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

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II.1 INDONESIA'S HISTORIC 1945 CONSTITUTION OF INDONESIA

The 1945 Constitution possesses a unique position in the history of modern Indonesia. As discussed below, it was framed by the founding fathers and mothers of the nation under the tight supervision of the Japanese World War II (WWII) military ruler during the last months of the Japanese occupation. However, it was finalized, ratified, and enacted after Indonesia proclaimed its independence on 17 August 1945. The Preamble of the Constitution, which was drafted free from the Japanese authority's intervention, contains the pure aspirations of Indonesia's struggle for independence and the state ideology of Pancasila. The Preamble has become a foundation and guiding star, providing the ideals of an independent Indonesia.¹ During the hard years of war defending independence and maintaining the integrity of the nation, the 1945 Constitution became the symbol of triumphant struggle, dignity, and the nation's unity. Thus, the 1945 Constitution has become sacrosanct.

However, the sacrosanct quality of the 1945 Constitution and the interests of its beneficiaries became a barrier for reform. Likewise, concerns over various ideas and political movements that sought to change the basic values of an independent Indonesia also became factors for maintaining its original draft.

The drafting of the 1945 Constitution was carried out when Indonesia was still under the authority of the Japanese military government at the end of the WWII era. It was written by the Investigating Commission for the Preparation of Independence (BPUPK)² and under the Japanese military ruler's supervision during the last months of WWII. The Japanese established the

1 On 18 August 1945, PPKI ratified the Preamble of the 1945 Constitution by acclamation. However, the draft of the articles had been fiercely debated before finally being ratified with the note that the articles would be corrected later as soon as possible. Sekretariat Negara Republik Indonesia, *op.cit.*, p.p. 426, 454. An elucidation of the 1945 Constitution was added later in October 1945 when Soepomo served as Minister of Justice. The Elucidation was drafted by Soepomo and contains concepts that strengthened the understanding of integralism into the articles of the 1945 Constitution. Then, the Presidential Decree of 5 July 1959, officiated the Elucidation as part of the 1945 Constitution, so that the 1945 Constitution consisted of the Preamble, the Articles, and the Elucidation.

2 Known in Indonesia as *Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan - Dokuritsu Zyunbi Tyoosa Kai*.

BPUPK. During the BPUPK's sessions, General Itagaki Sheisiro, the Commander of Japan's Seventh Army, asserted that Indonesia should be a strong and firm chain within the Greater East-Asia co-prosperity sphere, with a crucial obligation towards defending East Asia.³ Thus, most of the Constitution was tainted with fascist WWII Japanese ideas of integralism and of the hegemonic Greater East Asia Co-Prosperity Sphere project. The exception was the Jakarta Charter (*Piagam Jakarta*), which was prepared without Japanese supervision by a team of 9 and was led by Soekarno. It was completed on 22 June 1945 and contains the state ideology, Pancasila, and the basic values of an independent Indonesia. Soekarno reported *Piagam Jakarta* to BPUPK on 10 July 1945. BPUPK did not discuss it, but then decided to replace it with a new draft. The new one was drafted by a team of four and included a Declaration of Independence (*Pernyataan Kemerdekaan*) and an Opening (*Pembukaan*).⁴

On 7 August 1945, Japan's military government dissolved BPUPK and established the PPKI (*Panitia Persiapan Kemerdekaan Indonesia*) or The Preparatory Committee of Indonesia's Independence). With no Japanese members, the PPKI did not have to report its activities to the Japanese authorities.⁵

Right after Japan was defeated, Indonesian leaders proclaimed Indonesia's independence on 17 August 1945. The following day, the PPKI held its first meeting. It discussed both BPUPK drafts, the Declaration of Independence with the Opening, and the draft Constitution.⁶ At the request of Hatta and Soekarno, the Jakarta Charter, with the improvement of its 'seven words' was approved to replace the text of the Proclamation of Independence and the Opening prepared by BPUPK. Although the articles were debated substantively, due to a lack of time, it was ratified with a note that the articles should be improved as soon as possible.⁷

The 1945 Constitution, despite its background and weaknesses, immediately became the symbol of Indonesia's independence. The war to defend independence had entrenched the 1945 Constitution as the symbol of national pride, dignity, and unity.⁸

3 See Sekretariat Negara Republik Indonesia, *op.cit*, p. 370. The Japanese Seventh Area Army was a field army of the Imperial Japanese Army formed during final stages of the Pacific War and based in Japanese-occupied Malaya, Singapore and Borneo, Java, and Sumatra.

4 *Ibid.*, p.p. 213, 236 – 238.

5 See St. Sularto & D. Rini Yunarti, *Konflik Di Balik Proklamasi. BPUPKI, PPKI, dan Kemerdekaan*, Penerbit Buku KOMPAS, Jakarta, Agustus 2010, p.p. 14 – 20.

6 See Sekretariat Negara Republik Indonesia, *op.cit*, p.p. 412 – 420.

7 *Ibid.*, p.p. 426, 455.

8 In practice, the substance of the symbolic Constitution is not adhered to in making the laws of its implementation, so it will produce laws that are substantively less effective. See *Law Making for Development, Exploration of Theory and Practice of the International Legislative Project*, J. Arnscheidt, B. Van Rooij, J.M. Otto (Eds.), Leiden University Press, 2008, pp. 63 - 65.

In the first years of independence, from 1945 to 1949, it was a nominal constitution despite being officially ratified. Which is to say, it was not implemented. The Constitution stipulates that the President shall hold the governing powers as the chief of the executive. However, the position of the prime minister as the chief executive was introduced under allegations from the Allied Forces that the 1945 Constitution was a Japanese creation. President Soekarno, whom the Allied Forces accused of collaborating with Japan, was then positioned only as a symbolic head of state.⁹ However, as mentioned above, the symbolic status of the 1945 Constitution remained.

From 31 January 1950 to 17 August 1950, Indonesia became a federal republic and adopted a federal state constitution (UUD RIS).¹⁰ However, on 19 May 1950, at the insistence of representatives of the states and the people, the federal government, along with the state representatives, agreed to return to a unitary state. This officially took place on 16 August 1950. Correspondingly, the Federal Constitution was replaced by a provisional 1950 Constitution (Undang Undang Dasar Sementara 1950 – UUDS 1950) which was prepared by a committee chaired by Soepomo.¹¹

The UUDS 1950 that adheres to the parliamentary system was adopted from August 1950 to July 1959. However, this system caused political instability, economic setbacks, and regional upheavals. Thus, with support from the Armed Forces, President Soekarno issued a decree to re-enact the 1945 Constitution on 5 July 1959. From July 1959 to 1966, the Constitution was also not fully implemented during Soekarno's presidency. The multi-party system of that period did not comply with the design of the 1945 Constitution, which adopted a single-party system, with PNI¹² as the only political party.¹³ As a result, President Soekarno was caught up in the politics of maintaining balance.

9 On 13 December 1999 Ruslan Abdulgani testified before a PAH I public hearing that the Allied Forces decided not to talk to this 'Japanese puppet'. See Majelis Permusyawaratan Rakyat Republik Indonesia, *op. cit.*, Tahun Sidang 2000, Buku Satu, Edisi Revisi, Sekretariat Jenderal, 2010, p. 194.

10 With the opinion that it still had the right to the territory of Indonesia as its territory, the Dutch took military action to re-establish its authority over the territory of the former Dutch East Indies. As a result, there were prolonged wars in the period from 1945 to 1949 between the Dutch and Indonesian. Finally, through a round table conference mediated by the United Nations in The Hague, the Netherlands recognized Indonesian sovereignty on the condition that Indonesia change its form from a unitary state to a union state. In line with the negotiations, a team from Indonesia and the Netherlands worked to prepare a constitution for the United States of Indonesia, known as UUD RIS (*Undang-Undang Dasar Republik Indonesia Serikat* or The Constitution of the Republic of the United States of Indonesia). The Indonesian team was led by Soepomo.

11 Prof. Mr. Dr. R. Soepomo, a biography by Drs. A. T. Soegito. Departemen Pendidikan dan Kebudayaan, Pusat Penelitian Sejarah dan Budaya, Proyek Inventarisasi dan Dokumentasi Sejarah Nasional 1979/1980, p.p. 30, 36.

12 Known as *Partai Nasional Indonesia* of the Indonesian National Party.

13 Sekretariat Negara Republik Indonesia, *op.cit.*, pp. 503-505.

From 1967 to 1998, during the New Order era, the regime was determined to carry out the 1945 Constitution purely and consequently. However, this turned the 1945 Constitution into a tool to justify absolute centralization of power to the president, Suharto's later election as president for seven consecutive periods, the suppression of freedom of press, and so on.

Therefore, even though the Preamble of the 1945 Constitution managed to capture and formulate the essence of the virtues of the Indonesian independence and its ideals, the Constitution's provisions failed to establish an effective mechanism for guarding, applying, and carrying out those virtues. Even the existing mechanism has a tendency that is contrary to nurturing Indonesian people with an intact humanity towards becoming just, prosperous, and advanced. Nevertheless, the main political powers, including the armed forces, for decades accepted the Preamble, the Articles, and the Elucidation of the 1945 Constitution as one final and inviolable entity.

By contrast, decades of state practice highlighted the weaknesses of the 1945 Constitution. Whenever the Constitution was implemented consistently, there was an inevitable concentration of power in the hands of the president without sufficient supervision or limitation. The desire to have a democratic political system continued to grow among political activists, military, student and college activists, and other communities. However, the symbolic position of the 1945 Constitution and the interests of those who benefited from the system it established became a barrier to Constitutional reform. Additionally, concerns over various ideas and political movements seeking to change the basic values of the existence of the nation and an independent Indonesia were used as justifications to defend the original 1945 Constitution.¹⁴

II.2 ASPIRATIONS FOR CONSTITUTIONAL DEMOCRACY DURING THE COLONIAL PERIODS

The modern nationalist movements emerged in the Dutch East Indies (Indonesia) with the establishment of the Western education system in the late 19th century.¹⁵ The Dutch Ethical Policy of 1901 significantly increased the number of indigenous people who received a higher Western educa-

14 Since independence, Indonesia has faced challenges from those who want to change Indonesia in accordance with their political beliefs, including those who want to establish an Islamic state or communist state, either through political activity or by force. Armed rebellions by DI / TII (the Darul Islam / Indonesian Islamic Army) took place in various regions from 1949 to 1962. In 1948, the Indonesian Communist Party (PKI) launched an uprising in Madiun, East Java and in October 1965 PKI tried to seize power.

15 See Robert van Niel, *The Emergence of the Modern Indonesian Elite*, van Hoeve, The Hague, 1960.

tion.¹⁶ New generations were exposed to and studied the Western political ideals and doctrines, such as liberty, the nation-state, democracy, the rule of law, humanity, social justice, socialism, communism, and fascism. They also learned the Western methods of political and social struggle, such as the political party structure, trade unions and strike actions, while observing how democracy, fascism, and communism played out. This new elite then developed and promoted the idea of an independent and unified Indonesia that would bring together the disparate groups of 'Indonesian' people. From the beginning, they introduced this as a national movement, not a particular ethnic, religious, or primordial group movement.

On 28 October 1928, delegations of youth organizations from various regional, ethnic, and religious backgrounds convened at a conference in Batavia (Jakarta). They issued a declaration, renowned as *Sumpah Pemuda* (the Youth Pledge).¹⁷ They pledged that the heterogeneous people of the country constituted one nation, Indonesia, with one motherland, Indonesia, and one national language, Indonesian. It was a landmark event in the country's history and formed the founding moment of the Indonesian nation, which was seminal in how Indonesia's future would take shape.

In the meantime, the Netherlands was also changing. Influenced by the development of humanism and democracy that flourished in Europe, the Dutch government softened its policy in the Dutch East Indies.¹⁸ The moderate colonial policy had enabled the establishment of several political parties, which reflected ideologies of the time, i.e., nationalism, Islamism, integralism, socialism, and communism.¹⁹ Besides, there were also many free and uncensored newspapers and radio stations. In 1918, the Dutch colonial government established a *Volksraad* (People's Council) that was intended to channel the views and grievances of the people to the government.²⁰ However, the Dutch Government later decided that the *Volksraad*²¹

16 R. A. Kartini, a prominent writer and pioneer in woman's rights in Indonesia and an Indonesian *Pahlawan Nasional* (National Heroine), graduated from ELS (Europese Lagere School – European Elementary School) in 1891. Her book *Door Duisternis Tot Licht*. 's Gravenhage, 1912 (English version, *Letters of a Javanese Princess* – London, 1921) inspired women's emancipation in the Dutch East Indies. Radjiman Wedyodiningrat, the chairman of BPUPK, graduated from STOVIA (*School tot Opleiding van Indische Artsen – Dutch East Indies Medical School*) in 1903-1904 and from the medical faculty of the University of Amsterdam in 1910.

17 The Youth Pledge declares: Firstly, We, the sons and daughters of Indonesia, acknowledge one motherland, Indonesia. Secondly, We, the sons and daughters of Indonesia, acknowledge one nation, the nation of Indonesia. Thirdly, We, the sons and daughters of Indonesia, uphold the language of unity, Indonesian.

18 See M.C. Ricklefs, *A History of Modern Indonesia since c. 1200*, Stanford University Press, 4th edition, 2008, p. 183.

19 See also Adriaan Bedner, *The Need for Realism*, p. 161.

20 Initially, Governor-General van Limburg Stirum encouraged the *Volksraad* to take on more responsibilities. See M.C. Ricklefs, *op. cit.*, p. 208.

21 The Dutch government held elections for members of the *Volksraad* several times. *Ibid.*, p. 194.

had become uncontrollable and trimmed its authority, which proved seminal to the future of political behaviour in Indonesia. Some prominent figures of the nationalist movement joined the *Volksraad*. However, the hard-liners saw no advantage and refrained from joining.²²

The nationalist movements were divided into those willing ('the cooperative') and unwilling ('the non-cooperative') to cooperate with the colonial government. The cooperative movement operated within the colonial power system. It was unable to do much. The non-cooperative movement immediately came under the leadership of Soekarno, an ardent revolutionary and a great orator. It grew beyond the influence of his close ally, Mohammad Hatta, who wanted to build a movement that promoted national awareness and political education.²³ Soekarno emphasized a political programme of populist *macht vorming* (power formation) and *macht aanwending* (power mobilization). His camp was active outside the system and fought against it. The non-cooperative movements' mass-based politics revolved around solidarity and confronting the colonial government rather than around building a political organization and system.

The political world at that time was dominated by three ideologies: democracy, fascism, and communism. Until the end of World War II, the Third World leaders generally felt antipathy towards capitalism and were critical of fascism and communism. They tended to see socialism as an alternative, as shown by Jawaharlal Nehru in India,²⁴ Ho Chi Minh in Vietnam²⁵ and Kwame Nkrumah in Ghana.²⁶

Generally, the Indonesian nationalist movements rejected fascism and communism and were highly critical of democracy. Soekarno asserted that fascism was contrary to Indonesia's spirit and sharply denounced the *Führerprinzip* adopted by the Nazi regime as creating a *Kadavergehorsamkeit*, a cadaver obedience.²⁷ Hatta insisted that fascism must be destroyed because, under fascism, people would only be further enslaved.²⁸ On the other hand, Soekarno also asserted that he was not a communist.²⁹ Both Soekarno and Hatta denounced Western practices of democracy. Soekarno criticized the Western democratic system for treating people unfairly, despite having a

22 Soekarno, *Sekali Lagi Tentang Sosionasionalisme Dan Sosiodemokrasi*, Fikiran Rakyat 1932, in Ir. Soekarno, *Dibawah Bendera Revolusi*, Yayasan Bung Karno, Jilid Pertama, 2005, p. 190.

23 Anthony Reid, *To Nation by Revolution, Indonesia in the 20th Century*, NUS Press Singapore, 2011, p. 19.

24 See Frank Moraes, *Jawaharlal Nehru, A Biography*, Jaico Publishing DPR, Mumbai, 2007.

25 See William J. Duiker, *Ho Chi Minh, A Life*, New York, 2000.

26 See David Birmingham, *Kwame Nkrumah: The Father of African Nationalism*, Ohio University Press, 1998.

27 See Pandji Islam, magazine, 1940, in Ir. Soekarno, *op. cit.*, pp. 460, 461. Hatta later used this precise term in a BPUPKI meeting in June 1945. See also Sekretariat Negara Republik Indonesia, *op. cit.*, p. 202. Cadaver obedience is defined as blind obedience or total abandonment of one's free will to the higher authority.

28 Mavis Rose, *Indonesia Free: A Political Biography of Mohammad Hatta*, Equinox Publishing (Asia) Pte. Ltd., 2010, p. 149.

