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The eternity of the Constitution: a study of the unamendable clauses in Southeast Asian countries

A eternidade da Constituição: um estudo das cláusulas pétreas nos países do Sudeste Asiático

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Abstract: Constitutions, as the highest legal documents, often include Eternity clauses to protect core values that remain unalterable. In Southeast Asia, countries implement these clauses in various ways, reflecting the region's complex social, political, and historical contexts. This study examines how Southeast Asia countries apply immutability clauses and assesses their impact on legal stability and political reform. Using a multidisciplinary comparative approach, the research focuses on the Philippines, Indonesia, Malaysia, and Myanmar, analyzing the variations in their design and implementation. The study finds that Unamendable clauses help protect fundamental values such as the rule of law, democracy, and territorial integrity. However, these clauses also generate tensions between the need for stability and the demand for legal flexibility. The study's novelty lies in its multidimensional analysis, which links law, politics, and culture, offering insights into the relevance of unamendable clauses amid modern challenges such as globalization and democratic pressures. By integrating legal, political, and social dimensions, the research shows that legal stability requires not only formal protection through unamendable clauses but also strong institutions and active public participation. These findings provide important insights for policymakers in Southeast Asia countries and contribute to the global literature on constitutional law.

Keywords: Unamendable clauses. Constitution. Constitutional identity. Constitutional reform. Constitutional amendment.

Resumo: As constituições, enquanto documentos jurídicos mais elevados, incluem frequentemente cláusulas pétreas para proteger valores fundamentais que permanecem inalteráveis. No Sudeste Asiático, os países aplicam essas cláusulas de várias formas, refletindo os complexos contextos sociais, políticos e históricos da região. Este estudo examina a forma como os países do Sudeste Asiático aplicam as cláusulas pétreas e avalia o seu impacto na estabilidade jurídica e na reforma política. Utilizando uma abordagem comparativa multidisciplinar, a investigação centra-se nas Filipinas, Indonésia, Malásia e Myanmar, analisando as variações na sua conceção e aplicação. O estudo conclui que as cláusulas pétreas ajudam a proteger valores fundamentais, como o Estado de Direito, a democracia e a integridade territorial. No entanto, essas cláusulas também geram tensões entre a necessidade de estabilidade e a procura de flexibilidade jurídica. A novidade do estudo reside na sua análise multidimensional, que liga o direito, a política e a cultura, oferecendo uma visão sobre a relevância das cláusulas pétreas no meio de desafios modernos, como a globalização e as pressões democráticas. Ao integrar as dimensões jurídica, política e social, a investigação mostra que a estabilidade jurídica exige não só uma proteção formal através de cláusulas pétreas, mas também instituições fortes e uma participação pública ativa. Essas conclusões fornecem informações importantes para os decisores políticos dos países do Sudeste Asiático e contribuem para a literatura global sobre direito constitucional.

Palavras-chave: Cláusulas pétreas. Constituição. Identidade constitucional. Reforma constitucional. Emendas constitucionais.

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Contents: 1 Introduction – 2 Method – 3 The theoretical framework for unamendable clauses – 4 The context of eternity clauses in Southeast Asia – 5 Comparative analysis: eternity clause in several Southeast Asian countries – 6 The legal and political implications of the eternity clauses in Southeast Asian countries – 7 Eternity clauses: lessons for Southeast Asia countries – 8 Conclusion – References

1 Introduction

A constitution is the supreme legal document that guides the life of a nation and serves as the blueprint for creating essential and strategic regulations within a state.¹ In Southeast Asia, the constitution not only acts as a source of law but also guarantees stability amidst cultural, ethnic, and religious diversity. As constitutions evolve globally, they not only establish procedures for amending the constitution but also include provisions that no one can alter, either explicitly or implicitly.^{2 3} These provisions known as “Eternity clauses,” protect the constitution’s identity and its core values.⁴ Such clauses ensure that fundamental principles, such as popular sovereignty, territorial integrity, or a specific system of government, remain unchangeable through ordinary constitutional amendments.⁵ However, the relevance and application of these unamendable clauses now face significant challenges due to ongoing political dynamics and legal reforms.

Southeast Asia countries adopt diverse approaches to unamendable clauses. Some countries explicitly include such provisions, while others prefer flexibility in

¹ NGGILU, Novendri M. *Politik Hukum Pengujian Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Secara Formal*. Bandung, 2024. 63 f. Thesis (Doctorate) – Doctorate in Law Program, Universitas Padjajaran.

² ROZNAI, Yaniv. *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers*. First published in paperback Oxford Constitutional Theory. Oxford: Oxford University Press, 2019; See also ROZNAI, Yaniv. Constitutional Amendability and Unamendability in South-East Asia. *Journal of Comparative Law*, [s.l.], v. 14, n. 1, p. 188-204. 2019.

³ ROZNAI, Yaniv. *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers*. First published in paperback Oxford Constitutional Theory. Oxford: Oxford University Press, 2019.

⁴ POLZIN, Monika. Constitutional Identity, Unconstitutional Amendments and the Idea of Constituent Power: The Development of the Doctrine of Constitutional Identity in German Constitutional Law, *International Journal of Constitutional Law*, New York, v. 14, n. 2, 411-438, apr. 2016; POLZIN, Monika. Constitutional Identity as a Constructed Reality and a Restless Soul, *German Law Journal*, Frankfurt, v. 18, n. 7, p. 1595-1616, dec. 2017.

⁵ ROZNAI, Yaniv. The Theory and Practice of ‘Supra-Constitutional’ Limits on Constitutional Amendments, *International and Comparative Law Quarterly*, Cambridge, v. 62, n. 3, p. 557-97, jul. 2013; See also NGGILU, Novendri M.; MOHA, Mohamad Rivaldi; SINAGA, Muhammad Ridho; RACHMANIAR, Adelia. Judicial Review of Constitutional Amendments: Comparison Between India, Germany, Colombia, and the Relevancy with Indonesia, *Lex Scientia Law Review*, Semarang, v. 8, n. 1, p. 261-298, sep. 2024.

their constitutional design. For instance, Cambodia,⁶ Indonesia,⁷ and Myanmar⁸ have explicit provisions regarding the limits of constitutional reform, while countries like Malaysia take a more implicit approach to protecting core values.⁹ This diversity reflects the unique political, historical, and legal complexities in the region.

The study of unamendable clauses in Southeast Asia countries has become increasingly relevant in the face of globalization, pressures on democracy, and changes in governance. Through an in-depth analysis of unamendable clauses, this research not only explores the normative aspects of constitutional law but also provides insights into the relationship between constitutional stability and the political dynamics in the region.

Although unamendable clauses are considered an important mechanism for protecting the core values of a constitution, their implementation is not always free from challenges. In Southeast Asia, the application of these clauses often faces a dilemma between maintaining constitutional stability and meeting the needs of progressive reform.¹⁰ For example, the existence of unamendable provisions can lead to political deadlock when the need for constitutional change cannot be accommodated through the available mechanisms.¹¹ This raises a fundamental question: do unamendable clauses truly protect core values, or do they hinder the development of democracy?

The question arising from this issue not only focuses on the legal effectiveness of unamendable clauses but also on their impact on political stability and the legitimacy of the constitution. Therefore, this research aims to fill the gap in academic literature and provide a clearer understanding of the relevance of unamendable clauses in the Southeast Asian context.

This research aims to explore how unamendable clauses are applied in Southeast Asian countries, focusing on their role in protecting core constitutional

⁶ LEE, Hoong Phun; TEW, Yvonne. In: The Law and Politics of Unconstitutional Constitutional Amendments in Malaysia; ABEYRATNE, Rehan; SON, Ngo (Coord.). *The Law and Politics of Unconstitutional Constitutional Amendments in Asia*. New York: Routledge, 2021. p. 239.

