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

Tobing, J.

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## III.1 THE END OF THE NEW ORDER AND HABIBIE'S PRESIDENCY

Towards the end of his term in 1988, President Suharto repeatedly stated in limited circles that he would soon resign. 1998 was the end of the 1945 generation's active period (*Angkatan '45*). Suharto, born on 8 June 1921, was by then 77 years old. He had been in power for seven consecutive periods. The youngest *les révolutionnaires*, who were 17 years old at the outbreak of the revolution, were reaching 70 years of age. Suharto used to say that the New Order's continuous development programmes had generated large numbers of better-educated people, a relatively advanced national economy, and Indonesia's increased exposure to globalization. The young generation of military officers had not experienced revolution as a liberation army and had joined the military service as a profession. Suharto often opined that these officers had different attitudes towards power and a different comprehension of dedication to the people. In this context, Suharto began to talk repeatedly about the need to reform and the preparatory steps for the generational transition.<sup>1</sup>

Among others, Suharto wanted GOLKAR, the ruling political power, to be independent in political decision-making, political recruitment, and funding. The party also needed to detach itself from the armed forces (the military and police), which had been supporting it. He also discussed the idea of conducting free and fair elections in 1987, in which GOLKAR would compete openly and fairly with PPP and PDI. Suharto also endorsed forming ICMI (Association of Indonesian Muslim Intellectuals)<sup>2</sup> to give the growing number of Muslim intellectuals a place in the system. Accordingly, GOLKAR's chairman, Lt. Gen. (ret.) Sudharmono,<sup>3</sup> systematically built the GOLKAR infrastructure, preparing for a smooth and peaceful generational

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1 See also III.5.2. The author was then the Head of the Political Team of GOLKAR's powerful *Dewan Pembina* (Supervisory Board, 1983–1988), which was led by Suharto himself. The *Dewan Pembina* was the highest authority that controls GOLKAR. The author occasionally joined Suharto in late evening casual conversations at his residence in Cendana street, Central Jakarta.

2 ICMI stands for *Ikatan Cendekiawan Muslim Indonesia*.

3 Sudharmono, a retired Army Lieutenant General, was a long-time confidant of Suharto, the fifth Vice-President of the Republic of Indonesia (1988–1993), and the former Minister of State Secretary (1978–1983).

transition.<sup>4</sup> Thereafter, the political elite began discussing reform, even amidst the ruling camp's inner circle.

Then, Sudharmono was elected as the Vice President<sup>5</sup> and Lieutenant General (Ret.) Wahono was elected as GOLKAR's chairman.<sup>6</sup>

However, Lieutenant General (Ret.) Wahono's leadership was focused more on replacing Suharto with others from a military background. Therefore, although efforts to prepare an independent GOLKAR and build a civilian-led political system continued, they were less organized and intensive.

Meanwhile, the armed forces' leaders did not agree with Suharto's plan. The Chief of Staff of the Armed Forces for Socio-Political Affairs stated to the author that the Armed Forces did not agree with the idea of an independent GOLKAR.<sup>7</sup> Previously, The Minister of Home Affairs stated to the author that he did not agree with the idea of free elections. He argued that it was not the time for free elections.<sup>8</sup>

Nevertheless, in another effort to ensure a smooth and peaceful transition, Suharto appointed B.J. Habibie as Vice President from 1998-2003.<sup>9</sup> Habibie was then minister of Science and Technology and was previously assigned to lead ICMI.

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4 <sup>95</sup> Under Sudharmono's GOLKAR leadership (1982-1987), the author was head of the department of organization, membership, and political education (cadre training). The author was also then the head of GOLKAR's Political Team of *Dewan Pembina* (the Board of Trustees).

5 During MPR's 1988 plenary session, a Armed Forces faction member in the MPR, B.G. Ibrahim Saleh attempted to thwart Sudharmono's vice-presidential candidacy. The author, as an MPR member, was at that plenary session. See also Julius Pour, *Benny Moerdani, Profil Prajurit Negarawan*, Yayasan Keuangan Panglima Besar Sudirman, Jakarta, 3<sup>rd</sup> printing, August 1993, pp. 536 – 541. In his book, Sudharmono reveals that General Benny Murdani, then Commander of the Armed Forces, stated his disagreement that the Armed Forces propose Sudharmono as the vice-presidential candidate. See Sudharmono, S.H., *Pengalaman dalam Masa Pengabdian, Sebuah Otobiografi*, Penerbit PT Gramedia Widiasarana Indonesia, Jakarta, 1997, p. 397.

6 Under Wahono's GOLKAR leadership (1987-1992), the author was Deputy Chairman in charge of organization, membership, political education (cadre training) and general elections.

7 Lt. Gen. Harsudiono Hartas, The Chief of Staff of the Armed Forces for Socio-Political Affairs, reiterated the Armed Forces position to the author. The Armed Forces comprised of the Military and the Police, was led by The Commander of the Armed Forces, with five subordinate Chiefs of Staffs: The Chief of Staff of the Army, the Navy, the Air Force, Socio-Political Affairs, and the Non-Armed Forces Temporary Assignment (*Kekaryaan*), plus the Chief of the National Police.

8 Minister Soepardjo Rustam stated his opinion to the author in a meeting at the Minister's office. Sudharmono, GOLKAR's Chairman, disclosed the same thing to the author.

9 As Vice President, Habibie would have more chance to be elected as Suharto's successor.

Such was the situation at the end of the Suharto period: sharp divisions and disputes among the political elites around Suharto.<sup>10</sup> This situation developed in a society that was already filled with widespread democratic ideas, which was seminal to the success of the subsequent reform process.

Meanwhile, the 1997 financial crisis rapidly turned into a national economic crisis and significantly eroded the regime's legitimacy. A deep and wide political crisis ensued. Students took to the streets, staging demonstrations, urging Suharto to resign, and demanding democratization and the military's exit from politics. In response, Suharto consolidated his position and rotated the military's strategic positions. On 16 February 1998, Suharto appointed General Wiranto as the new Commander of the Armed Forces and empowered him with President's Instruction no. 16/1998. This gave Wiranto special and immense power to restore security and order.<sup>11</sup> Further, on 20 March 1998, Suharto appointed Lt. Gen. Prabowo Subianto, his son-in-law, the former Commander of the Army Special Forces, as the Commander of the powerful Army Strategic Command.<sup>12</sup>

On 12 May 1998, in a street rally demanding Suharto's resignation, four students from Jakarta's Trisakti University were shot dead and dozens more were injured. Thus, the political crisis escalated rapidly. Suharto still tried to convince the public that he could cope with the situation and promised reform measures. However, he failed to form a cabinet because many of his confidants deserted him in this time of crisis.<sup>13</sup> Likewise, the students and other dissidents refused the offer, pressed for his immediate resignation, and demanded freedom and democracy. Observing the situation on the ground, Suharto was very worried about the possibility of a clash that would surely take a big toll. Thus, on 20 May 1998, President Suharto resigned and Habibie was sworn in. Later, B.J. Habibie failed to retain the support of the Armed Forces and most non-ICMI groups.

### III.1.1 Impetus for reform

Immediately, President B.J. Habibie embraced the protesters. Hours after his inauguration, he asserted his commitment to gradually undertake reforms based on Pancasila and the 1945 Constitution.<sup>14</sup> Habibie initiated discourses

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10 Thus, in fact, there was a sharp conflict between Suharto's idea of a civilian-led political system and groups trying to maintain military dominance. This fact differs from the argument that there were no serious divisions among the ruling authoritarian elite. See Donald L. Horowitz, *op.cit.*, p. 8.

11 Colonel Wiranto was the aide of the President of the Republic of Indonesia (1989–1993).

12 However, one day after President Suharto resigned, on 22 May 1998, President Habibie dismissed Lt. Gen. Prabowo Subijanto from his post, accusing him of organizing a coup against himself. See Bacharuddin Jusuf Habibie, *Detik-Detik yang Menentukan, Jalan Panjang Indonesia Menuju Demokrasi*, THC Mandiri, 2006, p. 102.

