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Leiden  
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## **The essence of the 1999-2002 constitutional reform in Indonesia: remaking the Negara Hukum. A socio-legal study**

Tobing, J.

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The Essence of the 1999-2002 Constitutional Reform in Indonesia

*Remaking the Negara Hukum*

A Socio-Legal Study



The Essence of the 1999-2002  
Constitutional Reform in Indonesia

*Remaking the Negara Hukum*

A Socio-Legal Study

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*door*

Jakob Tobing

geboren te Kotabaru Reteh, Riau, Indonesië

in 1943

Promotoren:            prof. dr. J.M. Otto  
                              prof. dr. A.W. Bedner

Promotiecommissie:  prof. dr. H. Schulte Nordholt  
                              prof. dr. W.J.M. Voermans  
                              prof. dr. T. Ginsburg (University of Chicago, V.S.)  
                              prof. dr. S. D. Harijanti (Universitas Padjadjaran,  
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# Acknowledgements

On 10 August 2002, the plenary meeting of the 2002 Annual Session of People's Consultative Assembly of the Republic of Indonesia ratified the final changes to the 1945 Constitution, marking the completion of a four years long reform process.

Many people have commented on these changes and the amendment process, but not always adequately. That is why – as one of the actors in this process – I considered it necessary to write this PhD-thesis; as a form of accountability to history. It shows how my colleagues and I, without draft changes prepared in advance and guided by our nation's fundamental values discussed the amendment proposals for four years, struggling for a democratic constitution based on the rule of law.

It explains the difficulties we faced because concepts such as rule of law and constitutionalism were comprehended differently by the different actors involved. It also addresses how we managed an open process that interacted with challenges as the anger of people in some areas who felt unfairly treated by the central government, the desire to change the unitary state into a federal one, the desire of certain Muslims to introduce Islamic law, and so on. The process also interacted with those who did not agree to change the Constitution.

Coming from different backgrounds and positions, we went through a winding and tripping, time-consuming and tiring process, but with respect for each other and always trying to reach a consensus. Thus the deliberation process created a sense of ownership and shared responsibility of each faction for the success of constitutional reform. Indeed, every change made in the 1945 Constitution, except for one, about the appointed members of the People's Consultative Assembly, in the end were achieved through consensus.

And I wanted to write about this process not in the form of a practical, political book, but in the form of a doctoral dissertation. During the colonial period Leiden was the center of activity for Indonesian students in the Netherlands who were fighting for Indonesian independence. Influential figures in the history of legal development of the Netherlands Indies such as Cornelis van Vollenhoven and Snouck Hurgronje were professors at Leiden University. Besides that, Leiden University hosts a rich library of the Dutch East Indies and of modern Indonesia.

Thus, I decided to apply to Leiden University and I was fortunate to be accepted as a doctoral student at the Van Vollenhoven Institute for Law, Governance and Society (VVI) with Prof. Dr. Jan Michiel Otto, professor of Law and Governance in Developing Countries and director of the VVI as my supervisor.

His extensive knowledge and deep understanding of development issues of law and governance in developing countries with a broad diversity of norms and traditions, and particularly with a predominantly Muslim population, helped improve my perspectives. Moreover, his carefulness, patience and friendship were very supportive and encouraged me to complete my thesis through a long and often difficult period.

I am also very grateful to Prof. Dr. Adriaan Bedner, professor of Law and Society in Indonesia, and currently the chair of the VVI, who co-supervised my thesis, and who enriched my views with constructive comments.

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Thus, for several years, I was involved in many academic activities at the Van Vollenhoven Institute. Doing library research, writing the draft of my thesis, obtaining assistance from my supervisors, engaging in seminars and discussions, and so on. This even included off-campus activities, such as cycling together in a park in North Amsterdam.

Finally, but not least, I want to thank my beloved wife Adriana, my tough and reliable children, in-laws and grandchildren: Tumpal, my beloved son who passed away on 4 April 2021, Putri, Ruhut, Dewi, Sarah, Diky, Erika, Anezka, Prudence, Claudio, Bianca, Kiara and Kaleb. Your prayers, attention, understanding, support and patience have enabled me to realize this dream. Therefore, I dedicate this dissertation to my wife Adriana, to my children, my in-laws and my grandchildren and in memory of my beloved son Tumpal.