⁷ EDDYONO, Luthfi Widagdo. The Unamendable Articles of the 1945 Constitution, *Constitutional Review*, Jakarta, v. 2, n. 2, p. 252-269, dec. 2016. See also NGGILU, Novendri M.; PERWIRA, Indra; ABDURAHMAN, Ali. Constitutionality Review of Indonesian Constitutional Amendments: History and Future, *Russian Law Journal*, [s.l.], vol. 11, n. 2, p. 117-125, apr. 2023.

⁸ LILJEBLAD, Jonathan. Constitutionalism and Legal Change in Myanmar ed. Andrew Harding and Khin Hin Hoo, *Journal of Contemporary Asia*, [s.l.], vol. 48, n. 3, p. 521-523, may. 2018.

⁹ TEW, Yvonne. Malaysia's Invisible Constitution. In: DIXON, Rosalind; STONE, Adrienne (Coord.). *The Invisible Constitution in Comparative Perspective*. Cambridge: Cambridge University Press, 2018. p. 376-400.

¹⁰ PIRDAUS, Dede Iman; CHAYANDARI, Rini; SALIH, Yasir. Constitutional Values, Legal Politics, and Political Stability: A Comparative Analysis in the Post-Authoritarian Context of Indonesia. *International Journal of Humanities, Law, and Politics*, Bandung, v. 1, n. 4, p. 64-69, feb. 2024.

¹¹ SUTEU, Silvia. Eternity Clauses in Post-Conflict and Post-Authoritarian Constitution-Making: Promise and Limits *Global Constitutionalism*. Edinburgh, v. 6, n. 1. p. 63-100, mar. 2017.

values and their impact on political and legal dynamics. Through a comparative approach, the study seeks to uncover variations in the design and implementation of unamendable clauses across Southeast Asia countries and examine how historical, political, and cultural factors influence their effectiveness.

Specifically, this research aims to identify the legal principles underlying unamendable clauses in countries such as the Philippines, Indonesia, and Myanmar. Additionally, the study seeks to assess the extent to which these provisions can prevent threats to fundamental values, such as the rule of law and human rights, while accommodating the need for legal reform in the face of changing times. With this approach, the research not only focuses on legal analysis but also highlights the socio-political implications of unamendable clauses.

The expected outcome of this research is a significant theoretical and practical contribution to the study of comparative constitutional law. The findings of this study could serve as a reference for policymakers, academics, and legal practitioners in designing constitutions that strike a balance between stability and flexibility, particularly in the rapidly developing Southeast Asian region.

Moreover, most existing research is oriented toward normative analysis without considering the socio-political context that shapes the application of unamendable clauses. For example, in Myanmar, the presence of unamendable clauses is closely linked to the history of conflict and the protection of the military.¹² This gap highlights the need for a more in-depth analysis of how these provisions function in such distinct contexts. By exploring the relationship between law, politics, and culture, this research offers new insights that have not been extensively addressed in previous academic literature.

Literature on unamendable clauses in constitutional law has developed rapidly, particularly in Europe¹³ and Latin America,¹⁴ often serving as a reference in

¹² O'BRIEN, Melanie. Myanmar. In: SAYAPIN, Sergey (Coord.). *International Conflict and Security Law*. The Hague: T.M.C. Asser Press, 2022. p. 1257-1283.

¹³ POLZIN, Monika. Constitutional Identity, Unconstitutional Amendments and the Idea of Constituent Power; See also POLZIN, Monika. The Basic-Structure Doctrine and Its German and French Origins: A Tale of Migration, Integration, Invention and Forgetting. *Indian Law Review*, [s.l.], vol. 5, n. 1, p. 45-61, jan. 2021. ROZNAI, Yaniv; YOLCU, S. An Unconstitutional Constitutional Amendment—the Turkish Perspective: A Comment on the Turkish Constitutional Court's Headscarf Decision. *International Journal of Constitutional Law*. New York, v. 10, no. 1 p. 175-207, jan. 2012; See also, OLCAY, Tarik. The Unamendability of Amendable Clauses: The Case of the Turkish Constitution. In: ALBERT, Richard; EMRAH, Bertil (coord.), *An Unamendable Constitution? v. 68. Ius Gentium: Comparative Perspectives on Law and Justice*. Cham: Springer International Publishing, 2018, p. 313-343.

¹⁴ BENÍTEZ-ROJAS, Vicente F. Beyond Invalidation: Unorthodox Forms of Judicial Review of Constitutional Amendments and Constitution-Amending Case Law in Colombia. *Revista de Investigações Constitucionais*. Curitiba, vol. 9, n. 2, p. 269-300, maio/ago. 2022; ALBERT, Richard. The Three Varieties of Unamendability. In: ALBERT, Richard (coord.). *Constitutional Amendments*. New York: Oxford University Press, 2019 p. 139-172; CLEVES, Gonzalo Andres Ramirez. The Unconstitutionality of Constitutional Amendments in

comparative studies. In this context, unamendable clauses are viewed as essential tools to ensure core values such as the rule of law, human rights, and democracy remain intact despite political changes.¹⁵ However, in Southeast Asia, studies on unamendable clauses are still quite limited. Existing research tends to focus on issues like democracy, human rights, and legal reform¹⁶ but rarely addresses how unamendable clauses impact constitutional stability in the region.

One of the primary gaps in the existing literature is the insufficient attention given to the variation in the implementation of unamendable clauses across Southeast Asian countries. While nations like Malaysia and Indonesia incorporate protective elements for core constitutional principles, there is a lack of comprehensive analysis on how these clauses compare with those in other Southeast Asian nations, such as the Philippines or Myanmar. The absence of comparative studies makes it difficult to understand how unamendable clauses function in different political and legal environments. Furthermore, much of the available research tends to be descriptive, focusing on the general features of these clauses without delving into their broader legal, political, and social implications. For example, the potential consequences of having or lacking such provisions on the stability of constitutional systems, the protection of human rights, or the adaptability of governance to political change have not been thoroughly explored. This gap underscores the need for a more nuanced approach that not only compares the formal legal texts but also considers the real-world impact of these clauses on national governance and political dynamics.

This research aims to fill this gap by offering a comparative analysis focused on unamendable clauses in Southeast Asian countries. Using a multidisciplinary

Colombia: The Tension Between Majoritarian Democracy and Constitutional Democracy. In: BUSTAMANTE, Thomas; FERNANDES, Bernardo Gonçalves (Coord.). *Democratizing Constitutional Law*. vol. 113, Law and Philosophy Library. Cham: Springer International Publishing, 2016. p. 213-229; BERNAL, C. Unconstitutional Constitutional Amendments in the Case Study of Colombia: An Analysis of the Justification and Meaning of the Constitutional Replacement Doctrine. *International Journal of Constitutional Law*. New York, vol. 11, n. 2, p. 339-357, apr. 2013.

¹⁵ ROZNAI, Yaniv. *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers*. First published in paperback Oxford Constitutional Theory. Oxford: Oxford University Press, 2019; See also See also NGGILU, Novendri M; MOHA, Mohamad Rivaldi; SINAGA, Muhammad Ridho; RACHMANIAR, Adelia. Judicial Review of Constitutional Amendments: Comparison Between India, Germany, Colombia, and the Relevancy with Indonesia, *Lex Scientia Law Review*, Semarang, v. 8, n. 1, p. 261-298, sep. 2024.

¹⁶ ROZNAI, Yaniv. Constitutional Amendability and Unamendability in South-East Asia. *Journal of Comparative Law*, [s.l.], Vol. 14, n. 1, p. 188-204. 2019; See also TEW, Yvonne. Malaysia. In: LAW, David S.; LAU, Holming; SCHWARTZ, Alex (coord.). *The Oxford Handbook of Constitutional Law in Asia*. New York: Oxford University Press, 2024; See also ALBERT, Richard. The Power of Judicial Nullification in Asia and the World. In: ABEYRATNE, Rehan; SON, Bui-ngoc (Coord.). *The Law and Politics of Unconstitutional Constitutional Amendments in Asia*, Comparative Constitutional Change London New York: Routledge, Taylor & Francis Group, 2022.

approach, the study examines not only the legal aspects but also the political and social dynamics that influence the implementation of unamendable clauses. In a global context, this contribution provides valuable insights into how the principle of eternity can adapt to the unique conditions of developing Southeast Asian countries.

