



The Mirror of the Constitution of the Democratic Republic of Timor-Leste in the Tourism Law Frame

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Abstract. In the constitutional legal structure of the Democratic Republic of Timor-Leste, the constitution is always interpreted as official state documents which only contain a portion of the text of the regulation that underlies the constitution of RDTL as the womb of the Maubere homeland. Even though in modern countries, the constitution has transcended the civilization of the times, this is also part of Socrates' reflection, who dreamed of an ideal state that is ordered by the constitution and has its own legal sovereignty. Thus, the constitution is like a tourism guide with rules and principles that indicate the beliefs and values of members who live, grow and live with the community, the dynamics of legal thought developed by Prof. Sajipto Rahardjo on search, enlightenment, and liberation. The fact shows that the country is already independent, but the law is still chained by the colonial power. This research is a normative legal research that aims to examine the mirror of the constitution of the Democratic Republic of Timor-Leste in the tourism law frame. Returning to the issue of the constitution as the supreme law, which all people must obey without exception. A new problem arises, namely, who will guarantee that constitutional provisions are carried out by the Executive Body or other government bodies per the rules in the text. As has been emphasized in the constitution of RDTL, in Article 2, paragraphs (1) and (2), sovereignty is in the hands of the people, who will use it in the manner and in the form stipulated in the constitution and in paragraph (2) that the state is subject to constitutions and laws.

Keywords: Constitution of Timor-Leste, law, tourism

1 Introduction

In the constitutional legal structure of the Democratic Republic of Timor-Leste (RDTL), the constitution is always interpreted as official state documents which only contain a portion of the text of the legal rules that underlie the constitution of RDTL as the womb of the Maubere homeland. Although in modern countries, the constitution has transcended the civilization of the times, this is also part of Socrates' reflection, who dreams of an ideal state that is ordered by the constitution and has its own legal sovereignty. So that in critical thinking about the state, one must truly interpret the contents of the state's goals as the founding fathers dreamed of and will continue to strive for by generations as the *ius constituendum* of the RDTL state.

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The ideals of the RDTL as law state, as mandated in the constitution, are to uphold and uphold the character and cultural heritage of the people of Timor-Leste so that the constitution is not just a document or just part of the text of dead legal rules, but a constitution as part of the values tourism and not just *sou apenas uma gota de agua oceanos que sois voz* (the constitution is not just a drop in a reservoir in a vast foreign ocean and just wets the skin of the earth but does not sink into the bowels of the earth). Therefore, the rule of law must be debated, and if not, colonial laws will appear that want to colonize; even though the heads of the colonizers have been beheaded, their bodies are still running. Thus, the people who are sovereign in the country, where the people can free themselves, is where their homeland is “*Ubi liberta, ibi patria*.” The constitution is like a tourism guide with rules and principles that indicate the beliefs and values of members who live, grow and live with the community. The dynamics of legal thought developed and championed by Prof. Sajipto Rahardjo on search, enlightenment and liberation. Reality shows that the country is already independent, but the law is still chained by the colonial power. This is the basis for the struggle of critical legal thinking that must be explored, studied, and discussed to produce progressive ideas and ideas in a socially just legal system.

The administrative law system in Timor-Leste, in particular, is still chained by officials or elites who use their power and position to chain the people. The people must respect the Constitution due to officials who forgot themselves. The people are forced to comply with the existing laws in RDTL. In this case, they have to make ends meet, so they forget that RDTL has its own laws. Based on this problem, the researcher studies “*The Mirror of the Constitutional of the Democratic Republic of Timor-Leste in the Tourism Law Frame*.” There are two research questions in this study, as described below. Is the Constitution of the Democratic Republic of Timor-Leste as an origin of the Constitution?

2 Method

This research is a normative legal research. The researcher aims to describe and examine the constitution of the Democratic Republic of Timor-Leste within the tourism law frame. This is part of doctrinal legal research. As Dyah Octorina Susanti (2014) explains, doctrinal research aims to provide a systematic exposition of the legal rules governing certain areas of law.

3 Discussion

3.1 Embryo (Origins) of the Constitution

In this study, the researcher uses another term for the meaning of the constitution, which is not just state documents or a text that contains positive legal rules only; however, the constitution as a tourism guide is specifically viewed from two perspectives of a country’s constitution. The comparative history method means comparing the form of the state, the form of government, and the constitutions of various coun-

tries. As it is known that there are three terms contained in the constitutional embryo of a country which is viewed from two angles, namely the state's form and the constitution's formation. Thus, the embryo (origin) of the constitution of a country is the basic law of the country "Droit constitutional" namely:

1) The form of the state:

- a) Spontaneous State (Spontane Staat), the constitution is called the Revolutionary Constitution The Constitution of RDTL was born in the history of the Revolution, as stated in the preamble to the RDTL constitution in paragraph 9, which describes the form of struggle and resistance of the Maubere People in the liberation of the Maubere homeland by foreign powers and colonies. Thus, what is referred to as a "spontaneous state" is a state that arose as a result of a revolution. This is why its constitution is revolutionary.
- b) Negotiated State (Parlementaire Staat), the constitution is called the Parliamentary Constitution). Negotiated state is a country based on relative truth; it is not based on absolute *waarheid* like *oosterse* democracy which is only pursued through forums of discussion and negotiation as its political philosophy. The existence of a parliament which is reflected in the constitution of the country concerned is a characteristic of a negotiated state. Therefore, the constitution is called a parliamentary constitution (this is the gap in the parliamentary system).
- c) Derivative State (Algeleide Staat), its constitution is called the Neo-national Constitution. Derivative state is a country whose constitution takes the experience of existing countries (neo-national), its nature is only adopting, there is no original idea "oorpronkelijke gedacht."

