

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

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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

#### **PROEFSCHRIFT**

ter verkrijging van de graad van doctor aan de Universiteit Leiden, op gezag van rector magnificus prof.dr.ir. H. Bijl, volgens besluit van het college voor promoties te verdedigen op woensdag 28 juni 2023 klokke 13.45 uur

door

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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.

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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.

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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.

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### **Abbreviations**

ABRI Angkatan Bersenjata Republik Indonesia – Armed Forces of the Republic

of Indonesia

AIPI Akademi Ilmu Pengetahuan Indonesia – Indonesian Academy of

Sciences

AIPI Asosiasi Ilmu Politik Indonesia – Association of Political Science of

Indonesia

ASPRI Asisten Pribadi – Personal Assistant

B.F.O. Bijeenkomst voor Federaal Overleg – Federal Consultation Meeting

B.J. Habibie Baharuddin Jusuf Habibie

Balitbang Badan Penelitian dan Pengembangan Partai Demokrasi Indonesia – Mega PDI-Mega – Research and Development Body of the Indonesia Democratic

Party – Megawati Soekarnoputri

BBC British Broadcasting Corporation

BIG Badan Informasi Geospatial – Geospatial Information Agency

BKR Badan Keamanan Rakyat – People's Security Agency

BP-7 Badan Pembina Pendidikan Pelaksanaan Pedoman Penghayatan dan

*Pengamalan Pancasila* – Board of Trustees of Education of the Implementation of Guidelines for the Comprehension and Application of

Pancasila

BPH Bendoro Pangeran Haryo – a high ranking noble of Javanese society

BPK Badan Pemeriksa Keuangan – Audit Board

BPKKP Badan Penolong Keluarga Korban Perang – Agency for Helping the

Family of the War Victims

BP-MPR Badan Pekerja Majelis Permusyawaratan Rakyat – Working Body of the

People's Consultative Assembly

BPS Biro Pusat Statistik – Central Statisic Bureau

BPUPK Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan – Investigating

Commission for Preparatory Works for Independence

BPUPKI Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan Indonesia –

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 Dewan Dakwah Islamiyah – Council of Islamic Mission

DDII Dewan Dakwah Islamiyah Indonesia – Indonesian Islamic Missionary

Council

XVIII Abbreviations

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

Abbreviations XIX

F-TNI/Polri Fraksi Tentara Nasional Indonesia/ Kepolisian Negara Republik Indonesia –

Faction of Indonesian National Military Forces and Indonesian Police

F-UD Fraksi Utusan Daerah – Faction of Regional Delegations

F-UG Fraksi Utusan Golongan – Faction of Delegations of Functional Groups

GAM Gerakan Aceh Merdeka – Free Aceh Movement
GAMA Universitas Gajah Mada – University of Gajah Mada
GBHN Garis-Garis Besar Haluan Negara – State Policies in Outlines
GERINDO Gerakan Rakyat Indonesia – Indonesian People's Movement

GMNI Gerakan Mahasiswa Nasional Indonesia – Indonesian National Student

Movement

GOLKAR Golongan Karya – Functional Groups

GPII Gerakan Pemuda Islam Indonesia – Indonesia Muslim Youth Movement

HMI Himpunan Mahasiswa Islam – Muslim Students Association
IAIN Institut Agama Islam Negeri – State Institute for Islamic Studies
ICMI Ikatan Cendekiawan Muslim Indonesia – Indonesian Association of

Muslim Intellectuals

IFES International Foundation for Electorate System

IKADIN Ikatan Advokat Indonesia – Union of Indonesian Advocates IPB Institut Pertanian Bogor – Bogor Agricultural University

IPKI Ikatan Pendukung Kemerdekaan Indonesia – Association of Supporters

of Indonesian Independence

IPPNU Ikatan Putera-Puteri NU – Association of Son and Daughter of NU

IRI International Republican Institute – a USA based NGO

ISEI Ikatan Sarjana Ekonomi Indonesia – Indonesian Association of Econo-

mist

ISPI Ikatan Sarjana Pendidikan Indonesia – Indonesian Association of

Educationist

ITB Institut Teknologi Bandung – Bandung Institute of Technology

 $\label{eq:control_def} JABODETABEK \ \textit{Jakarta} - \textit{Bogor} - \textit{Depok} - \textit{Tangerang} - \textit{Bekasi} - Areas \ of \ the \ Greater$ 

Jakarta

K.H. Kiai Haji – the venerated haj

KAMI Kesatuan Aksi Mahasiswa Indonesia – Indonesian Student Action Union KAPI Kesatuan Aksi Pelajar Indonesia – Indonesian High School Student

Action Union

KAPPI Kesatuan Aksi Pemuda Pelajar Indonesia – Indonesian Student and

Youth Action Union

KIPP Komite Independen Pemantau Pemilu – Independent Committee of

**Election Observers** 

KISDI Komite Indonesia untuk Solidaritas Dunia Islam – Indonesian

Committee for Solidarity of the Islamic World

KMA Koninklijke Militaire Academie – Royal Military Academy
KMB Konperensi Meja Bundar – Royal Table Conference