13 See I.3.

14 Gatra Magazine, 30 May 1998.

on reformation and issued policies to facilitate and encourage the reformation process. He formed a Team of Seven (*Tim Tujuh*), led by Ryaas Rasyid. He tasked them with drafting bills on political parties, elections, and on the new composition and structures of the MPR, DPR, and the local DPRs of Representatives.<sup>15</sup>

On the other hand, three days before resigning, on 18 May 1998, President Suharto issued President's Instruction no. 16/1998. This delegated special authority to the Commander of the Armed Forces (ABRI), General Wiranto, to restore security and order and if necessary, declare a state of emergency. Based on that instruction, General Wiranto gained immense power, but he did not use it to his advantage.<sup>16</sup> Whatever his motivation might have been, under his command, the military supported the political process in securing President Suharto's resignation and Vice-President Habibie's appointment as the new president.<sup>17</sup> Wiranto then took seminal measures for the continuation of reform. Working with officers close to him, he prepared a reform agenda within the military.<sup>18</sup> These officers included Lt. Gen. Agus Wijoyo, Lt. Gen. Agus Wirahadikusumah, and Lt. Gen. Susilo Bambang Yudhoyono.

On 29 June 1998, the DPR requested the MPR to convene a special session. Subsequently, the MPR decided to convene from 10 to 13 November 1998. In preparation for the special session, the MPR Working Body met on 15 September 1998. Lt. Gen. Agus Wijoyo from F-TNI/POLRI attended the meeting. He asserted the military meant to open vast opportunities for further elaboration of the 1945 Constitution and to consider the regulation of human rights and duties in MPR decrees.<sup>19</sup> Wiranto set up a team led by Lt. Gen. Susilo Bambang Yudhoyono,<sup>20</sup> then ABRI's Chief of Socio-Political Staff, to formulate "ABRI Main Ideas on Reform". These were subsequently discussed further in a seminar at SESKOAD (Army's School of Staff and

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15 www.kpu.go.id, 05 May 2013, Pemilu 1999. *Tim Tujuh* finished its duty in 1998 after the new political laws were ratified. There was another *Tim Tujuh* formed by President Abdurrahman Wahid in May 2001. It was assigned to find a solution to the conflict between the President and Parliament.

16 With the extra-ordinary power delegated to him, Wiranto could have easily taken power as Suharto did in 1966. I suspect General Wiranto, former aide and confidant of President Suharto, was instructed by the President to obey the Constitution and safeguard the power transition.

17 *Tempo Magazine*, 26 October 2006, in A. Pambudi, *Sintong & Prabowo, Dari 'Kudeta L.B. Moerdani' sampai 'Kudeta Prabowo'*, MedPress, 2009, pp. 115–118. Later, Wiranto revealed that if he had taken power, there would have been a clash between the people and the military, in which the people would have been the victims. He did not want to betray the people. Wiranto used his special authority to ensure the constitutional transition of power from Suharto to Habibie. See *Republica.co.id*, 30 March 2014.

18 A. Malik Haramain, *op. cit.*, p. 117.

19 Majelis Permusyawaratan Rakyat Republik Indonesia, *Buku Dua, Jilid 3, Risalah Rapat Badan Pekerja MPR-RI, Sekretariat Jenderal MPR-RI, 1999*, pp. 23, 24.

20 In 2004, Susilo Bambang Yudhoyono was elected as the Indonesian president in a direct presidential election and re-elected in 2009.

Command)<sup>21</sup> in Bandung from 22 to 24 September 1998.<sup>22</sup> On 5 October 1998, General Wiranto, announced the adoption of a 'New Paradigm', gradually reducing the military's role in politics and encouraging the development of democracy and civil society.<sup>23</sup>

On 20 September 1998, Andi Mattalatta, the Chairman of the Faction of the Functional Group (FKP)<sup>24</sup> in the DPR and Y.B. Wiyanjono from the Faction of the Indonesian Democratic Party (F-PDI)<sup>25</sup> stated that amending the 1945 Constitution required revoking MPR Decree no. IV/1983 on Referendum.<sup>26</sup>

In the meantime, the opposition movements moved forward, pushing for reform. These movements were then represented by prominent figures. These included Megawati Soekarnoputri (daughter of the late President Soekarno) who had long led the movement against the New Order. It also included Abdurrahman Wahid (an intellectual and reformist leader of NU), Amien Rais (a critical campus intellectual and leader of Muhammadiyah), and Sultan Hamengkubuwono X (a well-respected reform-minded aristocrat Sultan of Yogyakarta).

President Habibie's free press policy had placed the military in the public spotlight.<sup>27</sup> Sharp criticism of the military's actions pressured it to be more accommodating to reform's demands. Examples of past actions included the *Trisakti* tragedy, the alleged involvement of military elements in racist atrocities in May 1998,<sup>28</sup> and military operations in Aceh, Maluku, Papua, and East Timor.<sup>29</sup> On 25 May 1999, Lt. Gen. Agus Wirahadikusumah, chief of the general planning staff division of the Indonesian Armed Forces, asserted that the Armed Forces agreed to amend the 1945 Constitution.<sup>30</sup>

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

22 Members of the team included Nurcholish Madjid, Ryaas Rasyid, Afan Gaffar, Lt. Gen. Sayidiman Suryodiprodjo, and General Rudini.

23 *TNI Abad XXI: Redefinisi, Reposisi, dan Reaktualisasi Peran TNI dalam Kehidupan Bangsa* (TNI in the 21st Century: Redefinition, Reposition, and Reactualization of the TNI's Role in National Life), Jakarta, MABES TNI, pp. 22-25.

24 FKP stands for *Fraksi Karya Pembangunan*.

25 F-PDI stands for *Fraksi Partai Demokrasi Indonesia*.

26 *Merdeka Daily*, 21 September 1998. MPR Decree no. IV/1983 on Referendum stipulates that if the MPR would like to change UUD 1945, the MPR must first determine the people's opinion through a referendum. They believed the 1945 Constitution does not require a referendum prior to an amendment. In addition, the military, especially the army, has an extensive and very effective territorial network which can determine the outcome of the referendum, while they do not want changes to the 1945 Constitution. The author prepared the draft MPR Decree no. IV/1983 when the author was the Head of the Political Team of the Board of Trustees.

27 A. Malik Haramain, *op. cit.*, pp. 115-116.

28 On 12 May 1998, four students were shot dead by unidentified troops while demonstrating at Trisakti University's campus, demanding President Suharto's departure. From 12-15 May 1998, anti-Chinese racist atrocities hit Jakarta.

29 *Kompas Daily*, 2 December 1999.

30 *Republika Daily*, 26 May 1999.

In sum, there were serious political divisions and contestations within the ruling regime, alongside the potential for open societal conflict. However, the situation could be controlled, physical clashes had been prevented and disputes successfully channelled to constitutional institutions. If President Suharto, who still had strong supporters and who was the Supreme Commander of the Armed Forces, had persisted or retaliated, the situation would have been much worse. Equally, the country would have been worse off if the opposition had insisted on enforcing reform through extra-parliamentary means. In that case, a physical clash would have been unavoidable.

In the meantime, aspirations to reform the 1945 Constitution had been voiced in academic and other political communities (See V.4.5.)

