How the legislation performance in the formation of regional policy in East Nusa Tenggara? The purpose research is to eksplain the conception of *besluiten* or decision *ad abstracto* in his position as *staatsregelings* which is used regional government areas as well as performance of enforcement of the policy of Governor of East Nusa Tenggara and Chief Regent of North Central Timor in realized the function of conservative law based on the theory of development law by Sidharta and Mochtar Kusumaatmadja.

¹⁵ Ibid, Manubulu III.

¹⁶ Etatism refers to government officials or parties who hold positions in government administration. This term comes from French *etat* popularized by King Louis XIV with the motto '*L'État, c'est moi*' to legitimize the royal position before Parliament in Isakh Benyamin Manubulu and Randi Vallentino Neonbeni, 2023, "*Teaching Materials for International Maritime Law*", Kupang, Tangguh Denara Jaya, p. 84.

¹⁷ Idul Rishan, 2022, "Evaluation of Legislative Performance in the Formation of the Job Creation Omnibus Law: Legislative Study", *UNDANG JOURNAL OF LAW*, Vol. 5, no. 1, p. 46, DOI :

<https://doi.org/10.22437/ujh.5.1.43-67>.

¹⁸ Ibid, p. 65-48, See also the legal perspective in socioanthropological studies in Manubulu III, p. 52.

¹⁹ A basic understanding of political communication is built on ecological, sociological and rational structural foundations while still considering social psychology. See Isakh Benyamin Manubulu and Komang Pradnya Sudibya, "Analysis of the Contextuality of Political Communication in the 2019 Presidential Election of the Republic of Indonesia from the Perspective of Constitutional Law," *Kertha Negara: Journal of Legal Sciences*, 2018, 1-20 2018-11-02.

²⁰ See from Considerans of SE No. 130/21/BU TTU.

RESEARCH METHODS

This Study is arranged in normative legal study supported with the statute approach, analytical and conceptual approach, legisprudence approach as well as case approach. This research is also introduced the type legislation approach by Luc J. Wintgens which is a type of statute approach that focuses on legislation rationality in a theoretical and practical.²¹ The legislation approach used to find correct conception in the order to understand the formulation of policy regulation in East Nusa Tenggara. Analytical and conceptual approach used to understand the framework of Regulation Policies theory and factors that differentiate between policy regulations and statutory regulations, case approach focuses on the normative behavior of the Chief Regent of North Central Timor and the Governor of East Nusa Tenggara in determining policy as well as as well as a legislative approach to measure conformity between procedures, openness and participation in line with JJ's social contract theory. Rousseau.

²¹ Luc Wintgens, *Legisprudence: A New Theoretical Approach to Legislation* (Hart, 2002). See also Upandera Baxi's view which emphasizes the importance of theoretical primacy in the practical scope. Upendra Baxi, "A Community of Judges," *South Asia Research* 40, no. 3 (November 1, 2020): 434–39, <https://doi.org/10.1177/0262728020944138>. and the writings of Tanius Sebastian, who encourages efforts to gain theoretical primacy from the perspective of studying law in "Ronald Dworkin's Anti-Positivism: Reasoning Law as Morality," *Law: Journal of Law* 6, no. 1 (May 12, 2023): 269–308, <https://doi.org/10.22437/ujh.6.1.269-308>.

²² "Limitations of Actions in Government Administrative Law and Actions in Civil Law by the Government - MAKASSAR STATE ADMINISTRATIVE COURT," accessed July 24, 2023, <https://ptun-makassar.go.id/batasan-aksi-dalam-Hukum-Admin-sisteman-dan-perbuatan-dalam-Hukum-perdata-oleh-government/>.

²³ Isakh Manubulu, 2020, *Archetypes of Authority: A Critical Study of the Thought of I Nyoman Suyatna*, accessed from <https://doi.org/10.13140/RG.2.2.10582.06725>. (Manubulu - About Authority). See also in I Nyoman Suyatna, 2019, "General Principles of Good Government in the Formation of Regional Regulations", Malang, CV. Nuswantara, p. 351-370.