29 Suluh Indonesia Muda, 1926, newspaper, in Ir. Soekarno, *op. cit.*, p. 18.

parliament.³⁰ Furthermore, according to Soekarno, the Western democracies ignored social justice and economic democracy. He preferred a single-party system.³¹ Soekarno further rejected individualism and liberalism as the root causes of injustice, imperialism, and world problems.³²

Hatta denounced the Western democratic system as crippled, manifesting political rights but not economic and social cohesion (*pergaulan sosial*). He asserted that the root of injustice was individualism, the basis of Western liberalism, which created modern capitalism and economic and political imperialism. In his view, Western individualism destroyed social cohesion, turning a good principle like “people’s sovereignty” into a tool for exploiting the people (*pemakan rakyat*).³³

However, Hatta supported democracy as such and strongly rejected a state with unlimited power.³⁴ In that regard, he emphasized that the indigenous democracy that lived in Indonesian society should be implemented, with its original principles adapted to present conditions.³⁵ Hatta asserted that the struggle for freedom was a struggle for democracy and humanity.³⁶ The law must rely on the sense of justice and truth that lives in the conscience of many people. Rules would be just and bring happiness if they were based on the sovereignty of the people.³⁷ Almost all colonial countries, namely the Netherlands, Great Britain, France, Belgium, and the United States of America had democratic systems, except for Italy and Japan. This likely contributed to the independence activists’ critical stance towards Western democracies.

Regardless, Soekarno and Hatta attempted to find a middle ground to build a more appropriate democracy for Indonesia. However, they differed in how to overcome democracy’s weaknesses. Both believed in the fundamentals of democracy. However, Soekarno was more concerned with overhauling manifestations of injustice.³⁸ Meanwhile, Hatta emphasized the need for deliberative process and economic democracy. They both found

30 Fikiran Rakyat Daily, 1932 in Ir. Soekarno, *op. cit.*, pp. 170 – 173. Later, in his famous 1 June 1945 speech, Soekarno asserted that in the Western democracy, there is no social justice and economic democracy. See Sekretariat Negara Republik Indonesia, *op.cit.*, pp. 79, 259.

31 Soekarno, *Achieving Independent Indonesia*, an article, March 1933 in Ir. Soekarno, *op.cit.*, 2005, p.283.

32 Sekretariat Negara Republik Indonesia, *op.cit.*, pp. 255 – 261.

33 Mohammad Hatta, *Daulat Ra’jat*, No. 1, 20 September 1931, in *Karya Lengkap Bung Hatta* (The Complete Works of Bung Hatta), LP3ES, 1998, p. 342.

34 Sekretariat Negara Republik Indonesia, *op.cit.*, p. 263.

35 Mavis Rose, *op. cit.*, p. 108 -109.

36 *Ibid.*, p. 66. As quoted from M. Hatta, “Propaganda”, in *Portrait of a Patriot*, p. 156. It was first published in *Indonesia Merdeka*, 1926.

37 Mohammad Hatta, *Ke Arah Indonesia Merdeka* (Toward Independent Indonesia), in *Karya Lengkap Bung Hatta* (Buku 1): *Kebangsaan dan Kerakyatan*, Jakarta: Penerbit PT Pustaka LP3ES Indonesia, 1998, p. 343.

38 Later, Soekarno introduced his ideas on “Rediscovering Our Revolution” in his speech of 17 August 1959 and “To Build a World a New” in his speech at the XIV United Nations Plenary Session on 30 September 1960.

that independence was a prerequisite. However, their different standpoints had seminal consequences for the formation of the first Constitution (the 1945 Constitution) and post-independence governance practices.³⁹

Another nationalist movement figure, Sutan Syahrir, would later become the first prime minister of Indonesia. He gained an appreciation of socialist principles and became a proponent of parliamentary democracy when studying at the Law Faculty of Amsterdam University and Leiden University from 1929 to 1931.⁴⁰

In 1940, several young Indonesians signed-up as cadets in Bandung at the Royal Military Academy (*Koninklijke Militaire Academie*). These cadets included Tahi Bonar Simatupang, who later became the first Chief of Staff of the Indonesian Armed Forces. It also included Abdul Harris Nasution⁴¹ who later became the second Commander of the Indonesian Armed Forces and the originator of Indonesia's dual-function military (*dwifungsi*). They both would become prominent military figures who shaped Indonesian politics in the 1950s.

Thus, before the Japanese occupation, ideas of constitutional democracy had already spawned in Indonesia. However, these ideas evolved around personal figures. Politics did not develop as institutionalized politics. Instead, it developed as mass political action outside and against the existing colonial power structures.

Japan invaded and defeated the Netherlands in March 1942 and then colonized Indonesia for three and a half years. The new colonial ruler dissolved political parties, closed newspapers and radio stations, and prohibited political activity.⁴² Only the Indonesian Islamic Council (*Majelis Islam A'la Indonesia*) was permitted to stay open.⁴³ On the other hand, the Japanese ruler established the *Putera* (People's Power Centre),⁴⁴ led by Soekarno, Mohammad Hatta, Ki Hajar Dewantoro, and Kiyai Haji Mas Mansyur.

Japan also established the Indonesian voluntary army, PETA (*Pembela Tanah Air*), the local police (*Keibodan*), a semi-military youth group (*Seinen-dan*), and soldiers' helpers (*Heiho*). The Japanese authority also reorganized the neighbourhood system to make it easier to mobilize people if necessary.

39 See also Herbert Feith, *The Decline of Constitutional Democracy in Indonesia*, PT Equinox Publishing Indonesia, 2007, pp. 40 – 43.

40 Rudolf Mrazek, *op. cit.*, pp. 56 – 81. Sutan Syahrir did not finish his law degree when Hatta sent Sjahrir ahead of him to the Dutch East Indies in 1931, to help set up the Indonesian National Party (PNI). See also Asian Month, November 2017.

41 His book, *Fundamentals of Guerrilla Warfare*, was compulsory reading at West Point Military Academy, USA.

42 Law no. 3, 20 March 1942. See also Anthony Reid, *To Nation by Revolution, Indonesia in the 20th Century*, NUS Press, 2011, p. 23.

43 In 1943, the MIAI was abolished and replaced by Masyumi (*Majelis Syura Muslimin Indonesia* – Shura Council of Indonesian Muslim), a non-political organization and federation of Islamic organizations such as Nahdlatul Ulama and Muhammadiyah.

44 Putera stands for *Pusat Tenaga Rakyat*.

Japan also established a voluntary army corps in the environment of Islamic organizations, including *Hisbullah* (God's Army) and *Laskar Sabillillah* (God's Soldiers).⁴⁵ Japanese-trained PETA officers included Sudirman, who would become the first commander of the Indonesian Armed Forces, and Suharto, who would become Indonesia's second president.⁴⁶

Nationalist leaders could foster nationalism and pursue independence through these Japanese-sponsored paramilitary youth organizations and other mass groups.⁴⁷ Likewise, the Japanese rulers transformed mainstream nationalists into a cooperative movement, a change from their non-cooperative stance during the Dutch colonial era. Most of its prominent figures, such as Soekarno and Hatta, cooperated with the Japanese. However, others refused to cooperate and went underground, including Sutan Syahrir and Amir Syarifuddin.⁴⁸ However, they all kept in contact.⁴⁹ The main discourse among cooperative Indonesian leaders during the Japanese colonial period focused on how to win the war against the common enemy, namely the Western countries. They promoted anti-Western, anti-individualist, and anti-capitalist attitudes, and prepared for Indonesia's independence.⁵⁰ The independence movement cooperated with the Japanese but was neither organized along political party lines nor supported by independent mass media.

Meanwhile, the Japanese were increasingly losing power. The American fleet had approached the Japanese islands. The atomic bombs blew up Hiroshima on 6 August 1945 and Nagasaki on 9 August 1945. Japan was on the verge of defeat. On 14 August 1945, the Japanese dissolved PETA and Heiho.⁵¹ The following day, 15 August 1945, Emperor Hirohito announced

45 K.H. Zainul Arifin was appointed as the commander of *Hisbullah* and K.H. Masykur as the commander of *Laskar Sabillillah*. Both were prominent figures of Masyumi from an NU (*Nahdlatul Ulama*) background.

46 Prior to joining PETA, Suharto was a sergeant of the Dutch colonial military KNIL (*Koninklijk Nederlands-Indisch Leger*).

47 John Ball, *Indonesian Law, Commentary and Teaching Materials*, Faculty of Law, University of Sidney, 1981, p. 90.

48 Amir Syarifuddin Harahap is the 3rd Indonesian Prime Minister (3 July 1947 – 29 January 1948). He was educated in Haarlem and Leiden in the Netherlands. In 1937, towards the end of the Dutch period, Amir led a group of younger Marxists in establishing Gerindo ('Indonesian People's Movement'), a radical cooperating party opposed to international fascism. He joined PKI and was executed by the Indonesian military in 1948 after the failed Communist rebellion.

49 Mavis Rose, *op. cit.*, p. 158.

50 Mohammad Hatta, *Untuk Negeriku, Menuju Gerbang Kemerdekaan* (For My Country, Towards the Gate of Independence), an autobiography, Penerbit Buku Kompas, April 2011, p. 64. Prime Minister Koiso announced in September 1944 that Indonesia would soon be free.

51 Bilveer Singh, *Dwifungsi ABRI: The Dual Function of the Indonesian Armed Forces*, Singapore Institute of International Affairs, 1995, p. 26.

Japan's surrender.⁵² However, the three and half years of Japanese military administration had shaken Indonesia's social structure. The mass mobilization – unknown during the Dutch colonial time – reflected this change, turning into nationalist movements.⁵³

On 17 August 1945, Soekarno and Hatta proclaimed Indonesia's independence. The proclamation took place in a spirit of revolution, without the presence of adequate political structures and with no sufficient experience in institutionalized politics. Nevertheless, the militarily trained youth groups and mass movements supported this proclamation.⁵⁴ The people were revolutionized through patriotic songs and public speeches in front of *rapat raksasa* (mass meetings).⁵⁵ A collective frame of mind formed during and after the Japanese occupation.

Later, Simatupang wrote that potential mass support, mass-participation, and weak institutionalized political structures is one of the recurrent patterns in the Republic's political life that fosters extra-party politics.⁵⁶

II.3 THE MAKING OF THE 1945 CONSTITUTION

Indonesia's first Constitution (i.e., the 1945 Constitution) was designed initially for "an independent Indonesia as part of Greater East Asia", according to its main drafter, Soepomo.⁵⁷ Building the Greater East Asia Co-Prosperity

52 Following the treaty of surrender, then Japanese military administration in Indonesia was under the control of and subject to the instructions of the Allies. See Janis Mimura, 'Japan's New Order and Greater East Asia Co-Prosperity Sphere: Planning for Empire,' *The Asia-Pacific Journal* Vol 9, Issue 49 No 3, 5 December 2011.

53 Kishi Koichi, *Occupation in Indonesia*, in Joice C. Lebra, *Japan's Greater East Asia Co-Prosperity Sphere in World War II, Selected Readings and Documents*, Oxford University Press, 1975, p. 136.

54 One day before proclamation, Soekarno and Hatta were kidnapped by an ex-military youth group which was impatient with the sluggish older generations. They brought the leaders to Rengasdengklok. In this revolutionary environment, both leaders agreed to proclaim Indonesian independence on 17 August 1945. See, St. Sularto & D. Rini Yunarti, *op.cit.*, p. 56.

55 Sartono Kartodirdjo, *The Modern Indonesia, Tradition and Transformation*. Gajah Mada University Press, 1984, p. 88.

56 T.B. Simatupang, *The Role of the Military in Stabilization of Southeast Asian Nations with Special Focus on Indonesia*, an article in Bernhard Grossman (ed), *Southeast Asia in the Modern World*, Wiesbaden, Otto Harrassowitz, 1972, p. 275. Quoted from A.S.S. Tambunan, *Socio-Political Functions of the Indonesian Armed Forces, An Effort to Outline the Issues*, Pustaka Sinar Harapan, Jakarta, 1995.

57 Sekretariat Negara Republik Indonesia, *op. cit.*, pp. 368–369. Advice from Gunseikan (Chief of Japan's Military Government), 28 May 1945 and Congratulatory Remarks from Rikugun Taysoo (Commander of Japan's VIth Army) – General Itagaki Seishoroo, 28 May 1945. See also *The Elucidation of Soepomo*, 15 July 1945. *Ibid.*, p. 266.

Sphere was the Japanese colonial policy's project.⁵⁸ The Sphere was an autarkic bloc of Asian nations led by the Japanese and free of Western powers.⁵⁹ Its ultimate goal was securing the economic interests of Japan and proving its cultural superiority.⁶⁰ This project was Japan's geopolitical concept behind the Pacific War in WWII. It was a "pan idea" based on the geopolitical theory that the world would be divided into four pan-regions of large economic spheres. The regions would be centred around the "core" industrial nations of the United States, Germany, the Soviet Union, and Japan.⁶¹ It served as a complex ideological matrix that combined various strands of Japanese technocratic and right-wing thinking. The Sphere was the geopolitical projection of the 'New Order' reformation led by Kishi Nobusuke. It meant to reorder Japan's society and then reconstruct the world.⁶² This plan sought a new hierarchical, organic, functionalist Japanese community to replace the existing society, supposedly weakened by the individualism and capitalism advanced by Japan's economic development. Their technocratic vision affirmed neither capitalism nor socialism, but 'managerialism'.⁶³ The idea opposed Western materialistic, liberal, and individualistic values as well as communism.⁶⁴

On 1 August 1940, Matsuoka Yosuke, the foreign minister in Prime Minister Konoye's second cabinet, announced the concept of the "Greater East Asia Co-Prosperity Sphere".⁶⁵ The idea covered the territories of Japan (including Korea, Taiwan, and Sakhalin), China, Manchukuo, French Indo-

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- 58 Janis Mimura, *Planning for Empire, Reform Bureaucrats and the Japanese Wartime State*, Cornell University Press, 2011, p. 171. On 1 August 1940, Japanese Foreign Minister Matsuoka Yōsuke announced the government's policy to build the so-called "Greater East Asia Co-Prosperity Sphere." The term Greater East Asia Co-Prosperity Sphere implied that in addition to the core region of Japan, Manchukuo, and China, the sphere would include Southeast Asia, Eastern Siberia, and possibly the outer regions of Australia, India, and the Pacific Islands.
- 59 Janis Mimura, 'Japan's New Order and Greater East Asia Co-Prosperity Sphere: Planning for Empire,' *The Asia-Pacific Journal* Vol 9, Issue 49 No 3, 5 December 2011. The New Order conception that underlies the geopolitical idea was anti-individualist and anti-capitalist.
- 60 Ibid. Japanese leaders used the Greater East Asia Co-Prosperity Sphere in their propaganda in Japan and in other Asian countries. The leaders spoke of "Asia for Asians," the need to liberate Asian countries from Western imperialist powers, and economic co-prosperity for member nations of the autarkic bloc. As Japan occupied various Asian countries, they set up governments with local leaders who proclaimed independence from the Western powers.
- 61 Janis Mimura, *Planning for Empire, Reform Bureaucrats and the Japanese Wartime State*, Cornell University Press 2011, p. 189.
- 62 On 3 November 1938, Prince Konoye publicly declared Japan's intention to establish the New Order in East Asia. See *International Military Tribunal for the Far East*, chapter 7.
- 63 Janis Mimura, *op.cit.*, p. 14. To some extent, it resembles the idea of a 'negara pengurus' (caretaker state) proposed by Hatta during a BPUPK meeting on 15 July 1945. See Sekretariat Negara Republik Indonesia, *op.cit.* p. 262.
- 64 Reischauer, Edwin O., Craig, Albert M., *Japan, Tradition & Transformation*, Revised Edition, Harvard University, Houghton Mifflin Company, Boston, 1989, p. 270.
- 65 Janis Mimura, *op.cit.*, p. 171.

china, and the Dutch East Indies (*Hindia Belanda*).⁶⁶ Yosuke stated that Japan must control the western Pacific.⁶⁷ On 24 January 1941, Konoye stated that a Mutual Prosperity Sphere in Greater East Asia was essential to the continued existence of Japan.⁶⁸ *Yomiuri*, a prominent Japanese newspaper, wrote that Japan must remove all elements in East Asia which would interfere with its plans. Britain, the United States, France, and the Netherlands would have to be forced out of the Far East. Asia was the territory of the Asians.⁶⁹

The policy regarding Greater East Asia was controlled directly from Tokyo by the Ministry of Greater East Asia Ministry, which was in the hands of the military, after the military took control of the office from the Japanese Ministry of Foreign Affairs in 1942.⁷⁰ On 7 December 1941, Japan attacked Pearl Harbour and started the Pacific War in World War II. In Japan's view, this was a 'hundred-year' war between the architects of a new, fascist geopolitical order and the defenders of the old liberal capitalist order.⁷¹ The war was far more than just a battle over resources.⁷² The Greater East Asia Co-Prosperity Sphere idea was meant to rally those in the Japanese-occupied areas against imperialism and colonialism and encourage them to mobilize with Japan in the war and the peace that would follow.⁷³

Clearly, Greater East Asia was a major and important project, projecting Japan's future existence.⁷⁴ Therefore, it is unsurprising that the independent states formed by Japan, such as Burma, the Philippines, and Indonesia, were supposed to comply with the New Order and the Greater East Asia Co-Prosperity project.

As revealed in Japan's confidential Secretariat Paper no. 3167,⁷⁵ the military administration's basic policy in the Southern areas was to guide the native inhabitants to assume their proper places and to cooperate in establishing the Greater East Asia Co-Prosperity Sphere under the Empire's

66 Peter Duus, *The Greater East Asia Co-Prosperity Sphere, Dream and Reality*, Stanford University, *Journal of East Asian History*, Volume 5, number 1 (June 2008) pp. 143–254.