This research offers novelty in two key aspects: a comparative approach focused on the Southeast Asian region and a multidimensional exploration that encompasses law, politics, and society. Unlike previous studies that primarily examine unamendable clauses outside the region, this research specifically addresses Southeast Asian countries, which have unique political dynamics and legal systems. Additionally, the study provides a framework for analyzing the presence or absence of unamendable clauses in the context of modern challenges, such as political instability, demands for democratic reform, and legal globalization.

An innovative aspect of this research lies in its analysis of the practical implications of unamendable clauses. This study goes beyond evaluating the effectiveness of unamendable clauses in protecting fundamental values; it also explores how these provisions can create a complex dynamic between ensuring constitutional stability and accommodating the need for legal flexibility. On one hand, unamendable clauses serve as crucial safeguards for preserving key constitutional principles, such as the rule of law and human rights. On the other hand, they may become a source of tension when legal reform is necessary to address emerging political, social, or economic challenges. By investigating this tension, the research aims to provide a nuanced understanding of unamendable clauses, presenting them not merely as obstacles to political change, but as essential legal instruments that can evolve in response to shifting societal needs. Ultimately, the study seeks to offer a compelling academic justification for viewing unamendable clauses as dynamic and adaptive tools in constitutional law, capable of balancing both stability and reform.

Academically, this research holds high relevance in advancing the theory of comparative constitutional law, particularly in developing countries. Practically, it also provides guidance for policymakers to design mechanisms that protect core constitutional values in a manner tailored to the local context. The justification for this research is grounded in the urgent need for political and legal stability in Southeast Asia, as well as the importance of offering new perspectives that can enrich the international literature on unamendable clauses. Therefore, this research is not only locally relevant but also makes a significant contribution to the global discourse in the field of constitutional law.

2 Method

This research employs a statutory, historical, comparative, and multidisciplinary approach.¹⁷ The statutory approach aims to examine the unamendable clauses in the constitutions of several Southeast Asian countries, including Indonesia, the Philippines, Myanmar, and Malaysia. The historical approach seeks to understand the historical contexts that led to the inclusion of unamendable clauses in the constitutions of these Southeast Asian countries. The comparative approach is used to analyze how unamendable clauses are applied across these countries and their respective implementations. Lastly, the multidisciplinary approach explores how legal, political, and social factors influence the existence and application of unamendable clauses in the constitutions of Southeast Asian countries. The research presents the various legal materials gathered and processed in a prescriptive manner.¹⁸

3 The theoretical framework for unamendable clauses

In various cases involving the review of constitutional amendments, the discussion is often linked to specific doctrines, particularly the doctrine of unamendability. The origins of this doctrine can be traced back to the history of modern constitutions in France. In 1789, the Declaration of the Rights of Man and of the Citizen inspired the drafting of the Preamble to the French Constitution of 1791, which included provisions considered unamendable, particularly those related to liberty and equality.¹⁹ Throughout the process of constitutional amendments in France, particularly in 1884, the limitation on amendments was explicitly reaffirmed in Article 8, which stated that the republican form of government could not be amended.²⁰

Similarly to France, the provision limiting constitutional amendments emerged as a significant feature in the constitutions of U.S. states, as seen in the

¹⁷ IRWANSYAH. *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel*. Yogyakarta: Mirra Buana Media, 2020.

¹⁸ SYAHREZAH, Nurul Qamar Farah. *Metode Penelitian Hukum Doktrinal Dan Non-Doktrinal*. Makassar: Social Politik Genius, 2020.

¹⁹ ROZNAI, Yaniv. *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers*. First published in paperback Oxford Constitutional Theory. Oxford: Oxford University Press, 2019.

²⁰ ROZNAI, Yaniv. *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers*. First published in paperback Oxford Constitutional Theory. Oxford: Oxford University Press, 2019.

Constitutions of New Jersey²¹ and Delaware.²² This phenomenon was later reflected in the 1808 U.S. Constitution, particularly in Article V, which prohibited the removal of state representatives from the Senate without the approval of the respective state.²³ The principle of constitutional amendment limitations subsequently spread to other countries, such as Mexico,²⁴ Venezuela,²⁵ Ecuador,²⁶ and the Dominican Republic.²⁷

In the 19th century, the phenomenon of amendment limitations was also evident in the Weimar Constitution of 1932. The Constitution explicitly prohibited any amendments concerning the democratic federal structure of the state. Moreover, the events in the Weimar Republic drew the attention of constitutional scholars worldwide, sparking debates over the constitutionality of certain amendments. This controversy began when the Reichstag (Parliament) amended Article 41, which dealt with direct elections, including presidential elections. The amendment was

²¹ The 1776 Constitution of New Jersey required members of the Legislative Council and the House of Assembly to swear an oath not to “repeal or annul” the provisions concerning annual elections and the granting of equal civil rights. ROZNAI, Yaniv. *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers*. First published in paperback Oxford Constitutional Theory. Oxford: Oxford University Press, 2019;

²² The 1776 Constitution of Delaware prohibited amendments to the Declaration of Human Rights, the article establishing the country’s name, the bicameral legislature, the legislative powers, and the ban on the importation of slaves. ROZNAI, Yaniv. *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers*. First published in paperback Oxford Constitutional Theory. Oxford: Oxford University Press, 2019.

²³ According to Fleming, the provision limiting constitutional amendments reflects a political compromise, which contrasts sharply with the French Constitution, which aims to protect the core values that France holds as a nation. See FLEMING, James E. We the Exceptional American People. In: BARBER, Sotirios A.; GEORGE, Robert P. (coord.). *Constitutional Politics*, Princeton: Princeton University Press, 2002. p. 91-115.

²⁴ The 1824 Constitution of Mexico affirmed that the Roman Catholic Apostolic Religion would be the religion of the nation “forever.” This provision reflects an amendment limitation clause due to the use of the term “forever,” which is understood as unchangeable in any amendment procedure. Additionally, the constitution also included restrictions on amendments regarding the freedom and independence of the Mexican nation, freedom of the press, the form of government, and the states. ROZNAI, Yaniv. *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers*. First published in paperback Oxford Constitutional Theory. Oxford: Oxford University Press, 2019.

²⁵ The 1830 Constitution of Venezuela emphasized that Congress could not amend the form of the republic’s government. The 1839 Constitution further reinforced this by stating that the representative government, consolidated in unity, as well as the separation and independence of the legislative, executive, and judicial powers, could not be altered. ROZNAI, Yaniv. *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers*. First published in paperback Oxford Constitutional Theory. Oxford: Oxford University Press, 2019.

²⁶ The 1843 Constitution of Ecuador emphasized the protection of the form of government from amendment actions. Similarly, the 2008 Constitution reinforced this by explicitly prohibiting amendments related to the fundamental structure, nature, and core elements of the state. ROZNAI, Yaniv. *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers*. First published in paperback Oxford Constitutional Theory. Oxford: Oxford University Press, 2019.

²⁷ The 1865 Constitution of the Dominican Republic prohibited changes related to the form of the republic’s government. ROZNAI, Yaniv. *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers*. First published in paperback Oxford Constitutional Theory. Oxford: Oxford University Press, 2019.

designed to allow the parliament to extend the term of President Paul Ludwig Hindenburg through a simple parliamentary vote.