RESEARCH RESULTS AND DISCUSSION

Basic Conception of Policy Regulations (*Besluiten / Beslissing*)

The close relationship between policy and authority 'bevoeght' is motivated by the practice of carrying out tasks in government 'bestuurzorg'²². Authority define as the capacity to determine legal action²³ while policy acts as the output of authority²⁴ Reflections of Lon L. Fuller's in *The Morality of the Rule of Law* resulted a new conception of administrative ethics known as internal morality.²⁵ Internal morality is enumerated into 8 (eight)²⁶ basic criteria with the prohibition of policy conflicts being one of the criteria mentioned by Fuller.²⁷ In other words, Fuller's writings are solely intended to ensure that government officials obey administrative law because it contains 'bestuurnorm' government norms and behavioral norms 'gedragsnorm' of civil servants.²⁸ This obedience will produce quality legislation²⁹ which according to Mader's

²⁴ Policy must be limited by authority while authority acts as ipso facto of policy.

²⁵ "Legal Principles According To Prof. Lon Luvis Fuller (Harvard Professional)," Second Law Student

(blog) accessed July 24, 2023, <https://www.detikmahasiswahukum.com/2020/05/p-rinsip-hukum-menurut-prof-lon-luvis.html>.

²⁶ *Ibid*.

²⁷ Op.cit, Manubulu-About Authority, p.1.

²⁸ Fauzi Syam, Sukanto Satoto, and Helmi Helmi, "Legal Politics of Granting Absolute Competence to State Administrative Courts in Testing Abuse of Authority," *UU: Law Journal* 6, no. 1 (May 12, 2023): 189–233, <https://doi.org/10.22437/ujh.6.1.189-233>.

²⁹ Legislation is understood as activities in the formation of statutory regulations. In this case, staatregelingen in the broad sense of 'besluiten' are grouped into wettelijk regeling (legislative regulations), beleidsregels (policy regulations and beschikking (determination). Diani Kesuma, "Problems Related to the Quantity of Regulations In Resolving State Administrative Disputes," *Journal of Law and Business (Selisik)* 7, no. 1 (June 29, 2021): 133–45, <https://doi.org/10.35814/selisik.v7i1.2431>.

conception includes management, methods, acceptability, design, communication, procedures, usability and technique.³⁰ Irianto provides a Rule of Law (RoL) instrument to measure legislative performance which includes (1) Compliance with legal formation procedures, (2) Substance offered, and (3) control mechanisms with independent judicial channels.³¹ However, Irianto's opinion was later explained by Idul Rishan as a thought that was full of Barak's concept of Purposive Interpretation.³² This conception tries to dissect law from a legal theological perspective which is a point of interpretiveism between reality and domestic politics. Moving on from the discussion about parameters to measure legislative performance, Luc. J. Wintgens introduced a legal approach model, namely the legislative approach, which is a rational approach to the legislative process both in theory and practice.³³ Rationality in law formation is driven by the desire of justice seekers '*rechtzoekenden/jucticiabelen*' towards the intention of law formation.³⁴

The inseparability between rationality and justiciable intention is the *causa sui* of the formation of ideal law, which means that the validity of a norm is determined by the normative ideas and factual ideas that underlie

the formation of the norm³⁵ this then be weakens the analysis of Idul Rishan.³⁶ In this regard, the conception of policy regulations should be built on the principle that legal formation must be rational because policy is ipso facto of social reality.³⁷ The authoritarianism paradigm operating in the government sector has given rise to the fact that policy regulations are the *expressis verbis* of authorized officials. The concept of policy regulations must be able to choose the type of rules that will be regulated, whether in this case descriptive, disjunctive or instructive rules/norms.³⁸ Results of AP Zudan's study of Articles 17 to Article 21 of Law 30 of 2014 concerning Government Administration related to politics. The Law on Providing Absolute Competence to PTUN provides a recommendation regarding the direction of policy regulations, namely to provide legal protection and certainty³⁹ and protect the public from arbitrary acts of '*willekeur*'.⁴⁰ There is several criteria for arbitrary acts carried out by government officials include:

- (1) Exceeding authority with criteria in the form of exceeding the term of office for which authority is valid, exceeding authority over territorial boundaries and exceeding applicable legal provisions which have an impact on the invalidity of a

³⁰ *Op.cit*, Idul Rishan, h. 51.

³¹ *Ibid*, p. 52. See also Idul Rishan's which comments that Irianti's opinion is influenced by the Barak Concept (Aharon Barak) in Idul Rishan, "The Concept of Formal Review of Laws in the Constitutional Court," *Journal of the Constitution* 18, no. 1 (May 27, 2021): 001–021, <https://doi.org/10.31078/jk1811>.