67 Gordon W. Prange, *The Pacific War Online Encyclopaedia*, 1981.

68 Ibid.

69 Ibid.

70 See *Pacific War Online*.

71 Janis Mimura, *op.cit.*, p. 171. See also, Reischauer, Edwin O. and Craig, Albert M., *op.cit.*, p. 270.

72 The United States of America had, on 26 January 1940, terminated its Commercial Treaty with Japan. The embargo was extended and placed under a licensing system on 10 December 1940.

73 Ian Nish, "Greater East Asia Co-prosperity Sphere", in *The Oxford Companion to the Second World War*, general editor I.C.B. Dear (Oxford and New York), Oxford University Press, 1995, p. 501.

74 Janis Mimura, *op.cit.*, p. 172.

75 The Japanese Empire's Ministry of Navy, Secretariat Paper no. 3167, 14 March 1942.

leadership.⁷⁶ Billing themselves as Asia's champions against Western imperialism, the Japanese occupiers attempted to encourage and use nationalism to obtain local cooperation. Japan called its takeover a "liberation" in one area, the granting of "independence" to a native government in another and setting up a new native government in a third.⁷⁷

In Burma, in March 1943, the Japanese authority established a so-called "Preparatory Committee" to frame a constitution. On 8 May 1943, a Preparatory Committee for the Independence of Burma was established.⁷⁸ The Committee included a wide variety of respected members and was chaired by Ba Maw. Japan granted Burma independence on 1 August 1943 on the condition that Burma should conclude a Treaty of Alliance with Japan and should declare war against Britain and the United States.⁷⁹

Further, Document no. 73⁸⁰ states that a Preparatory Committee for Independence would be organized in Java. In the meantime, it would investigate and study independence-related matters and consider the Committee members' creative ideas, under the supervision of the Supreme Army Commander of Java. As a link in the Greater East Asia Co-Prosperity Sphere, the new nation was meant to maintain close and inseparable relations with the Empire.⁸¹ On 11 May 1945, the Greater East Asia Ministry proposed that certain matters should be determined separately under the relevant circumstances.⁸² These matters included declarations of war by the newly independent nations against the United States, Britain, and the Netherlands, and those nations' treaties with the Empire.

Against this background, on 1 March 1945 (Emperor Hirohito's birthday), the Japanese founded the BPUPK (The Investigation Commission for

76 Harry J. Benda, James K. Irikura, Koichi Kishi, *Japanese Military Administration in Indonesia: Selected Documents*. Document no. 6. Translation Series no. 6, Southeast Asia Studies, Yale University, 1965, p. 26. As the confidential paper summarized, Imperial Japan aimed for permanent possession of these occupied territories. Thus, the basic policy of the Civil Administration in the Navy territory (Borneo, Sulawesi) was *eikyu senriu* (permanent occupation). To this end, administrative and other policies would be devised to facilitate the entire region's organic integration into the Japanese Empire. See Ooi Keat Bin, *The Japanese Occupation of Borneo, 1941-1945*, Routledge, New York, NY 10016, 2011, p.

77 Edwin O. Reischauer and Albert M. Craig, *op.cit.*, p. 272.

78 Thakin Nu, *Burma under the Japanese, Pictures and Portraits*, edited and translated by J.S. Furnivall, London, MacMillan and Company Ltd., Reprinted April 1954, pp. 28, 54. Thakin Nu, later known as U Nu, Prime Minister of Burma, wrote that some members of the committee were pro-Japan, "the puppets who would do whatever the Japanese Command wanted."

79 *Ibid.*, pp. 38 – 69.

80 Document no. 73 on the Tentative Plan of the Southern Area Administration Office of the Army Ministry of Japan's Empire, 4 January 1945.

81 Harry J. Benda, James K. Irikura, Koichi Kishi, *op.cit.*, p. 263.

82 *Ibid.*, p. 265; Also known as the *Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan*.

Preparations for Independence) in Jakarta.⁸³ The Japanese appointed sixty Indonesians as core members, including prominent independence movement figures from the Dutch colonial era.⁸⁴ Members were generally staff from various Japanese military authorities. Eight Japanese officials were added as special members.⁸⁵ The chairman was Radjiman Wedyodiningrat, co-founder and former Boedi Oetomo chairman and Boedi Oetomo's representative on the *Volksraad*. Ichibangase Yosio (Japanese) and Raden Panji Soeroso were appointed as Vice-Chairmen. Soepomo was selected as a member.⁸⁶ The Commission's member selection followed Japan's policy of embracing and obtaining support from local nationalist and independence movements.⁸⁷ Sutan Syahrir, another revolutionary independence leader, refused to join and went underground, in agreement with Soekarno and Hatta.⁸⁸ The Japanese authority enacted a working procedure requiring the Investigation Commission to report periodically to *Gunseikan*, the Japanese Military Administration.⁸⁹

Thus, the 1945 constitution-making process was undeniably not an independent process for a truly independent state. The Japanese colonial government initiated and supervised the process, ensuring it was in Japan's interest.⁹⁰

On the other hand, the process occurred at a time when many Western democratic countries were capitalist, colonialist, anti-freedom, and oppressive. During this period, many freedom fighters associated their struggles with anti-Western camps. This association coincided with the Japanese invaders' view that fascism was superior to liberalism and communism, a "third way" of overcoming capitalism's crisis and resolving class conflicts

83 Subsequently, the English name of the Body was shortened to The Investigation Commission. The other committee, The Preparatory Committee for Indonesian Independence was also shortened to The Preparatory Committee. The Investigation Commission, chaired by Radjiman Wedyodiningrat, was dissolved on 7 August 1945 and replaced by a Preparatory Committee, chaired by Soekarno. The Investigation Commission had some Japanese special members. The Preparatory Committee had no Japanese members.

84 There was some level of negotiation between the Japanese authorities and Indonesian activists in selecting the members. However, the Japanese authority had the final say.

85 Later in July 1945, six more Indonesian members were added.

86 Sekretariat Negara Republik Indonesia, *op.cit.*, pp. xxv-xxvi.

87 Reischauer, Edwin O. and Craig, Albert M., *op.cit.*, p. 272.

88 See Rudolf Mrazek, *op.cit.*, p. 222.

89 *Makloemat Gunseikan no. 23, 2605*. See Marsillam Simanjuntak, *Pandangan Negara Integralistik, Sumber, Unsur, dan Riwaiatnya dalam Persiapan UUD 1945*, Pustaka Utama Grafiti, second printing, 1997, p. 75.

90 Radjiman Wedyodiningrat, in his foreword for the book titled '*Pidato 1 Juni Bung Karno*', 1947, wrote "... even though (The Investigation Commission) session was under strict surveillance of the Japanese Government army." In his Address to the State in the Opening of the First Session of Provisional MPRS on November 10, 1960, Soekarno described the UUD 1945's drafting process as "under the threat of colonial bayonet", but Soekarno refuted that the UUD 1945 was Japanese-made. See also Marsillam Simanjuntak, *op.cit.*, p. 77.

and authority in modern industrial society.⁹¹ Such worldviews helped shape the independence struggle during the Japanese occupation. In general, independence fighters conformed to the anti-Western doctrines embraced by the Japanese.

During the Investigation Commission's opening ceremony on 28 May 1945, Mayor General Seisabaro Okasaki (the Head of Military Administration)⁹² and General Itagaki Seishoro (the Seventh Army's Commander) asserted that an independent Indonesia was a link in the Greater East Asia Co-Prosperty Sphere.⁹³ Radjiman Wedyodiningrat, the Chairman of the Investigation Commission, made a similar statement.⁹⁴ That their messages were later adopted in the Constitution's draft Preamble⁹⁵ denotes that the Japanese authority had tight control on the Constitution's design.⁹⁶

In his opening remark, Wedyodiningrat appealed to the Investigation Commission's members to search for the ideal basis of the newly independent state.⁹⁷ In response, Investigation Commission members submitted various ideas. Soekarno delivered his ideas in his famous speech on 1 June 1945, in which he proposed, among other things, the fundamental norms of an independent Indonesia and the five principles of *Pancasila* as the state's foundations. The *Pancasila* includes the Belief in the One and Only God (*Ketuhanan Yang Maha Esa*), a Just and Civilised Humanity (*Kemanusiaan Yang Adil dan Beradab*), Indonesia's Unity (*Persatuan Indonesia*), a Democratic Life guided by Wisdom in Deliberation and Representation (*Kerakyatan Yang Dipimpin oleh Hikmat Kebijaksanaan, Dalam Permusyawaratan Perwakilan*) and Social Justice for all of Indonesia's People (*Keadilan Sosial bagi seluruh Rakyat Indonesia*).⁹⁸

91 Janis Mimura, *op. cit.*, p. 5.

92 Gordon W. Prange, *At Dawn We Slept, The Untold Story Of Pearl Harbour*, Penguin Books, 1991. On 1 November 1942, *Tojo* took the administration of the occupied territories completely out of the Foreign Office's hands with the creation of the Greater East Asia Ministry. Since the Army effectively controlled the Greater East Asia Ministry, it also had complete control of the occupied territories. The area army commanders had almost complete freedom to run local military governments as they saw fit.

93 Sekretariat Negara Republik Indonesia, *op.cit.*, pp. 367 - 370.

94 *Ibid.*, p. 374.

95 *Ibid.*, p. 266. In this part, Soepomo was recorded explaining the draft of the "preamble" (*pembukaan*) which contains the idea of Indonesia as part of Greater East Asia. As concluded in Hatta's Vice-Chairman Preparatory Committee report to the Committee's plenary meeting on 18 August 1945, the *Mukadimah* (the original draft) revoked and replaced the draft preamble. The *Mukadimah* was prepared by the nine-person committee led by Soekarno.

96 *Ibid.*, pp. 386-388. The Investigation Commission had to report the outcomes of the meeting to the Japanese Military Administration for further guidance.

97 *Ibid.*, p. 92.

98 Sekretariat Negara Republik Indonesia, *op.cit.*, pp. 63-84.

The Investigation Commission worked on the Constitution's draft from 29 May 1945 until 1 June 1945 and from 10 to 17 July 1945. Although the Japanese tightly controlled the process,⁹⁹ the Indonesian members attempted to smuggle ideas of true freedom and democracy into the draft. The Investigation Commission also formed a small eight-person committee, led by Soekarno, to formulate the state's foundation.¹⁰⁰ The committee struggled to resolve relations between religion and the state. At that time, 38 BPUPK members were in Jakarta. They were Jakarta residents and BPUPK members attending Jakarta's session of *Tyuo Sangiin* (the Japanese Army's Central Government's Advisory Board). Following BPUPK's governance procedures, Soekarno invited the 38 members to hold a meeting.¹⁰¹ The meeting agreed to change the members and to increase the committee's size to nine members, consisting of Soekarno, Mohammad Hatta, Mohammad Yamin, Soebardjo, Maramis, Kahar Moezakir, Wahid Hasjim, Abikoesno, and Agoes Salim.¹⁰²

Evading Japanese oversight, Soekarno and his Committee of Nine succeeded in reaching an agreement between the "Islamic group" and the "nationalist group". They managed to draft the Constitution's Preamble, entitled the '*Mukadimah*' (the Preamble), also known as the *Piagam Jakarta* (the Jakarta Charter).¹⁰³ The *Mukadimah* emphasized the values of true freedom, human dignity, social justice, people's sovereignty, and deliberative democracy, containing the *Pancasila* as the foundation of the state.

The translated draft of the *Mukadimah* was as follows:¹⁰⁴

Whereas Independence is truly the right of all nations and therefore colonization in the world shall be abolished, as it is not in accordance with humanity and justice;

99 It should be noted that the Japanese special members were always present during The Investigation Commission meetings.

100 The Committee of Eight consisted of Soekarno, Mohammad Hatta, Mohammad Yamin, M. Soetardjo Kartohadikoesoemo, R. Otto Iskandardinata, A. Maramis, Ki Bagoes Hadikoesoemo and K.H. Wahid Hasjim. See Sekretariat Negara Republik Indonesia, *op.cit.*, p. 88.

101 J.H.A. Logemann, *Nieuwe Gegevens Over Het Ontstaan Van De Indonesische Grondwet Van 1945*, N.V. Noord-Hollandsche Uitgevers Maatschappij Amsterdam - 1962, pp. 693-694.

102 See Sekretariat Negara Republik Indonesia, *op.cit.*, p. 94. Replacement and addition of members, Abdul Kahar Moezakir, Agus Salim, and Abikoesno Tjokrosoejoso provided a more proportional presence for figures with Islamic and nationalist political background in the committee.

103 The draft, which is also known as *Piagam Jakarta* (Jakarta Charter), was agreed by the Committee of Nine on 22 June 1945 and reported to The Investigation Commission on 11 July 1945. See, Sekretariat Negara, *op.cit.*, pp. 163 – 205.

104 Sekretariat Negara Republik Indonesia, *op.cit.*, p. 385. The English version of the *Mukadimah* is translated into English based on the Preamble of the 1945 Constitution of the Republic of Indonesia, published by the Constitutional Court of the Republic of Indonesia, 2015.

And the struggle of the movement towards the independence of Indonesia has now reached the moment of rejoicing to guide the people of Indonesia safely and soundly to the threshold of independence of the State of Indonesia, which is independent, united, sovereign, just and prosperous;

By the Grace of God the Almighty and impelled by the noble desire to live a free national life, the people of Indonesia hereby declare their independence;

Subsequent thereto, to form a Government of the State of Indonesia which shall protect the whole Indonesian nation and the entire native land of Indonesia and to advance the public welfare, to enhance the intellectual life of the nation, and to participate in the implementation of world order which is by virtue of freedom, perpetual peace and social justice, therefore the National Independence of Indonesia shall be composed in a Constitution of the State of Indonesia, which is structured in a form of the State of the Republic of Indonesia, with people's sovereignty based on the Belief in God with obligation to implement Islamic sharia to its followers, Just and Civilized Humanity, the Unity of Indonesia and a Democratic Life guided by Wisdom in Deliberation/Representation, and by realizing Social Justice for all the People of Indonesia.

The Committee of Nine's educational backgrounds and history of independence activism explains how they could produce such a Mukadimah script. They graduated from academic institutions in the Netherlands, the Netherlands-Indies, Egypt, and Mecca. They became leaders of national independence movements when receding liberalism, capitalism, and communism conflicted with 'superior' fascism.¹⁰⁵ They also encountered liberal-capitalist Western countries that were generally colonialist and anti-independence.

Unlike other parts of the 1945 Constitution, the Committee of Nine compiled the Mukadimah manuscripts without the Japanese military's supervision. Therefore, the original Mukadimah is the only part of the 1945 Constitution that is clean of fascist Japanese ideas and interests and contains the pure aspirations and ideals of independent Indonesia.

On 10 July 1945, the Committee of Nine reported the Mukadimah's draft to the BPUPK plenary meeting. However, despite being asked by many members to immediately discuss it, the Chairman of BPUPK, Radjiman, postponed it and prioritized discussing the draft contents of the Constitution. The following day, the Chairman invited members of BPUPK to prepare for the formation of a commission to draft the Constitution. But before continuing, Parada Harahap asked for time to convey his views on the Mukadimah manuscript reported by the Committee of Nine the day before. Basically, he warned that the Indonesian people should not forget Japan's great meritorious contribution to Indonesia in gaining independence and that an independent Indonesia was a member of the Greater East Asia family.¹⁰⁶ He noted that Indonesian independence documents should reflect both points. Then, BPUPK formed a committee to draft the

105 Janis Mimura, 2011.

106 See Sekretariat Negara Republik Indonesia, *op.cit.*, pp. 164-165, 176-179, 213.

Constitution chaired by Soekarno with 19 members and a special Japanese Government Military officer member.¹⁰⁷

On 11 July 1945, the Constitution's Drafting Committee discussed the draft of the Mukadimah. The Committee rejected the Mukadimah and set it aside.¹⁰⁸ Then Soekarno, the chairman of the Committee, appointed four members of the Committee, Soebardjo, Soepomo, Soekiman and Harahap to draft a new introduction to replace the Mukadimah.¹⁰⁹

This four-person team (Team-4) was tasked with finalising the Preamble replacement by the following morning, 12 July 1945. After forming Team-4, the Constitution's Drafting Committee formed a small team of six members to draft the body of the Constitution. This small team consisted of six members: Wongsonagoro, Soebardjo, Maramis, Soepomo, Soekiman and Salim, with Soepomo as chairman (Team-6).¹¹⁰ Team-6 was assigned to complete the draft Constitution and report it to the Constitution's Drafting Committee on 13 July 1945. All of Team-4's members who oversaw revising the Mukadimah, except Parada Harahap, were members of Team-6. Both teams were led by Soepomo and worked in intertwined time frames. This process shows that the Mukadimah's replacement and the drafting of the Constitution was carried out in the same spirit.

