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ADVANCES IN SOCIAL HUMANITIES RESEARCH

# Analysis of the Theory of Legislation in the Constitutional Review Procedure of the Democratic Republic of Timor-Leste in 2002

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***Abstract***
*This research addresses the challenges of the 2002 RDTL Constitution in the Democratic Republic of Timor-Leste, focusing on its rigidity and outdated provisions that no longer align with contemporary societal needs. The study explores the theoretical, juridical, and sociological issues surrounding the constitution, highlighting the need for constitutional amendments. The research methodology employed is normative, utilizing legislative, conceptual, and comparative approaches. The study identifies issues such as disharmony in norms due to outdated articles, conflicts between different constitutional clauses, and the implications of an unamended constitution on state administration and the protection of citizens' constitutional rights. The paper suggests that the national parliament, in collaboration with the President and government, should prioritize constitutional amendments to ensure the legal framework addresses current challenges, including technological advances and changing societal conditions. The research underscores the importance of constitutional flexibility to maintain a stable and responsive legal order.*
***Keywords:*** *RDTL Constitution; Constitutional Amendment; Legal Framework*

## Introduction

Along with 21 years of Restoration of Independence, the Democratic Republic of Timor Leste continues to build in various aspects of state life in order to realize a civil, prosperous, just and prosperous society according to the goals of the State stipulated in Article 6 of the Constitution of the Democratic Republic of Timor-Leste. However, the realization of equitable national development often experiences various obstacles in various aspects, one of which is the aspect of sustainable legal development.

In relation to the development of sustainable law in accordance with the wishes and demands of the people, it is necessary to amend the 2002 RDTL constitution, although as a fundamental norm and basis for the formation of law, the 2002 RDTL constitution has not been amended once, even though Article 154 paragraph 3 of the 2002 K-RDTL states that within a period of six years there must be a review of the constitution, however, for two decades the administrators of the State of Timor Leste have not amended the constitution because firstly, so far the political party that won the election and has the most seats in the national parliament has not had the initiate=ve for amendments and there is no consensus between political parties.

Second, these parties have different interests, with a vision of building the country, thus giving implications for the creation of the 2002 RDTL constitutional amendment.

Then on the other hand, Article 154 paragraph 4 of the K-RDTL also provides an opportunity for members of Parliament to submit revision proposals without being bound by the time set, even though constitutional privileges are given directly by the constitution to members of parliament but do not submit proposals for constitutional revisions according to the time and spirit of the 2002 RDTL constitution.

In relation to the 2002 amendment to the RDTL constitution, the President also has the authority to submit a referendum to the government. This is regulated in Article 85 letter (f) and then in Article 115 paragraph 2 letter (d) he proposes to the national parliament to hold a referendum, on the grounds of national interest, because the referendum to determine whether or not to revise the constitution according to the wishes of the people is regulated in Article 1 paragraph (1) and Article 2 paragraph (1) of the 2002 RDTL constitution.

Starting from the explanation that has been stated, there are several issues, including: First, the theoretical issue, the 2002 RDTL constitution is a basic norm in the formation of laws and regulations below it, meaning that it has the highest position as stated by Hans Kelsen who presupposes that the basic norm of the constitution is the highest level in national law. The constitution in question is the constitution in the material sense and the constitution in the formal sense. The constitution in the material sense according to Kelsen is a norm or set of positive norms that regulate the creation of general legal norms. While the formal constitution is a written constitution that can contain not only legal norms that regulate the creation of legal norms, but also norms on other subjects that are politically important . In essence, Hans Kelsen places the constitution as the highest norm and divides it into formal and material constitutions.

Kelsen's opinion sees the RDTL constitution as the highest norm, where the procedure for making constitutional changes is regulated in article 154 of the RDTL constitution of 2002, as Hans Kelsen's opinion also emphasizes that the formal constitutional amendment procedure is not the same as the amendment of ordinary laws. The procedure is special and with stricter requirements (rigid). The aim is to stabilize the norms for the positive legal basis of the entire national legal order. Furthermore, the formal constitution regulates state organs, such as the legislative, executive, and judiciary. According to Kelsen, the organs authorized to amend the constitution are the same as the organs authorized to amend ordinary laws or what is known as the legislature .

Based on Hans Kelsen's opinion, the 2002 RDTL constitution is rigid in nature and the authority to make amendments lies with the national parliament and members of parliament and the government, but until now the government (in the broad sense) has not carried out the will of the constitution, therefore it is an urgent need for amendments for the RDTL state to the articles that are no longer in accordance with current conditions.

In addition, the country of Timor Leste also does not have a clear normative system, thus giving implications for the formation of laws and regulations under the constitution which often causes disharmony of laws and regulations or uncertainty, therefore Timor Leste needs to establish a norm hierarchy as Kelsen's theory explained earlier which aims to avoid uncertainty of legal norms, meaning establishing a norm

hierarchy with legal certainty and clarity (legal certainty). According to Kelsen, law is a system of norms. Norms are statements that emphasize the aspect of "should" or das sollen, by including several regulations about what should be done. Norms are products and actions of deliberative humans. Laws containing general rules become guidelines for individuals to behave in society, both in relations with other individuals and in relations with society. These rules become limitations for society in burdening or taking action against individuals. The existence of these rules and the implementation of these rules give rise to legal certainty . Legal certainty is a question that can only be answered normatively, not sociologically . So the formation of the hierarchy of legal norms must be clear and definite so as to create legal certainty and not be open to multiple interpretations.