³² Research provided by Manulang does not provide a bright spot for understanding purposive interpretation because it is too full of meaning dialectical premises See E. Fernando M. Manulang, "*Interpretation Teleology/Sociology, Interpretation Purposive And Aharon Barak: An Critical Reflection*," *Veritas et Justitia* 5, no. 2 (December 27, 2019): 262–85, <https://doi.org/10.25123/vej.v5i2.3495>

³³ *Loc.cit*, Idul Rishan, p. 44.

³⁴ *Op.cit*, Manulang, p. 262.

³⁵ *Op.cit*, Sebastian-Anti-Positivism, p. 463.

³⁶ After reading the Concept of Formal Testing and Evaluation of Legislative Performance compiled by Idul Rishan, the author discovered the

fact that Idul Rishan was not consistent with the school of thought he believed in. In this case, the analysis in both articles is full of positivist considerations but the conclusions are structured in a left-wing political thought (anti-positivism).

³⁷ Isakh Manubulu et al, *Concretization Of The Sociological Value Of Traditional Law As A Social Reality Reviewed From The Awig -Awig Of Pakraman Padangtegal Village*, 2018, <https://doi.org/10.13140/RG.2.2.19780.45444>.

³⁸ "Injunctive Norms: Definition and 10 Examples (2023)," accessed July 25, 2023, <https://helpfulprofessor.com/injunctive-norms/>.

³⁹ Idul Rishan uses the term due process of law making to describe the basic framework for law enforcement objectives.

⁴⁰ References to describe arbitrary acts include *verklared woordenboek openbaar bestuur* or *detournement de pouvoir*. See in *Op.cit*, Syam, Satoto, and Helmi, "Legal Politics of Granting Absolute Competence to State Administrative Courts in Testing Abuse of Authority"

- regulation with a Decision that has permanent legal force;⁴¹
- (2) Mixing up authorities which occurs when an authority is determined outside the scope of the field/material and is contrary to the purpose of the authority given, has the impact of canceling a policy;⁴²
 - (3) Acting arbitrarily as a typology of arbitrary acts '*willekeur*' which is most commonly practiced as a form of administrative violation, namely the establishment of policy regulations without authority and in conflict with court decisions, thus having the effect of invalidating these regulations (usually in civil cases).⁴³⁻⁴⁴

Policy regulations born from government actions '*bersturendelingen*' are divided into factual actions '*fetelijke handelingen*' and legal actions '*rechtshandelingen*'. Factual action is a concrete action contained in Article 1 Number 8 of the AP Law and Article 87 of the government administration Law. Meanwhile, *rechtshandelingen* is differentiated based on administrative legal implications and is divided into one-sided actions '*eenzijdige*' and two-sided actions, namely '*tweezijdige*'. As for the nature of the '*eenzijdige*', apart from being a '*reglement/pseudo-wetgeving*' arrangement, it stipulates '*beschikking*', concrete norms '*concrete normgeving*' and plans '*plans*'. This is different from '*tweezijdige*' which involves other parties in its formation, in this case it can be

exemplified by a contract. Reading from this description, in fact the conception of policy regulations should be based on the official line regarding the law that is enforced with the scope of (1) State policies that are valid or no longer valid, (2) Conformity with the economic, political, social and cultural background so that the policy This can be said to be *volunte generale* and (3) Suitability to the needs of law enforcement in the field. Legislative performance in the formation of policy regulations is measured by juridical and practical maturity. In this case, the misreading of '*dwang*', the forced '*dwaling*' and the deception of '*berdog*' are logical consequences from juridical immaturity.⁴⁵

Meanwhile, practically speaking, a policy regulation can be said to subtly suppress 'gentle oppression' if the policy regulation is not formed based on reality on the ground, especially if the policy conveys the '*weltanschauung*' view of life which has become the '*rechtsgesichte*' history of state life. In this case, the formation of a state that is not based on power is not a lexical choice⁴⁶ however, it is a reality that the State is nothing more than a social institution.⁴⁷ This means that even though state officials have the authority to form laws and regulations, this authority is given based on the principle of delegated authority and is not an original authority, so policy makers must comply with the limits of their authority.⁴⁸ The birth of policy

⁴¹ Vide Article 17 paragraph (2) Letter a Jo. Article 18 paragraph (1) of the Government Administration Law.

⁴² Vide Article 17 paragraph (2) Letter a Jo. Article 18 paragraph (1) of the Government Administration Law.

⁴³ Vide Article 17 paragraph (2) Letter b jo. Article 18 paragraph (2) Government Administration Law.

