

History of the Constitution of the Democratic Republic of Timor Leste

Querubin Jong Ferreira¹ | Lucia de Canossa Silva Hau¹

1. Universidade da Paz (UNPAZ), Dili, Timor-Leste

Correspondence:

Querubin Jong Ferreira, Universidade da Paz (UNPAZ), Dili, Timor-Leste
querubinjongferreira@gmail.com

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Abstract—The historical record of the emergence of a constitutional state is actually a long and always interesting historical process to study. One such example is the history of the birth of the RDTL constitution from 1975 to 2002, which continues to be a topic of academic discussion and debate. The issue of the birth of the RDTL state constitution is a hot topic of discussion and interest, and has become a research topic for students of the Faculty of Law, both undergraduate and graduate. The debate that until now is still questioned even though in reality the 1975 constitution is only considered an official state document and at the same time becomes the foundation of state life, this becomes controversial because the drafters of the text and the preparatory council for the independence of the RDTL state were carried out through the election of the constituent assembly which had the authority at that time, to form and reformulate a new constitution, because the results and ideas of the 1975 constitution were considered to have no progress so that the election of the constituent assembly council was re-enacted to prepare for the independence of the state through the results of the referendum which was carried out simultaneously with the restoration of independence and at the same time the ratification of the new RDTL constitution by de jury on May 20, 2002. Although de facto the independence of the RDTL state on November 28, 1975 was only considered as a unilateral declaration. This legal issue is a serious debate and is always questioned about the existence of the 1975 constitution, under where, so that researchers use the word *Qou vadis* history of the RDTL constitution as an opening in this writing. By using the normative legal research method, which focuses on the study of authoritative state legal products, using several approaches, such as historical, conceptual, and applicable statutory approaches. However, this legal writing is still far from expectations, as it is limited to academic discussions.

Keywords: History; constitution of the Democratic Republic of Timor Leste

Introduction

Republica Democratica de Timor-Leste (RDTL) or commonly referred to as the State of Timor-Leste is the youngest country in Southeast Asia and is one of the countries that became independent in the 21st century. Although on November 28, 1975, Fretilin unilaterally declared independence for Timor-Leste, in the shortest possible time, as stated in the text of the proclamation of the Democratic Republic of Timor-Leste.

“Texto da Proclamação da Independência (Texto da Proclamação da Independência, 1975). Encarnando a aspiração suprema do povo de Timor Leste e para salvaguarda dos seus mais legítimos direitos e interesses como nação soberana o Comité Centra da Frente Revolucionária de Timor Leste independente Fretelin decretal eu proclamo, unilateralmente, an independência

de Timor Leste que passa a ser apartir das 00H00 de hoje a republica democratica de Timor Leste, anti-colonialista e ante-imperialismo. Viva Republica demokratika de Timor Leste., Viva o povo de Timor Leste livre e independente..., Viva a Fretelin”

Historically, Timor-Leste has experienced a long period of colonialism. From 1515 to 1975, in the mid-sixteenth century, Timor-Leste was under Portuguese rule. From 1975 to 1999, Timor-Leste was under Indonesian rule, and from 1999 to 2002, Timor-Leste was under UN control, represented by UNTAET. The name used during the Portuguese colonial period was Timor-Portuguese. After integration with the Unitary State of the Republic of Indonesia, the name changed to Timor-East and then changed to Timor-Leste after Timor-Leste gained independence on May 20, 2002. When discussing a country's constitution, it is very interesting to know the conditions under which the constitution was born, who contributed significantly to its birth, where the country's formulators or founders, the "founding fathers," should take it, and what the country's ideals were outlined. In addition, with the constitution will be known about the country, both the form, structure of the state and its government system. The national paradigm of the RDTL state "Patria Maubere", as the state philosophy, and Patria-povo as the soul of the people "volkgeist" which is a manifestation of the spirit of a society and at the same time becomes the life of the society, which flows in an ideology that grows with the people in the independence of the RDTL state. Timor-Leste is a new country that is building the joints of the state and state order in the principles of liberal democracy guided by the philosophy of an independent nation with historical values rooted from the formation of the RDTL state. The national paradigm is an expression of national agreement that can be concluded with four consensuses, First, Patria Maubere as the state ideology, Second, Patria-povo, as the nation's philosophy, Third, national independence as the nation's ideals, Fourth, the RDTL Constitution as the legal basis of the state. This philosophy contains deep values of patriotism and nationalism with the value of state existence and the value of national welfare. This philosophy needs to be explored scientifically to be applied in the process of national development, especially the development of national character because this philosophy has been used as the language of the nation's struggle to achieve independence of RDTL "mate ka moris ukun rasik-an". The RDTL Constitution is a basic legal instrument that underlies the legal and constitutional system of the RDTL state which contains state values, the adopted government system, national identity and national character. The RDTL Constitution also formulates universal principles that define the rule of law, democracy, sovereignty, unitary, independent and upholding humanitarian values. The RDTL Constitution is not only a legal instrument but also the main framework in the legal basis planned to fill independence and national development. Thus, in the RDTL Constitution there are also several fundamental principles contained in the body of the RDTL Constitution. So that the RDTL state is a democratic, sovereign, independent and united state based on the will of the people and upholding humanitarian values. The State of Timor Leste is also guided by the principle of sovereignty that is in the hands of the people and is implemented in accordance with the law and the constitution.