On 13 July 1945, at the urging of Gunseikanbu (the Japanese military government),¹¹¹ the Small Team submitted their draft Constitution at the Constitution's Drafting Committee's meeting.¹¹²

During that meeting, Wahid Hasjim proposed that the President should be a Muslim, that Islam should be the state religion, and that the state should guarantee the independence of other faith practitioners. However, others contested this proposal. Agoes Salim argued that the proposal nullified the compromise between the nationalist and Islamist camps. Salim asserted that they must respect their promise to protect other religions, with which Djajadiningrat, Wongsonagoro, and Oto Iskandardinata agreed.¹¹³

Regarding Article 29, Iskandardinata proposed inserting the phrase "The State shall be based on God with the obligation to implement Islamic Sharia for the adherents", which had been in the draft Preamble. Soepomo,

107 The committee consisted of Soekarno (Chairman), Maramis, Oto Iskandardinata, Poerobojo, Agus Salim, Subardjo, Soepomo, Mrs. Ulfah Santosa, Wachid Hasjim, Parada Harahap, Latuharhary, Susanto, Sartono, Wongsonegoro, Wurjaningrat, Singgih, Tan Eng Hoa, Husein Djajadiningrat, Sukiman. See Sekretariat Negara, *op.cit.*, p. 201.

108 It was set aside until 18 August 1945, when Sukarno and Hatta insisted on revoking the new text and reviving the original Mukadimah.

109 *Ibid.*, p. 213. The four members completed the draft and reported it to the Committee on 14 July 1945. The new draft consists of Declaration of Independence and Preamble.

110 See Sekretariat Negara Republik Indonesia, *op.cit.*, p. 222.

111 See Sekretariat Negara Republik Indonesia, *op.cit.*, p. 146.

112 See *Ibid.*, pp. 226-233. Therefore, the making of the Constitutional articles was certainly not based on the ideas and spirit contained in the draft Preamble prepared by the team of nine. Soepomo also emphasized that in preparing the Constitution, Indonesia must recognize itself as a country within the Greater East Asia environment. See *Ibid.*, p. 266.

113 *Ibid.*, pp. 224-225.

as head of the Small Team, expressed no objection to the proposal.¹¹⁴ On the other hand, Maria Ulfah Santoso proposed including basic rights in the Constitution. However, Soepomo refused, saying that the state of Indonesia was based on the people's sovereignty.¹¹⁵

On 14 July 1945, Soekarno, as the chairman of the Constitution Drafting Committee, reported the Constitution's draft introduction – comprised of the Declaration of Independence and a short Preamble – to the Investigation Commission.¹¹⁶

The manuscript of the Declaration of Independence states, among other points:

The victory of Dai Nippon Teikoku (the Japan Empire) over Russia in the 1905 war has inspired – the vehement determination of Indonesian people for freedom – with the spirit of Eastern nationalism. The example of how the Japan Empire triumphed, has spawned organized movements in Indonesian nation, ... demanding the right to freedom of every nation ...

The demand of Dai Nippon Teikoku for the right of Asian freedom, based on equal right of every nation, has been contrary to the interests of Western imperialism ..., has eventually forced Dai Nippon to declare war against the USA and the Britain.

Acknowledging and respecting the righteous intention of Dai Nippon Teikoku in the War of Greater East Asia, every nation within the Greater East Asia Co-prosperity Sphere ..., has been obliged to contribute with all the might and with full determination, to the joint struggle

And now, our struggle has come to the moment of rejoicing, to bring Indonesian people safely and soundly to the gate of the state of Indonesia, which is free, united, sovereign, just and prosperous, who live as true members of the family of the Greater East Asia

By the grace of Allah, the Almighty, ... herewith the people of Indonesia declares independence.

The declaration of independence is followed by a short Preamble,¹¹⁷ which states:

In the name of Allah, the All Compassionate and Merciful,

To form a Government of the State of Indonesia which shall protect the whole Indonesian nation and the entire homeland of Indonesia and in order to advance general prosperity, to develop the nation's intellectual life, ... which is to be established as the State of the Republic of Indonesia with sovereignty of the people and based on the belief in God, with the obligation to implement Islamic shari'a for the adherents,

114 Ibid., p. 225.

115 Ibid., p. 225.

116 Ibid., pp. 235-238.

117 In which the first three paragraphs of the (original) Mukadimah were abolished.

The Investigation Commission agreed that the new Declaration of Independence and the short Preamble would be the first part of the Constitution.¹¹⁸

On 15 July 1945, Soekarno reported the draft Constitution to the Investigation Commission. On that occasion, Soepomo elucidated the draft and emphasized that the Constitution should not contain articles that were not aligned with the concept of the familial state (*negara kekeluargaan*).¹¹⁹ He also reminded the Commission that the constitution should be made for the state to enrich the familial life of Greater East Asia and that Indonesia should realize its position as a state in the sphere of Greater East Asia.¹²⁰ Further, Soepomo asserted that the people's sovereignty would be implemented through the highest authority, a People's Consultative Body (*Badan Permusyawaratan Rakyat*). Therefore, it was not necessary to include basic rights in the Constitution.¹²¹ He also confirmed that it should refute individualism and instead focus on the familyhood system. Soepomo emphasized that familyhood applied to the brotherhood of states within Greater East Asia, of which Indonesia was a member.¹²²

Soepomo's description of the draft was similar to his previous presentation before the Investigation Commission on 31 May 1945. At that time, Soepomo stated that Indonesia should be built on the integralist *Staatsidee* (state idea) as adopted by Nazi Germany and fascist Imperial Japan. Soepomo elucidated that the integralist state of Indonesia did not need to guarantee individual rights vis-a-vis the state (*Grund und Freiheitsrechte*) because everyone was an organic part of the state and the state did not stand outside of personal freedom. He reminded the Investigation Commission that the integralist state was what the Japanese authority had recommended.¹²³ Election by the people for the people was not acceptable because it was based on the individualistic concept and the way of Western (parliamentary) democracies, i.e., a system that equated human beings with one another as mere figures, all of whom were of equal value. Instead, a people's deliberative council should elect the leader, linking them and the people.¹²⁴ Soepomo's opinion was identical to that of Jean Bodin, who argued that "the worst system is people's sovereignty (democracy), because the voting rights (votes) are counted, not weighed, while the number of the stupid, the sinners and the fools are a thousand times more than the honest."¹²⁵

118 See Sekretariat Negara Republik Indonesia, *op.cit.*, pp. 265, 267.

119 The nation as an extended family, whereby the economy is not only dependent on profit-making but also on social responsibilities.

120 See Sekretariat Negara Republik Indonesia, *op.cit.*, p. 266.

121 *Ibid.*, p. 223. Later in that meeting of 13 July 1945, the name of the council was changed from *Badan Permusyawaratan Rakyat* to *Majelis Permusyawaratan Rakyat* (MPR).

122 *Ibid.*, pp. 265-266.

123 *Ibid.*, pp. 34-37, 40.

124 *Ibid.*, p. 42.

125 See Bodin, Jean (1530-1596) in, *On Sovereignty, Six Books of the Commonwealth*, abridged and translated by M.J. Tooley, Seven Treasures Publications, 2009, pp. 230-239.

Thus, the Constitution's main text was drafted towards uniting leadership and the people and under the principle of state unity (*das Ganze der politischen Einheit des Volkes*). This principle was a national-socialist concept that, according to Soepomo, reflected Indonesian society. In this system, Soepomo underlined that the president is the Father of the nation, a true leader leading the way towards the noble ideals (*Führung als Kernbegriff-ein totaler Führerstaat*).¹²⁶

Soekarno then urged the Investigation Commission to promptly finalize the Constitution so that freedom could soon be realized. In Dutch, he reminded the Commission that the "*uren die het lot van eeuwen beheerschen*", the hours that govern the fate of centuries had arrived.¹²⁷ Nonetheless, Mohammad Hatta emphasized the importance of government accountability to the people, the government's limitation of power, and the adherence of basic rights that should be stipulated in the Constitution.¹²⁸ In response, Soepomo emphasized that Indonesia rejected individualism and the class-state (*klasse-staat*), preferring a state that protected the whole nation and country, based on unity through social justice for all within the sphere of Greater East Asia.¹²⁹ Sovereignty was in the hands of the people and manifested itself in the MPR. The Constitution required a state based on the rule of law (*Rechtsstaat*) rather than power (*Machtsstaat*), based on a constitution rather than absolutist governance. It required a government system that gave predominance to the head of state, vesting the "concentrated power and responsibility" in the presidency.¹³⁰

Previously, Soepomo had urged the Investigation Commission to choose a system that would suit the legal history (*Rechtsgeschiede*) and social structure of Indonesian society. He argued against choosing the individualistic-capitalistic Western system or the dictatorial communist system for the proletariat. He instead proposed an *integralist* state where the people and leaders would be politically unified, transcend any societal group, and be filled with the spirit of familial cooperation. Soepomo argued that there is no dualism between the state and the individual which would require a guarantee of fundamental rights and civil liberties (*Grund und Freiheitsrechte*) for the individual against the state.¹³¹ Soepomo also referred to the Japanese Dai Nippon system, based upon the eternal and total inte-

126 During the discussion in the BPUPK, Soepomo used the German language many times, the language of Japan's ally during WWII.

127 Sekretariat Negara Republik Indonesia, *op.cit.*, p. 250.

128 *Ibid.*, pp. 262-263. Hatta emphasized these values three years before the adoption of the Universal Declaration of Human Rights by the United Nations General Assembly on 10 December 1948 at the Palais de Chaillot in Paris, France.

129 *Ibid.*, pp. 265-266.

130 *Ibid.*, pp. 273-274.

131 *Ibid.*, pp. 36-37.

gration of His Royal Highness Tenno Heika, the state, and the people.¹³² In this view, the state rests upon the principle of familyhood and Nazi-inspired concepts of the “leadership principle” (*Führungsprinzip*), “living space” (*Lebensraum*), and “national land planning” (*nationalen Raumordnung*). Furthermore, Soepomo underlined Hatta’s argument that the state should be a unified national state, not an Islamic state.¹³³ Finally, he elucidated that the most important aspect in an integralist state is the livelihood of the nation in its totality. The state does not side with the most powerful or largest group and does not consider the individual interests at its core. Instead, the state guarantees the safety of the whole nation as an integrated unity.¹³⁴

Until the end of the debate, many Investigation Commission members argued in favour of including the “*droits de l’homme et du citoyen*” (the basic rights of the citizen) in the Constitution.¹³⁵ Conversely, Soekarno encouraged the Commission to remove from the Constitution all civil rights recognized by the French Republic.¹³⁶

Eventually, the Investigation Commission made several changes to the Constitution Drafting Committee’s draft. The President and the Vice-President should be native Indonesians and Muslims. Freedom of religion was replaced with a stipulation that Indonesia shall be based on God and obliged to implement Islamic Sharia for adherents.¹³⁷ However, arguing that including people’s basic rights, i.e., rights of assembly and association, would be contrary to the systematic of the Constitution’s writing, Soepomo concluded that such matters would be regulated under ordinary laws.¹³⁸

132 In his statement before PAH I public hearing on 13 December 1999, Ruslan Abdulgani revealed his conversation with Soepomo in which the latter had stated that democracy is *manunggaling* (in unity), the unity between the Royal Highness and the people. Furthermore, Abdulgani concluded that during the vote on the form of the independent state of Indonesia, Soepomo was one of the six Investigation Commission members who voted for a monarchy. See Majelis Permusyawaratan Rakyat Republik Indonesia, *Risalah Perubahan Undang-Undang Dasar Negara Republik Indonesia*, Tahun Sidang 2000, Buku Satu, Edisi Revisi, Sekretariat Jenderal, 2010, p. 193. *Manunggaling*, or the full term “*manunggaling kawulo lan Gusti*” is an understanding among traditional Javanese society. It means a state in which a person has been able to surrender his life totally to God so that he can let God work through him.

133 Hatta asserted that the state should not be based on a separation between ‘religion’ and ‘the state’ but should instead be a modern state based on a separation between religious and state affairs. See Sekretariat Negara Republik Indonesia, *op. cit.*, pp. 38 – 39. On the other hand, Hatta (and Sartono) argued for a ‘religiously neutral’ state. See Daniel S. Lev, *Islamic Courts in Indonesia: A Study in the Political Bases of Legal Institutions*, University of California Press, 1 January 1972, p. 39.

134 Sekretariat Negara Republik Indonesia, *op. cit.*, pp. 36 - 37. However, as the leader of the Indonesian delegation in writing the 1949 Federal Constitution and the leader drafting the provisional 1950 Constitution, Soepomo agreed to adopt checks and balances in the parliamentary system and human rights.

135 *Ibid.*, p. 250.

136 *Ibid.*, pp. 259, 261.

137 *Ibid.*, p. 267.

138 *Ibid.*, p. 289.

The process was a political one. Ideas were debated politically, though often embellished with theoretical quotes.¹³⁹ In many instances, literature was used to justify or even disguise specific ideas. On the other hand, the drafting process occurred when the Mukadimah or Jakarta Charter, drafted by the Indonesian Committee of Nine, had been discarded. It was replaced by a Declaration of Independence and brief Preamble, both tainted by Japanese fascist ideas.¹⁴⁰ There is no record that the Japanese members of the Investigation Committee actively participated in the discussions. However, the description above shows how Japanese hegemonic interests were the deciding factors in the Committee's conclusions.

Thus, there had been arguments between the ideas of a true independent Indonesia and the ideas corresponding with Japanese interests.

In the meantime, various political attitudes based on integralism, nationalism, socialism, and Islamism also contributed to the debates. Only ideas that did not obviously oppose the ideas of Japanese fascism stood a chance.¹⁴¹

On 16 July 1945, the Investigation Commission approved the draft Constitution, containing the Declaration of Independence, the short Preamble, and the Articles.¹⁴² On 18 July 1945, the Investigation Commission submitted the draft to the Commander of the Japanese Military Administration (*Gunseikan Kakka*).¹⁴³ However, the *Gunseikan Kakka* never responded.

139 See, among others, *Ibid.*, pp. 273 - 274. Soepomo quoted Hegel's view on sovereignty so often that Hegel's philosophy seemed to form his view on state matters. In that regard, it was in line with Japan's totalitarian system (*kokutai*), a kind of integralist-totalitarian system. However, on 15 July 1945, Soepomo mentioned some interesting points which contradicted the Hegelian principles he used to quote. Among others, he asserted that the government system should be based on a constitution and not on absolutism. See Sekretariat Negara Republik Indonesia, *op.cit.*, pp. 33, 35, 274.

140 See *Ibid.*, pp. 238, 266. On 14 July 1945, Soekarno reported the draft of the Declaration of Independence and the (short) Preamble to the Investigation Commission. These stated, among others, that the independent state of Indonesia should enrich the familial life of Greater East Asia. Further, on 15 July 1945, before an Investigation Commission session, Soepomo asserted that the constitution was composed with the acknowledgement that: "... the state should prosper the life of the Greater East Asia. We should bear in mind Indonesia's position of being a state within the Greater East Asia."

141 The Investigation Commission should report its work periodically to *Gunseikan*, the Japanese Military Administration. See *Makloemat Gunseikan no. 23, 2605*, in Marsillam Simanjuntak, *op.cit.*, p. 75. The pre-independence drafting process of UUD 1945 also included Japanese Military Colonial Ruler representatives. It is understandable how compromises and pretences occurred in those circumstances. Immediately after Japan's actual surrender in WWII, on 7 August 1945, the Japanese authority formed a new Preparatory Committee, this time with no Japanese members. The Preparatory Committee then finalized the draft Constitution in a one-day meeting on 18 August 1945. See also Sekretariat Negara Republik Indonesia, *op.cit.*, pp. 412 - 420.

142 Sekretariat Negara Republik Indonesia, *op.cit.*, p. 361.

143 *Ibid.*, pp. 386 - 388.

In the meantime, the Imperial Government of Japan continued with its plan. A cablegram¹⁴⁴ from 2 August 1945 revealed that Japan's government had simultaneously scheduled Indonesia declaring independence and war on Britain, the Netherlands, and the United States on 7 September 1945. Further, the document stated that after independence and before assigning a formal Envoy Extraordinary and Ambassador Plenipotentiary, a Japanese military commander in Jakarta would serve as a formal Minister for the Java region.¹⁴⁵ On 7 August 1945, Japan replaced the Investigation Commission with the Preparatory Committee for Independence of Indonesia (*Panitia Persiapan Kemerdekaan Indonesia*).¹⁴⁶ However, the Preparatory Committee did not immediately resume the process.

On the invitation of the Japanese authority for South-East Asia, three Indonesian leaders (Soekarno, Hatta, and Radjiman) flew to Dalath, Saigon to meet General Terauchi. They discussed Indonesian Independence Day, which the Japanese had scheduled for 7 September 1945. Upon the leaders' return on 14 August 1945, the youth leaders met Soekarno and Hatta. Anticipating that Japan would soon surrender after an atomic bomb had destroyed Hiroshima (6 August 1945) and Nagasaki (9 August 1945),¹⁴⁷ they urged Soekarno and Hatta to seize independence immediately and not wait for the Japanese plan. However, Soekarno and Hatta insisted that they should ask the Preparatory Committee for a decision.

Japan surrendered on 15 August 1945 and there was still no decision from Soekarno and Hatta.¹⁴⁸ Impatient with their uncertain attitude, the youths kidnapped them and brought them to Rengasdengklok to compel them to declare Indonesia's independence.¹⁴⁹ In short, Soekarno and Hatta agreed with the youth leaders to proclaim independence on 17 August

144 The cablegram was sent from General Terauchi, the Supreme Chief of Staff of Japan's Army I Corps for Southeast Asia, to the Deputy Chief (Vice Minister) on Independence for East Asia.