Second, the legal issue, where Article 154 paragraphs 3 and 4 of the 2002 RDTL constitution give rise to disharmony in norms, because paragraph 2 limits the time to make amendments while paragraph 4 does not limit the time to make constitutional amendments, so that parliament and members of parliament and the government can make changes to the constitution, but do not think about making amendments, even though There are several articles or verses that are indeed no longer relevant to the current conditions and situations, for example Article 153 paragraph 3 and 4 of the 2002 K-RDTL, need to be amended, then also Article 71 and 72 concerning the system of delegation of authority to regional governments which are still administrative in nature, whereas Article 5 gives authority to the central government to delegate its authority in full, so that until now the administrative decentralization system is still being implemented even though various efforts have been made by forming laws and regulations regarding decentralization, the attachment to these articles has backfired on the country. Therefore, in order to create a better constitution in the future, the national parliament, members of parliament and the government and the president can work together to amend articles that are no longer relevant.

Three relevant studies have addressed key issues related to the constitutional development and legal norms in Timor-Leste. First, a study by Suryadi et al. (2019) explored the role of legal certainty in national constitutions, emphasizing that a well-structured hierarchy of norms is crucial for minimizing legal ambiguities. This aligns with the need to amend Timor-Leste’s constitution to provide clearer guidelines and avoid inconsistent interpretations. Second, research by Marques (2021) examined the impact of constitutional rigidity on governance in post-conflict states, underscoring the necessity of flexible constitutional provisions to adapt to evolving national needs. This study supports the argument for the amendment of the 2002 RDTL Constitution to ensure it remains relevant in the face of modern challenges. Finally, a study by Pinto (2020) investigated the political challenges in constitutional amendments in emerging democracies, highlighting the difficulties faced by Timor-Leste’s government in securing the necessary political consensus for constitutional changes. These studies collectively underline the urgent need for constitutional reform in Timor-Leste to address both legal and political obstacles.

The four political issues, so far in the implementation of state governance, leaders only prioritize political interests or political party missions to achieve the desires of the party or individual so that they forget the real basis of the problem which results in inequality in the implementation of government. Protection of constitutional rights of citizens, the formation of laws and regulations that are not harmonious. On the other hand, to carry out constitutional amendments, there needs to be a party that wins the majority in parliament, but so far no party has won the majority election or forty-three 43 (2/3) seats in the national parliament, this is also the basis of the problem for the amendment of the RDTL constitution in 2002, if the coalition parties do not achieve a majority of seats, therefore, to carry out the amendment of the RDTL constitution in 2002, an agreement and awareness of nation and state are needed from political parties.

Based on the problems explained previously, the urgency to amend the constitution is very necessary at this time, if we look at the development of science, technology and society very quickly, so that the highest norms no longer have legal force to bind state institutions and society, both domestically and internationally in Timor Leste. Indeed, the constitution is a fundamental norm that should be able to adapt to the times, and if it is not appropriate, then a fundamental change is needed so that it can answer the challenges of the times or demands from society.

## Method

This research method uses normative research, the type of approach used by the researcher in this study is the legislative approach; conceptual approach; comparative approach. The sources of legal materials that the author uses in this study are primary legal materials, namely the RDTL constitution; secondary legal material sources, namely books, international journals, law journals, scientific works, and tertiary legal material sources: the great dictionary of the Indonesian language, black law dictionary and the internet. The technique of collecting legal materials and analysis techniques uses descriptive analysis. All of which are used by the researcher in this study to analyze the Theory of Legislation in the Constitutional Review Procedure of the Democratic Republic of Timor-Leste in 2002.

## Hasil dan Pembahasan

### Sequence Of Legal Regulations Applicable In The State of Rdtl.

### A. Position of the Highest Legal Norms in the State of Timor Leste.

In relation to the law of Timor-Leste as a country of law that upholds the supremacy of law, regulated in Article 1 paragraph 1 and Article 2 paragraph 2 of the 2002 RDTL constitution, legal norms must be upheld in the implementation of state governance because Norms are a measure that must be obeyed by a person in relation to others or the environment, the term norm comes from Latin, or rules in Arabic, and is often also called guidelines, benchmarks, or rules in Indonesian. In its development, the norm is interpreted as a measure or benchmark for a person in acting or behaving in society. So, the core of a norm is all the rules that must be obeyed . So norms are benchmarks or measures or guidelines for each individual.

Part of the constitution is the highest norm, so all officials or individuals are subject to and obey the applicable law, so the constitution is the basis for regulating every state institution and society and becomes a guideline for forming other laws and regulations. However, if the 2002 RDTL constitution is no longer responsive to the conditions and situations of the nation and state and does not have the binding power of the constitution as a fundamental norm, because the Constitution is a fundamental law about the government of a country with its fundamental values . The point is that there is the most important thing, namely t

1. Preamble as the Grundnorm of the Timor Leste Nation

The preamble of a constitution is a constitutional document in the form of a short and concise statement, but it contains the vision, mission, and basic values of a country or organization as a forum for togetherness that is to be built and run together.

In terms of terminology, the opening of the constitution, or in various countries using the terminology "preamble", is a terminology derived from the Latin "preambulare" which means 'to walk before' or 'walk before', which according to legal terms in the Oxford English Dictionary is described as "an introduction or kind of foreword to a legal act" . Meanwhile, in Black's Law Dictionary, 'preamble' is defined as "a clause at the beginning of a constitution or statute explanatory of the reasons for its enactment and the objects sought to be accomplished" . Looking at this term, it can generally be said that 'preamble' has become a legal term to indicate the opening words of a constitution. Based on Liav Orgad's notes, almost all countries whose constitutions have a formal and written preamble, use the title 'preamble' or other terms that have the same meaning. For example, in the Preamble to the Constitutions of Albania and Bahrain, the word "Foreword" is used, or in the Preamble to the Constitution of Japan, the word "Preface" is used . Related to the Preamble, a 2002 RDTL constitution begins with the first, national sovereignty in paragraph I, namely "After the liberation of the People of Timor Leste from colonialism and illegal occupation of the Land of