### III.1.2 The emergence of a new generation of political Islam

The early 21st-century constitution debate occurred as a new generation of well-educated and open-minded Muslims became politically more important. Under President Suharto, from the 1970s onwards, there was a substantial investment in educational programmes. Under the supervision of the Ministry of Religious Affairs, many educational institutions were established, promoting a non-ideological concept of Islam. The state institutes for Islamic studies (IAIN)<sup>31</sup> played key roles in the New Order policy, especially their post-graduate programmes in Jakarta and Yogyakarta.<sup>32</sup> Such programmes brought about great changes in traditional Muslim communities.<sup>33</sup> Many programme graduates became the new Indonesian elite, changing the Islam-state relationship. They developed the notion that Islam and Pancasila are not opposed: Pancasila as the state ideology is acceptable and final, and Indonesia will not become an Islamic state. The actual challenge, they concluded, was how to realize Pancasila's values into instrumental policies. There was a huge surge of Islamic intellectuals who adhered to a new way of thinking about the country's philosophy.<sup>34</sup> Most of them belonged to either Muhammadiyah or NU (The Awakening of Islamic Scholars),<sup>35</sup> Indonesia's two largest Islamic organizations.

Nurcholish Madjid (1939-2005), one of this area's major pioneers, asserted that Muslims should not dream of making Indonesia an Islamic state. Madjid welcomed the trend towards national convergence that

31 IAIN stands for *Institut Agama Islam Negeri*.

32 Mujiburrahman, *The Struggle of KPPSI in South Sulawesi*, in Martin van Bruinessen (Ed.), *Contemporary Developments in Indonesian Islam. Explaining the "Conservative Turn"*, ISEAS, 2013, p. 154.

33 ICMI, *Antara Status Quo dan Demokrasi* (Between Status Quo and Democracy), Nasrullah Ali-Fauzi (ed.) Penerbit Mizan, Bandung, 1995, p. 236.

34 Nurcholish Madjid (1987), *Islam, Kemodernan dan KeIndonesiaan* (Islam, Modernity, and Indonesian Identity), Mizan Publisher, Bandung, New Edition, 2008, pp. 3–17.

35 NU stands for *Nahdlatul Ulama*.



evolved around Pancasila's noble values. Madjid asserted that Pancasila is sufficient to accommodate Muslims' aspirations.<sup>36</sup> Abdurrahman Wahid, former chairman of Nahdlatul Ulama and later the fourth Indonesian president, asserted that there is always a majority in Indonesia, Muslim, or non-Muslim, who accepts Pancasila.<sup>37</sup> He further affirmed that an Islamic state is just an illusion that has no basis in Islamic teaching.<sup>38</sup>

Nahdlatul Ulama, Indonesia's largest Islamic organization, is known as a tolerant Muslim organization.<sup>39</sup> NU's *Rois Aam* (the General Guide, the most venerated ulema), KH. Sahal Mahfudh gave the *iftitah* (opening speech) at the NU's National Conference in Surabaya on 27 July 2006. In it, he reaffirmed NU's basic understanding, which respects differences of religion, traditions, and beliefs. Mahfudh further stated that one of NU's distinctive characteristics is its ability to apply the teachings of the sacred religious texts in a cultural context that is profane. NU believes that Islamic law can be implemented without formal institutions. Given the Indonesian nation's God-ordained conditions of a pluralistic population and society, NU concluded that Indonesia's unitary state based on Pancasila is already the final form for the Indonesian nation.<sup>40</sup>

Likewise, Ahmad Syafii Maarif argues that the people of Muslim-majority Indonesia regard democracy as realizing the Koranic principle of *shura*.<sup>41</sup> Maarif was a prominent Muslim reformist and the former chairman of Muhammadiyah, the second-largest Muslim organization in Indonesia.<sup>42</sup>

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36 Ibid., p. 173.

37 *Ilusi Negara Islam, Ekspansi Gerakan Islam Transnasional di Indonesia* (Illusion of Islamic State, Expansion of Transnational Islamic Movement in Indonesia), K. H. Abdurrahman Wahid (editor), LibForAll Foundation, 2009, pp. 17-18.

38 Ibid, p. 41.

39 The Nahdlatul Ulama (NU – Awakening of the Ulema) is a traditionalist Sunni Islam movement in Indonesia following the Shafi'i school of jurisprudence, which was founded on 31 January 1926 by inter alia K.H. Hasyim Asy'ari. NU embraces *Ahlussunnah wal jama'ah*, a mindset that takes the middle path (*wasatiyah*) between the extreme *aqli* (rationalist) and the extreme *naqli* (scripturalist) as the response to the puritanist Islam introduced by Wahhabism in Saudi Arabia. "NU was established to fight Wahabi," asserted KH. Said Aqil Siradj, the Chairman of NU. See *Laskar Penjaga Persatuan Islam*, Makassar, 7 January 2014. According to Akhmad Sahal, the leader of a special branch of NU in the USA, the characteristics of NU and Wahhabi are different. The Wahhabi understanding is "so narrow, so easy to accuse the heathen and the infidel Muslims." In contrast, NU's characteristics – as a representation of *Ahlus Sunnah wal Jamaah* (Aswaja) – are tolerance, moderation, uprightness, and balance. See Madina online, 22 September 2015.

40 *Iftitah* (Opening) speech of *Rois Aam* KH. MA. Sahal Mahfudh at the opening of the National Conference of NU, Surabaya, 27 July 2006.

41 Ahmad Syafii Maarif, *Islam dalam Bingkai keIndonesiaan dan Kemanusiaan* (Islam in the frame of Indonesian Identity and Humanity), Penerbit Mizan, Bandung, 2009, p. 148.

42 The Muhammadiyah was established by KH Ahmad Dahlan, a local Muslim scholar, on 18 November 1912 as a movement for "*al-ruju' ila al-Quran al-hadiths*", a movement back to the Quran and hadith with an emphasis on rational arguments instead of textual interpretations.



Further, Maarif affirmed that most new *santri*<sup>43</sup> accepted Pancasila as the state philosophy, which increased opportunities to build a nation without theological bickering.<sup>44</sup>

In December 1990, with President Suharto's blessing, the Association of Indonesian Muslim Intellectuals (ICMI) was founded.<sup>45</sup> It became a venue for new Muslim elites, modernists and traditionalists, to mix and bridge social gaps. As Nurcholish Madjid admits, it eased the feeling of being an outsider.<sup>46</sup> According to Jalaluddin Rakhmat, it created a sense of Muslims' returning power.<sup>47</sup> In the meantime, efforts increased to build interfaith communication. Interfaith dialogues were organized by prominent Muslim figures, such as Mukti Ali and Munawir Syadzali, and Christian-Catholics, such as TB Simatupang, Latuihamallo and Franz Magnis Suseno. At least among elites, such dialogues increased mutual understanding and cooperation among the various religious groups.<sup>48</sup>

This distinguishes new Muslim intellectuals from the older generations.<sup>49</sup> In the first two decades of Indonesia's independence, Islamic political circles were dominated by intellectuals who wished to develop Indonesia based on Islam. It rendered the unanimous acceptance of the Pancasila and the Preamble as the starting points of constitutional reform from 1999-2002. It saved the process from the same fate as the Konstituante.

Yet, it should be noted that besides those new intellectual elites, other Muslim groups continued to strive for Indonesia as an Islamic state, or at least for the implementation of Islamic Sharia as a constitutional obligation. Most of them are the successive generation of Islamist movements or the Darul Islam that fought for Islam as the state's foundation.<sup>50</sup> With democracy's rise, they had more freedom to express their political ideologies and

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43 *Santri*: students from a traditional Islamic boarding school.

44 Ahmad Syafii Maarif, *op.cit.*, p. 175.

45 ICMI stands for *Ikatan Cendekiawan Muslim Indonesia*. Its first chairman was Ing. B.J. Habiebie, then President Suharto's Minister of Science and Technology. He later became the Vice-President and then the third President of Indonesia. Through ICMI, Suharto hoped to build a new power that could balance the Army's political role, which was getting away from him.

46 ICMI, *op.cit.*, p. 300.

47 *Ibid*, p. 332.