KNIP Komite Nasional Indonesia Pusat – Central Indonesian National

Committee

KNPI Komite Nasional Pemuda Indonesia – National Committee of Indone-

sian Youth

XX Abbreviations

KOMNAS HAM Komisi Nasional Hak-Hak Asasi Manusia – National Commission for

**Human Rights** 

KOSGORO Kesatuan Organisasi Serbaguna Gotong Royong – Union of Mutual

Cooperation Multifunction Organizations

KOTI Komando Operasi Tertinggi – Supreme Operation Command

KOWANI Kongres Wanita Indonesia - National Council of Woman of Indonesia

KPPSI Komite Perjuangan Penegakan Syariat Islam – Committee for the

Struggle of Enforcement of Islamic Sharia

KPU Komisi Pemilihan Umum – General Election Commission

KRMT Kanjeng Raden Mas Tumenggung – a high ranking noble title which is

conferred by the palace of Jogja to men outside the palace family

KWI Konferensi Waligereja Indonesia – Bishops' Conference of Indonesia

KY Komisi Yudisial – Judicial Commission

LEMHANNAS Lembaga Ketahanan Nasional – Institute for National Resilience

LIPI Lembaga Ilmu Pengetahuan Indonesia – Institute of Sciences of Indonesia LPTP Lembaga Pengembangan Teknology Pedesaan – Institute for Develop-

ment of Rural Technology

LSM Lembaga Swadaya Masyarakat – Non-Governmental Organization

Lt. Gen. Lieutenant General

MA Mahkamah Agung – Supreme Court

MASYUMI Majelis Syuro Muslimin Indonesia – Indonesian Muslim Shura Council

MIAI Majelis Islam A'la Indonesia – Indonesian Islamic Council

MK Mahkamah Konstitusi – Constitutional Court

MKGR Musyawarah Kekeluargaan Gotong Royong – Mutual Assistance

Families Association

MPR Majelis Permusyawaratan Rakyat – People's Consultative Assembly
MPR-RI Majelis Permusyawaratan Rakyat Republik Indonesia – People's Consul-

tative Assembly of the Republic of Indonesia

MPRS Majelis Permusyawaratan Rakyat Sementara – Provisional People's

Consultative Asssembly

MUI Majelis Ulama Indonesia – Indonesia Ulema Council

NAMFREL The National Citizens' Movement for Free Elections – an NGO for

election watchdog based in the Philippines

NASAKOM Nasionalis-Agama-Komunis – Nationalist – Religious – Communist

NDI National Democratic Institute – a US based NGO

NGO Non-Governmental Organization

NKRI Negara Kesatuan Republik Indonesia – Unitary State of Republic of

Indonesia

NU Nahdlatul Ulama – Association of Muslim Scholars
OPM Organisasi Papua Merdeka – Organization of Free Papua

ORBA Orde Baru – New Order ORLA Orde Lama – Old Order

PAH Panitia Ad-Hoc – Ad-Hoc Committee

PAM Pasukan Pengamanan Masyarakat Swakarsa – Self-initiated Public

SWAKARSA Security Forces

PAN Partai Amanat Nasional – National Mandate Party

Abbreviations XXI

PARKINDO Partai Kristen Indonesia – Indonesian Christian Party

PARMUSI Partai Muslimin Indonesia – Indonesian Muslim-followers Party
PBHI Perhimpunan Bantuan Hukum dan Hak Asasi Manusia Indonesia – Asso-

ciation of Legal Aid and Human Rights of Indonesia

PBI Partai Bhinneka Tunggal Ika – Unity in Diversity Party
PDI Partai Demokrasi Indonesia – Indonesia's Democratic Party

PDI-P Partai Demokrasi Indonesia Perjuangan – Indonesia Democratic Party of

Struggle

PDR Partai Daulat Rakuat – People Sovereign Party

PEPABRI Persatuan Purnawirawan Angkatan Bersenjata Republik Indonesia –

Union of Indonesia's Armed Forces Veteran.

PERADI Perhimpunan Advokat Indonesia – Indonesian Advocates Association

PERMESTA Perjuangan Rakyat Semesta – Universal People's Struggle PERTI Pergerakan Tarbiyah Islamiyah – Islamic Education Movement

PETA Pembela Tanah Air – Defenders of the Fatherland

PGI Persekutuan Gereja-Gereja di Indonesia – Council of Churches in

Indonesia

PHI Pelajar Islam Indonesia – Indonesia Muslim Student

PII

PIR Wongso- Persatuan Indonesia Raya-Wongsonagoro – Greater Indonesia Unity-

negoro Wongsonagoro

PK Partai Keadilan – Justice Party

PKB Partai Kebangkitan Bangsa – National Awakening Party
PKI Partai Komunis Indonesia – Communist Party of Indonesia
PKP Partai Keadilan dan Persatuan – Justice and Unity Party
PNI Partai Nasional Indonesia – Indonesia National Party