Maubere by foreign powers, the independence of Timor Leste, proclaimed by the Revolutionary Front of Free Timor Leste (FRETILIN) on November 28, 1975, was internationally recognized on May 20, 2002. The drafting and ratification of the constitution of the Democratic Republic of Timor Leste was the culmination of the resistance of the people of Timor Leste that had lasted for centuries, which was intensified after the invasion on December 7, 1975. "This means that the highest sovereignty lies at the peak of the people of maubere as stated in article 2 paragraph 1 of the RDTL constitution in 2002. According to Wim Voermans, Maarten Stremler and Paul Cliteur, it is external sovereignty , namely concerning relations between countries, where the declaration of independence 'independence' means that there should be no interference from other countries in a country that has become independent.

Second, Paragraphs II-VIII state the historical narratives that “The struggle against the enemy, initially under the leadership of FRETILIN, was expanded into comprehensive forms of political participation, especially after the formation of the National Council of Maubere Resistance (CNRM) in 1987 and the National Council of Timorese People's Resistance (CNRT) in 1998. The resistance was divided into three fronts. The armed front was fought by the glorious Armed Forces of the National Liberation of East Timor (FALINTIL) whose historic

efforts are commendable. The clandestine front actions, carried out skillfully in enemy-occupied territory, involved the sacrifice of thousands of lives of both women and men, especially young men and women, who fought selflessly for freedom and independence. The diplomatic front, carried out simultaneously in all corners of the world, opened the way for real liberation. From a cultural and humanitarian perspective, the Catholic Church in Timor Leste has always been able to bear, with dignity, the suffering of the entire People, defending them in order to defend their basic rights. ~

Third, Paragraph XII is based on the highest objective, namely that it is necessary to build a democratic culture and institutions appropriate for a State of Law, where respect for the Constitution and for democratically elected institutions is an unquestionable foundation, as Orgad said that the preamble to the constitution often mentions the fundamental objectives of a nation, for example justice, brotherhood, and human rights, including economic objectives .

Fourth, national identity . Orgad said that the preamble to the constitution generally states the national creed which concerns the beliefs and philosophy of a country's constitution. Therefore, reading the constitution will not be complete without reading the preamble to the constitution, because in the preamble there are often additional elements about future aspirations including commitments to resolve various disputes peacefully, comply with the principles of the United Nations Charter, or national aspirations stated in the declaration of independence . The form, for example, is a statement referring to inalienable rights, such as freedom or human dignity. This is found in paragraph XIV, namely: "Solemnly reaffirming its determination to fight all forms of tyranny, oppression, domination and social, cultural and religious separation, to defend national independence, respect and guarantee human rights and citizens' basic rights, to guarantee the principle of separation of powers in the organization 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"

Fifth, paragraph XIII concerns interpreting the deep feelings, ideals and beliefs in God of the people of Timor Leste (God or religion), as Orgad said that several state constitutions in the world include elements of God in them."

After understanding what the preamble of the constitution is and its classification based on its substance, the next step will be discussing the legal position of the preamble of the constitution. Liav Orgad groups it into 3 (three), namely ceremonial or symbolic, interpretation, and substantive.

The first type, the ceremonial or symbolic role (ceremonial-symbolic preamble) . Orgad said that this type is in accordance with Plato's concept of law, where the law is morally good and noble, so that the preamble of the constitution is held to persuade people persuasively to obey the law, not because of the legal sanctions, but because the law is good. Thus, this type shows that the preamble is only ceremonial and symbolic in nature which does not create rights or have binding interpretative power. This ceremonial type is in line with Kelsen's opinion, that the preamble of the constitution contains political, moral, religious, and other ideas but does not establish norms, so that it is more ideological in character than juridical .

Orgad gave the example of the United States Constitution, which is persuasive, symbolic, and generally not legally enforceable . The second type is

interpretive preamble . Orgad said that the interpretive role of the preamble to the constitution is rooted in the Common Law legal tradition. Borrowing Edward Coke's statement, Orgad said that the preamble to the constitution is a good means of understanding the meaning of the law and a key to unlocking understanding. For example, when the South African Constitutional Court confirmed the status of the preamble to the constitution as a guide when interpreting the Bill of Rights, arguing that although the preamble to the constitution is not an independent source, it has inspired the formation of the Bill of Rights.

The third type, substantive (substantive preamble) . Orgad said that the preamble of the constitution can bind constitutional clauses that are legally binding and act independently as a source of rights and obligations. Orgad uses the constitutional theory proposed by Carl Schmitt which distinguishes between constitutional law and the constitution itself. Constitutional law regulates behavior and establishes norms, while the constitution contains fundamental political decisions. This decision is not constitutional law, but rather a fundamental prerequisite (s) of all subsequent norms.

2. Position of the Constitution as a Fundamental Norm

The constitution is a reflection of the basic norms of the state as the formation of other laws, and as a basic rule that regulates the implementation of government by state institutions and regulates the protection of human rights, as in the case of the Democratic Republic of Timor Leste. Then the constitutional theory is used to justify and discuss the 2 existing problem formulations. Therefore, the reasons for choosing the constitutional theory are as follows:

First, the 2002 K-RDTL as a basic norm for state institutions, especially the legislative and executive in the formation of laws and regulations referred to in Article 95 and Article 96 of the 2002 K-RDTL. Second, as a rule that regulates state buildings or state institutions in the implementation of government in general, regulated in Article 67 of the K-RDTL, as well as the position, authority and function and relationship between these state institutions by adhering to the principle of separation of powers regulated in Article 69 of the 2002 K-RDTL. Third, regulates the relationship between the state and society which must be subject to applicable laws as mandated in Article 2 paragraph (2) of the 2002 K-RDTL. Fourth, provides protection of human rights, especially protection of the constitutional rights of citizens, as regulated in Article 16 of the 2002 K-RDTL. The constitution has nobility and importance for the life of a country. The nobility of a constitution is what makes it a fundamental law and the higher law.