145 Document no. 80. See Harry J. Benda, James K. Irikura, Koichi Kishi, *op.cit.*, pp. 275, 276. Burma was granted independence on 1 August 1943 on the condition that it conclude a Treaty of Alliance with Japan and declare war against Britain and the United States. Preceding independence, a constitution was drafted under the guidance of the Japanese authority. Together with the Philippines and Indonesia, Burma was part of the Greater East Asia Co-Prosperity Sphere. See Thakin Nu, *op. cit.*, pp. 38 – 69.

146 Subsequently, the Committee's name was shortened to the Preparatory Committee.

147 Emperor Hirohito declared Japan's surrender on 15 August 1945.

148 On 15 August 1945, the 16th Japanese Army affirmed that they would no longer support granting independence to Indonesia. This position was confirmed by the Seventh Area Army Commander, Itagaki Seishoro, in Singapore on 19 August 1945. Through this position, the Japanese maintained the status quo and transferred it to the Allied Forces. See Ken'ichi Goto, Waseda University, *Caught in the Middle. Japanese Attitudes toward Indonesian Independence in 1945*. Journal of Southeast Asia Studies Vol. 27, No. 1 (March 1996), pp. 37 – 48. Published by Cambridge University Press on behalf of the Department of History of the National University of Singapore.

149 A national youth movement of Indonesia led by Chaerul Saleh, dr. Soetjipto and Sukarni kidnapped Soekarno and Hatta and urged them to proclaim independence immediately. See St. Sularto & D. Rini Yunarti, *op.cit.*, p. 100.

1945. With their safety guaranteed by Admiral Takashi Maeda,¹⁵⁰ a Japanese officer sympathetic to the plan, Soekarno and his colleagues drafted the text of the proclamation in the late evening on 16 August 1945 at Maeda's residence¹⁵¹ in Jakarta. They declared independence at 10:00 on 17 August 1945. In his speech, before declaring Indonesia's independence, Soekarno asserted that his previous attitude in favour of the Japanese had been merely a tactic towards achieving independence.¹⁵²

The newly proclaimed state had neither a government nor a constitution. On 18 August 1945, the Preparatory Committee hastily strove to finalize the Constitution and elect a president and vice-president of the Republic of Indonesia.

The BPUPK plenary meeting minutes record that day consisting of three parts, each of which lasted approximately one hour. The first part discussed the Preamble to the Constitution. The second part discussed the Government Structure and the Constitution. The third part discussed the election of the president and vice president and the formation of the KNIP.¹⁵³

In this regard, it is important to note that on the previous afternoon, Mohammad Hatta was informed by an officer of the Japanese Navy (Kaigun) that the representatives of Protestants and Catholics in the area controlled by the Kaigun strongly objected to one section of the draft Preamble: "Belief in God with the obligation to carry out Islamic law for its adherents". The provision in that sentence was regarded as discriminating against a minority group. If this "discrimination" were adopted, they preferred being outside the Republic of Indonesia. As is known, these areas, particularly Sulawesi and Kalimantan, were under the control of the Japanese Navy's and were planned to be made an "eikyu senryu" (permanent occupation), an annexed Japanese territory.¹⁵⁴

Therefore, considering that the issue was very serious for the integrity of the nation and the state, the next morning before the PPKI meeting, Mohammad Hatta invited several Islamic religious leaders, members of the PPKI, Ki Bagus Hadikoesoemo, Wahid Hasyim, Kasman Singodimedjo and Teuku Hasan to discuss the matter. These leaders, realizing the seriousness

150 Admiral Maeda was the liaison-officer between the Japanese Army and the Navy. In 1976, Maeda was honoured by President Suharto with the *Bintang Jasa Nararya*, the Republic of Indonesia's medal-of-honour.

151 Mohammad Hatta, *op. cit.*, p. 91. The author argues that Soekarno and Hatta were unwilling to use the text of the Declaration of Independence that had been prepared by Soepomo *cs.* Instead, Soekarno himself wrote the famous text of the Independence Proclamation and then typed the manuscript. This was confirmed to the author by Sajuti Melik, a journalist who typed the draft Proclamation, and a former member of parliament (1971–1982).

152 Sekretariat Negara Republik Indonesia, *op.cit.*, 1995, p. 407.

153 See *Ibid*, pp. 412 – 455. KNIP (Komite Nasional Indonesia Pusat - the Central Indonesian National Committee).

154 See Ooi Keat Bin, *The Japanese Occupation of Borneo, 1941-1945*, Routledge, New York, NY 10016, 2011,

of this issue, wisely and immediately agreed to replace the sentence, “*Ketuhanan dengan kewajiban menjalankan syari’at Islam bagi pemeluk-pemeluknya*” (Belief in God, with the obligation to carry out Islamic law for its adherents) with “*Ketuhanan Yang Maha Esa*” (Belief in the One and Only God).¹⁵⁵

At the beginning of the Preparatory Committee meeting on 18 August 1945, Soekarno explained that PPKI members had proposed various changes to the draft Constitution. Sukarno then advocated following the Investigation Commission’s draft Constitution, reminding members that time was limited.

Soekarno and Hatta asserted that the draft Declaration of Independence and the short Preamble must be revoked and replaced by the draft Mukadimah (from 22 June 1945). Mohammad Hatta explained that “there was a Small Team which had composed a Preamble for our Constitution. But later, the Dokuritsu Zyunbi Tjoosakai revised the Preamble and broke it into two: The Declaration of Indonesian independence and a short Preamble.”

Further, Hatta stated that PPKI members proposed to “revoke the Declaration of Independence and the short preamble and to replace them with the Mukadimah that was drafted by the Small Team, ... in short, we return to the initial Preamble.” In his explanation, Hatta also conveyed the draft Preamble’s changes regarding belief in God as agreed that morning.¹⁵⁶

Just like Hatta, Soekarno also affirmed that “... the Declaration of Independence which was drafted by the Investigation Commission should be resolutely revoked. Likewise, the introduction which was made by the Tyoosakai was completely removed,”¹⁵⁷ Then, Soekarno asserted that the title Mukadimah was replaced by Pembukaan.¹⁵⁸

Then, Soekarno offered the draft of the Pembukaan to the PPKI plenary for approval. The PPKI plenary meeting unanimously agreed the text as the Pembukaan to the Constitution.¹⁵⁹

In the subsequent plenary meeting, which lasted only one hour, PPKI discussed the draft Constitution.¹⁶⁰ Yet, although parts were corrected, it was impossible to rewrite its entirety in such a short time.¹⁶¹ Nevertheless, Soekarno urged that the Constitution should be ratified that day. He reminded the PPKI that the situation was rapidly changing and admitted in Dutch that the Constitution was provisional, “... *een revolutionaire grondwet*” (a revolutionary constitution). He emphasized that the MPR should, as soon as possible and in a conducive environment, convene to make a

155 Mohammad Hatta, “*Untuk Negeriku, Menuju Gerbang Kemerdekaan*”, an autobiography, Penerbit Buku Kompas, Januari 2011, pp. 95 – 98.

156 Sekretariat Negara Republik Indonesia, op.cit., 1995, p. 414.

157 Ibid., pp. 414-417.

158 As affirmed by Soekarno. Ibid., p. 417.

159 Ibid., p. 420.

160 This second part of the PPKI’s plenary meeting lasted from 11.26 to 12.20 Indonesia Western Time. Ibid., p. 423.

161 In that respect, the claim that the original 1945 Constitution’s constitutional system has been designed following the Preamble’s values does not have a solid basis.

more complete and perfect Constitution.¹⁶² The Preparatory Committee then approved the Constitution on the condition that it should be improved later, as soon as possible. Then, a constitutional amendments procedure was incorporated into the Constitution,¹⁶³ based on the proposals of Sam Ratulangi, Iwa Kusumasumantri, and Mohammad Hatta.¹⁶⁴

In that way, the 1945 Constitution was drafted through a joint process of two different stages. The first stage was under the direction of the Japanese. The second stage was an independent process, one that was very short and revolutionary in spirit. The last stage boosted the character of the constitution-making significantly, changing it from a process under Japanese control into one that was vibrant, fiercely independent, and revolutionary.

On the other hand, it is important to note that since the Investigation Commission's first meeting, there was disagreement about the state's foundation.¹⁶⁵ The Islamists wanted Islam as the state's foundation while the nationalists wanted a secular basis.¹⁶⁶ Soekarno, for instance, in his famous speech on 1 June 1945, affirmed that Indonesia should be a state based on nationalism, a state of "all for all", which would not side with the largest group, but exceed, heed, and respect all groups, large and small.¹⁶⁷ Quoting Hatta, Soepomo stated that religious and state affairs should be separated.¹⁶⁸ As discussed above, just before the Preparatory Committee meeting on the morning of 18 August 1945, an agreement was reached to replace the "tujuh kata" from the draft Mukadimah and replaced with "Belief in the One and Only God".¹⁶⁹

Further, the Preparatory Committee (PPKI) agreed to delete "should be a Muslim" as a requirement to the Presidency. Subsequently, Hatta explained to the PPKI's plenary that the 'seven-words' in the *Mukadimah* and the related Article had been removed, and that the phrase "Ketuhanan" (Belief in God) in the *Mukadimah* had been adjusted to "Ketuhanan Yang Maha Esa" (Belief in the One and Only God).¹⁷⁰ In that way, the Preamble of the 1945 Constitution, which does not mention Greater East Asia, was approved by The Preparatory Committee on 18 August 1945.¹⁷¹

162 Sekretariat Negara Republik Indonesia, *op.cit.*, pp. 413, 426.

163 *Ibid.*, p. 441.

164 *Ibid.*, pp. 429-433

165 *Ibid.*, pp. 38 – 40; 344 – 352.

166 Deliar Noer, *Partai Islam Di Pentas Nasional* (Islamic Parties at National Stage), PT Pustaka Utama Grafiti, First Printing, 1987, pp. 35 – 38.

167 Sekretariat Negara Republik Indonesia, *op.cit.*, p. 71.

168 *Ibid.*, p. 38.

169 Mohammad Hatta, *op.cit.*, p.p. 95 – 98.

170 Sekretariat Negara Republik Indonesia, *op.cit.*, p. 415. The formulation of the first principle in the *Mukadimah*, which was "Belief in God with the obligation to implement Islamic Sharia for the adherents", was replaced by "Belief in the One and only God."

171 There is no official English version of the 1945 Constitution. The text quoted here comes from the English version of the 1945 Constitution published by the Constitutional Court of the Republic of Indonesia, 2015.

THE 1945 CONSTITUTION OF THE REPUBLIC OF INDONESIA
PREAMBLE

Whereas Independence is truly the right of all nations and therefore colonization in the world shall be abolished, as it is not in accordance with humanity and justice.

And the struggle of the movement towards the independence of Indonesia has now reached the moment of rejoicing to guide the people of Indonesia safely and soundly to the threshold of independence of the State of Indonesia, which is independent, united, sovereign, just and prosperous,

By the Grace of God, the Almighty and impelled by the noble desire to live a free national life, the people of Indonesia hereby declare their independence.

Subsequent thereto, to form a Government of the State of Indonesia which shall protect the whole Indonesian nation and the entire native land of Indonesia and to advance the public welfare, to enhance the intellectual life of the nation, and to participate in the execution of world order which is by virtue of freedom, perpetual peace and social justice, therefore the National Independence of Indonesia shall be composed in a Constitution of the State of Indonesia, which is structured in a form of the State of the Republic of Indonesia, with people's sovereignty based on the belief in the One and Only God, Just and Civilized Humanity, the Unity of Indonesia and a Democratic Life guided by Wisdom in Deliberation/Representation, and by realizing Social Justice for all the People of Indonesia.

The Preamble contains the fundamental consensus on political and moral commitments of the people of Indonesia and affirms the state's adherence to independence, people's sovereignty, humanity, and social justice. It contains the desire, values, and goals of Indonesia's independence, exalted as noble ideals of the nation.¹⁷² Also embodied in the Preamble is the *Pancasila*, the five principles: "Belief in the One and Only God", "Just and Civilized Humanity", "The Unity of Indonesia", "Democratic Life guided by Wisdom in Deliberation/Representation", and "Social Justice for all the People of Indonesia". These are the foundation of the state. They are an inclusive ideology representing a consensus between Muslims who called for Islam as the state philosophy and nationalists who wanted a non-religious state philosophy. Despite these disagreements, most articles in the draft Constitution remained intact.¹⁷³

Aware of the possible flaws in the 1945 Constitution, Soekarno asserted that the Constitution is "an *express* Constitution, a *revolutie grondwet* that must be improved later at an appropriate time."¹⁷⁴ Based on Iwa Kususumantri's proposal,¹⁷⁵ the 1945 Constitution provides a constitutional

172 As comparison, see Gregoire Webber, *Post Conflict Constitutions and Constitutional Narratives* (quoted from Walter Bagehot, *The English Constitution*, 1867, New York. Oxford University Press, 2009), in a paper presented at the 2010 WG Hart Legal Workshop *Comparative Aspects on Constitution: Theory and Practice*, last updated 6 January 2011; p. 18.

173 Concurrently, the 'seven words' were also removed from the draft of Article 29.

174 Sekretariat Negara Republik Indonesia, *op.cit.*, p. 426.

175 *Ibid.*, pp. 427- 428.

amendment procedure in Article 37.¹⁷⁶ At the insistence of Ratulangi,¹⁷⁷ Additional Provisions were added. These stipulate that within six months of its formation, the MPR shall convene to enact the Constitution as a provisional constitution.¹⁷⁸

At the end of the meeting on 18 August 1945, Soekarno declared that the Constitution of the State of the Republic of Indonesia and its transitional rules were validly decided.¹⁷⁹ Hence, due to the different understandings of democracy and time constraints, the 1945 Constitution became a rather ambiguous constitution, adhering to the principles of democracy, human rights, and the rule of law through the Preamble and fascist ideas through the main Articles. However, Article 37 demonstrated its provisional and temporary nature.

Despite its shortcomings, the revolutionary spirit that surrounded its birth and the subsequent battles for defending independence elevated the 1945 Constitution to a symbol of a triumphant national struggle for independence and the dignity of the nation.¹⁸⁰

II.3.1 The first four years of the 1945 Constitution's implementation (1945–1949)

From 1945 to 1949, the 1945 Constitution was not actually implemented. Following the Allied Forces' allegations that the 1945 Constitution was a Japanese creation,¹⁸¹ the Constitution's presidential system was not implemented. Sutan Syahrir, a social-democrat and anti-Japanese underground

176 Article 37 UUD 1945 states: (1) In order to amend the Constitution, no less than 2/3 of the total members of the People's Consultative Assembly shall be in attendance. (2) Decisions shall be taken with the approval of no less than 2/3 of its total members in attendance.

177 Sekretariat Negara Republik Indonesia, *op.cit.*, pp. 450, 451.

178 Previously, on 11 July 1945, Wongsonagoro reminded the Investigation Commission that, in due time, the new state's statute should be composed in a way that respected the people's sovereignty. See Sekretariat Negara Republik Indonesia, *op.cit.*, p. 173. The Investigation Commission's members were selected and appointed by Japan's military authority.

179 *Ibid.*, p. 455.

180 Later, during the New Order era, all political powers, including the military and police, were obliged to be loyal to the 1945 Constitution. The first oath of the Soldier's Oath, embedded in Law nos. 20/1988 and 34/2004, asserts that the soldier is loyal to the Unitary State of the Republic of Indonesia, which is based on *Pancasila* and the 1945 Constitution of the Republic of Indonesia. See also Law nos. 3/1975 and 31/2002 on political parties.

181 On 13 December 1999, Ruslan Abdulgani testified before a PAH I public hearing that the British authority asserted not to talk to this 'Japanese puppet'. See Majelis Permusyawaratan Rakyat Republik Indonesia, *op. cit.*, Tahun Sidang 2000, Buku Satu, Edisi Revisi, Sekretariat Jenderal, 2010, p. 194.

activist, was appointed prime minister,¹⁸² a position the 1945 Constitution does not mention. He was accountable to the KNIP (the Central Indonesian National Committee)¹⁸³ through a parliamentary-like government system. President Soekarno, whom the Allied Forces accused of collaborating with Japan, was then positioned as the head of state. The establishment of the PNI (Indonesia National Party) as the only state political party was cancelled and a multi-party system was introduced.¹⁸⁴ This move was an astute political manoeuvre by a faction led by Hatta and Syahrir to implement parliamentary democracy and to alienate Soekarno from the political leadership.¹⁸⁵

The country was both overwhelmed by guerrilla warfare and a revolutionary atmosphere and by diplomacy seeking international support for Indonesian independence¹⁸⁶. Unfortunately, the two sides of the struggle, guerrilla battle and diplomacy, were not running harmoniously and even conflicted occasionally. In the meantime, the Army was overwhelmed with civilian politics.¹⁸⁷ Soldiers played a multifaceted role in the guerrilla war against the Dutch and day-to-day governance, especially in the countryside.