48 Jan S. Aritonang, *Sejarah perjumpaan Kristen dan Islam di Indonesia*, BPK, Gunung Mulia, 2004, pp. 494 - 497. See also, Steenbrink, *Patterns of Muslim-Christian Dialogue in Indonesia, 1965 - 1998*, Published in EXCHANGE, vol. 29/2000, 2-22.

49 Initially, Mohammad Natsir accepted *Pancasila* as a state philosophy. However, after President Soekarno proposed 'Guided Democracy' in his *Konsepsi Presiden*, Natsir considered *Pancasila* as too flexible and amorphous, allowing the President to do whatever he or she desired. See, Deliar Noer, *op. cit.* pp. 133-134.

50 Isa Anshary was a leading figure of the fundamentalist wing of Masyumi, who fought for an Islamic state and maintained relationships with the rebellious Darul Islam. See, Mujiburrahman, *op. cit.*, pp. 159-161.

to develop their organizations.<sup>51</sup> Although so far they have lacked sufficient public political support, as shown by the election outcomes, one can witness a re-emergence of groups and movements promoting Islamic ideologies. For example, an early 2011 survey of students and religious teachers in Jabotabek shows that public schools are fertile ground for spreading intolerant ideologies.<sup>52</sup> They have paved their way into government institutions and to some extents have leading positions in discourses on issues related to Islam. As observed by Van Bruinessen, moderate and progressive Islam seems to be losing its power to define the terms of debate, leaving the initiative to those who promote intolerant Islamic ideologies.<sup>53</sup>

### III.2 THE STRENGTHS AND SHORTCOMINGS OF THE 1945 CONSTITUTION

After occupying Indonesia during World War II, the Japanese formed the commission that drew up the 1945 Constitution. It was the outcome of two forces: efforts to achieve true Indonesian independence championed by prominent figures of the Indonesian independence movement and Japan's hegemonic plan to build the Greater East Asia Co-Prosperty Sphere. The Japanese formed the commission towards the war's end after occupying Indonesia.

Japan surrendered on 15 August 1945. On 17 August 1945, Indonesia proclaimed independence. On 18 August 1945, the country passed the 1945 Constitution. The 1945 Constitution then underwent an idealization and mystification process during the war of upholding and defending Indonesia's independence (See II.3.). Against this background, the 1945 Constitution had its strengths and shortcomings.

#### III.2.1 The Constitution's strengths

##### III.2.1.1 *A symbol of independence*

The drafting of the 1945 Constitution and its position during the early days of Indonesian independence turned the 1945 Constitution into a symbol of Indonesian existence and dignity. As discussed previously, the Constitution marks the triumphant end of a long and persistent struggle for indepen-

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51 Mujiburrahman, *op. cit.*, p. 157. Since the early decades of reform, there was a misguided understanding, as if democracy meant the freedom to do everything, including tear down the state. The increased activity of Islamic radicals was accepted as an unintended consequence of democracy. In those days, misperceptions and negligence allowed for the rise of radical movements and the infiltration of those ideas into the educational institutions, mosques, and society at large, both in rural and urban areas.

52 The report of Survey of the Institute of Islamic Studies and Peace (LaKIP), Jakarta, 2011.

53 Martin van Bruinessen, *Introduction: Contemporary Developments in Indonesian Islam and the "Conservative Turn" of the Early Twenty-First Century*, in Martin van Bruinessen (ed.), *op.cit.*, p. 4.

dence.<sup>54</sup> At least most mainstream Indonesian politicians appreciate the 1945 Constitution more for its symbolic dimension than its actual texts and contents.<sup>55</sup> In addition, the 1945 Constitution unites mainstream Indonesian political communities. Its symbolic status influences how it could be changed.

### III.2.1.2 *The Preamble's Pancasila: A widely accepted unifying ideology*

The Preamble, as discussed above, is the only part of the original 1945 Constitution that is not tainted by Japanese WWII interests and ideas. It was formulated by an informal team of nine people, led by Soekarno and Hatta, who worked beyond the Japanese colonial authority's scrutiny. The Preamble's history and values provide the nation and people with a romanticized past and future sublime ideal worth fighting for. The Preamble contains the nationhood's foundation, the aspirational ideals, and the state's tasks.

These tasks include protecting all the people, land, and territorial integrity, improving public welfare, educating people, and participating in executing a world order based on freedom, perpetual peace, and social justice. The Preamble affirms the Indonesian state's existence based on people's sovereignty and the five principles, i.e., Pancasila. Section 4 of the Preamble lists these principles: The One and Only God, a 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. The Preamble embodies the proclamation's spirit and the new nation's aspirations.

Thus, the Constitution mythologizes a dream that goes beyond rationality. Such a dream is essential for providing an identity for and maintaining solidarity and unity in Indonesia's new and heterogeneous nation.

### III.2.1.3 *Defining Indonesia's identity*

The 1945 Constitution's Preamble contains, among others, the principle of people's sovereignty based on the state's foundational principles, *Pancasila*. These principles affirm the Indonesian nationhood's inclusive perspective amidst its diverse population.

Article 1(1) affirms that Indonesia is a unitary republic. Article 35 states that the national flag of Indonesia shall be red and white (*Sang Merah Putih*). Article 36 states that the national language of Indonesia shall be Bahasa Indonesia.

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54 The TNI (*Tentara Nasional Indonesia* – National Military of Indonesia) and Polri (*Polisi Republik Indonesia* - Police of the Republic of Indonesia) require loyalty to the Unitary State of the Republic of Indonesia based on *Pancasila* and UUD 1945 through its Soldiers' Oath (*Sumpah Prajurit*) and Police Pledge (Police *Tri Brata*).

55 However, as history shows, this idolatry position of the UUD 1945 is also an impeding factor for improving it.

These provisions affirm the nation's identity, which is marked by a unified Indonesian society. National heroes and heroines from various regions across the archipelago pledged to uphold such a unified attitude through the Youth Pledge (*Sumpah Pemuda*) of 28 October 1928: "one nation, one country, and one national language, Indonesia". This unity is characteristic of Indonesian nationhood amidst its plurality.

#### III.2.1.4 *Basic principles of human rights*

The 1945 Constitution was made under the Japanese military administration's strict surveillance, three years before the 1948 United Nations Declaration of Human Rights. Nevertheless, it contains several basic principles of human rights.<sup>56</sup> The basis of the state is Pancasila, the five basic principles contained in the Constitution's Preamble. The five precepts are in one organic entity, complementing each other and being inseparable. The second precept, *Kemanusiaan yang Adil dan Beradab* (Just and Civilized Humanity), is the strong basis for appreciating humanity and inclusiveness. Although the Investigation Commission did not accept all of the proposals regarding fundamental rights, Article 27 guarantees equal rights for citizens before the law and in government. Article 28 states that "the freedom of association and assembly, to express verbal and written expression and else shall be stipulated by law." Article 29(2) asserts that the State guarantees all persons the freedom to worship according to his/her religion or belief. Although the Constitution does not fully recognize human rights, these provisions evidence the constitution-making process' strong aspiration towards respecting people's basic rights.

In addition, the existence of human rights elements in those articles provided a strong foundation for enhancing human rights provisions in subsequent constitutional amendments.

#### III.2.1.5 *Social welfare as a principal constitutional goal*

Articles 33 and 34 of the 1945 Constitution affirm social welfare as the objectives of the Preamble's inherent freedoms.

These articles assert that Indonesia will follow a development path that provides welfare and social justice for the people. They provide a foundation for government intervention in the economy to ensure this goal's achievement. They also form an important measure in implementing democracy and in furthering social human rights.<sup>57</sup>

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56 In the Investigation Commission meetings, on 13 July 1945, Maria Ulfah Santoso proposed that the Constitution should include a provision on basic rights. On 15 July 1945, Mohammad Hatta emphasized that basic rights, such as freedom of expression and association, should be stipulated in the Constitution. But the proposals were rejected. See Sekretariat Negara Republik Indonesia, *op.cit.*, pp. 225, 262.