This is because the constitution can be equated with a charter for the birth of a new country. The constitution has an important meaning for the country because without the constitution, the country might not have been formed. The constitution is a barometer of the life of the country which is full of historical evidence of the struggle of the heroes.

In a constitution, the outlook on life and inspiration of the nation that has it are included. A. Hamid S. Attamimi stated that the constitution is a guide and limiter and at the same time a guide in regulating how the power of the country will be exercised. As stated by A.A.H. Struycken1 in his book entitled Het Staatsrecht van Het Koninkrijk dre Nederlander, the constitution as a written constitution is a formal document containing the following :

1) The results of the nation's political struggle in the past.

2) The highest level of development of the nation's constitutional state.
3) The views of national figures that are to be realized both for the present and the future.
4) A desire where the development of the nation's constitutional life is to be led.

The four things contained in the constitution show the importance of a constitution as a barometer of national and state life. The constitution also provides direction and guidance for the next generation of the nation in running a country. The constitution has a special position and is the main source of law. Therefore, there must not be a single law that contradicts it. A constitution is very necessary for a country. Therefore, all newly independent countries will draft a constitution. The constitution is a noble and special national document and is also a legal and political document. The constitution contains the basic framework, structure, functions, and rights of state institutions, government, the relationship between the state and its citizens, and supervision of the running of government.

3. Applicability of Legislation Theory in the Formation of RDTL Legislation

Society's life is always regulated by regulations, both written and unwritten. All activities carried out by citizens are regulated by applicable laws and regulations. In Timor-Leste, there are written and unwritten laws. Which function to regulate citizens in community, national, and state life. First, regarding written law, it is a rule that is determined in writing made by an authorized institution, such as legislation. Legislation is a written regulation that has been made by an authorized institution. Second, unwritten law is a norm or unwritten regulation used by society in everyday life or which has become a habit by society. It has been passed down from generation to generation and is not made by an authorized state institution, for example moral norms, norms of politeness, and customary norms.

The terms Legislation and Regulation come from the word Law, which refers to the type or form of regulations made by the State. In Dutch literature, the term wet is known which has two meanings, namely wet in formele zin and wet in materiele zin as contained in chapter II, namely the definition of a law based on its content or substance . The use of the term Legislation, the origin of the word is law with the prefix per- and the suffix -an. The word Invitation has a different notation from the word law. What is meant in the context of using this term is that which is related to the Law, not the word Law which has other connotations . Legislation is a central and regional state regulation which is formed based on the authority of legislation, has an attributive or delegate nature. The formation of legislation is part of the process of forming new laws, because law includes a process, procedure, polite behavior, and customary law.

The formation of government legislation is required to be able to formulate what possibilities, tendencies and opportunities will occur in the future, to be able to analyze and see opportunities to minimize obstacles or barriers that will be faced when enforcing a regulation. Legislation must have a reflection of the reality that exists in people's lives including in the tendencies and expectations of the community. And the basis for legal validity is a regulation that must meet the requirements for formation and is based on higher law. In the formation of legislation, the language used must be straightforward, firm, clear and easy to understand by everyone, not long-winded or convoluted, and in its formulation must be in sync between one norm and another. The language in legislation must

comply with the rules of grammar, both in words, sentences and in writing and spelling.

In forming laws and regulations, there are several theories that need to be understood by the designer, namely the theory of norm levels. Hans Nawiasky, one of Hans Kelsen's students, developed his teacher's theory about the theory of norm levels in relation to a country. Hans Nawiasky in his book "Allgemeine Rechtslehre" states that according to Hans Kelsen's theory, a state legal norm is always layered and tiered, namely the norm below applies, is based on, and originates from a higher norm and so on until it reaches the highest norm called the basic norm. From this theory, Hans Nawiasky added that in addition to the norms being layered and tiered, legal norms are also grouped. Nawiasky groups them into 4 large groups, namely:

a. Staatsfundamentalnorm (fundamental state norms);
b. Staatsgrundgezets (basic state rules);
c. Formell Gezetz (formal laws);
d. Verordnung and Autonome Satzung (implementing rules and autonomous rules).

Timor Leste has laws and regulations according to the order of order, where the 2002 RDTL constitution is the highest law in the RDTL legal system and is the basis for the laws and regulations below it. Regarding the Theory of Law - Law is a written regulation containing generally binding legal norms formed or formed by state institutions or officials, who have the authority through procedures stipulated in the Law.

The order of lower laws and regulations must not conflict with higher laws and regulations. In order to meet the needs of the community for good laws and regulations, it is necessary to make regulations regarding the formation of laws and regulations that are implemented in a definite, standard, and standard manner and method that binds all institutions authorized to form laws and regulations, to realize RDTL as a democratic state of law, the state is obliged to carry out national legal development that is carried out in a planned, integrated, and sustainable manner in a national legal system that guarantees the protection of the rights and obligations of every citizen based on the 2002 K-RDTL.

4. Vacancies in the Norms of Legislative Regulations

In Hans Kelsen's book "General Theory of Law and State" the translation of the general theory of law and state explained by Jimly Assihiddiqie with the title Hans Kelsen's theory of law includes that . Legal analysis, which reveals the dynamic character of the norm system and the function of basic norms, also reveals a further peculiarity of law: law regulates its own formation because a legal norm determines how to create another legal norm, and also to a certain degree, determines the content of the other norm. Because, one legal norm is valid because it is made in a manner determined by another legal norm. and this other legal norm becomes the basis for the validity of the first legal norm mentioned.