182 Herbert Feith, *op.cit.*, p. 43. Wim Schermerhorn, a Social-Democrat, was the Dutch Prime Minister from 1945 – 1946. Therefore, Indonesian leadership assumed that Sutan Syahrir, a socialist, was the right person to deal with the then-socialist government of the Netherlands. Herbert Feith also wrote that the decision came from “a belief that the new Republic would gain wider international acceptance if it is headed by a leader of an anti-Japanese underground organization.”

183 Also known as the *Komite Nasional Indonesia Pusat*. The Preparatory Committee established the KNIP on 22 August 1945, based on Article IV, Transitional Rule of UUD 1945. Edict of the Vice President no X/1945, dated 16 October 1945, stated that the KNIP – the Central Indonesian National Committee – was given legislative powers before the formation of the People’s Consultative Assembly and DPR.

184 The PNI was the *Partai Nasional Indonesia*. During its fourth meeting on 22 August 1945, the PPKI decided to form PNI as the single state party. See Sekretariat Negara Republik Indonesia, *op.cit.*, pp. 503 – 505. On 3 November 1945, Vice President Hatta issued an edict to encourage the establishment of political parties.

185 This action also contributed to future extra-constitutional political behaviour.

186 . As concluded in the first Cairo Conference on WWII on 7 November 1943 and considering herself as the holder of sovereignty over the territory, in July 1947 and in December 1948 the Netherlands conducted military operations to re-establish its control over the territory of the former Netherlands East Indies.

187 A negotiation between the Netherlands and Indonesia in Linggarjati, West Java, on 25 March 1947, led to three events. First, the Dutch Government recognized the status quo rule of the Republic of Indonesia over Java, Madura, and Sumatera. Second, the Indonesian and Dutch governments jointly organized the establishment of a state in the form of a federation under the name of the *Republik Indonesia Serikat* (RIS – The Unitary States of the Republic of Indonesia). Third, the RIS and Dutch government worked together in a union called the Union of Indonesia and the Netherlands. Subsequently, the Renville negotiations led to the cessation of the fighting and the establishment of demarcation lines (known as the *Van Mook* lines). Afterwards, Indonesian armed forces had to evacuate their strongholds in various locations.

The people appreciated soldiers, who would generally enjoy high social status. On the other hand, the up-and-down multi-party cabinets¹⁸⁸ were unable to do much to overcome the economic hardships.

The Indonesian military is one of the few armed forces in the world that has the character of a liberation army. During the power vacuum, after the Japanese surrendered and PETA and Heiho disbanded, various youth organizations spontaneously formed military organizations and armed themselves with seized Japanese armaments.

To avoid confrontation with the Allied Forces after the proclamation,¹⁸⁹ the new Republic established an agency called the BPKKP (Agency for Helping the Families of War Victims) instead of forming a military organization.¹⁹⁰ The Preparatory Committee formed the BKR (People's Security Organisation) as part of the BPKKP.¹⁹¹ Nevertheless, youth groups and general mass organizations continued to build armed militia forces, which later integrated into the BKR.

Chaotic civilian politics, short-term cabinets, continued economic hardship, military dissatisfaction with the diplomatic negotiations, government programmes for reorganizing and streamlining the military, and rebellions by the *DI/TII* and *PKI-Madiun*¹⁹² all further increased the military's disappointment with the existing civilian political system. The chaotic civilian politics also degraded the political parties' reputations and delegitimized the parliamentary and democratic system. While the Indonesian army evolved as a national army, it grew into a political army that systematically developed political links with the nation-state building process.¹⁹³

In the meantime, attempts to make Islam the state's ideological foundation continued. On 17 December 1945, the political party Masyumi, following its statutes, issued an action programme to alter the 1945 Constitution to establish an Islamic state and society.¹⁹⁴ On 18 September 1948, the Communist Party (PKI) under Muso launched a rebellion and established a "Soviet Republic of Indonesia" in Madiun, East Java.¹⁹⁵

188 There were seven cabinets between 1945 and 1949.

189 The Allied Forces, following the Potsdam Declaration of 26 July 1945, would soon take over the East Indies from the Japanese.

190 The BPKKP was the *Badan Penolong Keluarga Korban Perang*. Sekretariat Negara Republik Indonesia, *op. cit.*, pp. 500 – 502.

191 The BKR was the *Badan Keamanan Rakyat*.

192 *DI/TII* stands for *Darul Islam/Tentara Islam Indonesia* (The Islamic State/The Indonesian Islamic Army). *PKI* stands for *Partai Komunis Indonesia* (The Indonesian Communist Party).

193 Andi Widjajanto, *Transforming Indonesia's Armed Forces*, UNISCI Discussion Papers, no. 15, October 2007.

194 Deliar Noer, *op. cit.*, p. 119. At that time, NU still joined Masyumi.

195 TNI recaptured Madiun on 30 September 1948. The communist rebellion was destroyed two months later.

From December 1949 to August 1950, the unitary Republic of Indonesia became a member state of the federal Republic of Indonesia. Its territory was the region of the Yogyakarta sultanate (see below). During that period, the 1945 Constitution was the constitution of the unitary republic.

The above shows that in this period, the political structure did not advance and institutionalized politics did not evolve. The main issue of political contestations was the state ideology. During this period, the 1945 Constitution was merely regarded as a formal yet nominal Constitution that was not actually implemented.

II.4 THE PROVISIONAL CONSTITUTIONS: 1949 TO 1959

II.4.1 UUD RIS: 31 January – 17 August 1950

On 17 August 1945, Indonesia proclaimed her independence as a sovereign country, the Republic of Indonesia. In 1947 and 1949, the Dutch claimed their authority over the territory previously known as the *Nederlands Indie* (the Netherlands East Indies), as the 1943 Cairo Conference agreement implies.¹⁹⁶ The Dutch launched military actions during those years, framing it as enforcement of their territorial authority. However, Indonesia considered that this Dutch military aggression violated Indonesia's sovereignty, submitting as much to the United Nations. Peace negotiations between Indonesia and the Netherlands held in Linggarjati (1948) and Jakarta (the 1949 Roem-Roijen conference) failed to solve the dispute. In the meantime, the Dutch authority established several states throughout the country.

Eventually, with UN intervention, the Netherlands hosted a peace conference, the Round Table Conference, between 3 August – 2 November 1949 in The Hague. It was then that the Dutch finally recognized Indonesian independence, after which Western countries and the United Nations followed suit.¹⁹⁷

The conference also agreed that Indonesia should be a federal state named the RIS (the Federal Republic of Indonesia),¹⁹⁸ with member states including the Unitary State of the Republic of Indonesia.

196 On 27 November 1943, the first Cairo Conference on WWII (attended by President Roosevelt of the United States of America, Prime Minister Winston Churchill of the United Kingdom, and Generalissimo Chiang Kai-shek of the Republic of China) concluded that "Japan be stripped of all the islands in the Pacific which she has seized or occupied since the beginning of the First World War in 1914".

197 United Nations Security Council Resolution number 86 adopted on 26 September 1950.

198 The RIS stands for the *Republik Indonesia Serikat*.

The RIS and BFO (Federal Consultation Meeting) delegations¹⁹⁹ jointly prepared the Federal Republic's draft Constitution (UUD RIS)²⁰⁰ under UN supervision at the Round Table Conference (KMB).²⁰¹ Soepomo, one of the prominent actors who drafted the 1945 Constitution, was a member of the Indonesian delegation.²⁰² The process involved government-appointed people isolated from the public. It took place from August to October 1949 in Scheveningen and The Hague, occurring alongside the KMB (23 August – 2 November 1949).

The KMB ended the war for Indonesian independence and transferred Indonesian sovereignty from the Dutch to Indonesia.²⁰³ Both delegations of the Republic of Indonesia and BFO signed the UUD RIS on 29 October 1949.²⁰⁴ On 31 January 1950, Indonesia enacted the 1949 Federal Constitution through the President's Decree no. 48. (c) State Gazette 50-3.²⁰⁵

Article 186 of the 1949 Constitution affirmed that the 1949 Federal Constitution was provisional.²⁰⁶ Further, Indonesia was constituted as a federal state that adopted the principles of democracy and the rule of law,²⁰⁷ human rights,²⁰⁸ and an independent judiciary.²⁰⁹

The UN also influenced the successful incorporation of those principles into the 1949 Federal Constitution.²¹⁰ These principles (democracy and the rule of law) were thus artificially transplanted, incorporated into the Constitution through an isolated process by a hand-picked team.

199 BFO was the *Bijeenkomst voor Federaal Overleg*. It was a forum of Federal Republic of Indonesia state representatives. The BFO delegation consisted of Sultan Hamid II (West Kalimantan) as the chairman, Ide Anak Agoeng Gde Agoeng (Indonesia Timur - East Indonesia) as Vice-Chairman, Soeparmo (Madura) as Vice-Chairman, A.A. Rivai (Bandjar), Saleh Achmad (Bangka), K.A. Moh. Joesoef (Belitung), Mochran Bin Hadji Moh. Ali (Dayak Besar – Greater Dayak), R. Sudjito (Jawa Tengah - Central Java), R. Tg. Djuwito (Jawa Timur - East Java), M. Jamani (Kalimantan Tenggara - Southeast Kalimantan), Adji Pangeran Sosronegoro (Kalimantan Timur - East Kalimantan), Mr. R. Tg. Djumhana Wiriatmadja (Pasundan), Radja Mohammad (Riau), Abdul Malik (Sumatera Selatan - South Sumatera), and Radja Kaliamsjah Sinaga (Sumatera Timur - East Sumatera).

200 The RIS' Constitution was the *Undang Undang Dasar Republik Indonesia Serikat* (UUD RIS).

201 KMB stands for *Konperensi Meja Bundar*.

202 The delegation from the Republic of Indonesia to the KMB was led by Mohammad Hatta.

203 The USA government supported the Republic of Indonesia and pressured the Netherlands to transfer sovereignty after Indonesia showed its determination to suppress the 1948 Communist Madiun rebellion.

204 Following the KMB agreement, NKRI (*Negara Kesatuan Republik Indonesia* - the Unitary State of Republic of Indonesia) with its capital in Yogyakarta, became a member state of the RIS (*Republik Indonesia Serikat* – the Republic of United States of Indonesia). The 1945 Constitution was the NKRI's Constitution, yet it had a Prime Minister, dr. Halim.

205 The 1949 Constitution ended on 17 August 1950 when Indonesia again became a Unitary State of the Republic of Indonesia.

206 The Constitution of the Republic of the United States of Indonesia, Article 186.

207 *Ibid.*, Article 1 (1).

208 *Ibid.*, Articles 7 to 33.

209 *Ibid.*, Article 145.

210 Herbert Feith, *op. cit.*, p. 43. See also, *UN Commission for Indonesia: special report to Security Council*. UN Security Council Document S/1417, 10 November 1949. Art. 45, p. 26.

II.4.2 UUDS 1950: 17 August 1950 – 5 July 1959

In August 1950, following the demands of the Federal Republic's state delegations, Indonesia again turned into a unitary state. This change occurred just six months after the establishment of the Federal Republic. The 1949 Federal Constitution was then altered to become the 1950 Provisional Constitution (UUDS),²¹¹ again affirming Indonesia as a unitary state. Soepomo chaired the government-appointed joint-committee between the Federal Republic and the Republic Governments to make the changes. The 1950 UUDS was promulgated under Law No. 7 of 1950. The law was passed in Jakarta on 14 August and put into effect on 17 August 1950.

The democratic and rule of law principles were again incorporated into the Constitution without the public's political involvement or commitment. However, this Constitution successfully obtained international recognition, which was essential for the young Republic. The 1949 and 1950 Constitutions are similar. They assert the principles of democracy, the rule of law, adherence to human rights, and an independent judiciary. The 1950 Constitution also affirms its provisional status in Article 134(1). Article 134(2) stipulates the formation of a Constituent Assembly (*Konstituante*) through a general election.

Indonesia adopted a parliamentary democracy, conducted the first democratic elections in 1955, established a parliament and Constituent Assembly, and attempted to draft a new and democratic constitution. Unfortunately, this was all to no avail. Six cabinets failed to stabilize the post-revolutionary situation and consolidate the democratic political system. During this period, people observed continuous disputes among the political parties while the short-term cabinets did not deliver. Newspapers reported officials' abuse of power and rampant corruption.²¹² The Dutch still occupied West Irian, which President Soekarno told the people was evidence that Indonesia had not fully achieved its independence. The relationships between the central government and the regions were deteriorating. The Army felt neglected and mistreated. With parliament at its lowest point, the Army demanded its dissolution.²¹³ The Army was also caught up in internal disputes. Economic hardship, political disputes, instability, and the multi-party system's unreliability degraded the political parties' reputation. It also delegitimized the parliamentary and democratic system. This was a tumultuous period in independent Indonesia's history.

Against that background, channelling public discontent and fomenting nationalism and revolution gained more support than seeking to improve public administration and economic development.

211 UUDS stands for *Undang-Undang Dasar Sementara*.

212 *Pedoman Daily*, newspaper, 14 August 1956.

213 The Army felt humiliated and degraded by the politicians in DPR who openly debated the Army's internal affairs.

In the meantime, the Army managed to overcome its internal bickering. Zulkifli Lubis' group, which saw a military junta as a solution,²¹⁴ had been purged. Thus, Soekarno, then a well-respected revolutionary leader cut off from actual power, saw his influence and power increase significantly, as did the Army under Nasution. The Army then moved closer to President Soekarno and began a new power constellation. According to Herbert Feith, the Army leaders contributed organized power and prestige, while the President contributed legitimacy.²¹⁵ However, Soekarno did not let the Army become too powerful. To that effect, he built a political equilibrium in which the PKI and the Army balanced each other out.

On 21 February 1957, President Soekarno proposed the so-called *Konsepsi Presiden* (The President's Conception) to break through the stagnant national revolution. It was a democracy with leadership (*demokrasi dengan kepemimpinan*)²¹⁶ where a National Council led by Soekarno would take precedence over the elected DPR (The People's Representatives Council – the Parliament). However, this idea was strongly opposed by, among others, Mohammad Natsir from Masyumi, who denounced the *Konsepsi* as dictatorial and against Islam.²¹⁷ In the meantime, the Army developed a Middle Way (*Jalan Tengah*) conception,²¹⁸ the embryo of the subsequent dual-function of the armed forces (*dwi-fungsi* ABRI).

On 14 March 1957, President Soekarno declared martial law and established a war authority organization that continued down to the village level, which enhanced the Army's control.²¹⁹ On 15 February 1958, a mutinous government, the PRRI, was declared in Sumatera, with its headquarters in Bukittinggi.²²⁰ The PRRI included many pro-democracy leaders from Masyumi (Islamic Party) and PSI (Indonesian Socialist Party),²²¹ including Syafrudin Prawiranegara, Mohammad Natsir, Burhanuddin Harahap, Sumitro Djojohadikusumo, and Maludin Simbolon. The central government

214 Herbert Feith, *op.cit.*, pp. 505-506.

215 Ibid, p. 602.

216 Mavis Rose, *op. cit.*, pp. 295 – 296. According to Hatta, Soekarno had not coined the term “*Demokrasi Terpimpin*” (Guided Democracy). They did not want a dictatorship but felt that democracy through political parties was not correct.

217 Audrey R. Kahin, *Islam, Nationalism and Democracy, A Political Biography of Mohammad Natsir*, NUS Press Singapore, 2012, p. 99. Mohammad Natsir launched a strong defence of the democratic system and denounced Guided Democracy as a democracy without opposition. See also, Deliar Noer, *op. cit.*, pp. 353 - 354.

218 The “Middle Way” is a concept developed by General Abdul Haris Nasution, the then Commander of the Armed Forces, where the Army, not as an organization but as exponents, is given the opportunity of having a limited role in civil administration, to participate in determining the policies of the state at high levels. See Crouch, Harold, *op.cit.*, p. 24.

219 Daniel S. Lev, *The Transition to Guided Democracy: Indonesian Politics 1957 - 1959*, First Equinox Edition, 2009, p. 7.

220 The PRRI stands for *Pemerintah Revolusioner Republik Indonesia* or the Revolutionary Government of the Republic of Indonesia. The author lived in Bukittinggi between 1948–1959.

221 The PSI stands for *Partai Sosialis Indonesia*.

launched a military operation in response. By October 1961, the dissidents were practically defeated and surrendered. Most of the prominent figures of PRRI were imprisoned.²²² The influence and leadership of the pro-democracy figures and political parties diminished, many of whom were involved in the failed mutiny.

II.4.3 Konstituante – The Constituent Assembly: 1956-1959

As stipulated in Article 134 of the 1950 Provisional Constitution, a general election was conducted on 15 December 1955 to elect the Constituent Assembly's members (*Konstituante*).²²³ It was a credible election where 514 representatives were elected²²⁴ representing 20 political parties,²²⁵ 11 non-party affiliated organizations, and 3 individual members. Subsequently, for almost three years, the *Konstituante* convened regularly to make a new and permanent Constitution. They agreed on almost all principles of parliamentary democracy and the supremacy of law, on the elaboration of human rights, independent judiciary powers, checks and balances, and other matters.²²⁶ Unlike the previous 1950 Provisional Constitution,²²⁷ the *Konstituante* came to understand that laws could not contradict the constitution. Likewise, they were reminded of the necessity of Constitutional provisions that require implementation.²²⁸ Hence, they were in favour

222 See M.C. Ricklefs, *op.cit.*, pp. 299 – 307.

223 An election to elect members of Parliament was conducted on 29 September 1955.

224 According to the law, a total of 520 members should be elected. However, six members representing West Irian could not be elected because West Irian was still under Dutch rule.