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## Abbreviations

ABRI	<i>Angkatan Bersenjata Republik Indonesia</i> – Armed Forces of the Republic of Indonesia
AIPI	<i>Akademi Ilmu Pengetahuan Indonesia</i> – Indonesian Academy of Sciences
APII	<i>Asosiasi Ilmu Politik Indonesia</i> – Association of Political Science of Indonesia
ASPRI	<i>Asisten Pribadi</i> – Personal Assistant
B.F.O.	<i>Bijeenkomst voor Federaal Overleg</i> – Federal Consultation Meeting
B.J. Habibie	Baharuddin Jusuf Habibie
Balitbang PDI-Mega	<i>Badan Penelitian dan Pengembangan Partai Demokrasi Indonesia – Mega</i> – Research and Development Body of the Indonesia Democratic Party – Megawati Soekarnoputri
BBC	British Broadcasting Corporation
BIG	<i>Badan Informasi Geospasial</i> – Geospatial Information Agency
BKR	<i>Badan Keamanan Rakyat</i> – People’s Security Agency
BP-7	<i>Badan Pembina Pendidikan Pelaksanaan Pedoman Penghayatan dan Pengamalan Pancasila</i> – Board of Trustees of Education of the Implementation of Guidelines for the Comprehension and Application of Pancasila
BPH	<i>Bendoro Pangeran Haryo</i> – a high ranking noble of Javanese society
BPK	<i>Badan Pemeriksa Keuangan</i> – Audit Board
BPKPK	<i>Badan Penolong Keluarga Korban Perang</i> – Agency for Helping the Family of the War Victims
BP-MPR	<i>Badan Pekerja Majelis Permusyawaratan Rakyat</i> – Working Body of the People’s Consultative Assembly
BPS	<i>Biro Pusat Statistik</i> – Central Statistic Bureau
BPUPK	<i>Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan</i> – Investigating Commission for Preparatory Works for Independence
BPUPKI	<i>Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan Indonesia</i> – Investigating Commission for Preparatory Works for Independence of Indonesia
CBE	Commander of British Empire
CETRO	Center for Electoral Reform
CIDES	Center for Information and Development Studies
CINAPS	Centre for Indonesian National Policy Studies
CSIS	Centre for Strategic and International Studies
DDI	<i>Dewan Dakwah Islamiyah</i> – Council of Islamic Mission
DDII	<i>Dewan Dakwah Islamiyah Indonesia</i> – Indonesian Islamic Missionary Council