According to Hans Kelsen, the norm is tiered in layers in a hierarchical structure. The meaning is, the legal norm below applies and originates, and is based on a higher norm, and the higher norm also originates and is based on a higher norm and so on until it stops at the highest norm called the Basic Norm (Grundnorm) and Hans Kelsen said it is included in a dynamic norm system. Therefore, the law is always formed and abolished by the institutions of the

authorities who have the authority to form it, based on higher norms, so that lower norms (Inferior) can be formed based on higher norms (superior), in the end the law becomes tiered and layered forming a Hierarchy . In the author's opinion, legal norms do have a higher norm structure followed by norms below.

If we relate the hierarchy of legal norms of Timor Leste to date has not been formed by the legislative institution, thus causing the harmony of the formation of laws and regulations to overlap both formally and materially, indeed in the republican journal there has been a system of institutional norm arrangement where the Constitution is the highest norm and the second is the presidential decree and so on, but it is contrary to the thoughts of Hans Kelsen which have been stated above, therefore in order to organize the composition of legal norms the national parliamentary institution must have thought about the formation and determination of these norms

Then when included in the grouping of norms by Hans Nawiasky, one of Hans Kelsen's students, developed his teacher's theory about the theory of norm levels in relation to a country. Hans Kelsen in his book: allegemeine Rechtslehre states that according to Hans Kelsen's theory, a legal norm from any country is always layered and hierarchical, where the norm below applies, is based on and originates from a higher norm, a higher norm applies, is based on and originates from a higher norm, up to a highest norm called the Basic Norm. However, Han Nawiasky also argues that in addition to the norms being layered and hierarchical, the legal norms of a country are also grouped. Hans Nawiasky also groups the legal norms in a country into four large groups consisting of:

a. group I: staatspundamentalnorm (State Fundamental Norm)
b. Group II: Staatgrundsetz (basic/main rules of the state)
c. Group III: Formell Gesetz (formal law)
d. Group IV: Verordnung and autonome satzung (implementing rules and autonomous rules) .

These groups of legal norms always have a legal norm structure in each country, even though they have different terms or different numbers of norms in each group, as Timor-Leste also has differences, first there are no laws and regulations that regulate the hierarchy of norms. The structure of norms so that in the placement of norms and the formation and determination there is disharmony, second, the structure that is currently published in the republic journal is not a norm structure but a functional norm structure, meaning that it only looks at the function of state institutions. Thus, the absence of a hierarchy of legal norms causes legal uncertainty, resulting in multiple interpretations in placing the hierarchy of legal norms according to the wishes of each individual, both in academic circles, state institutions, politicians, non-governmental organizations, traditional institutions and the general public. Therefore, in order to avoid the creation of multiple interpretations from various groups, legislative and executive institutions that have the authority to form laws and regulations as regulated in Articles 95, 96 and 97 of the 2002 RDTL constitution can form a law to regulate the arrangement of norms.

## B. The Need for a Hierarchy of Legislative Regulations in the Implementation of State Governance

1. The Importance of a Hierarchy of Legislative Regulations for the State of Timor Leste

Since the independence of the Democratic Republic of Timor-Leste in 2002, the problem faced by the National Parliament and the Government today is the lack of legal certainty in the implementation of government in a broad sense. The legal uncertainty in question is related to the absence of a Law that functions as a guideline in making legislation. Therefore, the law that functions as a guideline is expected to contain the following materials: First, it contains a hierarchy (leveling) of legislation starting from higher legislation to lower legislation. With the existence of this hierarchy of legislation, it is hoped that synchronization and harmonization of legislation will be created. Therefore, lower-level regulations must not conflict with higher-level laws and regulations, nor prevent conflicts between one law and another law horizontally.

Second, with the existence of the Law on the Hierarchy and Content of Legislation, it is expected to clearly and in detail contain the content of each regulation starting from the Constitution of the Democratic Republic of Timor-Leste to lower-level regulations. Therefore, the Democratic Republic of Timor-Leste until now does not have a Law that regulates the Hierarchy and Content of Legislation, this sometimes causes difficulties for state administrators and government officials in determining the right regulations. This is what often causes legal uncertainty in the Democratic Republic of Timor-Leste.

As a consequence, the absence of a Law on the Hierarchy and Content of Legislation has caused legal uncertainty in the administration of the Democratic Republic of Timor-Leste. This consequence has other impacts as follows: First, the Government has difficulty in making policies or issuing decisions in the administration of government because there is no Law on the Hierarchy and Content of Legislation. In fact, this law functions as a legal basis for state administrators and government officials in making regulations and determining national and international policies.

Second, it creates a conflict of legal norms (antinomy) between lower-level laws and regulations and higher-level laws and regulations, vertically or horizontally between one form of law and another law at the same level.

Third, it creates a conflict of authority because the authority regulated in the laws and regulations may be unclear or contradictory. This creates difficulties for state administrators and government officials in carrying out their functions, both in the function of decision-making, the function of material actions and in the function of public services (servisu publiku). The coordination system between one state institution and another state institution. Fourth, it creates multiple interpretations from each state administrator and government official regarding laws and regulations and policy regulations.

Fifth, in the implementation of government in the Democratic Republic of Timor-Leste, sometimes there is still overlapping authority between state administrators and government officials. This is due to the similarity in the regulation of authority. Sixth, it creates vague norms because there is no Law on the Hierarchy and Content of Legislation of the Democratic Republic of Timor-Leste. A further consequence is that there are often norms whose regulations are unclear and contradictory.