⁴⁴ Read Muhammad Adiguna Bimasakti's explanation, "Limitations of Actions in Government Administrative Law and Actions in Civil Law by the Government - MAKASSAR STATE ADMINISTRATIVE COURT," accessed July 25, 2023, <https://ptun-makassar.go.id/batasan-aksi-dalam-Hukum-Admin-sisteman-dan-perbuatan-dalam-Hukum-perdata-oleh-government/>.

⁴⁵ Quoting Utrecht's view '*geen jurisdische gebreken in de wilsforming*' which means that

because policies are formed based on statements of '*wilferklaring*' beliefs from state officials, these policies must not contain juridical deficiencies.

⁴⁶ See Manubulu III.

⁴⁷ Soekarno's Political Manifesto entitled "Rediscovering Our Resolution" stated the position of law as one of protection, mutual cooperation, kinship, tolerance, anti-colonial, imperialism and federalism. See Muhammad Dahlan, "Recognition of the Rights of Indigenous Peoples in the Constitution," UU: Legal Journal 1, no. 2 (2018): 187-217, <https://doi.org/10.22437/ujh.1.2.187-217>.

⁴⁸ The principle of 'delegated authority' was implemented because the Legislature as the 'original authority' was late in following social developments so that the legislative and legislative functions were given from higher regulations with continuous authority within its limits, giving birth to an idea known as *fraise ermesent*.

regulations should be able to maintain the constitutional spirit in a country⁴⁹ not actually discrepancies in the philosophy of the state.⁵⁰ Referring to this analysis, the basic conception of the formation of policy regulations lies in the rationality of State Officials whose rationality is measured by the ability of state officials to determine a policy while still looking at theoretical priorities.

Legislative Performance in Policy Formation in East Nusa Tenggara Province

Max Weber's view that law is the final channel of social control⁵¹ is actually influenced by 3 (three) basic assumptions of the legal approach⁵² namely the moral approach, legal science and sociological approach.⁵³ In this case, objective wording⁵⁴ (Hoaxer's conception of the purpose of forming laws and regulations) is the underlying reason for the formation of laws. In line with this idea, measures of legislative performance in Indonesia can be displayed in the Legislative Performance Index statistics⁵⁵ using quantitative methods. The assessment indicators are measured with a score of 1-100 on the effectiveness variable

(specifically at the vulnerable time of formation) getting a score of 99/100, followed by suitability of procedures with a score of 75/100, public acceptability (regarding the presence or absence of public protests) with a score of 38/100. The lowest figure is occupied by public participation (the factor of whether or not RUDP is implemented) with a score of 16/100, the implementation of working visits 0/100, the availability of public participation 10/100, the transparency variable with a score of 16/100 because 80.4% of the trials were not broadcast.⁵⁶

The low level of public participation and transparency in policy formation seems to be a special note in the Legislation Performance Index. Interestingly, the effectiveness of the procedure received a score of 99/100 issues of transparency and public participation, especially in the implementation of Public Hearing Meetings⁵⁷ and work visits.⁵⁸ Even though this method is offered to answer the performance of legislation developed by the Indonesian Parliamentary Center, the weakness of IKL⁵⁹ is does not measure the ability of state officials to carry out the task of forming state

⁴⁹ One of the important points from MPR Tab No. II/MPRS/1960 concerning the USDESK Political Manipulation stated Indonesian socialism and Indonesian personality as the main pillars of the country's development.

⁵⁰ Ronald Dworkin in anti-positivism thought stated that if the law is binding because of its authority then the official is the law. In other words, the location of law making lies with authorized officials, whereas if the law is binding from argumentation, the written law is not the law (an antithesis to Arif Sidharta's purely mechanical subsumption thinking) so that the law in the second characteristic lies with the sophists. See in Manubulu III and Sebastian, "Ronald Dworkin's Anti-Positivism."

⁵¹ Aditya Yuli Sulistyawan, "Liberalism and Rationality as the Basis for the Rule of Law: Gerald Turkel's Perspective," UU: Law Journal 3, no. 1 (July 7, 2020): 173–200, <https://doi.org/10.22437/ujh.3.1.173-200>. Also read Manubulu III, p. 42.

⁵² This legal approach was later called by Max Weber the Typology of Legal Approaches.

⁵³ *Ibid*, p. 175.