The parliament's action triggered protests, including one from Hitler. In his open letter to the German public, Hitler explained his opposition to the amendment of Article 41, arguing that it violated the fundamental pillars of the state, particularly democracy and direct elections, as outlined in Article 1 of the Weimar Constitution.²⁸ This letter was influenced by Schmitt's views, who criticized scholars like Anschütz and Thoma for failing to acknowledge the existence of limitations on constitutional amendments.²⁹ Schmitt distinguished between a constitution (Verfassung) and constitutional law (Verfassungsgesetz), asserting that a constitution represents a fundamental political decision or the crystallization of society's symbolic principles and values (constitutional identity). This, he argued, is superior to constitutional law, which contains the norms of the constitution but lacks its fundamentals character.³⁰

In his study of 735 constitutions, Yaniv Roznai identified a global trend regarding the inclusion of constitutional amendment limitations. Prior to World War II, only three countries³¹ included such provisions in their constitutions. However, after the war, this number rose sharply, with 206 constitutions across 199 countries³² incorporating amendment limitations. Additionally, 30% of these constitutions safeguard fundamental citizens' rights. This growing trend of unamendable provisions post-WWII³³ reflects the intent of constitutional framers to protect core values and principles. This conviction in preserving these values has led some scholars to refer to such provisions as "eternity clauses".³⁴ Furthermore,

²⁸ WISCHMEYER, Thomas. Unconstitutional Constitutional Amendments. *International Journal of Constitutional Law*. New York, v. 15, n. 4, p. 1242-1247, nov. 2017.

²⁹ WISCHMEYER, Thomas. Unconstitutional Constitutional Amendments. *International Journal of Constitutional Law*. New York, v. 15, n. 4, p. 1242-1247, nov. 2017.

³⁰ VINX, Lars. *The Guardian of the Constitution: Hans Kelsen and Carl Schmitt on the Limits of Constitutional Law*. Cambridge: Cambridge University Press, 2015; WIECZOREK, Tomás. Carl Schmitt, Amigo De Weimar. Notas En Torno a La Verfassungslehre Como Teoría Y Doctrina De La Constitución. *Isonomía - Revista de Teoría y Filosofía Del Derecho*. Ciudad de México, n. 56, spring, p. 29-70, jun. 2022.

³¹ Honduras, Mexico, and Panama. ROZNAI, Yaniv. *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers*. First published in paperback Oxford Constitutional Theory. Oxford: Oxford University Press, 2019.

³² ROZNAI, Yaniv. *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers*. First published in paperback Oxford Constitutional Theory. Oxford: Oxford University Press, 2019.

³³ SATRIO, Abdurrahman. The Existence of the Unamendable Provision of the Unitary State of the Republic of Indonesia: The Role of the Constitutional Court. *Comparative Constitutional and Administrative Law Quarterly*, [s.l.], v. 3, no., p. 418-37. 2017.

³⁴ SUTEU, Silvia. *Eternity Clauses in Democratic Constitutionalism*. Oford: Oxford University Press, 2021; SUTEU, Silvia. SUTEU, Silvia. Eternity Clauses in Post-Conflict and Post-Authoritarian Constitution-Making: Promise and Limits *Global Constitutionalism*. Edinburgh, v. 6, n. 1. p. 63-100, mar. 2017.

in his research on constitutional amendment limitations, Yaniv Roznai categorizes the components of unamendable provisions into five groups, which are:

- 1) The form of the state and the system of government. In this regard, countries such as Indonesia,³⁵ Thailand,³⁶ and Germany³⁷ protect the unchangeable form of their state structure and system of government.
- 2) Political structure. In this context, countries such as Bahrain,³⁸ Kazakhstan,³⁹ and Portugal⁴⁰ protect the unchangeable nature of their bicameral system, regional autonomy, separation of powers, and judicial independence.
- 3) State ideology, is often referred to as constitutional identity. Countries that explicitly prohibit amendments to their state ideology include Ecuador, which protects the “Roman Catholic Apostolic” faith,⁴¹ and Turkey, which safeguards its secular and social state ideology.⁴² Additionally, from the author’s perspective, when considering the context of Indonesia, Pancasila as the state ideology also falls under this category.⁴³
- 4) Fundamental rights. Some countries explicitly declare that citizens’ fundamental rights are unalterable and must be protected and preserved. These rights include human dignity, equality, freedom, press freedom, workers’ rights, and the rights of trade unions. Countries like Germany,

³⁵ EDDYONO, Luthfi Widagdo. The Unamendable Articles of the 1945 Constitution, *Constitutional Review*, Jakarta, v. 2, n. 2, p. 252-269, dec. 2016; SATRIO, Abdurrachman Pemikiran Sri Soemantri Tentang Pembatasan-Pembatasan Dalam Mengubah Undang-Undang Dasar: Kontekstualisasi Denagn Keberadaan Klausul Yang Tak Dapat Diubah Dalam UUD 1945 Pasca Amandemen. In: HARJANTI, Susi Dwi. *Interaksi Konstitusi Dan Politik: Kontekstualisasi Pemikiran Sri Soemantri*. Bandung: PSHKN FH Unpad, 2016. SATRIO, Abdurrachman. The Existence of the Unamendable Provision of the Unitary State of the Republic of Indonesia: The Role of the Constitutional Court. *Comparative Constitutional and Administrative Law Quarterly*, [s.l.], v. 3, no., p. 418-37. 2017.

³⁶ ROZNAI, Yaniv. Constitutional Amendability and Unamendability in South-East Asia. *Journal of Comparative Law*, [s.l.], v. 14, n. 1, p. 188-204. 2019.

³⁷ POLZIN. The Basic-Structure Doctrine and Its German and French Origins; GÖZLER, Kemal. *Judicial Review of Constitutional Amendments: A Comparative Study*. Bursa: Ekin press, 2008.

³⁸ ALBERT, Richard. The Three Varieties of Unamendability. In: ALBERT, Richard (coord.). *Constitutional Amendments*. New York: Oxford University Press, 2019 p. 139-172.

³⁹ SUTEU, Silvia. *Eternity Clauses in Democratic Constitutionalism*. Oxford: Oxford University Press, 2021.

⁴⁰ GARLICKI, Lech; ROZNAI, Yaniv. Introduction: Constitutional Unamendability in Europe. *European Journal of Law Reform*. [s.l.], v. 21, n. 3, p. 217-225, may. 2019.

⁴¹ ROZNAI, Yaniv. Unconstitutional Constitutional Amendments – The Migration and Success of a Constitutional Idea. *The American Journal of Comparative Law*. [s.l.] v. 61, n. 03, p. 657-720, 2013.

⁴² ROZNAI, Yaniv; YOLCU, S. An Unconstitutional Constitutional Amendment – the Turkish Perspective: A Comment on the Turkish Constitutional Court’s Headscarf Decision. *International Journal of Constitutional Law*. New York, v. 10, n. 1 p. 175-207, jan. 2012. See also, OLCAY, Tarik. The Unamendability of Amendable Clauses: The Case of the Turkish Constitution. In: ALBERT, Richard; EMRAH, Bertil (Coord.). *An Unamendable Constitution?*. vol. 68. *Ius Gentium: Comparative Perspectives on Law and Justice*. Cham: Springer International Publishing, 2018, p. 313-343.; OLCAY, The Unamendability of Amendable Clauses.

⁴³ NGGILU, Novendri M; PERWIRA, Indra; ABDURAHMAN, Ali. Constitutionality Review of Indonesian Constitutional Amendments: History and Future, *Russian Law Journal*, [s.l.], v. 11, n. 2, p. 117-125, apr. 2023; EDDYONO, Luthfi Widagdo. Quo Vadis Pancasila Sebagai Norma Konstitusi Yang Tidak Dapat Diubah. *Jurnal Konstitusi*. Jakarta, v. 16, n. 3, p. 585, oct. 2019.

Mexico, and Portugal are examples of nations that specifically protect these fundamental rights from constitutional amendments.⁴⁴

- 5) National integrity, which encompasses aspects such as national unity, territorial integrity, sovereignty, and independence. Countries like Azerbaijan, Cameroon, and Ivory Coast are examples of nations that make these aspects unamendable in their constitutions.⁴⁵

Theoretically, eternity clauses can be analyzed through two main perspectives: the theory of constitutional stability and the theory of constitutional flexibility. The theory of stability argues that a constitution should offer strong protection for fundamental values to prevent them from being undermined by regime changes or short-term political pressures. On the other hand, the theory of flexibility emphasizes the need for adaptability, as a constitution must remain relevant to the changing needs of society. The tension between these two perspectives becomes a key issue when evaluating the effectiveness of eternity clauses, particularly in developing countries with complex political dynamics, such as those in Southeast Asia.