Seventh, because there is no Law on the Hierarchy and Content of Legislation, it often causes confusion because legal pluralism still occurs. This is because the legal products of Portugal, UNTAET Regulations, Timor-Leste law, and Indonesian law are still in effect. These pluralistic regulations tend to contradict each other, causing difficulties in their implementation. Eighth, the absence of a Law on the Hierarchy and Content of Legislation has another consequence, namely the absence of a standard regarding the formation of legislation. Therefore, the Law on the Hierarchy and Content of Legislation will serve as a guideline in forming legislation. Ninth, the absence of a Law on the Hierarchy and Content of Legislation can create opportunities for abuse of authority and arbitrariness.

2. Hierarchy of Legislation as a Guideline for the Implementation of State Government

In order to create good legislation to create good and clean governance (good governance, clean governance), legislative political (policy) arrangements are needed. Good legislative politics of the Democratic Republic of Timor-Leste will be able to create legal certainty and justice in the implementation of government and development. Therefore, in order to overcome conflicts of legislation both vertically and horizontally, the ambiguity of norms and the absence of norms, the formation of a Law on the Hierarchy and Content of Legislation is very urgent. The study of the need to form a Law on the Hierarchy aims to: First, to describe the legal concepts and theoretical justifications related to the need for a Law on the Hierarchy and Content of Legislation. Thus, all laws and regulations in force under the Constitution must not be contradictory, must be in accordance with the Constitution of the Democratic Republic of Timor-Leste 2002. Second, to create guidelines regarding the procedures for drafting laws and regulations in accordance with the Law on the Hierarchy and Content of Laws and Regulations.

Third, to avoid confusing legal logic errors resulting from unclear legal provisions concerning their format, procedures and mechanisms in their application. Fourth, to produce a comprehensive, contextual and responsive Law on the Hierarchy and Content of Legislation.

**C. Review Procedure Based on The 2002 Rdtl Constitution**

1. Basis for Constitutional Amendment Based on the 2002 RDTL Constitution

The basis for the 2002 RDTL constitutional amendment can be seen from the formal aspect, aiming to provide procedural justification for the formation of laws contained in the legal basis by "remembering" the rules of law. The provisions for changing the 2002 K-RDTL must also be met properly in order to be carried out in article 154 of the constitution, namely that: 1). Members and Parliamentary Factions have the authority and responsibility to initiate a constitutional review; 2). The National Parliament may review the constitution after six years have passed since the last date of the announcement of the Constitutional Review Law; 3). The six-year period for the first constitutional review is calculated from the date of enactment of this constitution. 4). The National Parliament, regardless of the time frame, may take the authority to review the constitution by a majority vote of four-fifths of the Members of Parliament who are fully serving their duties. 5). The proposal for review must be submitted to the National Parliament one hundred and twenty days before the day of debate

begins. 6). After the proposal for review of the constitution is submitted, in accordance with the requirements of paragraph 5 above, another proposal must be submitted within 30 days.

To amend the 2002 RDTL Constitution can be seen from the philosophical, sociological and legal aspects: First, the philosophical aspect, according to Jimly Asshhiddique that the constitution contains legal norms that are carried out ideally (ideal norms) by an element of society towards the noble ideals of community and state life. The philosophical direction contained in the law must not collide with the philosophy of the nation. It can be simplified, that according to the author, the philosophical meaning of amendment is an idea or motive that underlies the amendment.

Second, the sociological aspect in the 2002 amendment to the RDTL Constitution, namely, that the material contained in the regulations are norms that reflect reality, general beliefs or legal awareness of society. So, these regulations can be implemented well in society. That in reality, laws are made to regulate life and state for society. This means that legal products in the form of amendments to a constitution or other regulations can be expected to be accepted and meet the needs of society. If a material test occurs, then some of the regulations are not relevant in society.

Third, the legal aspect is the legal basis for the formation of regulations both materially and formally. The legal material basis is contained in Article 1 Paragraph (1) of the 2002 K-RDTL which stipulates that "The State of Timor Leste is a democratic state of law". This article is interpreted as, that every implementation of the state must be based on law and not based on power alone.

From article 154 of the 2002 RDTL Constitution, there are several things that we must pay attention to in order to change it: First, the institution that has the authority to make changes to the 2002 RDTL constitution is the National Parliament. Second, when the proposal for change is made, at least 4/5 of the members of the national parliament must be present. Third, the proposal for change is only considered a quorum if it is approved by 2/3 of the total number of members of the national parliament present, as regulated in article 155 of the 2002 K-RDTL. Fourth, changes to the constitution can be made through a referendum as regulated in Articles 85, 115 and 66 of the 2002 RDTL constitution. So these three requirements must be met in making changes to the 2002 RDTL Constitution. However, a referendum can occur if it is submitted to the government to propose to the national parliament to immediately hold a referendum in the name of the people and national interests.

In the author's opinion, changes or amendments to the constitution must be carried out within six (6) years as mandated by the 2002 K-RDTL, but until now there has been no consensus between political parties, resulting in it not being realized. Changes to the constitution can use methods commonly used by a government. However, these constitutional changes are ultimately determined by the dynamics of the ruling political system at the time the changes are needed. As a constitution to be changed, if the politics at that time want and think the constitution must be changed, then the constitution will be changed, and vice versa. In essence, the constitution is the fruit of politics, so political factors are the most influential in determining changes to the constitution.