⁵⁴ This term is used in the writings of Ali Marwan HSB in the article entitled "Compelling

Urgency in the Formation of Government Regulations in Lieu of Laws" in "Indonesian Legislation Journal Volume 14 Number 1 of 2017," accessed July 26, 2023, https://ditjenpp.kemenkumham.go.id/index.php?option=com_content&view=article&id=3360:jurnal-legislative-indonesia-volume-13-nomor-4-tahun-2017&catid=59:publication-material&Itemid=92&lang=en.

⁵⁵ IPL is a method for assessing legislative performance developed by the Indonesian Parliamentary Center (IPC).

⁵⁶ "Legislation Performance Index - Open Parliament," accessed July 26, 2023, <https://webcache.googleusercontent.com/search?q=cache:ep8YvzEL4VoJ:https://openparliament.id/index-kinerja-legislative/&cd=13&hl=en&ct=clnk&gl=en>.

⁵⁷ Also known as Rapat Umum Dengar Pendapat.

⁵⁸ "DPR RI Legislation Performance Index from 2020 – 2021 – Indonesian Parliamentary Center," accessed July 26, 2023, <https://ipc.or.id/index-kinerja-legislasi-dpr-ri-dari-2020-2021/>.

⁵⁹ Acronime of Indeks Kinerja Legislatif/Legislative Performance Index.

law '*staatsregelings*'. Such problems then make the Indonesian government need a special approach called legislation in order to provide a measure of the readiness of state officials in establishing a policy.

At the regional level, for example, when the people of North Central Timor Regency were faced with the fact that the Government had formed a problematic policy that prohibited the activities of betel nut⁶⁰ and smoking. Points 3 and 4 SE 130/21/BU TTU which require the demolition of smoking and smoking facilities in buildings/offices/schools⁶¹ The implementation of this policy is clearly stated in Point 5 Circular Letter a quo also applies to all people who are active in the areas mentioned. Furthermore, the Governor of East Nusa Tenggara requires that the student, teachers and component are required to start learning at 05.00 WITA.⁶² The reason for implementing this policy in his view is to train and hone discipline⁶³ and improve the quality of schools. Governor said that the allocation of education funds for East Nusa Tenggara Province has reached 34% ⁶⁴ of the education funding allocation threshold within 20% of the Regional Income And Expenditure Budget in accordance with Article 31 paragraph (4) of the 1945 Constitution.⁶⁵ Although in the end this policy to be ineffective, but implies the

idea of the importance of a special approach in the process of forming policy regulations. In this case, legislative performance is measured using a legislative approach not only applied to the origin authority⁶⁶ but also to state officials who hold the role of delegated authority. As an approach aimed at creating a responsive legal framework; top-down law enforcement; synergy between structural, functional, elite democracy and participatory democracy; adjustment to the specificity, diversity and social conditions of legal development; as well as phenomenology and positivism characterized by the concepts of method, management and facts, the legislative approach can be used as a means of control over the banal policies of state officials. In this case, law should be built on an understanding of uniformity, neutrality and predictability ⁶⁷ so that state officials are then more responsible in realizing the due process of law making.⁶⁸

State officials should have an understanding of the open policy framework '*vrijbaleid*' and the closed policy '*gebonden beleids*' contained in Article 1 Number 13 of Indonesian Law No. 12 of 2011 concerning the Formation of Statutory Regulations, where this regulation emphasizes that "content material"⁶⁹ of a state regulation must refer to the type, function and

⁶⁰ See SE No. 130/21/BU.

⁶¹ *Loc.cit*, Manubulu.

⁶² "The Governor of NTT's Policy Regarding Schools at 5 in the Morning Which Has Generated Polemics... Page All - Kompas.Com," accessed July 26, 2023, <https://regional.kompas.com/read/2023/03/01/093822278/NTT-governor's-policy-about-school-at-5-am-that-reaps-polemic?page=all>.

⁶³ "Reasons for the Governor of East Nusa Tenggara to Maintain the 5 AM School Entry Policy - News Liputan6.Com," accessed July 26, 2023, <https://www.liputan6.com/news/read/5220863/alasan-gubernur-ntt-pertahanan-politik-go-to-school-at-5-am>.

⁶⁴ It is 14% higher the national standar for the education funding allocation which around 20% of Regional Income and Expenditure Budget.

⁶⁵ Also read "NTT Governor Will Implement School Entry at 5 AM, Ombudsman Surprised," accessed July 26, 2023, <https://news.detik.com/berita/d-6592555/gubernur->

ntt-akan-tercepat-kerja-besar -5-am- ombudsman-astonished.