DI	<i>Darul Islam – House of Islam/The Islamic State</i>
DPA	<i>Dewan Pertimbangan Agung – Supreme Advisory Council</i>
DPAS	<i>Dewan Pertimbangan Agung Sementara – Provisional Supreme Advisory Council</i>
DPD	<i>Dewan Perwakilan Daerah – Regional Representatives Council or Council for Representation of the Regions.</i>
DPR	<i>Dewan Perwakilan Rakyat – People’s Representatives Council</i>
DPRD I	<i>Dewan Perwakilan Rakyat Daerah Tingkat I – Provincial People’s Representatives Council</i>
DPRD II	<i>Dewan Perwakilan Rakyat Daerah Tingkat II – District/City People’s Representative Council</i>
DPR-GR	<i>Dewan Perwakilan Rakyat Gotong Royong – Collaborative People’s Representatives Council</i>
DUD	<i>Dewan Utusan Daerah – Council of Regional Delegations</i>
ELS	<i>Europese Lagere School – European Elementary School</i>
ELSAM	<i>Lembaga Studi dan Advokasi Masyarakat – Institute for Research and Policy Advocacy</i>
F-ABRI	<i>Fraksi Angkatan Bersenjata Republik Indonesia – Faction of the Armed Forces of the Republic of Indonesia.</i>
FKIK	<i>Forum Kajian Ilmiah Konstitusi – Forum for Scientific Study of the Constitution</i>
F-KKI	<i>Fraksi Kesatuan Kebangsaan Indonesia – Faction of Unity of Indonesian Nationhood</i>
F-KP	<i>Fraksi Karya Pembangunan – Faction of the Functional Group</i>
FKPPI	<i>Forum Komunikasi Putra Putri Purnawirawan dan Putra Putri TNI Polri – Communication Forum of Sons and Daughters of Retired Military and Police and Sons and Daughters of Military and Police</i>
FMI	<i>Front Mahasiswa Islam – Muslim Student Front</i>
FOKO	<i>Forum Komunikasi Purnawirawan TNI dan Polri – Communication Forum of the Retired Indonesian National Armed Forces and Indonesian National Police</i>
F-PBB	<i>Fraksi Partai Bulan Bintang – Faction of Crescent Moon and Stars Party</i>
F-PDI	<i>Fraksi Partai Demokrasi Indonesia – Faction of Indonesian Democratic Party</i>
F-PDIP	<i>Fraksi Partai Demokrasi Indonesia Perjuangan – Faction of Indonesian Democratic Party of Struggle</i>
F-PDKB	<i>Fraksi Partai Demokrasi Kasih Bangsa – Faction of Democracy and Love the Nation Party</i>
F-PDU	<i>Fraksi Partai Daulatul Ummah – Faction of People’s Sovereignty Party</i>
F-PG	<i>Fraksi Partai GOLKAR – Faction of GOLKAR Party</i>
FPI	<i>Front Pembela Islam – Islamic Defender Front</i>
F-PPP	<i>Fraksi Partai Persatuan Pembangunan – Faction of United Development Party</i>
F-REFORMASI	<i>Fraksi Reformasi – Faction of Reformation, a faction in the MPR which was a combination of members of the National Mandate Party and the Welfare Party</i>

F-TNI/Polri	<i>Fraksi Tentara Nasional Indonesia/ Kepolisian Negara Republik Indonesia</i> – Faction of Indonesian National Military Forces and Indonesian Police
F-UD	<i>Fraksi Utusan Daerah</i> – Faction of Regional Delegations
F-UG	<i>Fraksi Utusan Golongan</i> – Faction of Delegations of Functional Groups
GAM	<i>Gerakan Aceh Merdeka</i> – Free Aceh Movement
GAMA	<i>Universitas Gajah Mada</i> – University of Gajah Mada
GBHN	<i>Garis-Garis Besar Haluan Negara</i> – State Policies in Outlines
GERINDO	<i>Gerakan Rakyat Indonesia</i> – Indonesian People’s Movement
GMNI	<i>Gerakan Mahasiswa Nasional Indonesia</i> – Indonesian National Student Movement
GOLKAR	<i>Golongan Karya</i> – Functional Groups
GPII	<i>Gerakan Pemuda Islam Indonesia</i> – Indonesia Muslim Youth Movement
HMI	<i>Himpunan Mahasiswa Islam</i> – Muslim Students Association
IAIN	<i>Institut Agama Islam Negeri</i> – State Institute for Islamic Studies
ICMI	<i>Ikatan Cendekiawan Muslim Indonesia</i> – Indonesian Association of Muslim Intellectuals
IFES	International Foundation for Electorate System
IKADIN	<i>Ikatan Advokat Indonesia</i> – Union of Indonesian Advocates
IPB	<i>Institut Pertanian Bogor</i> – Bogor Agricultural University
IPKI	<i>Ikatan Pendukung Kemerdekaan Indonesia</i> – Association of Supporters of Indonesian Independence
IPPNU	<i>Ikatan Putera-Puteri NU</i> – Association of Son and Daughter of NU
IRI	International Republican Institute – a USA based NGO
ISEI	<i>Ikatan Sarjana Ekonomi Indonesia</i> – Indonesian Association of Economist
ISPI	<i>Ikatan Sarjana Pendidikan Indonesia</i> – Indonesian Association of Educationist
ITB	<i>Institut Teknologi Bandung</i> – Bandung Institute of Technology
JABODETABEK	<i>Jakarta – Bogor – Depok – Tangerang – Bekasi</i> – Areas of the Greater Jakarta
K.H.	<i>Kiai Haji</i> – the venerated haj
KAMI	<i>Kesatuan Aksi Mahasiswa Indonesia</i> – Indonesian Student Action Union
KAPI	<i>Kesatuan Aksi Pelajar Indonesia</i> – Indonesian High School Student Action Union
KAPPI	<i>Kesatuan Aksi Pemuda Pelajar Indonesia</i> – Indonesian Student and Youth Action Union
KIPP	<i>Komite Independen Pemantau Pemilu</i> – Independent Committee of Election Observers
KISDI	<i>Komite Indonesia untuk Solidaritas Dunia Islam</i> – Indonesian Committee for Solidarity of the Islamic World
KMA	<i>Koninklijke Militaire Academie</i> – Royal Military Academy
KMB	<i>Konperensi Meja Bundar</i> – Round Table Conference
KNIP	<i>Komite Nasional Indonesia Pusat</i> – Central Indonesian National Committee
KNPI	<i>Komite Nasional Pemuda Indonesia</i> – National Committee of Indonesian Youth