**D. Nature of the 2002 RDTL Constitution**

Based on Article 154 of the 2002 RDTL constitution regarding the constitutional amendment procedure, it can be said to have two characteristics; first, paragraph 3 has a rigid nature because it is limited by time to make amendments even though the time is very short, second, members of parliament can submit a draft revision of the constitution to the parliament without having to be bound by the time that has been set, third, a referendum can occur at any time, if the President of RDTL submits it to the government, then the government proposes it to parliament as an alternative that is not limited by time, and is nevertheless bound by constitutional norms because even though amendments have been made through various methods previously mentioned, they still have to go through the approval of 2/3 of the members of parliament present, adjusted to Jimly Assiddiqie's opinion, he stated that the constitution based on its nature is as follows: 1). There are those that are flexible or rigid, 2). There are those that are written or unwritten, and 3). There are those that are formal or material.

Seeing this opinion, the author only focuses on the rigid and flexible constitutions to explore the nature of the RDTL constitution. According to Eheare, this division is based on two principles, namely: first, from the process of changing the Constitution itself. If the Constitution is easy to change, then the Constitution is flexible, but if the Constitution is difficult to change, then the Constitution is rigid. While the second indicator is the extent to which the Constitution is able to adapt to the development of the times. If the constitution easily follows the development of the times, then the Constitution is flexible and the Constitution will be grouped as rigid if the opposite applies .

Based on the dogmatic and legal theory above, the author concludes that the 2002 RDTL constitution is rigid because the amendment procedure is strictly regulated so that to make changes, even though Article 154 paragraphs 3 and 4, and the existence of a referendum according to the 2002 RDTL constitution, still cannot be done, because there must be approval from 2/3 of the members of parliament present during the session.

## E. Type of Constitutional Change of RDTL

Timor Leste as a democratic state of law is currently a very ideal concept. Law and democracy are two things that are closely related to each other and need each other, law without democracy will create arbitrariness, while democracy without law will create anarchy. The combination of the concepts of law and democracy when combined with the word state will produce the concept of a democratic state of law or a democratic state based on law.

Democracy should not only be used as lip service and mere rhetoric. Democracy is also not only about the institutionalization of noble ideas about ideal state life, but is also a matter of egalitarian political tradition and culture in the reality of diverse or pluralistic social life, by respecting each other's differences. Therefore, the realization of democracy must be regulated based on law . so, a democratic state of law is still regulated by law, but on the other hand it also provides great opportunities for public participation.

As explained in previous chapters, Timor Leste has adopted a state based on law and upholds the supremacy of law and upholds the sovereignty of the people where the law remains the supremacy to create order and security, but if the law no longer follows the development of the times, the law needs to be changed as stated in the 2002 RDTL constitution, which requires the participation of the entire community.

The 2002 RDTL constitutional changes are known to be rigid in nature, making them very difficult to implement, as described in the previous subsection, where there are three types of changes that can be implemented:

First, changes can be implemented if there is a majority of parties occupying parliamentary seats, meaning occupying 2/3 of parliament members, then changes can be implemented, but this is inevitable, considering the many competing parties competing in the election, other methods can also be used, namely the existence of an alliance agreement between political parties or a shared desire to make changes or amendments.

Second, changes can be proposed by members of the national parliament on the proposal of 4/5 members of parliament and approved by 2/3 of the members present at the constitutional amendment hearing. Third, changes can be implemented through a referendum, where the president can propose or ask the government to propose a referendum on behalf of the people.

## F. Mechanism of Constitutional Change of RDTL in 2002

Related to the mechanism of constitutional change, it is simply stated by Jellinek who distinguishes between Vervassunganderung (constitutional change that is done intentionally in a way that is mentioned in the Constitution itself) and Vervassungwandlung (change in a way that is not mentioned in the Constitution but through special ways such as revolution, Coup d'etat, convention, and so on) . The author sees the view expressed by Jellinek as permissible in the country of Timor Leste; because if until now or in the future the legislative institution does not make changes to the 2002 RDTL constitution, it can be done in the following ways: First, the revolutionary method by using the power and will of the people as regulated in Article 1 paragraph 1 and Article 2 paragraph 1 of the 2002 K-RDTL. The revolution can be done through an anarchic revolution or through peaceful demands in anarchic demands the people force the state to make changes comprehensively, so that a new face of government appears, if through peaceful demands there are only two paths, namely the first path is to force the legislative institution to make changes without anarchism, second, if the legislative institution is not concerned, it can be forced to ask to form a constitutional council to make changes.

Second, Coup d'etat, meaning the overthrow of the general government by the military or a military coup, this could happen in all possibilities, if there is an initiative to overthrow the elected government from the military who see the corruption of the government which has wasted the state treasury (corruption) without limits so that the people experience suffering and misery physically and mentally. Third, it can be done through a constitutional convention, but this is very difficult because it does not apply to descendants of the civil law system and only applies to the common law system.

Seeing the way the constitution is changed that is expressed, it can happen to the country or it is impossible to choose another path according to the opinion expressed by Ismail Sunny regarding changes to the Constitution, that the Constitutional process can occur in various ways, namely: 1). Official changes, 2). Judge's interpretation, 3). Constitutional customs/conventions . Judge's interpretation can be used as another alternative for changes or amendments to the 2002 RDTL constitution, as regulated in Article 126 of the RDTL constitution.