2) The form of the constitution, viz:

- 1) The constitution made by the king
- 2) The constitution made by the king with his people (in the form of a pactum).
- 3) The constitution made entirely by the people (in the form of *einigung*)
- 4) The constitution is made by a constituent body.
- 5) The constitution made by a dictatorship.

3.2 Constitutional Value

The logical consequence of the fact that without a state constitution it is impossible to form, the constitution occupies a very crucial position in the constitutional life of a country. Likewise, the state and the constitution are institutions that cannot be separated from one another. This is in line with A. Hamid S. Attamimi who said that the importance of a constitution or basic law is to provide guidance and provide boundaries, as well as how state power must be exercised. In line with the above understanding, Struycken in his book *Het Staatsrecht van Het Koninkrijk der Nederlanden*, states that the basic law as a written constitution is a formal document that contains:

- 1) The results of the nation's political struggle in the past
- 2) The highest levels of national constitutional development
- 3) The views of national figures that are to be realized, both for the present and for the future
- 4) A desire in which the development of the nation's constitutional life is to be led.

Of the four content materials originating from the Constitution above, it shows the importance of the Constitution for a country. The Constitution becomes a barometer of state and national life, which is full of historical evidence of the struggles of its predecessors, as well as the basic ideas outlined by the founding fathers. It provides direction to the nation's next generation in driving the country they lead. Thus, the Constitution is not only a document or legal text but a tourism guide for countries who want to know a country, both from the form of the state, the form of government, and the country's Constitution. So, to understand a country's Constitution, it is not only sufficient to look at the provisions contained in the Constitution but also to understand the basic rules that emerge and are maintained in administering the state.

Although, it is not written down or is often exemplified by "conventions" on the state constitution of a nation, because with such an understanding "orde" as the main function of law can be realized. Relating the value of the constitution, Karl Loewenstein said the investigation regarding the meaning of a written constitution in a national environment, especially for ordinary people. From the results of his investigation he concluded that there are three values of a constitution, viz

a) The constitution that has normative value

A constitution that has been officially accepted by a nation and for them the constitution is not only valid in the legal sense, but also as a living reality; it is fully necessary and effective. In other words, the constitution is implemented purely and consistently. This is as stated in the constitution of RDTL in Article 14 concerning state symbols which specifically gives the meaning of the flag, symbol and national anthem. Furthermore, in Article 15 concerning the national flag, paragraph (2) which gives meaning and symbolizes the meaning that animates the struggle, among others; yellow which means traces of colonialism, black which means backwardness that must be overcome, red which means the struggle for the liberation of the country and white means peace.

b) The constitution that has nominal value

A constitution that has a nominal value means that legally the constitution is applicable, but certain articles of the constitution are in fact not applicable. According to the researcher of the constitution in nominal value, it means that the constitution only regulates the structure of the state and government's institutions, because in a position the people will be elected and determined through politics.

c) The constitution has semantic value

A constitution has a semantic value if the constitution is legally still applicable, but in reality it is only to give shape to an existing place, and is used to exercise political power. In other words, the constitution is just a mere term, while in practice it is only intended for the interests of the ruler.

3.3 Supremacy of Constitution

In a modern state, the administration of state power is carried out based on Constitutional Law (*droit constitutionnel*). According to Carl Schmit that the constitution or *verfassung* is considered the highest political decision. In this case, the constitution

has a position or degree of supremacy of the constitution. In other words, the constitution has the highest position in the legal order of a country. The superiority of the constitution has binding power not only for citizens but also for the rulers and for the constitution-making body itself.

3.4 Constitutional binding capacity factor

If the constitution is seen from the moral aspect of the fundamental basis, then the constitution is under it. In other words, the constitution must not conflict with the universal values of moral ethics. Therefore, seen from the constitutional philosophy, if constitutional rules conflict with moral ethics, then the constitution should be set aside. William H. Seward gave an example that the constitution which legitimized slavery should not have been obeyed. Another example, if the constitution legalized the apartheid system by itself it would be morally wrong. Returning to the issue of the constitution as the supreme law (supremacy law) which must be obeyed by the people and all implementers of the state, a new problem arises, namely who will guarantee that the provisions of the constitution or basic laws are really carried out according to the spirit and words of the law text, both by the executive body and other government agencies. As has been emphasized in the constitution of RDTL, in Article 2 paragraphs (1) and (2), that sovereignty is in the hands of the people, who will use it in the manner and in the form stipulated in the constitution and in paragraph (2) that the state is subject to Constitutions and laws.

4 Conclusion

If analyzed profoundly, in essence, the researcher is trying to find an answer that, on the one hand, a theory and concept are not so dominant in state law practitioners in the constitution of RDTL. The constitution is not just a document or just a part of the text of dead legal rules, but the constitution is part of the value of tourism and not just sou apenas uma gota de agua oceanos que sois voz (the constitution is not just a drop in a reservoir in a vast foreign ocean and just wets the skin of the earth but does not sink into the bowels of the earth). The constitution is like a tourism guide that contains rules and principles that indicate the beliefs and values of members who live, grow and live with the community.

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