KOMNAS HAM	<i>Komisi Nasional Hak-Hak Asasi Manusia</i> – National Commission for Human Rights
KOSGORO	<i>Kesatuan Organisasi Serbaguna Gotong Royong</i> – Union of Mutual Cooperation Multifunction Organizations
KOTI	<i>Komando Operasi Tertinggi</i> – Supreme Operation Command
KOWANI	<i>Kongres Wanita Indonesia</i> – National Council of Woman of Indonesia
KPPSI	<i>Komite Perjuangan Penegakan Syariat Islam</i> – Committee for the Struggle of Enforcement of Islamic Sharia
KPU	<i>Komisi Pemilihan Umum</i> – General Election Commission
KRMT	<i>Kanjeng Raden Mas Tumenggung</i> – a high ranking noble title which is conferred by the palace of Jogja to men outside the palace family
KWI	<i>Konferensi Waligereja Indonesia</i> – Bishops' Conference of Indonesia
KY	<i>Komisi Yudisial</i> – Judicial Commission
LEMHANNAS	<i>Lembaga Ketahanan Nasional</i> – Institute for National Resilience
LIPI	<i>Lembaga Ilmu Pengetahuan Indonesia</i> – Institute of Sciences of Indonesia
LPTP	<i>Lembaga Pengembangan Teknologi Pedesaan</i> – Institute for Development of Rural Technology
LSM	<i>Lembaga Swadaya Masyarakat</i> – Non-Governmental Organization
Lt. Gen.	Lieutenant General
MA	<i>Mahkamah Agung</i> – Supreme Court
MASYUMI	<i>Majelis Syuro Muslimin Indonesia</i> – Indonesian Muslim Shura Council
MIAI	<i>Majelis Islam A'la Indonesia</i> – Indonesian Islamic Council
MK	<i>Mahkamah Konstitusi</i> – Constitutional Court
MKGR	<i>Musyawarah Kekeluargaan Gotong Royong</i> – Mutual Assistance Families Association
MPR	<i>Majelis Permusyawaratan Rakyat</i> – People's Consultative Assembly
MPR-RI	<i>Majelis Permusyawaratan Rakyat Republik Indonesia</i> – People's Consultative Assembly of the Republic of Indonesia
MPRS	<i>Majelis Permusyawaratan Rakyat Sementara</i> – Provisional People's Consultative Asssembly
MUI	<i>Majelis Ulama Indonesia</i> – Indonesia Ulema Council
NAMFREL	The National Citizens' Movement for Free Elections – an NGO for election watchdog based in the Philippines
NASAKOM	<i>Nasionalis-Agama-Komunis</i> – Nationalist – Religious – Communist
NDI	National Democratic Institute – a US based NGO
NGO	Non-Governmental Organization
NKRI	<i>Negara Kesatuan Republik Indonesia</i> – Unitary State of Republic of Indonesia
NU	<i>Nahdlatul Ulama</i> – Association of Muslim Scholars
OPM	<i>Organisasi Papua Merdeka</i> – Organization of Free Papua
ORBA	<i>Orde Baru</i> – New Order
ORLA	<i>Orde Lama</i> – Old Order
PAH	<i>Panitia Ad-Hoc</i> – Ad-Hoc Committee
PAM	<i>Pasukan Pengamanan Masyarakat Swakarsa</i> – Self-initiated Public Security Forces
SWAKARSA	
PAN	<i>Partai Amanat Nasional</i> – National Mandate Party