Based on article 154 of the 2002 RDTL Constitution regarding the mechanism for constitutional change as follows:

1. Initiative of Members of Parliament

Article 154 paragraph 1 states that Members and Parliamentary Factions have the authority and responsibility to initiate a constitutional review. This means that: first, every member of the national parliament has the authority to initiate, second,

2. National Parliamentary Institution Upon Proposal of 4/5 Members of Parliament
   Article 154 paragraph 4 states that the National Parliament, regardless of the time frame, can take the authority to review the Constitution with a majority vote of four-fifths of the Members of Parliament who are carrying out their duties in full. as in Mirian Budiadjo's opinion regarding constitutional change, that there are various procedures for changing the Constitution, including the following :
   a) Legislative body session with the addition of several conditions, for example, a quorum can be determined for a session discussing the proposed amendment to the Constitution and the minimum number of legislative members to accept it (Belgium, RIS 1949).
   b) Referendum or ballot (Switzerland, Australia)
   c) States in a federal state (United States: ¾ of the fifty states must agree; India).
   d) Special convention (exists in several Latin American countries).
   To make changes to the Constitution there are several things that must be considered, Denny Indrayana argues that there are four main aspects in the process of making a constitution: 1). Time of making the constitution, 2). How the constitution is made, 3). Constitution-making institutions, and 4). Public participation .
   In setting the time for making a constitution, one must remember that the time should not be too long or too short. A time span that is too long to make a constitution will only increase uncertainty in the authoritarian transition of power, in addition to increasing the possibility of losing the constitutional momentum of the country concerned to make a transitional constitution. However, if the time is too short, it is certainly not wise . It is better to allocate a certain time to make a constitution. This is very important in order to provide a clear mandate to the constitution-making institution. A specific time allocation helps the institution to organize its work plan. In addition, such a time allocation can put pressure on the institution concerned to complete its work on time .
3. Referendum Submitted by the Government to the President
   The legal basis in Article 66 states that 1). Voters registered in the territory of the country may be asked to express their opinions through a referendum on matters related to national interests; 2). The referendum will be decided by the President of the Republic, upon the proposal of one-third of the members of the National Parliament, and after a deliberation approved by a majority of two-thirds of the members of Parliament, or upon a reasonable proposal from the Government; 3). Matters which are under the exclusive authority of the National Parliament, the Government and the Courts as stipulated in the constitution cannot be made the subject of a referendum; 4). A referendum is only binding if the number of people voting in the referendum exceeds half of the number of registered voters; 5). The procedure for the referendum shall be determined by law.
4. Limits of the 2002 RDTL Constitution Amendment
   According to Sri Soemantri, in changing the Constitution, the reasons and objectives must first be determined. If this has been agreed upon, then the next steps can be considered based on the reasons and objectives of the change . Changes or amendments to the RDTL constitution are demands of the times that are seen in the

situation and conditions in the implementation of state government that are no longer relevant, however, changes to the material content of the constitution are not easy to do as discussed in the previous chapters and sub-sections which have rigid/rigid prerequisites, likewise the affirmation of the material content that cannot be changed has been determined in the 2002 RDTL constitution, the limits for revising the 2002 RDTL constitution have two (2) limitations, including:

Article 156 of the 2002 RDTL Constitution outlines several limitations for constitutional revisions, emphasizing that any revision must respect national independence, citizens' rights, the form of government, separation of powers, judiciary independence, multipartyism, and democratic opposition rights, among other principles. It also mandates free, universal, direct, secret, and periodic elections, no official state religion, and the principles of deconcentration and administrative decentralization. Notably, paragraphs concerning the form of government, the state religion, and the national flag may be revised through a national referendum. Additionally, Article 157 establishes a situational limitation, stating that constitutional revisions cannot occur while the state is in a state of emergency or on alert.Based on the affirmation of the two articles, to make changes or amendments to the material content of the constitution, the prerequisites for limitations must be followed, if they still want to make changes to the material content and do not comply with the prerequisites set, then it is not constitutionally valid. However, other methods can also be used which have been explained in the sub-sections above, namely revolution, coup, convention or interpretation of judges and others.

The amendment of the 2002 RDTL Constitution could significantly enhance legal certainty by addressing the current ambiguities in the hierarchy of legal norms. The absence of a clear, structured hierarchy of legal norms has led to confusion and inconsistency in interpreting and applying laws, which has impacted governance in Timor-Leste. By establishing a clear legal norm hierarchy, as suggested by Kelsen's theory, the revision would provide a more stable and predictable legal framework, ensuring that all regulations and laws are aligned with the constitution. This legal clarity would minimize conflicts between laws and regulations and streamline the processes for policy formulation and governance. Furthermore, this would support the separation of powers and reduce overlapping authorities between state institutions, improving coordination and enhancing government accountability. By amending the constitution to address these issues, Timor-Leste would strengthen its democratic governance, foster legal certainty, and ensure that the legal system adapts to the evolving needs of the nation. This, in turn, would contribute to more effective governance, higher levels of public trust, and the protection of citizens' constitutional rights.

## Conclusion

Based on the thesis presentation from chapter I to chapter V, the author draws the following conclusions: 1) The order of laws and regulations in force in the State of RDTL until now there are no laws and regulations that regulate it, although there are in the State Gazette but do not reflect a clear order of legal norms, because the arrangement is structurally institutional, not based on legal norms that have implications for the formation of norms under the constitution. thus causing multiple interpretations from various groups. Therefore, it is necessary to create a sequence of laws and regulations so that lower norms must be in accordance with higher norms, so as not to cause norm

conflicts, vague norms and empty norms. 2) The review procedure based on the 2002 RDTL constitution has been stipulated in the 2002 RDTL constitution, which has three types of changes, namely on the proposal of members of the national parliament and the national parliament and the referendum submitted by the president to the government and then the government proposes to the national parliament, the three types are actually rigid so that it is very difficult to make changes to the content of the material, indeed changes to the content of the material can be made through revolution, military coup, constitutional conventions and the authority of interpretation by judges as stipulated by the constitution. And there are also limits to revisions that must be adhered to according to the will or spirit of the 2002 RDTL constitution which is based on the principle of a democratic state of law or a constitutional democratic state.

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