Method

Normative legal research is legal research that focuses on the study of authoritative state legal products in the form of statutory regulations (Marzuki, 2017). The primary legal materials in this research consist of; the 1975 RDTL Constitution and the 2002 RDTL Constitution. Secondary legal materials in this research include journal articles, books and research results related to the History of the RDTL Constitution. Non-legal materials in this research are language dictionaries. The approaches used in this research are the historical approach, the conceptual approach and the legislative approach.

Discussion

Constitution of Republic Democratic Timor-Leste

The philosophy of life of a nation will embody a system of values that the nation aspires to, forming beliefs in group life as well as becoming a benchmark for the welfare of group life in accordance with the

ideals of the nation concerned (Marzuki, 2017). The basic ideas of "Povo Maubere" as Volksgeist in realizing the highest ideals of the people as a whole and complete unity of these ideas in a state system are called ideology (Mukadimah Konstitusi Republik Demokratik Timor Leste, 2002). The formation of the Maubere people's ideology as a doctrine of struggle against the enemy, which was initially led by the Frente Revolucionaria do Timor-Leste Independente (FRETELIN) and then the re-establishment of the Conselho Nacional de Resistencia Maubere or National Council of Maubere Resistance (CNRM) in 1987 which was then changed to Conselho Nacional de Resistencia Timorese or National Council of Timorese People's Resistance (CNRT) in 1998. Thus, theoretically, the development of the growth of a state ideology became the basis of the philosophy of the Maubere Homeland, as in the Preamble to the Constitution of the Democratic Republic of Timor Leste, in paragraph 1, as the main principles referred to are called the fundamental state principles "staatsfundamental norm" of the RDTL state, namely the Preamble to the RDTL constitution and the main issues contained in the body of the RDTL constitution in its contents which are the basic principles of the RDTL state as stated in article 1 paragraph (2), that on November 28, 2010 1975 was the day of the Proclamation of Independence of the Democratic Republic of Timor Leste. Both the state philosophy and the state's objectives are the legal sources for the constitutional law of the RDTL. Therefore, it can be concluded that if there is no proclamation of independence as intended, what is the meaning of the state and the constitution. The sources of the legal order of the RDTL state are the outlook on life, awareness and legal ideals "rechtside" as well as ideals regarding individual freedom, national independence, respect for human dignity, social justice, national peace, political ideals regarding the nature, form and purpose of the state, moral ideals regarding social and religious life as the embodiment of human conscience (Busroh, 1994). With the values and basic principles contained therein, the preamble to the RDTL constitution has a position as an absolute factor determining the existence of legal order, in addition to that, it is also one of the elements in the hierarchical order of legal levels. The history of the struggle of the Timor Leste nation which was proclaimed on November 28, 1975, since that date the RDTL state system can be seen from the beginning of independence, in general the history of the RDTL state system and its development can be divided into 4 periods, namely (Gunn, nd):

Portuguese colonial period: 1522-1975

Japanese colonial period: 1942-1945

Indonesian colonial period: 1975-1999

UNTAET period, UN Security Council Resolution No. 384, dated 22 December 1975 and No. 385, dated 22 April 1976 to 30 August 1999.

The democratic republic of Timor Leste, De facto based on reality or in reality describes a situation where a country has a status based on reality, without referring to formal law or official recognition has proclaimed its independence on November 28, 1975 at that time, occurred unilaterally as in the text of the proclamation of independence of the state of RDTL, as has been described in the background of the writing of this law even though it was only recognized De jure recognized by the international world and restored on May 20, 2002. Solemnly reaffirms its determination to fight against all forms of tyranny, oppression, domination and social, cultural and religious separation, to defend national independence, respect and guarantee human rights and the basic rights of citizens, to guarantee the principle of separation of powers in the arrangement of the State, and to establish the basic core rules of multi-party democracy, with the aim of building a just and prosperous country and developing a united and friendly society.