PARKINDO	<i>Partai Kristen Indonesia</i> – Indonesian Christian Party
PARMUSI	<i>Partai Muslimin Indonesia</i> – Indonesian Muslim-followers Party
PBHI	<i>Perhimpunan Bantuan Hukum dan Hak Asasi Manusia Indonesia</i> – Association of Legal Aid and Human Rights of Indonesia
PBI	<i>Partai Bhinneka Tunggal Ika</i> – Unity in Diversity Party
PDI	<i>Partai Demokrasi Indonesia</i> – Indonesia’s Democratic Party
PDI-P	<i>Partai Demokrasi Indonesia Perjuangan</i> – Indonesia Democratic Party of Struggle
PDR	<i>Partai Daulat Rakyat</i> – People Sovereign Party
PEPABRI	<i>Persatuan Purnawirawan Angkatan Bersenjata Republik Indonesia</i> – Union of Indonesia’s Armed Forces Veteran.
PERADI	<i>Perhimpunan Advokat Indonesia</i> – Indonesian Advocates Association
PERMESTA	<i>Perjuangan Rakyat Semesta</i> – Universal People’s Struggle
PERTI	<i>Pergerakan Tarbiyah Islamiyah</i> – Islamic Education Movement
PETA	<i>Pembela Tanah Air</i> – Defenders of the Fatherland
PGI	<i>Persekutuan Gereja-Gereja di Indonesia</i> – Council of Churches in Indonesia
PHI	<i>Pelajar Islam Indonesia</i> – Indonesia Muslim Student
PII	
PIR Wongsonegoro	<i>Persatuan Indonesia Raya-Wongsonagoro</i> – Greater Indonesia Unity-Wongsonagoro
PK	<i>Partai Keadilan</i> – Justice Party
PKB	<i>Partai Kebangkitan Bangsa</i> – National Awakening Party
PKI	<i>Partai Komunis Indonesia</i> – Communist Party of Indonesia
PKP	<i>Partai Keadilan dan Persatuan</i> – Justice and Unity Party
PNI	<i>Partai Nasional Indonesia</i> – Indonesia National Party
PNI-FM	<i>Partai Nasional Indonesia Front Marhaenis</i> – Marhaenist Front Indonesian National Party
PNI-MM	<i>Partai Nasional Indonesia Massa Marhaen</i> – Mass Marhaen Indonesian National Party
PNU	<i>Partai Nahdlatul Ummah</i> – Congregation Awakening Party
POLRI	<i>Polisi Republik Indonesia</i> – Police of the Republic of Indonesia
PP	<i>Partai Persatuan</i> – United Party
PPD I	<i>Panitia Pemilihan Daerah Tingkat I</i> – Election Committee of Provincial Level
PPD II	<i>Panitia Pemilihan Daerah Tingkat II</i> – Election Committee of District/Municipality Level
PPI	<i>Panitia Pemilihan Indonesia</i> – Indonesia Election Committee
PPMI	<i>Persaudaraan Pekerja Muslim Indonesia</i> – Brotherhood of Indonesia Muslim Workers
PPP	<i>Partai Persatuan Pembangunan</i> – United Development Party
PPTI	<i>Partai Politik Tarikat Islam</i> – Islam Sufism Political Party
PRD	<i>Partai Rakyat Demokratik</i> – People’s Democratic Party
PRI	<i>Partai Rakyat Indonesia</i> – Indonesian People’s Party
PRIM	<i>Partai Republik Indonesia Merdeka</i> – Independent Republic of Indonesia Party