⁶⁶ Maria Frida Indrawati's opinion in Arif Christiono Soebroto, 2020, "Legal Position of Policy Regulations under Regulations of the Minister of National Development Planning/Head of Bappenas".

⁶⁷ *Op.cit*, Manubulu III, h. 46.

⁶⁸ The meaning is present to describe the actual use of the law at the policy formation/formulation stage. See Poppy, "Evaluation of Legislative Performance," Faculty of Law - Islamic University of Indonesia (blog), October 23, 2020, <https://law.uui.ac.id/blog/2020/10/23/Evaluation-Performance-Legislasi/>.

⁶⁹ A. Hamid S. Attamimi introduced the term "content material" as a lexical choice from "het onderwerp" (meaning subject in Indonesian) with an expression quoted in the Ali Marwan HSB Journal "Thorbecke het elganaardig onderwerp der wet" interpreted as a material specific content of the regulations. See *Op.cit*, Ali Marwan HSB, p.112.

hierarchy of statutory regulations,⁷⁰ even if the policy is built on political intentions for regional development. The conditional preposition that applies to the premise of using discretion based on Article 22 paragraph (1) of the Government Administration Law requires several provisions, including the implementation of regulation policy activities, occupy legal vacuums and overcoming stagnation in government administration. So then the formation of statutory regulations is in the same direction with Bagir Manan's ideas namely about occupation of internal functions of statutory regulations, the function of determining, the function of renewal, the function of integration and the function of legal certainty, while the external function includes the functions of change, stability and convenience.⁷¹

The idea of using power by government official which is packaged in a concept of Rule of Law then produce a rational legislative performance and realize the basic concept of constitutional amendments to realize the principles of a democratic rule of law⁷². The intended rationale is solely to encourage the implementation of Article 5 Government Administration Law which includes forms of rationality in terms of '*linguistic rationality*', '*legal formal rationality*', '*theological rationality*', '*pragmatic rationality*' and '*ethical rationality*'.⁷³ Even though the state is a element of power, but the used of this power must be in accordance with the limits⁷⁴ where the society as a limit to the implementation of these policies.⁷⁵⁷⁶ The concept of new

constitutionalism⁷⁷ needs to be applied to the policies of government official where state administration which is characterized by the establishment of state institutions must be interpreted in line with the delegation of power in which these institutions derives its authority exclusively from the written constitution, the constitution provides supreme power, the use of authority is measured by the constitution, the constitution provides the right to defend their rights and the constitutional court is empowered by the legal system.⁷⁸⁻⁷⁹

Reflection on the Governor of East Nusa Tenggara policy and the Regent of North Central Timor also drives the urgency of the term validity. The meaning of the term validity is a legal validity mentioned by H.L.A. Hart's as the function to indicates legal action, legal impact, and conformity with the applicable legal system.⁸⁰ The rational idea of the Governor of East Nusa Tenggara and the Regent of North Central Timor will then be transformed into a legal certainty in accordance with Article 24 point b, c and d of the Government Administration Law. In the other words, the antinomy of legal certainty is a situation where a statement should be and is in fact⁸¹ is not interpreted as a separate situation but is transformed into an idea of legal certainty, so that policy formation does not differ from the idea of a state. Dogmatics validity according to Gustav Radbruch are normative ideas and factual ideas⁸² because the formation of a state is not merely a normative will but rather a

⁷⁰ Underlined by the Author.

⁷¹ See Ali Marwan HSB.

⁷² Despan Heryansyah and Harry Setya Nugraha, "The Relevance of the Judicial Review Decision by the Constitutional Court on the Checks and Balances System in the Formation of Laws,"

⁷³ Op.cit, Poppy, "Legislation Performance Evaluation", p. 51.

⁷⁴ See the conservative function of law, Loc.cit, Manubulu III.

⁷⁵ *Ibid*, p. 335.

⁷⁶ This also relates to Fuller's conception of internal morality.

⁷⁷ Alec Stone Sweet's concept of thought, which then gave rise to the idea of old constitutions regarding legislative sovereignty and new

constitutionalism as the intention of constitutional supremacy, clearly outlines several factors that must be considered in the context of implementing democracy.

⁷⁸ *Ibid*.

⁷⁹ The point is to provide a controlled power that 'restrains' the existence of the constitution.

⁸⁰ E. Fernando M. Manullang, "Misinterpretation of Gustav Radbruch's Ideas Regarding the Philosophical Doctrine of Validity in the Formation of Laws," UU: Law Journal 5, no. 2 (December 30, 2022): 453–80, <https://doi.org/10.22437/ujh.5.2.453-480>.