In the context of constitutional law, eternity clauses are often associated with the principles of the rule of law and constitutional supremacy. These clauses serve as a reflection of the effort to uphold the law as the highest guiding principle, one that cannot be overridden by political power or temporary interests.⁴⁶ Moreover, eternity clauses ensure that fundamental human rights and democratic principles remain central to the state's structure. However, this approach also has its limitations, such as the potential rigidity of the law, which may impede necessary reforms to address contemporary challenges.⁴⁷

Understanding this theoretical framework, it is essential to explore how eternity clauses are applied in different contexts, including Southeast Asia. Such an examination provides a deeper insight into how this concept can strike a balance between protecting core constitutional values and allowing for legal flexibility. Ultimately, the role of eternity clauses is not just legal, but also political, as they directly shape the dynamics between political actors, society, and legal institutions.

⁴⁴ ROZNAI, Yaniv. *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers*. First published in paperback Oxford Constitutional Theory. Oxford: Oxford University Press, 2019.

⁴⁵ KLYMENKO, K. Correlation of the Principles of Territorial Integrity of States and Self-Determination of Peoples in International Law. *Uzhhorod National University Herald*. [s.l.], Series: Law, n. 69, p. 444-450, apr 2022.

⁴⁶ SZAKÁLY, Zsuzsa. Constitution-Making and the Permanence of the Constitution. In: CSINK, Lóránt; TRÓCSÁNYI, László (Coord.). *Legal Studies on Central Europe*. Budapest, New York: Central European Academic Publishing, 2022. p. 199-222.

⁴⁷ SEROWANIEC, Maciej; WITKOWSKI, Zbigniew. Eternity Clause – a Realistic or Merely an Illusory Way of Protecting the State's Constitutional Identity?. *Toruńskie Studia Polsko-Włoskie*, [s.l.], p. 73-186, may. 2022.

4 The context of eternity clauses in Southeast Asia

Southeast Asia is a region of remarkable diversity in legal and political systems, ranging from constitutional monarchies to democratic republics.⁴⁸ Within this framework, eternity clauses play distinct roles, shaped by each country's legal frameworks and political traditions.⁴⁹ While some nations explicitly embed eternity clauses in their constitutions, others adopt a more flexible approach, implicitly safeguarding fundamental values.⁵⁰ This diversity underscores how local dynamics shape the application of eternity clauses, balancing the preservation of foundational principles with the unique contexts of each nation.

The Philippines, through its 1987 Constitution, explicitly prohibits amendments to core principles such as democracy, direct elections, and human rights⁵¹ – a reflection of the nation's political history shaped by the traumatic era of Ferdinand Marcos' authoritarian rule.⁵² In contrast, Indonesia explicitly safeguards the unitary state structure of the Republic from amendments, while implicitly considering its constitutional preamble as untouchable.⁵³ These approaches illustrate localized interpretations of eternity clauses, thoughtfully aligned with each country's unique political and social dynamics.

Conversely, countries like Myanmar grapple with substantial challenges to constitutional stability. Eternity clauses often spark debate, particularly when the military attempts to entrench its authority through provisions deemed unamendable.⁵⁴ In Malaysia, while no explicit eternity clauses exist, certain elements – such as Islam's status as the official religion and the special privileges

⁴⁸ BERTRAND, Jacques. *Political Change in Southeast Asia*. Cambridge: Cambridge University Press, 2013.

⁴⁹ HEIN, Michael. Impeding Constitutional Amendments: Why Are Entrenchment Clauses Codified in Contemporary Constitutions?. *Acta Politica*, [s.l.], v. 54, n. 2, p. 196-224, apr. 2019.

⁵⁰ ABEYRATNE, Rehan; SƠN, Ngọc Bui. *The Law and Politics of Unconstitutional Constitutional Amendments in Asia, Comparative Constitutional Change*. New York: Routledge, 2021.

⁵¹ DRESSEL, Björn. *The Judicialization of Politics in Asia*. New York: Routledge, 2012.

⁵² DRESSEL, Björn. *The Judicialization of Politics in Asia*. New York: Routledge, 2012.

⁵³ NGGILU, Novendri M; PERWIRA, Indra; ABDURAHMAN, Ali. Constitutionality Review of Indonesian Constitutional Amendments: History and Future, *Russian Law Journal*, [s.l.], v. 11, n. 2 p. 117-125, apr. 2023; EDDYONO, Luthfi Widagdo. Quo Vadis Pancasila Sebagai Norma Konstitusi Yang Tidak Dapat Diubah. *Jurnal Konstitusi*. Jakarta, vol. 16, n. 3, p. 585, oct. 2019; EDDYONO, Luthfi Widagdo. The Unamendable Articles of the 1945 Constitution, *Constitutional Review*, Jakarta, v. 2, n. 2, p. 252-269, dec. 2016; NGGILU, Novendri M; PERWIRA, Indra; ABDURAHMAN, Ali. Constitutionality Review of Indonesian Constitutional Amendments: History and Future, *Russian Law Journal*, [s.l.], v. 11, n. 2 p. 117-125, apr. 2023.

⁵⁴ DRESSEL, Björn. Thailand's Elusive Quest for a Workable Constitution, 1997-2007. *Contemporary Southeast Asia*. [s.l.], 31, n. 2, p. 296-325. 2009; HARDING, Andrew James; LEELAPATANA, Rawin. Constitution-Making in 21st-Century Thailand: The Continuing Search for a Perfect Constitutional Fit. *The Chinese Journal of Comparative Law*. Hong Kong, v. 7, n. 2, p. 266-84, sep. 2019.

of the Malay majority – are strongly safeguarded by law,⁵⁵ effectively serving as de facto eternity clauses in practice.

The social and political dynamics of the region play a pivotal role in shaping how eternity clauses are applied. In politically unstable nations, such clauses are often criticized as barriers to necessary reforms that could improve governance.⁵⁶ Conversely, they can act as critical safeguards against changes that might undermine core values, such as human rights or democratic principles.⁵⁷ This underscores the importance of evaluating how local contexts influence the implementation and effectiveness of eternity clauses in each country.

Southeast Asia illustrates how the implementation of eternity clauses is closely linked to the region's distinct political and social dynamics. The diversity in legal systems and political cultures creates both challenges and opportunities in understanding how these clauses serve as tools for maintaining constitutional stability. A comparative study of various Southeast Asian countries provides a deeper understanding of the role and effectiveness of eternity clauses in protecting core constitutional principles in the face of ever-changing political environments. Comparative Analysis: Eternity Clause in Several Southeast Asian Countries.

5 Comparative analysis: eternity clause in several Southeast Asian countries

- a. The Philippines: The eternity clause in the 1987 Philippine Constitution explicitly prohibits amendments that alter core principles such as democracy, direct elections, and human rights. This provision was shaped by the country's historical experience under authoritarian rule, positioning it as a critical safeguard for democratic values.⁵⁸ Nonetheless, its implementation faces challenges, particularly when political factions seek to manipulate constitutional mechanisms for their own agendas.

A distinctive feature of the Philippine Constitution is its emphasis on public involvement in constitutional change. The eternity clause is specifically designed to ensure that substantial amendments can only occur with the

⁵⁵ EBRAHIMI, Mansoureh; DRIS, Asmady; Yussof, K; SEONG, Teo Kok; HASSAN, Ahmad M. B. Hj. Religion and Identity Construction: Unity in Diversity. In: OSMAN, Amira; NAGLE, John; TRIPATHI, Sabyasachi (Coord.). *The Urban Ecologies of Divided Cities*. Advances in Science, Technology & Innovation, ed. Cham: Springer Nature Switzerland, 2023. p. 191-194.