57 Amartya Sen, *The Idea of Justice, In Memory of John Rawls*, First Harvard University Press paperback edition, 2011, pp. 345-348.

### III.2.1.6 *The unitary state*

Article 1(1) of the 1945 Constitution states that Indonesia “shall be a unitary state in the form of a republic”, providing the country and nation with an identity. This identity is important for a country that has historically seen numerous kingdoms and hundreds of cultural entities co-existing with no clear boundaries. The unitary state provides a common space and assures a fair living space for all people of Indonesia. It builds a sense of nationhood and collective identity for the heterogeneous population.

### III.2.1.7 *The presidential system*

Concentrating executive power in the President allows the government to quickly address the social and political challenges that often confront developing countries like Indonesia. The 1945 Constitution fixes the presidential system, setting clear limits on the presidential term.

### III.2.1.8 *Simplicity*

The 18 August 1945 version of the 1945 Constitution consists of a Preamble, 37 Articles with 68 clauses, 1 Transitional Provision with 4 Articles, and 1 Additional Provision with 2 clauses. Later, in October 1945, an Elucidation was added.<sup>58</sup> Assuming the Constitution contains adequate constitutional principles, a simple Constitution provides sufficient space for lower laws to creatively elaborate and translate its inherent principles while coping with dynamic situations.

Rigid and overly detailed Constitutional law would produce complications in Indonesia’s fast-changing environment. As Wheare stated, one essential characteristic of the Constitution’s ideal form is that it should be as short as possible.<sup>59</sup>

### III.2.1.9 *Amendment procedures*

Article 37 establishes the Constitution’s amendment procedure rules, a provision that is rare in a constitution.<sup>60</sup> It allows the Constitution to be amended following its own procedures. Thus, the 1945 Constitution can be updated without referring to an external or unconstitutional process, acts that often endanger the state’s existence.

58 With the re-enactment of the UUD 1945 by Presidential Decree of 5 July 1959, the Elucidation was officially attached as an integrated part of the UUD 1945.

59 K.C. Wheare, *Modern Constitutions*, Oxford University Press, fifth impression, 1980, p. 34.

60 Andrew Harding, *Dynamics and Problems of Constitution-Making in Asia and Beyond*, Paper for Group Discussion Panel, KPI Congress VIII, UN Centre, 3–5 November 2006.

### III.2.2 The Constitution's shortcomings

The original 1945 Constitution also displays shortcomings, including an improper separation of powers,<sup>61</sup> obscure checks and balances, and a weak rule of law. These shortcomings stem from the authoritarian design of the Constitution's political system. The Elucidation only adds to the Constitution's vagueness, leaving space for those in power to manipulate the Constitution.

#### III.2.2.1 Authoritarian nature

As discussed in the previous chapter (II.3), the original Constitution's authoritarianism reveals the overall design of the political system. Based on the premise that the whole society is unified and related in a familial relationship, it established an MPR as the peoples' representation (*Vertretungsorgan des Willens des Staatsvolkes*), fully exercising the people's sovereignty. The MPR is the highest state institution, wielding unlimited power, electing the President, and holding every state institution accountable.<sup>62</sup> In this system, the President is the MPR's mandate holder (*mandataris*) and subordinate (*untergeordnet*).<sup>63</sup>

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61 In his explanation before the Investigation Commission's plenary session on 15 July 1945, Soepomo confirmed that the 1945 Constitution indeed does not use a system that principally distinguishes between the state's three powers. See Sekretariat Negara Republik Indonesia, *op cit.*, p. 305.

62 Sekretariat Negara Republik Indonesia, *op cit.*, pp. 263–271. In his elucidation, Soepomo often used German terminologies.

63 The Elucidation of UUD 1945, Government System III.3.

The constitution presumes a one-party political system.<sup>64</sup> This design trapped the state into a politically stable system, but also one in which the President could only exercise his/her duties if he/she had control over the MPR. In other words, if the President did not control the MPR, the system would be unstable and paralyzed. It requires the President to control the majority of the MPR's members through a single-party system or one dominating political power. However, if the President controls the dominant political party that controls the MPR, then the highest power is in the President's hands. Thus, the principles of separation of powers, checks and balances, and the rule of law lose their influence. Yet, as described by Soepomo, the head of state must be a true leader, a guide toward noble ideals.<sup>65</sup> In this regard, the Elucidation of the 1945 Constitution emphasizes that the government's performance depends on the spirit and goodwill of leaders who will ensure that the government will perform its duties properly.<sup>66</sup>

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64 On 22 August 1945, the Preparatory Committee decided to establish PNI (*Partai Nasional Indonesia* - Indonesian National Party) as the only political party, with Soekarno as its supreme leader. See Sekretariat Negara Republik Indonesia, *op.cit.*, pp. 503-505. The establishment of PNI as the only political party in independent Indonesia was the most important part of the one-party political system design of the 1945 Constitution, as Soekarno had envisaged. See Ir. Soekarno, *Under the Banner of Revolution, op. cit.*, p. 283. One-party systems or dominant-party systems were common in Asia and Africa from the 1940s to 1970s. On the other hand, in a speech on 31 May 1945, Soepomo argued that whether a country is a republic, or a monarchy was not important. What was important is that the Head of State, either as the King, President or Duke, as in Burma, or the Fuhrer, should unite the state and nation. Further, Soepomo reiterated that how a country appoints a Head of State, whether with hereditary rights or only for a certain time, was merely a procedure. The important thing was not to elect a leader according to the Western democratic system, which equates humans with each other as mere numbers that are all the same worth. See Sekretariat Negara Republik Indonesia, *op.cit.*, pp. 41-42. On the other hand, Ruslan Abdulgani testified that Soepomo contended that the Constitution should adopt *Dai Ichi*, the Japanese unity and familial concept, so that democracy in Indonesia would unite the king and the people. Further, after a conversation with Soepomo, Ruslan Abdulgani concluded that on 10 July 1945, in the vote to determine the form of the independent state of Indonesia, 55 voted for a republic, 2 abstained, and Soepomo was one of the 6 Investigation Commission members who voted for a monarchy. It is most likely that there was an idea to set up an independent Indonesia as an absolute 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, pp. 193, 216. However, on 31 August 1945, under the pressure of the Allied Forces, the decision to establish PNI as the only political party was revoked by the KNIP (*Komite Nasional Indonesia Pusat* - The Central Indonesian National Committee). On 3 November 1945, the KNIP issued an announcement to allow people to establish political parties. The Central Indonesian National Committee (often abbreviated as KNIP) was established under Article IV, the Transitional Rules, the 1945 Constitution, and was inaugurated and commenced on 29 August 1945 until February 1950.

65 Sekretariat Negara Republik Indonesia, *op.cit.*, 1995, p. 36.

66 Elucidation of UUD 1945.

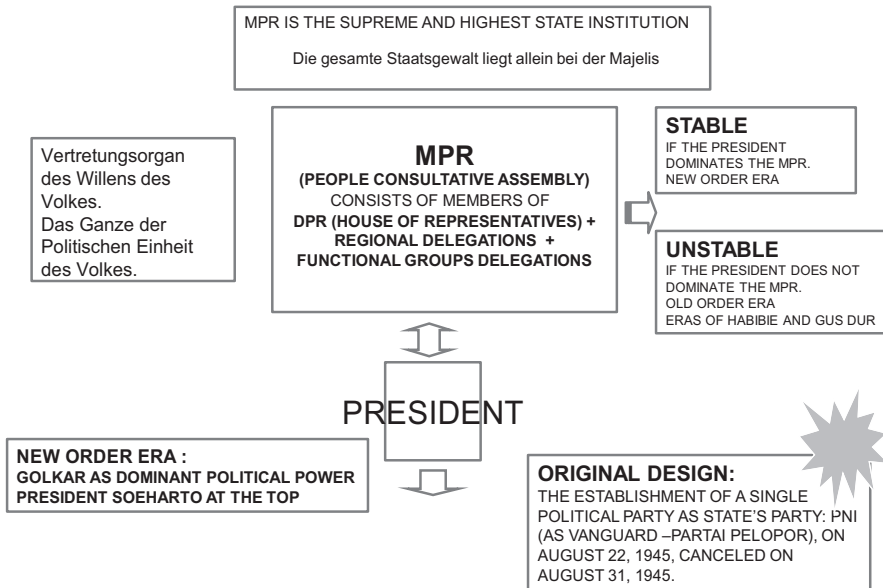


However, as Soerjanto Puspwardojo stated, in that regard, the original 1945 Constitution is too optimistic about the nature of mankind.<sup>67</sup>

Therefore, whenever the 1945 Constitution is exercised purely and consistently, it will build an authoritarian system of government.