PRN	<i>Partai Rakyat Nasional</i> – National People’s Party
PRRI	<i>Pemerintahan Revolusioner Republik Indonesia</i> – Revolutionary Government of the Republic of Indonesia
PSI	<i>Partai Sosialis Indonesia</i> – Indonesian Socialist Party
PSII	<i>Partai Syarikat Islam Indonesia</i> – Indonesian United Islam Party
PSII	<i>Partai Syarikat Islam Indonesia</i> – United Islamic Party of Indonesia
PSII	<i>Partai Syarikat Islam Indonesia</i> – Indonesian Islamic Association Party
PSMTI	<i>Paguyuban Sosial Marga Tionghoa Indonesia</i> – Indonesian Chinese Clan Social Association
PUDI	<i>Partai Uni Demokrasi Indonesia</i> – Indonesian Democratic Union Party
PUTERA	<i>Pusat Tenaga Rakyat</i> – People’s Power Centre
PWI	<i>Persatuan Wartawan Indonesia</i> – Journalists Association of Indonesia
R.	<i>Raden</i> – a noble title among the Javanese and Sundanese
R.A.	<i>Raden Ajeng</i> – a noble title for a woman in Javanese culture
R.M.	<i>Raden Mas</i> – a noble title for man in Javanese culture
RIS	<i>Republik Indonesia Serikat</i> – United Republic of Indonesia
RMS	<i>Republik Maluku Selatan</i> – Republic of South Moluccas
SDAP	<i>Sociaal Democratische Arbeiders Partij</i> – Social-Democratic Workers’ Party
SESKOAD	<i>Sekolah Staf dan Komando Angkatan Darat</i> – Army’s School of Staff and Command
SMK	<i>Sekolah Menengah Kejuruan</i> – Vocational School
SMP	<i>Sekolah Menengah Pertama</i> – Junior High School
SOKSI	<i>Sentral Organisasi Karyawan Swadiri Indonesia</i> – Central Organization of Indonesian Workers
SPSI	<i>Serikat Pekerja Seluruh Indonesia</i> – All Indonesian Workers Union
TA	<i>Tenaga Ahli</i> – Group of Experts
TII	<i>Tentara Islam Indonesia</i> – Indonesia’s Islamic Armed Forces
TNI	<i>Tentara Nasional Indonesia</i> – National Military of Indonesia
TNI	<i>Tentara Nasional Indonesia</i> – Indonesian National Armed Forces
TRITURA	<i>Tri tuntutan rakyat</i> – Three the People’s Demands
UBK	<i>Universitas Bung Karno</i> – University of Bung Karno
UI	<i>Universitas Indonesia</i> – University of Indonesia
UKI	<i>Universitas Kristen Indonesia</i> – Christian University of Indonesia
UN	United Nations
UNAS	<i>Universitas Nasional</i> – National University
UNDP	United Nations Development Programme
UNFREL	University Network for a Free and Fair Election
UNPAD	<i>Universitas Pajajaran</i> – University of Pajajaran
UNPAR	<i>Universitas Katolik Parahyangan</i> – Parahyangan Catholic University
UNTAG	<i>Universitas 17 Agustus</i> – University of August the 17 <sup>th</sup>
UNTEA	United Nation Temporary Executive Authority
US	United States
USA	United States of America
UUD 45	<i>Undang Undang Dasar 45</i> – 1945 Constitution

UUD NRI 1945	<i>Undang Undang Dasar Negara Republik Indonesia tahun 1945</i> – 1945 Constitution of the State of the Republic of Indonesia
UUD RIS	<i>Undang-Undang Dasar Republik Indonesia Serikat</i> – Constitution of the United Republic of Indonesia
UUDS 1950	<i>Undang Undang Dasar Sementara 1950</i> – Provisional Constitution of 1950
WALHI	<i>Wahana Lingkungan Hidup Indonesia</i> – Indonesian Forum for Environment
WALUBI	<i>Perwakilan Umat Buddha Indonesia</i> – Representatives of Indonesian Buddhist
WANTANNAS	<i>Dewan Ketahanan Nasional</i> – National Resilience Council
WANTIMPRES	<i>Dewan Pertimbangan Presiden</i> – President’s Advisory Council
WW II	World War II
YKPK	<i>Yayasan Kerukunan Persaudaraan Kebangsaan</i> – The Foundation of Harmony of National Brotherhood
YLBHI	<i>Yayasan Lembaga Bantuan Hukum Indonesia</i> – Indonesia’s Legal Aid Foundation.