⁵⁶ BUTKIEWICZ, James L; YANIKKAYA, Halit. Time-Consistent Politics and Growth in Developing Countries: An Empirical Analysis. *Review of World Economics*. [s.l.], v. 143, n. 2, p. 306-23, jul. 2007.

⁵⁷ LAHAI, John Idriss; STROKIRCH, Karin von; BRASTED, Howard; WARE, Helen. *Governance and Political Adaptation in Fragile States*. Cham: Springer International Publishing, 2019.

⁵⁸ DRESSEL, Björn. *The Judicialization of Politics in Asia*. New York: Routledge, 2012.

approval of a popular majority through a direct referendum. This provision adds an extra layer of protection against potential misuse of power by political elites.⁵⁹ In practice, this mechanism has effectively prevented attempts to alter key constitutional principles, such as proposals to extend the presidential term or abolish direct elections.

However, in practice, political pressure from elite groups sometimes attempts to exploit legal loopholes to influence the amendment process. For instance, there have been several initiatives to amend the constitution to shift the system of government to federalism.⁶⁰ Furthermore, debates surrounding the effectiveness of this clause arise when the functioning of democracy is hindered by corruption or weak law enforcement.

The situation in the Philippines highlights the crucial link between law and society. In this context, the Filipino public demonstrates a high level of participation in maintaining constitutional stability.⁶¹ The public's support for the core principles protected by the constitution illustrates that the success of such provisions relies heavily on the awareness and involvement of the people in the political process. Without this support, even the strongest clauses may falter under political pressure.

- b. Indonesia: In Indonesia, the provision in Article 37(5), which emerged from the constitutional reform process, enshrines the eternity of the unitary state.⁶² Furthermore, the Preamble to the Indonesian Constitution is implicitly regarded as an unamendable provision, as indicated by Article 37(1), which allows for amendments to the articles but explicitly excludes the Preamble.⁶³

⁵⁹ JACKSON, Karl. *Asian Contagion: The Causes and Consequences of a Financial Crisis*. New York: Routledge, 2018.

⁶⁰ MANACSA, Rodelio Cruz; TAN, Alexander C. 'Strong Republic' Sidetracked: Oligarchic Dynamics, Democratization, and Economic Development in the Philippines. *Korea Observer*. Seoul, vol. 43, n. 1. p. 47-87. 2012.; DRESSE, Björn. The Philippines: How Much Real Democracy?. *International Political Science Review*. [s.l.], v. 32, n. 5, p. 529-545, nov. 2011.

⁶¹ JACKSON, Karl. *Asian Contagion: The Causes and Consequences of a Financial Crisis*. New York: Routledge, 2018.

⁶² EDDYONO, Luthfi Widagdo. The Unamendable Articles of the 1945 Constitution, *Constitutional Review*, Jakarta, vol. 2, n. 2, p. 252-269, dec. 2016; NGGILU, Novendri M; PERWIRA, Indra; ABDURAHMAN, Ali. Constitutionality Review of Indonesian Constitutional Amendments: History and Future, *Russian Law Journal*, [s.l.], v. 11, n. 2 p. 117-125, apr. 2023.

⁶³ NGGILU, Novendri M; MOHA, Mohamad Rivaldi; SINAGA, Muhammad Ridho; RACHMANIAR, Adelia. Judicial Review of Constitutional Amendments: Comparison Between India, Germany, Colombia, and the Relevancy with Indonesia, *Lex Scientia Law Review*, Semarang, v. 8, n. 1, p. 261-298, sep. 2024; DEWI, Nurul Maulinawaty Nadya. Perlindungan Terhadap Identitas Konstitusi Indonesia. *Jurnal Poros Hukum Padjadjaran*. Bandung, v. 2, n. 1, p. 21-37, nov. 2020. SATRIO, Abdurrachman. Restoring Indonesia's (Un) Constitutional Constitution: Soepomo's Authoritarian Constitution, *German Law Journal*. Frankfurt, v. 24, n. 2, p. 402-416, mar. 2023; SATRIO, Abdurrachman. The Existence of the Unamendable Provision of the Unitary State of the Republic of Indonesia: The Role of the Constitutional Court. *Comparative Constitutional and Administrative Law Quarterly*, [s.l.], v. 3, no., p. 418-37. 2017.

The Preamble is considered unalterable because it encapsulates three fundamental aspects: First, the Proclamation of Indonesian Independence, which affirms the nation's status as an independent state, emphasizes the principle that colonialism constitutes a violation of human dignity and justice. This declaration is deeply rooted in Indonesia's painful historical experience under colonial rule, which spurred the national struggle for independence. The independence achieved is regarded as a collective aspiration of all Indonesian people.

Second, the Vision of an Independent Indonesia. Reflecting on the past, the nation's founders envisioned that Indonesia's independence should pave the way for a brighter future. Therefore, the aspirations of independence were articulated in the national objectives, which include protecting all Indonesians and the entirety of the Indonesian archipelago, fostering the intellectual development of the nation, and contributing to world order. Third, Pancasila as the philosophical foundation (*philosophische grondslag*) reflects the core values of Independent Indonesia. These values were derived not only from the painful history of colonialism but also from the rich heritage of the archipelago's past kingdoms.⁶⁴

The constitutional reform between 1999 and 2002 highlighted the political commitment of the People's Consultative Assembly, which agreed not to amend the preamble, based on the consideration that it contains Pancasila as the nation's identity.⁶⁵ This decision reflects a deep historical awareness, recognizing that the values of Pancasila – such as Belief in One God; Unity of Indonesia; Just and Civilized Humanity; Democracy guided by wisdom in deliberation and representation; and Social Justice for all Indonesians – are core principles that have been preserved through the constitution from the moment of Indonesia's independence up to the present. These values have been consistently upheld across several constitutional documents: the 1945 Constitution, the 1949 Constitution of the Republic of the United States of Indonesia, the 1950 Provisional Constitution, and the 1945 Constitution of the Republic of Indonesia.

However, these protected provisions are not without their challenges. In some cases, political pressures from certain groups can threaten core values, especially when interests attempt to alter the state structure

⁶⁴ NGGILU, Novendri M. *Politik Hukum Pengujian Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Secara Formal*. Bandung, 2024. 63 p. Thesis (Doctorate) – Doctorate in Law Program, Universitas Padjajaran.

⁶⁵ ASSHIDDIQIE, Jimly. *Pancasila: Identitas Konstitusi Berbangsa Dan Bernegara*. Jakarta: Rajawali Pers, 2022 SURAJIYO. *Tinjauan Epistemologi Terhadap Pancasila Sebagai Dasar Negara Republik Indonesia. Ikra-ITH Humaniora: Jurnal Sosial Dan Humaniora*. Jakarta, v. 5, n. 3 p. 54-62. 2021.

or undermine democratic systems. For example, discussions on the national implementation of Islamic law or the federalism debate often raise questions about whether these fundamental values should be more strongly safeguarded. Moreover, public perception of constitutional stability is a crucial factor. On one hand, legal flexibility allows for necessary reforms to adapt to changing times. On the other hand, this flexibility can be exploited to push political agendas that conflict with democratic principles. As such, while core values are procedurally protected, there remains potential for conflict when political interests clash with the principles of eternity.

Indonesia's experience provides a unique perspective on protecting constitutional values. The balance between flexibility and procedural safeguards offers valuable lessons on how fundamental values can be preserved without sacrificing the need for reform. However, to strengthen legal stability in the future, it is essential to ensure these protections are maintained amid evolving political landscapes.