### III.2.2.1.1 Figure no. 1: A diagram of the original 1945 Constitution

The diagram of the original 1945 Constitution sums up the previous sections.<sup>68</sup>



### III.2.2.2 No stipulation on general elections

The 1945 Constitution deliberately did not include provisions on elections. Soepomo elucidated that election by the people for the people was not acceptable because it was based on the Western system in which all human beings are equal and worth the same. According to Soepomo, the leader should be elected by a people's deliberative council so that the leader is integrated with the people.<sup>69</sup>

67 Soerjanto Puspwardojo is a professor in philosophy at the University of Indonesia, Jakarta. Kompas Daily, 1 September 1999, Seminar on "Assessing the Improvement of the UUD 1945, Toward a New Indonesia" at the National Resilience Institute (Lemhannas), Jakarta, Tuesday, August 31, 1999.

68 Presented by the author at a lecture at Lemhanas (*Lembaga Ketahanan Nasional* – National Resilience Institute), Jakarta, 2002. In his elucidation for The Investigation Commission, Soepomo often used German terminologies.

69 See Sekretariat Negara Republik Indonesia, *op.cit.*, p. 42.

### III.2.2.3 *Inconsistencies and deficiencies*

The 1945 Constitution contains several statements in its articles and the Elucidation that are inconsistent with its espoused principles. For example, the Preamble and Article 1(2) affirm that Indonesia is based on the people's sovereignty, while Article 1(2) immediately asserts that sovereignty is fully exercised by the MPR, which in practice is controlled by the President (see above), instantly transforming people's sovereignty into state sovereignty.

Likewise, the 1945 Constitution does not affirm that Indonesia shall be a state based on the rule of law. It does not declare that judicial power is independent, as required in a democratic state that embraces the rule of law. It is the Elucidation that declares that Indonesia shall be a state based on the rule of law (*rechtsstaat*) rather than power alone (*machtsstaat*). It declares that the government is based on the constitution (basic law) rather than absolutism (unlimited power). Finally, it declares that the judicial power shall be independent.<sup>70</sup> However, the Elucidation's statement becomes meaningless since the MPR is the highest state institution, with unlimited power, to which every state institution is accountable, including the judiciary.

Further, the 1945 Constitution does not adopt a separation of powers system and intentionally rejects checks and balances.<sup>71</sup> Moreover, it does not admit fair, accountable, and periodic elections and political parties as instruments for implementing constitutional principles. Likewise, it adopts a presidential system while stipulating that the president is responsible to the MPR, which can dismiss the president<sup>72</sup> – a characteristic of a parliamentary system.

### III.2.2.4 *Ambiguity*

There are several ambiguous articles in the original 1945 Constitution, notably Articles 7, 28, and 33. Article 7 states that "The President and the Vice President shall hold office for a term of five years and shall be eligible for re-election". It does not expressly give the president a maximum term of office. It was manipulated to justify the seven-time election of President Suharto. Earlier, in 1963, when the 1945 Constitution was valid, the MPRS enthroned Soekarno as president for life. Later, in 2001, the MPR dismissed President Abdurrahman Wahid after only two years in office. Both actions were made possible by the provision that the MPR holds unlimited power and can interpret Article 7 according to its political interests.<sup>73</sup>

Article 28 states "Freedom of association and assembly, of verbal and written expression and the like, shall be stipulated by law". However, this

70 See Chapter IX of the original 1945 Constitution and its Elucidation.

71 See Sekretariat Negara Republik Indonesia, *op.cit.*, pp. 304–305.

72 See the initial 1945 Constitution, *Elucidation, State Government System, III.3.*

73 The Provisional MPR decree No. II/MPRS/1963, 18 May 1963.

does not guarantee the existence of or adherence to basic rights. Without its stipulation by law, the right does not exist.<sup>74</sup>

Article 33, although one of the 1945 Constitution's strengths, also contains a level of ambiguity. It was intended for the state to actively pursue the achievement of justice and prosperity. The original formulation also provides the opportunity to implement an all-state economy, etatism.

### III.2.2.5 *The mystified Elucidation*

The Elucidation, regardless of annotations intending to make the Constitution consistent with the values inherent in the Preamble, hardened the authoritarian nature of the original 1945 Constitution. The Elucidation emphasizes that Indonesia shall be a state based on the rule of law and that the government shall be based on the constitution rather than absolutism. However, the rule of law and the constitutional system become meaningless when the highest power of the state is vested in the MPR, to which all other high state institutions are accountable and when the MPR's power is unlimited.<sup>75</sup>

Besides, the Elucidation was not made by The Investigation Commission or The Preparatory Committee. Instead, it was composed by Soepomo and added to the 1945 Constitution in October 1945, when Soepomo was the Minister of Justice. Subsequently, it was formally attached to the 1945 Constitution by the Presidential Decree of 5 July 1959.

### III.2.2.6 *The sacrosanct status*

The sacrosanct and unassailable position of the 1945 Constitution, which gives it strength as a symbol of the nation, has also hampered critical thinking about its shortcomings and potential improvements.

On the one hand, the 1945 Constitution's Preamble contains basic principles for the existence of the state of Indonesia. It confirms *Pancasila* as the state's foundation, the form of the unitary state, and the commitment to advance public welfare, develop the nation's intellectual life, and participate in the execution of a world order based on freedom, perpetual peace, and social justice. On the other hand, these principles are not backed up with enforceable provisions and can be interpreted in various ways.<sup>76</sup>

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74 Lindsey argues that this article is a demonstration of the government's power to restrict rights. See Tim Lindsey, "Indonesian Constitutional Reform: Muddling Towards Democracy", 2002, 6 Singapore Journal of International and Comparative Law, pp. 276–277.

75 See Elucidation to the 1945 Constitution, Government System, III, IV, and Chapter II, Article 3.

76 See Bart van Klink, *Symbolic legislation: An Essentially Political Concept*. Bart van Klink, Britta van Klink (eds.), *Symbolic Legislation Theory and Developments in Bio law*, Springer: Cham 2016, pp. 19–35.

In its symbolical position, the 1945 Constitution forms a collective memory, especially among the Indonesian political and military mainstream, which is immediately suspicious of any desire to amend the 1945 Constitution, let alone to replace it completely.

### III.3 THE PEOPLE'S CONSULTATIVE ASSEMBLY SPECIAL SESSION AND ITS RESULTS

Following the DPR's request,<sup>77</sup> from 10 to 13 November 1998, the MPR convened a Special Session to revise the MPR Decrees, to enable the election to be moved from 2002 to 1999, and to reduce the number of appointed military delegations in the DPR and MPR.<sup>78</sup>

However, groups of students, intellectuals, and workers refused this MPR Special Session. One group was the People's Democratic Party (*Partai Rakyat Demokratik* or PRD), a left-leaning militant political party, established and populated mostly by students. They regarded this Special Session as a way to prolong the New Order regime and legitimize the military's integration into politics.<sup>79</sup> They doubted that the election would be fair and clean. They insisted that a "people's committee" should be established as a new parliament before a general election.<sup>80</sup> Faizol Reza,<sup>81</sup> Chairman of the PRD, asserted that the priorities were reforming parliament and the election process, rather than electing a new president.<sup>82</sup> In other words, this group attempted to impose changes through a revolution.<sup>83</sup>

Conversely, another group consisted of organizations close to the military and GOLKAR, such as *Pemuda Pancasila* (Pancasila Youth), *Pemuda Pancamarga* (Pancamarga Youth),<sup>84</sup> and the FKPPi<sup>85</sup> and other elements of GOLKAR. They supported the validity of the presidency of BJ Habibie (a leading GOLKAR figure) as Suharto's replacement and the implementation of the MPR Special Session.