PNI-FM Partai Nasional Indonesia Front Marhaenis – Marhaenist Front Indone-

sian National Party

PNI-MM Partai Nasional Indonesia Massa Marhaen – Mass Marhaen Indonesian

National Party

PNU Partai Nahdlatul Ummah – Congregation Awakening Party
POLRI Polisi Republik Indonesia – Police of the Republic of Indonesia

PP Partai Persatuan – United Party

PPD I Panitia Pemilihan Daerah Tingkat I – Election Committee of Provincial

Level

PPD II Panitia Pemilihan Daerah Tingkat II – Election Committee of District/

Municipality Level

PPI Panitia Pemilihan Indonesia – Indonesia Election Committee PPMI Persaudaraan Pekerja Muslim Indonesia – Brotherhood of Indonesia

Muslim Workers

PPP Partai Persatuan Pembangunan – United Development Party
PPTI Partai Politik Tarikat Islam – Islam Sufism Political Party
PRD Partai Rakyat Demokratik – People's Democratic Party
PRI Partai Rakyat Indonesia – Indonesian People's Party

PRIM Partai Republik Indonesia Merdeka – Independent Republic of Indo-

nesia Party

XXII Abbreviations

PRN Partai Rakyat Nasional – National People's Party

PRRI Pemerintahan Revolusioner Republik Indonesia – Revolutionary Govern-

ment of the Republic of Indonesia

PSI Partai Sosialis Indonesia – Indonesian Socialist Party

PSII Partai Syarikat Islam Indonesia – Indonesian United Islam Party
PSII Partai Syarikat Islam Indonesia – United Islamic Party of Indonesia
PSII Partai Syarikat Islam Indonesia – Indonesian Islamic Association Party
PSMTI Paguyuban Sosial Marga Tionghoa Indonesia – Indonesian Chinese Clan

Social Association

PUDI Partai Uni Demokrasi Indonesia – Indonesian Democratic Union Party

PUTERA Pusat Tenaga Rakyat – People's Power Centre

PWI Persatuan Wartawan Indonesia – Journalists Association of Indonesia

R. Raden – a noble title among the Javanese and Sundanese
 R.A. Raden Ajeng – a noble title for a woman in Javanese culture
 R.M. Raden Mas – a noble title for man in Javanese culture
 RIS Republik Indonesia Serikat – United Republic of Indonesia
 RMS Republik Maluku Selatan – Republic of South Moluccas

SDAP Sociaal Democratische Arbeiders Partij – Social-Democratic Workers'

Party

SESKOAD Sekolah Staf dan Komando Angkatan Darat – Army's School of Staff and

Command

SMK Sekolah Menengah Kejuruan – Vocational School SMP Sekolah Menengah Pertama – Junior High School

SOKSI Sentral Organisasi Karyawan Swadiri Indonesia – Central Organization

of Indonesian Workers

SPSI Serikat Pekerja Seluruh Indonesia – All Indonesian Workers Union

TA Tenaga Ahli – Group of Experts

TII Tentara Islam Indonesia – Indonesia's Islamic Armed Forces
TNI Tentara Nasional Indonesia – National Military of Indonesia
TNI Tentara Nasional Indonesia – Indonesian National Armed Forces

TRITURA Tri tuntutan rakyat – Three the People's Demands
UBK Universitas Bung Karno – University of Bung Karno
UI Universitas Indonesia – University of Indonesia

UKI Universitas Kristen Indonesia – Christian University of Indonesia

UN United Nations

UNAS Universitas Nasional – National University
UNDP United Nations Development Programme
UNFREL University Network for a Free and Fair Election
UNPAD Universitas Pajajaran – University of Pajajaran

UNPAR Universitas Katolik Parahyangan – Parahyangan Catholic University

UNTAG *Universitas* 17 *Agustus* – University of August the 17<sup>th</sup>
UNTEA United Nation Temporary Executive Authority

US United States

USA United States of America

UUD 45 Undang Undang Dasar 45 – 1945 Constitution

*Abbreviations* XXIII

UUD NRI 1945 Undang Undang Dasar Negara Republik Indonesia tahun 1945 –
1945 Constitution of the State of the Republic of Indonesia
UUD RIS Undang-Undang Dasar Republik Indonesia Serikat – Constitution of the
United Republic of Indonesia
UUDS 1950 Undang Undang Dasar Sementara 1950 – Provisional Constitution of
1950
WALHI Wahana Lingkungan Hidup Indonesia – Indonesian Forum for Environment
WALUBI Perwakilan Umat Buddha Indonesia – Representatives of Indonesian
Buddhist

WANTANNAS Dewan Ketahanan Nasional – National Resilience Council WANTIMPRES Dewan Pertimbangan Presiden – President's Advisory Council

WW II World War II

YKPK Yayasan Kerukunan Persaudaraan Kebangsaan – The Foundation of

Harmony of National Brotherhood

YLBHI Yayasan Lembaga Bantuan Hukum Indonesia – Indonesia's Legal Aid

Foundation.