⁸¹ 2 things underlined by the author.

⁸² *Ibid*.

transindividual value of the founders⁸³ regarding the existence of Pancasila. This analysis finds a conclusion that the measurement of legislative performance in the policies East Nusa Tenggara and the North Central Timor using a legislative approach is not in line with the legislative principles which include legality, validity, openness, prudence and acceptability as intended in Article 3, Article 5, Chapter 17 to Article 21 of the Government Administration Law, these policies tend to be too pragmatic, reducing precision and caution so that regional governments need to improve in order to achieve an ideal legislative performance.

CONCLUSION

A. Conclusion

The policy of regional government of East Nusa Tenggara Province and the Regent of North Central Timor is not in the same direction with the concept of legislation intended for state administration, as a revolutionary policies is not performed as good policy but more as a coercive policies that are invalid, irrational, and not in line with an idea of good formulation of statutory.

B. Suggestion

For the Governor of East Nusa Tenggara and the Regent of North Central Timor still need to assess legislative performance using a legislative performance approach. For academics and practitioners to conduct studies on such policies using the Central Oversight Body (COB) as the legal development method.

BIBLIOGRAPHY

Alasan Gubernur NTT Pertahankan Kebijakan Masuk Sekolah Jam 5 Pagi - News Liputan6.Com." Accessed July 26, 2023. <https://www.liputan6.com/news/read/5220>

863/alasan-gubernur-ntt-pertahankan-kebijakan-masuk-sekolah-jam-5-pagi.

Batasan Tindakan Dalam Hukum Administrasi Pemerintahan Dan Perbuatan Dalam Hukum Perdata Oleh Pemerintah – PENGADILAN TATA USAHA NEGARA MAKASSAR." Accessed July 24, 2023. <https://ptun-makassar.go.id/batasan-tindakan-dalam-hukum-administrasi-pemerintahan-dan-perbuatan-dalam-hukum-perdata-oleh-pemerintah/>.

Baxi, Upendra. "A Community of Judges." South Asia Research 40, no. 3 (November 1, 2020): 434–39. <https://doi.org/10.1177/0262728020944138>.

Blackwell's Encyclopedia of Political Science, ed. Bogdanor dan Vernon, Oxford,.

Dahlan, Muhammad. "Rekognisi Hak Masyarakat Hukum Adat Dalam Konstitusi." Undang: Jurnal Hukum 1, no. 2(2018): 187–217. <https://doi.org/10.4377/ujh.1.2.187-217>.

DETIK MAHASISWA HUKUM. "PRINSIP HUKUM MENURUT PROF. LON LUVIS FULLER (GURU BESAR HARVARD)." Accessed July 24, 2023. <https://www.detikmahasiswahukum.com/2020/05/prinsip-hukum-menurut-prof-lon-luvis.html>.

"Gubernur NTT Akan Terapkan Sekolah Masuk Jam 5 Pagi, Ombudsman Heran." Accessed July 26, 2023. <https://news.detik.com/berita/d6592555/gubernur-ntt-akan-terapkan-sekolah-masuk-jam-5-pagi-ombudsman-heran>. Gubernur NTT Viktor Laiskodat Terapkan Kebijakan Masuk Sekolah Jam 5 Pagi, DPR Tak Setuju: Masih Banyak Cara Lain Suara.Com." Accessed July 24, 2023. <https://www.suara.com/news/2023/02/28/162818/gubernur-ntt-viktor-laiskodat-terapkan-kebijakan-masuk-sekolah-jam-5-pagi-dpr-tak-setuju-masih-banyak-cara-lain>.

⁸³ Terms used in the Comprehensive Text for the Establishment of the Constitution. See in Manubulu III, p. 4