225 The Konstituante's political seats were divided into 119 seats for the PNI (*Partai Nasional Indonesia* – Indonesian National Party), 112 seats for Masyumi (*Majelis Syuro Muslimin Indonesia* – Shura Council of Indonesian Muslims), 91 seats for NU (*Nahdlatul Ulama* – Association of Muslim Scholars), 80 seats for PKI (*Partai Komunis Indonesia* – Indonesian Communist Party), 16 seats for PSII (*Partai Syarikat Islam Indonesia* – Indonesian United Islam Party), 16 seats for Parkindo (*Partai Kristen Indonesia* – Indonesian Christian Party), 10 seats for *Partai Katolik* (Catholic Party), 10 seats for PSI (*Partai Sosialis Indonesia* – Indonesian Socialist Party), 8 seats for IPKI (*Ikatan Pendukung Kemerdekaan Indonesia* – Association of Supporters of Indonesian Independence), 7 seats for Perti (*Pergerakan Tarbiyah Islamiyah* – Islamic Education Movement), 5 seats for *Partai Buruh* (Labour Party), 3 seats for PRN (*Partai Rakyat Nasional* – National People's Party), 2 seats for PRI (*Partai Rakyat Indonesia* – Indonesian People's Party), 2 seats for Partai Murba (Musyawarah Rakyat Banyak – Common People Deliberative Party), 2 seats for PIR Wongsonegoro (*Persatuan Indonesia Raya* – Great Indonesia Unity), 2 seats for PRIM (*Partai Republik Indonesia Merdeka* – Independent Republic of Indonesia Party), 1 seat for PPTI (*Partai Politik Tarikat Islam* – Islam Sufi Political Party), 1 seat for *Partai Tani Indonesia* (Indonesian Peasant Party), and 1 seat for PIR NTB (*Partai Indonesia Raya* – Nusa Tenggara Barat – Great Indonesia Party of Nusa Tenggara Barat).

226 Adnan Buyung Nasution, *op.cit.*, pp. xxxii – xxxiv and pp. 257 – 258.

227 Article 95 (2) of UUDS 1950 states that a law cannot be judged.

228 Adnan Buyung Nasution, *op. cit.*, p. 236.

of an independent body with the authority to judge the constitutionality of laws.²²⁹ However, despite agreeing on almost all other matters, the ideological conflict²³⁰ on whether to have Indonesia based on Islam²³¹ or on nationalistic Pancasila hampered the process.²³² The proponents of Pancasila boycotted the meeting, and so the *Konstituante* was not able to make any decision. Eventually, the constitution-making process was halted. Although legally this situation should not have prevented the Constituent Assembly from continuing its work,²³³ the boycott and the Army's later ban (see below) practically ended this process. Under these circumstances, on 23 April 1959 President Soekarno submitted a proposal to the *Konstituante* to reinstate the 1945 Constitution. Although most members supported the proposal, the Assembly could not secure the 2/3 of members required to decide. The Islamic factions agreed to reinstate the 1945 Constitution if 'the seven words' were included.²³⁴ However, a vote rejected this suggestion. The *Konstituante* again failed to decide.

II.5 RE-ENACTING THE 1945 CONSTITUTION

On 3 June 1959, Army Chief of Staff, Lt. Gen. Nasution issued a regulation as the Central War Authority prohibiting all political activities. The DPR (People's Representatives Council)²³⁵ and the *Konstituante* had to stop their activities. Previously, General Nasution met and urged President Soekarno to reinstate the 1945 Constitution as the solution to the ongoing political crisis.²³⁶ Nasution argued that the President's conception would have a strong constitutional basis in the 1945 Constitution. On the other hand, with the 1945 Constitution in place, the Army could participate in the MPR. This supreme political institution consisted of members of parliament and delegations of functional groups which were appointed by the President. In the meantime, the public grew bored with these political disputes and were

229 Ibid, p. 237.

230 A grouping of nationalists (i.e., PNI, PKI, Parkindo, Partai Katolik, PSI, IPKI, and Murba) added up to 355 out of a total of 514 *Konstituante* members (66%). From this composition, one can see that neither the presence of the Islamic bloc alone nor the nationalist bloc could justify a *Konstituante* meeting for drawing up an agreement or deciding.

231 Mohammad Natsir, who previously accepted *Pancasila* and affirmed that there were no inherent contradictions or incompatibility between *Pancasila* and Islam and argued for 'Islamic democracy', seems to have become convinced that the breadth and flexibility of *Pancasila* allowed the President to fashion it into whatever they desired. See Audrey R. Kahin, *op. cit.*, pp. 99 – 101.

232 The disagreement had lasted since the making of the UUD 1945.

233 See Adnan Buyung Nasution, *op. cit.*, p. xxxv.

234 Ibid.

235 DPR stands for *Dewan Perwakilan Rakyat*. Hereinafter, the People's Representatives Council is referred to as DPR.

236 M.C. Ricklefs, *op.cit.*, p. 303.

suffering economic hardships. They became more receptive to President Soekarno's idea of guided democracy. As described by Feith, this situation was of major importance in the final abandonment of constitutional democracy.²³⁷

Having his *Konsepsi Presiden* opposed by most of the political parties, President Soekarno accepted Nasution's idea and declared the return to the 1945 Constitution on 5 July 1959.²³⁸ Soekarno then formed a presidential cabinet with three military colonels holding ministerial posts.²³⁹ Military officers were also included in the established National Council. Subsequently, military personnel also held governor, city mayor, and district-head positions.²⁴⁰ Nevertheless, as Nasution described it in 1958, the Middle Way was not a vehicle for the military as an organization but for military individuals to participate in determining government policies.²⁴¹

The decree also abolished the *Konstituante*. On 22 July 1959, the elected DPR agreed to work under the UUD 1945 Constitution. On 5 March 1960, the DPR was dissolved. On 24 June 1960, it was replaced by an appointed Collaborative People's Representatives Council or DPR-GR (*Dewan Perwakilan Rakyat Gotong Royong*).²⁴² Subsequently, following the 1945 Constitution, a Provisional People's Consultative Assembly (MPRS) was formed.²⁴³

II.5.1 The end of constitutional democracy. The beginning of authoritarianism

II.5.1.1 President Soekarno: "Revolution first"

The re-enactment of the 1945 Constitution ended the democratic eras and marked the beginning of the authoritarian era. From 1959 to 1966, the political system was overhauled to fit Soekarno's revolutionary ideas. However, the 1945 Constitution was not implemented. In 1959, President

237 Herbert Feith, *op. cit.*, p. 606.

238 The Presidential decree required the formation of MPRS (Provisional People's Consultative Assembly) and DPAS (Provisional Supreme Advisory Council) within the shortest possible time; the reimposition of UUD 1945; the invalidation of UUDS 1950 (Provisional 1950 Constitution); and the dissolution of the *Konstituante* (Constituent Assembly).

239 Colonel Soeprajogi, Minister for Economic Stability, Colonel Mohammad Nasir, Minister for Shipping, and Colonel Azis Saleh, Minister of Health. Colonel Isman was appointed as Advisor to the Indonesian Delegation to the United Nations.

240 See Lev, *op. cit.*, pp. 69 – 70; Crouch, Harold, *The Army and Politics in Indonesia*, Equinox, Jakarta, 2007, pp. 34, 38 – 41.

241 See above, Crouch, Harold, *op.cit.*, p. 24.

242 All members of the elected DPR, except those from Masyumi and PSI, were appointed as members of DPR-GR.

243 MPRS stands for *Majelis Permusyawaratan Rakyat Sementara*. MPRS consisted of members of DPR-GR and appointed representatives from functional groups, including the military.

Soekarno formed a Working Cabinet²⁴⁴ with himself as the prime minister and Djuanda as the first minister. He then established *Front Nasional* (the National Front) to accomplish a national revolution, work on development, and seize back West Irian from the Dutch. In 1960, the elected DPR was dissolved and replaced by a President-appointed provisional DPR-GR. It was positioned as the President's accomplice. The President could issue a presidential decision, which had the same status as law. Then, the President established a provisional MPR. Its leaders became part of the cabinet and were given a ministerial rank. Further, Soekarno attempted to unite the main political parties, the PNI (National Party of Indonesia), PKI (Communist Party of Indonesia), and NU (the Ulema's Awakening Party)²⁴⁵ into a group called NASAKOM (Nationalist-Religion-Communist).²⁴⁶ Then, in 1960, Masyumi and PSI (the Socialist Party of Indonesia) were dissolved. Further, political parties' activities were limited. By decree, the number of political parties was reduced from 28 to 11. The *Front Nasional* and NASAKOM were Soekarno's way of implementing a single-party system. Thereby, the President became increasingly powerful. On 18 May 1963, by MPRS Decree no. III/1963, the MPR appointed Soekarno as president for life.

Meanwhile, the Communist Party PKI expanded its influence and the military increased its role in politics and the economy. Nevertheless, neither the military nor the Communist Party PKI controlled politics; both depended on Soekarno's blessing. In June 1962, the Army, Navy, Air Force, and Police were integrated into ABRI (Indonesian Armed Forces).²⁴⁷ Then, in 1963, President Soekarno attempted to gain full control over ABRI by establishing KOTI (Supreme Operations Command),²⁴⁸ with himself as Commander and the then Army Chief of Staff General Ahmad Yani as the Chief of Staff.

The competition and conflict between the communists and the armed forces continued to rise. On 30 September 1965, the PKI launched a coup but failed. After the Communist Party PKI was crushed in 1965 and President Soekarno fell (see below) the Army dominated the situation and later developed a political system with a dual-functioning military as the main executive body. However, as discussed later, it was General Suharto who controlled the power alongside the military, as this organization was positioned to ensure the implementation of his policies. Yet, during this authoritarian period, concern among students and intellectuals on political issues

244 The 1945 Constitution adheres to a presidential system, where the president is also the head of government. Correspondingly, Soekarno formed a cabinet where he was the "head" of the Cabinet, and the ministers did not represent the political parties. Soekarno named his cabinet the "working cabinet" (*kabinet kerja*).

245 NU stands for *Nahdlatul Ulama*.

246 NASAKOM stands for *Nasionalis-Agama-Komunis*.

247 ABRI stands for *Angkatan Bersenjata Republik Indonesia*.

248 KOTI stands for *Komando Operasi Tertinggi*.

continued to grow. Various student organizations and other intellectuals, either independents or those affiliated with political parties, were active in political discussions. Their active role in major political events, especially in overthrowing President Soekarno in 1966,²⁴⁹ encouraged the influx of activists into the political elite. Many of these intellectual activists later became political party leaders.²⁵⁰ Again, during this period, the political system did not advance much and extra-party politics strengthened.

II.5.1.2 President Suharto: "Development first" and the end of the 1945 generation

The failed October 1965 Communist coup had taken a toll on Army leadership. Under General Suharto's leadership, the Army fought back and dominated the political field, with students and other activists on its side. People roamed the streets demanding *Tritura* (Three Demands of the People): The Dissolution of the Communist Party-PKI, Retooling the Cabinet, and Decreasing the Prices.²⁵¹ Students spearheaded these protests, which were organized by KAMI (Indonesian Student Action Union),²⁵² KAPI (Indonesian High School Student Action Union),²⁵³ and KAPPI (Indonesian Student Youth Action Union).²⁵⁴

Desperate, President Soekarno delegated his authority to General Suharto to control the situation, who immediately dominated it. Soon after he gained power, SESKOAD (Army's School of Staff and Command)²⁵⁵ organized a seminar that recommended establishing a two-party system to ensure checks and balances. However, Suharto rejected the idea. In March 1967, the Provisional People's Consultative Assembly convened a special session that relinquished the presidency from Soekarno²⁵⁶ and appointed General Suharto as the acting president.²⁵⁷

249 And later of President Suharto in 1998.

250 A high number of the political parties' leaders were student activists, such as Akbar Tanjung, Amien Rais, Cosmas Batubara, David Napitupulu, Djoko Sudiymiko, Jakob Tobing, Marzuki Darusman, Rahman Tolleng, Sarwono Kusumaatmadja, Rachmat Witoelar and Slamet Effendy Yusuf.

251 *Tritura* stands for *Tri Tuntutan Rakyat*.

252 KAMI stands for *Kesatuan Aksi Mahasiswa Indonesia*. The author, Jakob Tobing, was alternate Chairman of National Committee of KAMI. He was also a co-founder of KAMI of ITB (*Institut Teknologi Bandung* – Bandung Institute of Technology) and of KAMI consulate Bandung.

253 KAPI stands for *Kesatuan Aksi Pelajar Indonesia*.

254 KAPPI stands for *Kesatuan Aksi Pemuda Pelajar Indonesia*.

255 SESKOAD stands for *Sekolah Staf dan Komando Angkatan Darat*.

256 President Soekarno still had strong military support, especially from the Navy, Air Force, and elements of the Army. To avoid fighting amongst the people, Soekarno chose to obey the MPR's decision and quit as president. Later in 1998, in a similar position, President Suharto also took the same stance, resigning from the presidency despite still having strong support from groups in the military and others.

257 MPRS Decree No. XXXIII/MPRS/1967.

In his State Address on 16 August 1967, acting President Suharto denounced the past state governance practices. He expressed that the principles of people's sovereignty had shifted into the leader's sovereignty. He asserted that previous governments had seriously deviated from the 1945 Constitution, with head of state holding absolute power. The rule of law principles was abandoned and the country had become ruled by power. In practice, the basic principles of the constitutional system had changed into absolutism. The highest state authority was no longer in the hands of the Provisional People's Consultative Assembly. Instead, it was in the hands of the Great Leader of the Revolution. The Provisional People's Consultative Assembly was subordinate to the President. In the 1968 MPR Special Session, General Suharto was inaugurated as President.²⁵⁸ During this session, the Deputy Speaker of the Provisional Assembly, Lt. Gen. Mashudi, Governor of West Java, led a team that drafted the Provisional People's Consultative Assembly decree. It intended to limit the presidential tenure to a maximum of two consecutive periods of five years. However, Suharto's team rejected the draft.²⁵⁹ From that point onwards, Suharto held power for seven periods of 32 years.

Subsequently, the existing 11 political parties were forced to merge into two political parties, the PDI (Indonesia's Democratic Party)²⁶⁰ and PPP (United Development Party).²⁶¹ A third political power, GOLKAR (The Functional Groups) was established.²⁶² Elections were conducted periodically over a five-year interval. With the military and civil servants' full support, GOLKAR dominated the elections and Suharto was elected consecutively as president for seven terms.

There were no checks and balances. There was no free press. The DPR rubber-stamped government policies. However, security was maintained and the economy grew rapidly. Suharto governed single-handedly, with the military as an instrument under his control. Strategic policies were decided in *Cendana*, Suharto's residence. The military, with its nationwide territorial reach, assured its implementation. Thus, the power shifted from the Armed Forces to Suharto. Eventually, Suharto realized that his 1945 generation

258 MPRS Decree no. XLIV/MPRS/1968. The author took an oath as a member of DPR-GR/MPRS on 13 February 1968.

259 Lt. Gen. Mashudi reminded the author of this case in early 2000.

260 PDI stands for *Partai Demokrasi Indonesia*. It is the merger of PNI (*Partai Nasional Indonesia* - the Indonesian National Party), IPKI (*Ikatan Pendukung Kemerdekaan Indonesia* - the Association of the Supporters of Indonesian Independence), *Partai Murba* (Murba Party), *Parkindo* (*Partai Kristen Indonesia* - the Indonesian Christian Party), and *Partai Katolik* (Catholic Party).

261 PPP stands for *Partai Persatuan Pembangunan*. It is a merger of four Islamic religious parties, namely NU Party (*Partai Nahdlatul Ulama* - The party of The Awakening of Islamic Scholars), PSII (*Partai Syarikat Islam Indonesia* - United Islamic Party of Indonesia), Perti (*Persatuan Tarbiyah Islamiyah* - The Association of Islamic Education), and Parmusi (*Partai Muslimin Indonesia* - Indonesian Muslim-followers Party).

262 GOLKAR stands for *Golongan Karya*.

would soon begin to disappear and that the situation would change. By 1988, the youngest of the 1945 generation who had fought for independence would reach retirement age.²⁶³

On 5 October 1981, in his Armed Forces Day address, President Suharto stressed that the Armed Forces should not slide towards militarism, authoritarianism, and totalitarianism. He stated that the 1945 generation, especially those still active in the Armed Forces, must encourage the growth of Pancasila democracy and constitutional life based on the 1945 Constitution.²⁶⁴

Then, Suharto, as the chairman of the GOLKAR Board of Trustees,²⁶⁵ began to push for GOLKAR's transformation into an independent civil political force, reducing ABRI's involvement in politics, embracing emerging Muslim intellectuals and preparing for free elections.²⁶⁶

Further, Lt. Gen. (ret.) Sudharmono, the Minister/Secretary of State, was elected as Chairperson of GOLKAR's National Leadership Council in the GOLKAR National Conference in October 1983.²⁶⁷ Within the framework of his program known as *tri-sukses* program,²⁶⁸ development of GOLKAR organization's network and political training down to the villages level throughout Indonesia, began. Then, in line with the program, GOLKAR began to be weaned from the ABRI and KORPRI. However, not everyone was happy with the programs.