History of the Birth of the 1975

Constitution of the Republic of Indonesia the origins of a constitution in a country can basically be known from the history and growth of the constitution in the background description but will be discussed specifically in this discussion. The embryo of the constitution as the basic law "droit constitutional" of countries in the world, one of which is the constitution of the Republic of Indonesia in 1975, can be explored from two perspectives, namely from the perspective of the form of the state and from the

perspective of the constitution's creators. In theory, from the perspective of the form of the state, as stated in the 1975 Constitution of the Republic of Indonesia, in Article 1, among others (Constituição da República Democrática de Timor Leste De 28 de Novembro de 1975):

A República Democrática de Timor-Leste é uma Nação soberana una e indivisível, anti colonialista, anti-neocolonialista e anti-imperialista, nascida de uma forte resistência popular generalizada de luta contra o colonialismo português e o imperialismo, sob a justa direção da única e legítima vanguarda do Povo Maubere, a Frente Revolucionária de Timor-Leste Independente –FRETILIN.

English Translation:

The democratic republic of East Timor is a sovereign nation, one and indivisible, anti-colonialist, anti-neo-colonialist and anti-imperialist, born of a strong generalized popular resistance in the fight against Portuguese colonialism and imperialism, under the just direction of the only and Maubere people, the revolutionary front of Timor-Leste Independente FRETILIN.

Indonesia Translation:

Republik Demokratik Timor leste adalah sebuah negara yang berdaulat, satu dan tak terpisahkan, anti-kolonialis, anti-neo-kolonialis dan anti-imperialis, yang lahir dari perlawanan rakyat yang kuat dan tergeneralisasi dalam perjuangan melawan kolonialisme dan imperialisme Portugis, di bawah arahan yang adil. Satu-satunya garda depan rakyat Maubere yang sab, front revolusioner Fretelin Independe Timor-leste.

Based on the contents of the article, it can be concluded that the form of the RDTL state is a republic. In a basic sense, a republic is a state in which the reins of government ultimately branch from the people, not from the principle of noble descent and is often led by a president. This term comes from the Latin "Res publica". Thus, the constitution of the RDTL state is a pattern of group life in a state organization, which is often extended to any organization as a pattern of group life in a state organization, it generally contains:

- a) Things that are considered fundamental in organizing such as the head of state, citizens, representatives of state authority and so on.
- b) Things that are considered important in group life by a nation, even if they are not considered so by other nations.
- c) Things that are aspired to, even if they seem difficult to achieve because of their idealism "idealbegriff der verfassung", this aspect plays a unifying force, stabilizing the direction of the state movement and providing dynamics to the state movement.

The RDTL Constitution of 1975 was born in a revolutionary manner, as explained in the contents of article 1, the 1975 constitution. The form of revolution is a form of change in the state administration of the RDTL state in the form of government or social conditions carried out by violence such as armed resistance and ideological conflict. As according to Aristotle, giving the definition of revolution which is divided into two types, namely, first; revolution is a total change from a system to a different system, second; revolution is a modification of an existing system. Based on Aristotle's thinking, this is the problem and the essence of this writing, because after the birth of the 1975 constitution at that time, until now the existence of the 1975 constitution is still questionable, whether it is still valid or whether the 1975 constitution has been amended since the formation of the independence preparatory council formed during the transitional period UNTAET has carried out a total renewal of the 1975 constitution so that the constituent assembly council at that time was prepared again to form a new constitution for the state of Timor Leste. In this regard, revolutions have various forms as follows:

- 1) Rapid change revolution; a rapid change revolution is a form of social change that occurs in a short time and is a major change that stands alone. When there are people who do not accept some aspects of the existing change, it will give rise to social conflict.

2) Small change revolution; in contrast to a rapid revolution, a small change revolution does not have an immediate impact and is unconsciously felt by society.

3) Major change revolution; this form of major change revolution has a significant influence and is felt directly because it touches many aspects of life ranging from social relations, work systems or social stratification.

4) Desired change revolution; a desired change revolution can be planned in advance and corrected beforehand by the party wishing to make changes in society.

5) Undesired change revolution; this revolution is a form of social change that occurs beyond the reach of public supervision or desire.

6) Structural change revolution; structural change is a very fundamental change and causes a reorganization of the structure of society. Changes in the system of power from a colonial to a parliamentary form.

7) Process change revolution; The revolutionary process of change is a fundamental form of change because it is a refinement of previous changes. This revolution gave birth to the 2002 RDTL constitution. According to Koentjaraningrat, revolution is an effort to adapt to the current era and world conditions.