Islamic organizations also supported the implementation of the MPR Special Session and President B.J. Habibie, the Chairman of ICMI, who was

77 Decision No. 20/DPR-RI/1998, 29 June 1998.

78 MPR Decree No. XIV/MPR/1998.

79 Tempo Online, 3 November 1998.

80 PRD gave no explanation on how to form the "People's Committee".

81 Chairman of the Committee of the Central Board of the People's Democratic Party (PRD), student of the Language Faculty, University of Gajah Mada, Yogyakarta. Previously studied at the Faculty of Islamic Law, IAIN Sunan Kalijaga, Yogyakarta.

82 INFO-PEMBEBASAN, a journal published by the People's Democratic Party – Partai Rakyat Demokratik (PRD), <http://www.peg.apc.org/~prdint1>, accessed on 23 January 2012.

83 Lt. Gen. (ret) Djadja Suparman, *op. cit.*, pp. 140–146.

84 *Pemuda Pancamarga* is also known as Youth Wing of the Veterans.

85 FKPPi stands for *Forum Komunikasi Putra Putri Purnawirawan dan Putra Putri TNI/Polri* – the Communication Forum of Sons and Daughters of Retired Military and Police and Sons and Daughters of Military and Police.

regarded as a prominent Muslim representative. These included KISDI,<sup>86</sup> ICMI, CIDES,<sup>87</sup> and *Dewan Dakwah Islamiyah*,<sup>88</sup> which were organized through *Forum Silaturahmi Ulama-Habib*,<sup>89</sup> community leaders within the Jabodetabek area,<sup>90</sup> and the *Kongres Umat Muslim*.<sup>91</sup>

This group of Islamic organizations formed PAM SWAKARSA (Self-initiated Public Security Forces),<sup>92</sup> which was allegedly later mobilized and supported by ABRI's leadership.<sup>93</sup> This group saw the MPR Special Session as a constitutional means to achieve reform. It was, therefore, important for this group that the MPR Special Session did not fail. Occasionally, the two groups, supporters and opponents of the MPR Special Session, clashed physically. Often people in the streets were involved, mostly against the PAM SWAKARSA. Fatalities occurred.<sup>94</sup> Nonetheless, the government and prominent reformation figures reached an understanding, and the MPR held its Special Session from 10 to 13 November 1998.

While the MPR session was in progress, thousands of students from various universities in Jakarta, Tangerang, Bandung and its surroundings besieged the MPR complex and tried to occupy the MPR. They planned to compel the MPR to dismiss President Habibie and establish a presidium to govern the country. In the meantime, clashes between supporters and opponents of the MPR Special Session continued and many casualties occurred. On 13 November 1998, while the students took refuge in Atma Jaya Catholic University campus, they were shot at by unknown persons. Seventeen people were killed, including six students from various universities. More than 400 people were injured. General Wiranto, the Commander of the Armed Forces, claimed certain radical groups provoked clashes between students and the state apparatus to thwart the MPR Special Session.<sup>95</sup>

On the day the MPR session commenced, on the students' initiative,<sup>96</sup> four prominent reformist figures met at Gus Dur's residence in Ciganjur, Southern Jakarta, and issued the Ciganjur Declaration. These figures were Abdurrahman Wahid (Gus Dur), Amien Rais, Megawati Soekarnoputri, and

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86 KISDI stands for *Komite Indonesia untuk Solidaritas Dunia Islam* – Indonesian Committee for Solidarity of the Islamic World.

87 CIDES stands for Center for Information and Development Studies.

88 *Dewan Dakwah Islamiyah* stands for Council of Islamic Missionary.

89 *Forum Silaturahmi Ulama-Habib* stands for the Forum of Friendship between Ulama-Habib.

90 *Jabodetabek* is an acronym for (an area marked by the cities of) Jakarta, Bogor, Depok, Tangerang, and Bekasi, or the Greater Jakarta area.

91 *Kongres Umat Muslim* stands for The Muslim Congress.

92 PAM SWAKARSA stands for *Pasukan Pengamanan Masyarakat Swakarsa*.

93 Kompas Daily, 10 June 2004. "Kivlan Zein challenges Wiranto to court".

94 Tempo Magazine, 24 November 1998, *Pam Swakarsa: Actor or Victim?*

95 Kompas Daily, 23 November 1998.

96 The Ciganjur meeting's initiators were the Community of the Students of Bandung Institute of Technology, Jakarta Student Senate Communications Forum (FKSMJ), and Students of Siliwangi University.

Sultan Hamengkubuwono X.<sup>97</sup> They appealed to all parties to uphold the unity and the integrity of the nation in the spirit of Unity and Diversity and the Unitary State of the Republic of Indonesia, based on Pancasila and the 1945 Constitution, and to immediately carry out honest and fair elections overseen by independent teams.

The declaration asserted that an election would be a democratic way to end the transitional government of President B.J. Habibie and establish a legitimate new government. The declaration stated that three months (at most) after the May 1999 election, the MPR would need to form a new government. Further, they agreed that the dual function of the Armed Forces would be eliminated in phases and completed within six years (at most) from the date of the declaration, establishing a civil society.

The Armed Forces supported the MPR Special Session and believed it was necessary for maintaining the situation and for expediting the elections to 1999, a gateway for democratizing the country on a constitutional basis.<sup>98</sup>

The MPR Special Session was held amid scepticism and eventually produced decrees loaded with reform materials.

Among other points, the November 1998 MPR Special Session produced the following MPR Decrees:

- 1) No. VII/MPR/1998 on the Revision of and Additions to MPR Decree No. I/MPR/1983 on the Arrangement and Order of the MPR. The revised article states that "Revision to the Constitution should be implemented in accordance with the stipulations in Article 37 of the 1945 Constitution."<sup>99</sup> It removes the obstacles to amending the Constitution.
- 2) No. VIII/MPR/1998 on the Revocation of MPR Decree No. IV/MPR/1983 on Referendum.
- 3) No. XIII/MPR/1998 on the Limitation of the Term of Office of the President and Vice President of the Republic of Indonesia. This Decree sets a clear limit on the president's term in office, which can last a maximum of two periods. It hereby eliminates the ambiguous Article 7 of the 1945 Constitution.<sup>100</sup>
- 4) No. XIV/MPR/1998 on the Revision and Accretion of MPR Decree No. III/MPR/1998 on General Elections, the last time revised by MPR Decree No. I/MPR/1998. The new Decree states that the election will be conducted in 1999 instead of 2002. It also requires the democratization of political laws, including lifting restrictions on the number of political parties in Indonesia, which was at the time restricted to just three.

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97 The four figures represented the then main political powers, which soon led the newly formed PDI-P, PKB, PAN, and GOLKAR party, which were the winners of the 1999 election.

98 The last election in the New Order era took place in 1997.

99 Article 104 of the revised MPR Decree No. I/MPR/1998.

100 Article 7 of original UUD 1945 says: The President and the Vice-President shall hold office for a term of five years and shall be eligible for re-election.

- 5) No. XV/MPR/1998 on the Implementation of Regions' Autonomy; Regulation, Division, and Just Utilization of National Resources; and Balanced National and Regional Financials within the Framework of the Unitary Republic of Indonesia.
- 6) No. XVII/MPR/1998 on Human Rights.