- Heryansyah, Despan, and Harry Setya Nugraha. "Relevansi Putusan Uji Materi Oleh Mahkamah Konstitusi Terhadap Sistem Checks and Balances Dalam Pembentukan Undang-Undang." *Undang: Jurnal Hukum* 2, no. 2 (2019): 353–79. <https://doi.org/10.22437/ujh.2.2.353-379>.
- Indeks Kinerja Legislasi - Open Parliament." Accessed July 26, 2023. <https://webcache.googleusercontent.com/search?q=cache:ep8YvzEL4VoJ:https://openparliament.id/indeks-kinerja-legislasi/&cd=13&hl=id&ct=clnk&gl=id>.
- Indeks Kinerja Legislasi DPR RI Dari Tahun 2020 – 2021 – Indonesian Parliamentary Center." Accessed July 26, 2023. <https://ipc.or.id/indeks-kinerja-legislasi-dpr-ri-dari-tahun-2020-2021/>.
- Injunctive Norms: Definition and 10 Examples (2023)." Accessed July 25, 2023. <https://helpfulprofessor.com/injunctive-norms/>.
- Isakh Benyamin Manubulu. 506 Tahun Jejak Otonomi Di Pulau Rote, Jilid 1. Tersesat Dalam Pemahaman Nusak. Tangguh Denara Jaya. Kupang: Tangguh Denara Jaya, 2023.
- "Jurnal Legislasi Indonesia Volume 14 Nomor 1 Tahun 2017." Accessed July 26, 2023. https://ditjenpp.kemenkumham.go.id/index.php?option=com_content&view=article&id=3360:jurnal-legislasi-indonesia-volume-13-nomor-4-tahun-2017&catid=59:materi-publikasi&Itemid=92&lang=en.
- Kebijakan Gubernur NTT Soal Sekolah Jam 5 Pagi Yang Tuai Polemik... Halaman All - Kompas.Com." Accessed July 26, 2023. <https://regional.kompas.com/read/2023/03/01/093822278/kebijakan-gubernur-ntt-soal-sekolah-jam-5-pagi-yang-tuai-polemik?page=all>.
- Kesuma, Diani. "Permasalahan Terkait Kuantitas Regulasi Dalam Penyelesaian Sengketa Tata Usaha Negara." *Jurnal Hukum dan Bisnis (Selisik)* 7, no. 1 (June 29, 2021): 133–45. <https://doi.org/10.35814/selisik.v7i1.2431>.
- Sebastian, Tanius. "Anti-Positivisme Ronald Dworkin: Menalar Hukum Sebagai Moralitas." *Undang: Jurnal Hukum* 6, no. 1 (May 12, 2023): 269–308. <https://doi.org/10.22437/ujh.6.1.269-308>.
- 1.2431. Laiskodat Di Panggung Refleksi Kritis 4 Tahun.
- . "Penafsiran Teleologis/Sosiologis, Penafsiran Purposive Dan Aharon Barak: Suatu Refleksi Kritis." *Veritas et Justitia* 5, no. 2 (December 27, 2019): 262–85. <https://doi.org/10.25123/vej.v5i2.3495>.
- Muhammad Adiguna Bimasakti. "Batasan Tindakan dalam Hukum Administrasi Pemerintahan dan Perbuatan Dalam Hukum Perdata Oleh Pemerintah – Pengadilan Tata Usaha Negara Makassar." Accessed July 25, 2023. <https://ptun-makassar.go.id/batasan-tindakan-dalam-hukum-administrasi-pemerintahan-dan-perbuatan-dalam-hukum-perdata-oleh-pemerintah/>.
- Poppy. "Evaluasi Performa Legislasi." Fakultas Hukum -Universitas Islam Indonesia (blog), October 23, 2020. <https://law.uii.ac.id/blog/2020/10/23/evaluasi-performa-legislasi/>.
- Rishan, Idul. "Konsep Pengujian Formil Undang-Undang Di Mahkamah Konstitusi." *Jurnal Konstitusi* 18, no. 1 (May 27, 2021): 001–021. <https://doi.org/10.31078/jk1811>.
- Sulistiyawan, Aditya Yuli. "Liberalisme Dan Rasionalitas Sebagai Basis Rule of Law: Perspektif Gerald Turkel." *Undang: Jurnal Hukum* 3, no. 1 (July 7, 2020): 173–200. <https://doi.org/10.22437/ujh.3.1.173-200>.
- Suyatna, I Nyoman. 2019, "Asas-Asas Umum Pemerintahan Yang Baik dalam Pembentukan peraturan Daerah", Malang, CV. Nuswantara.
- Syam, Fauzi, Sukanto Satoto, and Helmi Helmi. "Politik Hukum Pemberian Kompetensi Absolut Peradilan Tata Usaha Negara Dalam Pengujian Penyalahgunaan Wewenang." *Undang: Jurnal Hukum* 6, no. 1 (May 12, 2023): 189–233. <https://doi.org/10.22437/ujh.6.1.189-233>.
- Wintgens, Luc. *Legisprudence: A New Theoretical Approach to Legislation*. Hart, 200