Meanwhile, Lt Gen. (ret.) TB Simatupang²⁶⁹ repeatedly reminded the military that before ending their dedication, the 1945 liberating generation should build a more participatory political system as their final project. Simatupang reminded them that the doctrine during the struggle for independence was different from the doctrine required during development. He asserted the necessity of both a continued national struggle and renewal. Simatupang argued that Pancasila and the 1945 Constitution as the political system's foundation were strong enough. The dual-function

263 In 1998, the 1945 generation's youngest independence fighters were already reaching the age of retirement.

264 President Suharto's speech at the commemoration ceremony of ABRI's 36th birthday on 5 October 1981, Cilegon, West Java.

265 GOLKAR's Board of Trustees or Dewan Pembina GOLKAR was the body that holds the highest authority over GOLKAR.

266 This program is known as the *kemandirian* (self-reliance) GOLKAR program, comprised of self-reliance in organizing, political recruitment, and funding. GOLKAR gradually became detached from the support of the Armed Forces and civil servants.

267 See Sudharmono S.H. *Pengalaman Dalam Masa Pengabdian*, an autobiography, PT Gramedia Widiasarana, Jakarta, 1997, p. 322. In the National Conference, the author was appointed as the chairperson of the OKK section of the GOLKAR National Leadership Council, in-charge of organization, membership, and political training. For the same period, Suharto was also re-confirmed as Chairman of the GOLKAR Board of Advisory. The author was appointed as the chairperson of the Political Team of the Board.

268 The Tri-Sukses (tri-successes) program consisted of organization's consolidation, political training for cadres and to win the 1987 election.

269 Lt Gen. (ret.) TB Simatupang was one of the founders and the former Chief of Staff of the Armed Forces of the Republic of Indonesia.

military could continue. However, he emphasized that it should encourage political development and a *Demokrasi Pancasila* (Pancasila Democracy) to prevent political decay. It should not bolster militarism, authoritarianism, and totalitarianism.²⁷⁰

Previously, in 1981, Lt. Gen. Soedjono Humardhani, ASPRI (Personal Assistant)²⁷¹ to the President, told the author that President Suharto planned to step down in 1988 after 20 years in power. However, he and other close aides disagreed with this plan. Later, in a conversation at his residence, where the author was present, President Suharto also expressed this desire.²⁷² In 1987, Suharto shared his intention to resign with Sarwono Kusumaatmadja, GOLKAR's then Secretary-General, and with Mrs. Mien Sugandi, the then Women's Empowerment Minister.²⁷³ On that occasion, Suharto considered changes to the political system.

Later, in 1993, Suharto established *Komnas HAM* (National Commission of Human Rights),²⁷⁴ an internationally recognized independent organization. He also emphasized the Pancasila's integrative and inclusive character. He asserted it was not a rigid, dogmatic, and doctrinaire ideology, but instead an open ideology that requires continuous dialogue and deliberation.²⁷⁵ He insisted that the UUD 1945 was sacred and must be maintained. Meanwhile, certain elite leaders often discussed democratization and free elections.²⁷⁶ Suharto began preparing the new national leadership. Sudharmono, GOLKAR's then-chairman was named as a candidate for vice-president for the 1988-1993 term. This may have signalled that Sudharmono, then 61 years old, could be the next president from 1993-1998. As chairman, entrusted with modernizing GOLKAR with its *program tri-sukses* (the three-successes programmes),²⁷⁷ Sudharmono was expected to continue the political modernization programme.²⁷⁸ However, as Lt. Gen.

270 See T.B. Simatupang, *Harapan, Keprihatinan dan Tekad, Angkatan '45 Merampungkan Tugas Sejarahnya*, (The Hope, The Concerns and The Determination. The 1945 Generation Accomplishing Its Historical Tasks). Inti Idayu Press, Jakarta, 2nd printing, 1986, pp. 91-194.

271 ASPRI stands for *Asisten Pribadi*.

272 The author was the head of Team A, in charge with politic and election, of *Dewan Pembina* (Board of Trustees) of GOLKAR, which was chaired by Suharto.

273 Sarwono Kusumaatmadja recalled the conversation on 12 December 2012.

274 Komnas HAM stands for *Komisi Nasional Hak Asasi Manusia*.

275 This assertion was always emphasized by his confidant and Cabinet Secretary, Lt. Gen. Moerdiono. See also, *BP-7*, p. 4.

276 The author was the Head of Political Section of the *Dewan Pembina* (Supervisory Council) of GOLKAR, which was chaired by Suharto himself (1983-1988). Many times, the author participated in the discussions. This was also revealed by Sarwono Kusumaatmadja on 12 December 2012.

277 The *Tri-sukses* program consisted of organizational consolidation, training political cadres, and winning the 1987 election.

278 The program was aimed at building GOLKAR as an independent civilian political power. See above.

Harsudiono Hartas²⁷⁹ told the author,²⁸⁰ if GOLKAR were independent, it could be controlled by people who were against Pancasila. Such control had to be prevented, or history would repeat itself, with the military building an extensive village-based territorial organization as occurred to inhibit the communist expansion in the 1950s and early 1960s. Lt. Gen. Harsudiono Hartas also rejected the idea that the military would be under a political system that adheres to civil supremacy. He stressed to the author that national politics was the responsibility of the Armed Forces as an organization, not Suharto's personal business. Later, Lt. Gen Supardjo Rustam, the Minister of Home Affairs, told the author that he also did not agree with the plan for free elections.

Meanwhile, various issues were circulating. It was alleged that Sudharmono had been involved in PKI, the Indonesian communist party.²⁸¹ Reports were widely circulated of Suharto's children participating in gambling and illicit businesses. Her eldest daughter, Mbak Tutut (Siti Hardijanti Rukmana), was rumoured to have been prepared to replace her father.²⁸² Meanwhile, senior army generals, such as Maraden Panggabean, Benny Murdani, and Ali Murtopo (Suharto's long-time colleagues), became concerned with the rumours regarding Suharto's children's being involved in business and gambling.²⁸³ However, their advice to Suharto was met with an unfriendly response. Suharto's relationship with the military elite deteriorated.

An MPR plenary session in March 1988 discussed Sudharmono's nomination as vice-president. Brig. Gen. Ibrahim Saleh, a member of F-ABRI (the military faction) interrupted the proceedings. He stated that there should be an alternative candidate for vice-president. People believed this was the Armed Forces' political move to thwart Sudharmono's candidacy, although the Armed Forces' leadership refuted this.²⁸⁴ Later, during an MPR general

279 Lt. Gen. Harsudiono Hartas was then ABRI's Socio-Political Chief of Staff.

280 The author was then GOLKAR's First Vice-Chairman in charge of organizing, political training, and elections.

281 See Retnowati Abdulgani Knapp, *Soeharto: The Life and Legacy of Indonesia's Second President*, an authorized biography, Marshal Cavendish (Asia) Private Limited, Singapore, 2007, p. 162.

282 Mbak Tutut was appointed as the deputy chairperson of GOLKAR from 1993-1998 and as chairperson of GOLKAR's faction in the 1997 MPR General Assembly. President Suharto then appointed her Minister for Social Affairs in 1998.

283 As General Maraden Panggabean disclosed to the author.

284 Benny Moerdani attempted to nominate General Try Sutrisno, his successor as Commander of the Armed Forces, for vice-president. Previously, on 29 February 1988, a week before an MPR general session, on 29 February 1988, and overshadowed by rumours that Benny Moerdani would stage a coup, President Suharto had replaced him as the Commander of the Armed Forces with General Try Sutrisno. See Julius Pour, *Benny Murdani Profil Prajurit Negarawan*, Penerbit Yayasan Keuangan Panglima Besar Sudirman, cetakan kedua, Mei 1993, pp. 541-543. See also *Sudharmono, S.H., Pengalaman Dalam Masa Pengabdian, Sebuah Otobiografi*, Penerbit PT Gramedia Widiasarana Indonesia, Jakarta, 1997, p. 397.

session in 1993, ABRI managed to convince Suharto to nominate General Try Sutrisno²⁸⁵ as the new vice-president. Without first consulting President Suharto, Lt. Gen. Harsudiyono Hartas²⁸⁶ stated that ABRI would nominate General Try Sutrisno as the next vice-president.²⁸⁷ It seems that ABRI did this to show that a national power struggle was an organization-wide issue, not just Suharto's personal issue.²⁸⁸

Suharto seemed unable to break away from the interests of many people around him. Despite repeatedly saying he would step down, he also repeatedly agreed to be re-elected President. His desire for political reform did not materialize. His intention to make GOLKAR an independent civil political power did not take place. This did not happen partly because there were oppositional elements around him, especially in the military, fearing that GOLKAR might be controlled by those against Pancasila and the unitary form of the Republic of Indonesia. Suharto may have begun to lose control over some of the younger military generations.²⁸⁹ Suharto clearly envisaged a new political system. GOLKAR would be an independent civil and dominant political power in a three-party system, alongside the PPP and PDI. The military would no longer have a significant political role. The presidency would be held by someone he trusted.

However, the new national leadership of GOLKAR under Lt. Gen. Wahono was not serious about continuing the GOLKAR tri-success program and was leaning to ABRI.²⁹⁰

In the meantime, reform groups and ideas sprung up among the civilian and military elite, which contributed to the subsequent success of reform. Several GOLKAR leaders known as *GOLKAR Putih* (White GOLKAR) strove for internal reform, including Sarwono Kusumaatmadja,²⁹¹ the author Jakob Tobing,²⁹² Djoko Sudiyatmiko, Anton Priyatno, and Marzuki

285 General Try Sutrisno was then ABRI Commander.

286 Lt. Gen. Harsudiyono Hartas was then the Chief of Staff of Socio-Political Affairs of the Armed Forces.

287 ABRI nominated its Commander, General Try Sutrisno, for Vice-President without President Suharto's prior consent, which was against the law as stipulated in MPR Decree no. II/1973. General Try Sutrisno served as Vice-President from 1993 to 1998.

288 As once told to the author by Lt. Gen. Harsudiyono Hartas, then the Chief of Staff of Socio-Political Affairs of the Armed Forces.

289 Immediately after Suharto stepped down, several military personnel ruffled the GOLKAR Secretariat and destroyed all files regarding GOLKAR's reform programme. This was revealed to the author by Bambang Kancil, a staff of GOLKAR Secretariat General office.

290 Lt. Gen. Wahono was GOLKAR's chairman 1992 – 1997 and then elected as the Speaker of MPR. In his leadership, the author was the first Deputy Chairman in charge of organization and election.

291 Sarwono Kusumaatmadja was GOLKAR's Secretary General (1983–1988).

292 Jakob Tobing was GOLKAR's Head of Organization and Political Training Department (1983–1988), First Deputy Chairman (1988–1993), and Head of Political Team of *Dewan Pembina* GOLKAR. *Dewan Pembina* (GOLKAR's Supervisory Board) was chaired by President Suharto and could control GOLKAR's policies.

Darusman. In 1995, several former militaries and GOLKAR elites and opposition figures²⁹³ established the Foundation of Harmony of National Brotherhood (YKPK)²⁹⁴ to fight for reform and democratization.²⁹⁵ In January 1996, the YKPK organized a seminar in Surabaya, in which many prominent intellectuals participated.²⁹⁶ Lt. Gen. (ret) Wahono,²⁹⁷ the new DPR's Chairman and MPR's speaker, gave the inaugural speech. This was followed by a solo violin performance of "Winds of Change".²⁹⁸ The seminar recommended a broad programme of reform and democratization in culture, economics, and politics, including recommending that Suharto not run again in the 1998 presidential election.²⁹⁹ At the outset, President Suharto accepted the recommendations amicably, but later turned and rejected them.³⁰⁰

Between April 1996 and March 1997, on President Suharto's request, several experts, mostly from LIPI (The Indonesian Institute of Sciences),³⁰¹ researched the reform of the dual-function military (*dwi-fungsi ABRI*). It evaluated the military's socio-political role and alternatives to the dual

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- 293 Among others, Lt. Gen. Bambang Triantoro (former Army Deputy Chief of Staff), Abdurrahman Wahid (later the fourth President of Indonesia), Megawati Soekarnoputri (later the fifth President of Indonesia), Frans Seda (former Minister of Finance), Matori Abdul Djilil (later Minister of Defence), the author (later chairman of the 1999 Indonesian Election Committee and MPR's 1999–2002 Constitution Amendment Ad-Hoc Committee), Anton Priyatno, Potsdam Hutasoit, Ida Ayu Utami Pidada, Suko Sudarso, Pontas Nasution, Marzuki Darusman (later Attorney General), and Heru Lelono (later Special Assistant to President Susilo Bambang Yudhoyono).
- 294 YKPK stands for *Yayasan Kerukunan Persaudaraan Kebangsaan*.
- 295 Bambang Triantoro was the YKPK's Chairman, the author was the Vice-Chairman, and Matori Abdul Djilil was the Secretary-General.
- 296 YKPK, *PEMBAHARUAN, Gagasan YKPK (REFORM, the Ideas of YKPK)*, YKPK (publisher), first printing, February 1997. The panellists were Umar Khayam, Soetandyo Wignjo-soebroto, Mochtar Buchori, Abdurrahman Wahid, Mohammad Sobari, Dawam Rahardjo, Kwik Kian Gie, Rizal Ramli, Faizal H. Basri, Marie Pangestu, Frans Seda, Afan Gaffar, Maj. Gen. Syamsuddin, Midian Sirait, and Marzuki Darusman. Among others, Umar Khayam presented a paper "*Scrape the roots of feudal aristocratic culture. Develop a culture of modern democracy.*"
- 297 Lt. Gen. Wahono was a close aid of President Suharto. When this former Commander of Strategic Forces was the Secretary for Supervision of Development Projects, his room in Binagراها, the president's office, was adjacent to President Suharto's room.
- 298 "Wind of Change" is a song by the German rock band Scorpions, recorded for their eleventh studio album, *Crazy World* (1990). The song was composed and written by the band's lead singer Klaus Meine. It was released as the album's third single in January 1991 and became a worldwide hit, just after the failed coup that led to the collapse of the Soviet Communist regime. See <https://ultimateclassicrock.com/scorpions-wind-of-change>.
- 299 YKPK, *op.cit.*
- 300 Responding to the YKPK's recommendation, in March 1997, President Suharto stated that he would not run again. However, judging that the reform program he wanted would not continue, he decided to run again in March 1998.
- 301 LIPI stands for *Lembaga Ilmu Pengetahuan Indonesia*.

function.³⁰² In March 1997, a seminar titled “Actualization of ABRI’s Dual Function against the Development” was held at the Army Staff and Command School (SESKOAD)³⁰³ in Bandung. The seminar argued that advancement in development had improved the public’s critical power and political awareness. Therefore, it concluded, the military must be able to encourage the people’s political participation.³⁰⁴

Thus, there were groupings and contestations between groups around Suharto, who argued about how the Indonesian political system should be built for the post-1945 generation. They debated who should inherit power. Military leaders did not want a civilian-led political system. They also wanted to reclaim the organizational power that was originally in the hands of the military, which Suharto had individually dominated. There were also groups that supported Suharto’s actions and ideas for reform.

In the meantime, the New Order’s intensive political indoctrination led to two conflicting outcomes. One, it suppressed society’s critical capacity towards authority. However, people also learned that this heterogeneous nation required *Pancasila*, an open and inclusive ideology as a basis of living together as a nation and the motto *bhinneka tunggal ika* (unity in diversity), as the self-perspective of the very diverse Indonesian nation.

II.5.1.2.1 Developmentalism

Considering the approaches the President Suharto era adopted, it can be categorized as a period of developmentalism. Under his rule, economic development and growth became the regime’s priorities. As these require stability and a concentration of authority, the other aspects of development were left behind, namely checks and balances, the supremacy of law, and human rights. Indeed, under the Suharto presidency, Indonesia saw remarkable economic growth. However, the implementation of policies for improving equality was not quite as successful.

On the other hand, an even distribution of income requires the active participation of the people, which in turn involves openness, the supremacy of law, and adherence to human rights. This failed under Suharto because the 1945 Constitution did not provide for a political system that limited powers, established checks and balances, or upheld the supremacy of law. The 1945 Constitution did not establish the people as the true holders of sovereignty.

302 “...Bila ABRI Menghendaki”, *Desakan-Kuat Reformasi Dwi-Fungsi ABRI*, (“... If ABRI Wants”, *Strong-Pressure for Reform of the Armed Forces Dual Function*), Indria Samego et al., Mizan Pustaka, Bandung, 1998. The researchers were Indria Samego Ph.D., Dewi Fortuna Anwar, Ph.D., Ikrar Nusa Bhakti, Ph.D., M Hamdan Basyar, Maswadi Rauf, M.A., Riza Sihbudi, and Sr Yanuarti.

303 SESKOAD stands for *Sekolah Staf dan Komando Angkatan Darat*.

304 A. Malik Haramain, *Gus Dur, Militer, dan Politik*. LKiS Yogyakarta, 1st printing, February 2004, pp. 122-125.