- c. Myanmar: The 2008 Constitution of Myanmar was crafted to grant substantial power to the military within the country's political structure.⁶⁶ One of the key mechanisms is the inclusion of unamendable provisions that safeguard fundamental issues, such as national sovereignty, the unitary state, and the military's role in politics.⁶⁷ These provisions, outlined in Article 436, require any constitutional amendment to secure approval from more than 75% of parliamentary members, followed by a national referendum.⁶⁸ This effectively gives the military veto power over any proposed constitutional reforms.⁶⁹

The unamendable provisions in Myanmar's constitution carry substantial legal consequences. Firstly, the constitution's rigidity makes it challenging for the country to adapt to social and political changes. For instance, reforms aimed at granting ethnic groups greater autonomy are blocked by the requirement of military approval. Secondly, the military's constitutionally guaranteed dominance undermines the principle of civilian supremacy in democratic

⁶⁶ CROUCH, Melissa *The Constitution of Myanmar: A Contextual Analysis*, Constitutional Systems of the World. Oxford, New York: Hart, 2019.; KYAW, Ye Phone. Collective Democratic Control of the Armed Forces: A Theoretical Understanding of the Current Structure of Myanmar Civil-Military Relations. *Journal of Political & Military Sociology*. Florida, v. 47, n. 1, p. 1-36, apr. 2021.

⁶⁷ CROUCH, Melissa. Myanmar. In: LAW, David S.; LAU, Holning; SCHWARTZ, Alex (coord.). *The Oxford Handbook of Constitutional Law in Asia*. New York: Oxford University Press, 2024.

⁶⁸ ROZNAI, Yaniv. Unamendability and the Genetic Code of the Constitution. *NYU School of Law, Public Law Research Paper*. New York, v. 27 n.2 p. 775-825, feb. 2025

⁶⁹ NAJIB, Miftah Awaludin; MAR'YAH, Chusnul. Konstitusi Myanmar Tahun 2008: Pembagian Kekuasaan Antara Sipil-Militer Pada Masa Pemerintahan Sipil Usdp (2011-2016) & Nld (2016-2021) Di Myanmar. *Jurnal Syntax Admiration*. Cirebon, v. 5, n. 7, p. 2681-2698, jul. 2024.

governance. In terms of international law, this situation stands out as an anomaly, as many modern democracies avoid overly rigid clauses to ensure constitutional flexibility in the face of changing political landscapes.⁷⁰

On the other hand, the existence of such provisions also sparks theoretical debates in constitutional law. Unamendable clauses are often seen as a way to preserve the fundamental stability of the state. However, in Myanmar's case, this clause primarily serves to maintain the dominance of certain institutions.⁷¹ This raises both ethical and legal questions about the legitimacy of a constitution that functions more as a tool for consolidating power than as a foundation for justice and inclusivity.

The unamendable provision in Myanmar's constitution presents a major challenge to the country's ethnic diversity. With over 135 ethnic groups, including Karen, Kachin, Shan, and Rohingya, each having distinct cultural and political identities, the rigid insistence on a unitary state has led to social alienation and the marginalization of certain groups. These ethnic communities see the constitutional rigidity as a significant obstacle to their pursuit of autonomy and recognition of their rights.⁷²

In a broader social context, religion has also been used as a political tool to reinforce the unamendable provisions in Myanmar's constitution. The majority of the population practices Theravada Buddhism, and the military has frequently leveraged religious narratives to legitimize its power and policies. The unamendable clauses are often linked to sacred religious values, making them difficult to question or challenge. This dynamic has contributed to a social hierarchy that marginalizes both ethnic and religious minority groups.

- d. Malaysia: In Malaysia, certain elements, such as Islam as the official religion and the special privileges of the Malay community, are protected by law, even though there is no explicit eternity clause.⁷³ These provisions represent a balance between preserving core values and the need to maintain social harmony in a diverse, multiracial, and multicultural society. The legal protections surrounding Islam and Malay privileges are seen as crucial for

⁷⁰ CROUCH, Melissa. Myanmar. In: LAW, David S.; LAU, Holning; SCHWARTZ, Alex (coord.). *The Oxford Handbook of Constitutional Law in Asia*. New York: Oxford University Press, 2024.

⁷¹ BERCHENKO, Hryhori. General Characteristics of the Unamendable Norms of the Constitution. *Philosophy of Law and General Theory of Law*. [s.l.], n. 2, p. 78-92, jan. 2023.

⁷² WALTON, Matthew J.; THEIN, Aye. Ethnic Politics. In: SIMPSON, Adam; FARRELLY, Nicholas (coord.). *Myanmar*. 2nd ed. London: Routledge, 2023. p. 31-45.

⁷³ TEW, Yvonne. Malaysia's Invisible Constitution. In: DIXON, Rosalind; STONE, Adrienne (Coord.). *The Invisible Constitution in Comparative Perspective*. Cambridge: Cambridge University Press, 2018. p. 376-400; LEE, Hoong Phun; TEW, Yvonne. In: The Law and Politics of Unconstitutional Constitutional Amendments in Malaysia; ABEYRATNE, Rehan; SON, Ngo (Coord.). *The Law and Politics of Unconstitutional Constitutional Amendments in Asia*. New York: Routledge, 2021. p. 239.

upholding the social contract and fostering national unity. However, they also raise complex issues regarding inclusivity and the equal treatment of non-Malay communities.

Malaysia, while not having an explicit eternity clause, ensures the protection of core elements such as Islam as the official religion and the special privileges of the Malay ethnic group through constitutional provisions that are difficult to amend. These provisions are enshrined in Article 159 of the Federal Constitution, which sets out strict procedures for amendments, including the consent of the Malay rulers.⁷⁴ This system strikes a balance between maintaining legal stability and addressing the social sensitivities of the country's multiethnic society, preserving key national values while navigating its diverse demographic landscape.

The provisions protecting the special privileges of the Malay ethnic group and the status of Islam are frequently debated in Malaysia. For the Malay majority, these protections are seen as a vital part of the national identity that should remain intact.⁷⁵ However, minority non-Malay groups often view these provisions as obstacles to achieving equality. This ongoing debate reflects the challenge of maintaining social stability in a society that is both ethnically and religiously diverse, highlighting the delicate balance between preserving historical and cultural values and addressing calls for greater equality among all groups.

From a legal standpoint, these provisions offer stability, but also risk creating rigidity. For example, the protection of these core elements has occasionally been used by political figures to suppress discussions on reforms that could challenge the status quo. However, the involvement of the Malay rulers in the amendment process serves as a safeguard, ensuring that major changes are not made unilaterally by the legislature.⁷⁶

Politically, these provisions often serve as tools for the political elite to preserve their power. Dominant parties use the issues of Malay privileges and the status of Islam to garner support, solidifying their influence among the Malay majority. However, this strategy has also sparked political fragmentation, especially among the more progressive younger generation.⁷⁷

⁷⁴ TEW, Yvonne. Malaysia's Invisible Constitution. In: DIXON, Rosalind; STONE, Adrienne (Coord.). *The Invisible Constitution in Comparative Perspective*. Cambridge: Cambridge University Press, 2018. p. 376-400.

⁷⁵ OLIVIER, Bob. Some Background to Malaysia. In: OLIVIER, Bob (coord.). *Islamic Revivalism and Politics in Malaysia, Critical Studies of the Asia-Pacific*. Singapore: Springer Singapore, 2020. p. 9-28.

⁷⁶ OSTWALD, Kai. Regime Resilience in Malaysia and Singapore Revisited: Ideologically-Bounded Democracies?. In: OSTWALD, Kai. *Oxford Research Encyclopedia of Politics*. Oxford: Oxford University Press, 2024.

⁷⁷ CASE, William. Political Elites in Southeast Asia. In: BEST, Heinrich; HIGLEY, John (coord.). *The Palgrave Handbook of Political Elites*. London: Palgrave Macmillan UK, 2018. p. 225-40.

Malaysia's experience shows that clauses of eternity, whether explicit or implicit, must be designed to maintain a balance between stability and inclusivity. While these provisions have safeguarded key values, it is essential to continually assess their relevance in the modern era. The lessons from Malaysia highlight the need for inclusive social and political dialogue to ensure that protecting core values does not impede societal progress.