Apart from the form of revolution that has been explained above, then how the origin of the constitution as the basic law (*droit constitutionnel*) of a country can be seen from two points of view, namely:

1) From the point of view of the form of the state, currently there are only three forms of state, namely:

a) Spontaneous State (*Spontane Staat*), the constitution is called the Revolutionary Constitution. Spontaneous State is a state that arises as a result of a revolution. Thus, its constitution is revolutionary. For example, the constitution of the United States, France and other countries, one of which is the state of Timor Leste, this can be clarified by the author in the preamble to the RDTL constitution in paragraph I of the independence of Timor Leste which was proclaimed by the "Revolutionary Front of Independent Timor Leste-FRETELIN".

b) Negotiated State (*Parlementaire Staat*), the constitution is called the Parliamentarian Constitution), this is actually a loophole in the parliamentary system, because the parliament as a place where discussions and negotiations are not carried out, so that the existence of a parliament reflected in the constitution of the country concerned is a characteristic of a negotiated state. Therefore, its constitution is called a parliamentary constitution. If, seen in practice, the implementation of the RDTL state adheres to a parliamentary system because it is the parliament that will guarantee the principle of checks and valence between RDTL state institutions, although in practice state institutions are still interdependent in making decisions and will be determined through member meetings.

c) Derivative State (*Algeleide Staat*), its constitution is called a Neo-National Constitution. A state whose constitution takes experience from existing countries is "neo-national". This means nationalism based on colonialism or nationalism that arises from colonization as a result of the acculturation process. This does not occur in the country of RDTL.

2) From the perspective of constitution formation (*maker*), in a country there are five possible forms of constitution, namely:

a) A constitution made by the king

b) A constitution made by the king together with his people (in the form of a pactum).

c) A constitution made entirely by the people (in the form of an *einigung*)

- d) A constitution made by a constituent body.
- e) A constitution made by a dictatorial government

History of the Constitution Formation in 2002

The history of the constitution formation of the RDTL state in 2002 is a long process that began during the transition period of the United Nations Transitional Administration in East Timor (UNTAET) which stipulated UNTAET regulation No. 2001/2, concerning the election of the Constituent Assembly which functioned to prepare a constitution for an Independent and Democratic Timor-Leste as on August 30, 2001, the general election of members of the Constituent Assembly was held which was attended by 91.3% or 382,968 people out of 421,018 people who met the requirements (eligible voters). Voting took place at 818 polling stations (TPS) spread across 13 Districts to elect eighty-eight (88) members of the Constituent Assembly using a mixed system, namely 75 national candidates (proportional system) and 13 candidates from the Districts, the number of which was 13 (District System). Of the 88 seats in the Constituent Assembly, the Fretilin Party won 55 seats, 33 seats were won by 11 small parties that participated in the Constituent Assembly elections. On September 15, 2001, Sergio Viera de Mello, as the leader of UNTAET, inaugurated the 88 members of the Constituent Assembly whose composition reflected the results of the general election. Then on September 16, 2001, it officially began carrying out its duties to discuss and prepare a draft constitution for the state of East Timor within 90 days or 3 months. The Constituent Assembly successfully completed the rules of procedure and also formed a committee tasked with making recommendations and discussing each draft law. The draft constitution discussed led to a form of a unitary democratic state of East Timor with a division of powers, namely the function of the president as commander of the armed forces, the Prime Minister as head of government and a national parliament that would limit the authority of the president. After the Constituent Assembly completed the draft Constitution, on February 9, 2001, the Constituent Assembly held a session to ratify the Draft Constitution temporarily. Thus, on March 22, 2002, the Constituent Assembly signed the Constitution of Timor-Leste, which is the highest legal product of the country. In this session, the Constituent Assembly also agreed to hold direct presidential elections. Therefore, on November 28, 2001, the Transitional Administration announced that the presidential election for East Timor would be held in April 2002 (Wahyono, 2009:101). On May 20, 2002, at exactly 00:00 Timor-Leste time, Xanana Gusmão was sworn in, accompanied by the raising of the Timor-Leste flag. From that day on, East Timor officially became Timor-Leste, recognized internationally as independent and sovereign.

Conclusion

The history of the constitution of the democratic republic of Timor Leste, historically a long struggle in the history of the country of RDTL has made changes to the constitution along with the results of the referendum, it is necessary to know that in fact the changes to the constitution at that time used changes through a referendum which means asking for opinions from the community as a whole who have the right to vote whether to agree or not to make changes. From these changes we can see and study them comprehensively both in the country of RDTL and in the world. The matter touched on is about how to change or maintain the constitution. The term referendum is one of the government's provisions implemented in the country of RDTL, namely a government that uses a system of direct supervision from the people, as stated in the 2002 RDTL constitution, in article 66 paragraph (1) in Portuguese; "...The citizens recenseados no national territory can be called to pronounce-se em referendo sobre questions da relevante interesse nacional. In this regard, according to Azhari, it is formulated that there are two types of referendums, namely: First; obligatory referendum, supervision/control by the people is required in terms of changing constitutional regulations, regulations regarding this can only be enforced after obtaining the approval of the majority vote from the people who have the right to vote. (See the contents of article 66). Second; facultative referendum, in terms of ordinary laws that have been stipulated by the legislative body and after a certain period after the law is announced, if it turns out that the people do not approve of the

law then the government must withdraw/revoke it.

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