Each of these case studies provides a detailed perspective on how eternity clauses are implemented in different contexts across Southeast Asia. This analysis reveals that the effectiveness of such clauses depends not only on their legal framework but also on the political and social dynamics in each country.

6 The legal and political implications of the eternity clauses in Southeast Asian countries

Eternity clauses play a significant role in fostering legal and political stability, particularly in countries with a history of political instability like several in Southeast Asia. Legally, eternity clauses act as safeguards, preventing changes that could undermine fundamental constitutional values like democracy, human rights, and the law supremacy.⁷⁸ For example, in the Philippines, the eternity clause in the 1987 Constitution was designed to protect democratic principles and human rights, ensuring that authoritarian rule cannot be reinstated. However, it is important to acknowledge that the presence of such clauses does not automatically ensure their effectiveness in practice. Political pressures, such as those exerted by elite or military groups, can threaten the integrity of these provisions.

Eternity clauses play a crucial role in establishing legal and political stability, particularly in countries with a long history of political instability, such as several in Southeast Asia. Legally, these clauses create barriers to changes that could undermine core constitutional values like democracy, human rights, and the rule of law. For example, in the Philippines, the eternity clause in the 1987 Constitution serves to prevent the return of authoritarian rule by protecting democratic principles and human rights. However, it is important to recognize that the existence of an eternity clause does not always guarantee its effectiveness in practice. Political factors, such as pressure from elite or military actors, can threaten the integrity of this provision.

⁷⁸ ROZNAI, Yaniv. *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers*. First published in paperback Oxford Constitutional Theory. Oxford: Oxford University Press, 2019.

In the political context, eternity clauses often serve as a crucial tool to protect foundational values from the threat of politicization. However, these clauses can also lead to conflicts when the need for reform is perceived as being in opposition to the principles of eternity they enshrine.⁷⁹ For example, in Myanmar, the eternity clause is primarily used to preserve the dominance of certain institutions, particularly the military.⁸⁰ This highlights that the success of an eternity clause depends not only on its legal design but also on the political commitment and the capacity of state institutions to enforce it impartially.

Socially, eternity clauses can strengthen public trust in the stability of the legal system. In multi-ethnic countries like Malaysia, provisions that indirectly protect core values – such as the special privileges for Malays and the status of Islam as the official religion – have provided legal certainty for the majority group, while also sparking debates over fairness for minority groups.⁸¹ This illustrates that eternity clauses, whether explicit or implicit, have a significant impact on social cohesion and intergroup relations. However, the legal rigidity that results from these clauses can also impede necessary reforms. Therefore, it is crucial to find a balance between safeguarding core values and maintaining legal flexibility to address contemporary challenges.

The implications of eternity clauses reflect the challenges and opportunities faced by Southeast Asian countries. As a region with unique political dynamics, Southeast Asia offers rich case studies on how eternity clauses can function within diverse legal contexts. On one hand, these clauses can serve as a safeguard for legal stability and democracy. On the other hand, they can trigger tensions when the core values enshrined in these clauses are seen as conflicting with the aspirations of society for change. Therefore, it is crucial to continuously assess the effectiveness and relevance of eternity clauses in the modern context.

⁷⁹ SEROWANIEC, Maciej; WITKOWSKI, Zbigniew. Eternity Clause – a Realistic or Merely an Illusory Way of Protecting the State's Constitutional Identity?. *Toruńskie Studia Polsko-Włoskie*, [s.l.], p. 73-186, may. 2022.

⁸⁰ BERCHENKO, Hryhorii. General Characteristics of the Unamendable Norms of the Constitution. *Philosophy of Law and General Theory of Law*, [s.l.], n. 2, p. 78-92, jan. 2023.

⁸¹ TEW, Yvonne. Malaysia. In: LAW, David S.; LAU, Holning; SCHWARTZ, Alex (coord.). *The Oxford Handbook of Constitutional Law in Asia*. New York: Oxford University Press, 2024; T TEW, Yvonne. Malaysia's Invisible Constitution. In: DIXON, Rosalind; STONE, Adrienne (Coord.). *The Invisible Constitution in Comparative Perspective*. Cambridge: Cambridge University Press, 2018. p. 376-400.

7 Eternity clauses: lessons for Southeast Asia countries

Eternity clauses in Southeast Asia offer valuable lessons on how legal and political norms can be adapted to safeguard stability without compromising the flexibility needed for progress. In a global context, Southeast Asian countries demonstrate that the implementation of eternity clauses does not always require explicit provisions within a constitution. Instead, core values can be protected through procedural or interpretative approaches, as seen in Malaysia.⁸² This highlights that the mechanisms used to protect fundamental principles can be tailored to fit local contexts, rather than adhering to a one-size-fits-all model.

The main takeaway from these countries is the crucial role of the political and social context in determining the effectiveness of eternity clauses. In countries like Myanmar, where political stability remains fragile, these clauses often lose their significance when confronted with pressure from dominant political actors. On the other hand, in countries like the Philippines, strong eternity clauses have provided significant protection for democratic values, even though their implementation still faces challenges. Therefore, the key lesson is that eternity clauses must be supported by robust, independent institutions to ensure their effective enforcement.

Moreover, the experiences of Southeast Asian countries demonstrate that eternity clauses can serve as tools to strike a balance between traditional values and modern needs. In Malaysia, the protection of traditional elements like the special rights of the Malay community has helped maintain social stability, although it must continue to be reassessed to ensure equality in a multi-ethnic society. Additionally, the lesson from Indonesia illustrates how eternity clauses have been used to protect both ideological values and the structure of the state. In Indonesia's history, these clauses have been tested through colonial politics that sought to create regional disintegration, highlighting their role in safeguarding national unity.⁸³

Looking ahead, Southeast Asia could consider a few key recommendations to improve the effectiveness of eternity clauses. First, strengthening legal institutions that can independently uphold these clauses, free from political pressure, is essential. Second, mechanisms should be developed to allow for adjustments to eternal values without compromising legal stability. Third, fostering a regional

⁸² TEW, Yvonne. Malaysia's Invisible Constitution. In: DIXON, Rosalind; STONE, Adrienne (Coord.). *The Invisible Constitution in Comparative Perspective*. Cambridge: Cambridge University Press, 2018. p. 376-400; LEE, Hoong Phun. The Law and Politics of Unconstitutional Constitutional Amendments in Malaysia.

⁸³ EDDYONO, Luthfi Widagdo. Quo Vadis Pancasila Sebagai Norma Konstitusi Yang Tidak Dapat Diubah. *Jurnal Konstitusi*. Jakarta, v. 16, n. 3, p. 585, oct. 2019.

dialogue to share experiences on how eternity clauses can contribute to legal and social stability in this dynamic region is crucial.

The future of eternity clauses in Southeast Asia will depend on how the region balances stability with reform. As global calls for legal and political reforms grow, these clauses should continue to be reassessed to ensure their relevance. With the unique challenges the region faces in terms of political stability and democracy, Southeast Asia could serve as a key testing ground for how eternity clauses can work effectively in diverse contexts.

8 Conclusion

Eternity clauses in constitutions are essential tools for protecting fundamental values such as democracy, human rights, and legal stability. In Southeast Asia, their implementation reflects the region's diverse legal and political systems. Countries like the Philippines and Indonesia explicitly enshrine eternity clauses to safeguard core values, while Malaysia relies on implicit protections through stringent amendment procedures. In contrast, Myanmar faces significant challenges, as its eternity clauses are often used to preserve the interests of political elites, particularly the military. This study shows that the success of eternity clauses depends not only on their legal design but also on the strength of institutions, political will, and public engagement.

This research offers a fresh perspective by examining the implementation of eternity clauses in Southeast Asia through a comparative approach across four key countries. The analysis highlights the need for a balance between protecting core values and allowing for legal reforms. By considering the legal, political, and social dimensions, the study underscores that legal stability requires not just formal protections through eternity clauses, but also strong institutions and active societal participation. These findings provide important insights for shaping constitutional policies in Southeast Asia and contribute to global constitutional law literature.

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