The MPR Special Session also assigned President Habibie to continue and consolidate the reformation process.<sup>101</sup> In response, Habibie asserted that the reform should be done through constitutional means rather than street actions.<sup>102</sup>

However, not all political powers agreed with changing the 1945 Constitution, despite enabling the possibility of change. Before the MPR Working Body Special Session's plenary meeting,<sup>103</sup> Rully Chairul Azwar<sup>104</sup> asserted that although GOLKAR had agreed to abolish MPR Decree No. IV/MPR/1983 on Referendum,<sup>105</sup> it did not mean that GOLKAR intended to change the 1945 Constitution. Azwar affirmed that until now, the 1945 Constitution, "in the totality of its soul, spirit and formulation", was the right constitution for Indonesia, whose independence was proclaimed on 17 August 1945.<sup>106</sup>

#### III.4 THE 1999 GENERAL ELECTION

Soon after the MPR Special Session, new laws on political parties and general elections were established. The DPR announced that the election would be conducted on 7 June 1999. Political activists established 141 new political parties and registered to participate in the election.<sup>107</sup> Among them were several prominent figures, such as Megawati Soekarnoputri, Abdurrahman Wahid, and Amien Rais. Soekarnoputri led PDI-P,<sup>108</sup> Wahid led PKB,<sup>109</sup> and Rais led PAN.<sup>110</sup> On the other hand, Akbar Tanjung took over the leadership

101 MPR Decree No. X/MPR/ 1998, Article 4.

102 Kompas Daily, 3 December 1998.

103 This meeting was held on 15 September 1998.

104 Azwar was speaking on behalf of F-PG (the MPR's largest faction in 1998).

105 This abolishment meant that changes to the 1945 Constitution could be performed using Article 37 of the Constitution.

106 Majelis Permusyawaratan Rakyat Republik Indonesia, Buku Dua, Jilid 3, *Risalah Rapat Badan Pekerja MPR-RI*, Sekretariat Jenderal MPR-RI, 1999, p. 43. Previously, GOLKAR Extraordinary Congress, 9 to 11 July 1998, asserted that GOLKAR upholds the 1945 Constitution and *Pancasila*. Rully Chairul Azwar is a prominent figure of the FKPPI.

107 In accordance with Law No. 2/1999 on political parties, all political parties must include *Pancasila* as the foundation of the unitary state of the Republic of Indonesia, and the principles or characteristics, aspirations, and programmes of the political parties must not contradict *Pancasila*.

108 PDI-P stands for *Partai Demokrasi Indonesia Perjuangan* – Indonesia Democratic Party – Struggle.

109 PKB stands for *Partai Kebangkitan Bangsa* – Nation Awakening Party.

110 PAN stands for *Partai Amanat Nasional* – National Mandate Party.



of GOLKAR.<sup>111</sup> Eventually, 48 political parties (45 of which were new) could participate in the election.<sup>112</sup> In the meantime, the Armed Forces and civil servant corps asserted their neutrality and maintained an equidistant position towards all election contenders.<sup>113</sup>

Based on the new Law No. 3/1999 on Election, the Election Commission (*Komisi Pemilihan Umum* or KPU) was established. It consisted of representatives from the 48 political parties that had participated in the elections and five government representatives. KPU then elected Rudini, a retired four-star army general, former Chief of Staff of the Army, and former Minister of Home Affairs, as the chairman.<sup>114</sup> Further, in accordance with the law, KPU established the Indonesian Election Committee (*Panitia Pemilihan Indonesia* or PPI), consisting of the same number of representatives as KPU. Then, the KPU elected the author, Jakob Tobing, as the Chairman of PPI through a direct election during a plenary meeting. The author was previously a KPU member representing PDI-P.<sup>115</sup> According to the law, KPU functioned as the policymaker and was assigned with compiling the election outcomes at all levels into one national result. The PPI functioned as the organizing committee, establishing and overseeing an organizing committee at the provincial level, PPD I. Further, PPD I established and supervised PPD II at the district and city level. PPD II established and supervised PPS, which ran the election booths, conducted the elections, and computed its results. By law, PPI was authorized to compile election outcomes at every level and to count the election results at the national level. Subsequently, the tabulations were to be submitted to the KPU, presenting one comprehensive national election result.

The general elections were conducted fairly, peacefully, and simultaneously on 7 June 1999, except in some areas in North Sumatera.<sup>116</sup> Voter turnout was high. Of 118,217,393 registered voters, 105,786,661 cast a vote (89,48 %).<sup>117</sup> In accordance with Law No. 3/1999 on General Elections,

111 Akbar Tandjung, former chairman of HMI (Himpunan Mahasiswa Islam – Islamic Student’s Association) and GOLKAR’s former Vice Secretary General, was elected as GOLKAR’s chairman in congress in 1998, defeating General (ret) Edy Sudradjat, former Commander of Indonesian Armed Forces and former Minister of Defence.

112 Law no. 3/1999 establishes requirements for political parties to take part in the 1999 General Election:

- a. recognized in accordance with Law no. 2/1999 on Political Parties;
- b. having a board of officials in more than half of Indonesia’s provinces;
- c. having a board of officials in more than half the number of districts/municipalities in the province referred to in point H.

113 During the old regime, ABRI and KORPRI were the backbones and main supporting powers of GOLKAR.

114 Rudini was the chairman of the MKGR party, one of the participating parties in the election.

115 The author represented PDI-P in KPU as a member (1999–2002). Previously, the author was the vice chairman of Supervisory Committee (PANWASLU) for the 1992 election and member of PANWASLU in the 1987 general elections.

116 [www.kpu.go.id](http://www.kpu.go.id), accessed on 4 March 2012.

117 *Ibid.*

the election was open to domestic and international observers, who were present at the highest level down to the polling booth. The election was monitored by several domestic observers, the political parties themselves, several domestic NGOs, and international observers. Domestic observers included KIPP (*Komite Independen Pemantau Pemilu* – the Independent Committee of Election Observers), Forum Rector, and University Network for a Free and Fair Election (UNFREL). International observers included the European Union, Carter Center, NDI (National Democratic Institute), IRI (International Republican Institute), Australia, and Namfrel (National Citizens' Movement for Free Elections – Philippines).<sup>118</sup> After completing his observations in various areas, the Chairman of the Carter Center, the United States' former President Jimmy Carter, visited the KPU office in Jakarta on 9 June 1999. He met with Rudini and the author, affirming that the elections he had observed had gone well.<sup>119</sup> Later, Carter wrote in the *International Herald Tribune* that Indonesia had held a fair and democratic 1999 election.<sup>120</sup>

PPD II and PPD I successfully completed the vote count at their respective levels and endorsed it.<sup>121</sup> PPI also succeeded in counting votes for national elections. Signed by PPI leaders and representatives of government and all political parties participating in the election, PPI ratified the national level result in PPI's decision no. 335/15/VII/1999, dated 26 July 1999. Then, PPI sent a tabulation of election results from all levels to the KPU to be ratified nationally.

However, the KPU failed to compile the election results as reported by the PPI into one national election result as instructed by law.<sup>122</sup> While all political parties in the PPI agreed on the tabulations, representatives of the same political parties in the KPU failed to do so. The 27 out of 48 political parties that failed to win DPR seats refused to sign the results. They claimed that the elections had been rigged, forged, or manipulated. The political circles and the media nicknamed these parties the "*partai gurem*", literally translated as "parties of the chicken lice". It became clear that these small parties expected to receive a seat in the Parliament, despite losing in the polls.

A KPU member from *Partai SPSI* revealed the expectation explicitly, stating that *Senayan* should also accommodate the small parties.<sup>123</sup> Conversely, *Partai Persatuan* (United Party) did not ask for a seat but urged the

118 See, among others, CNN World-Asia Pacific, 9 June 1999.

119 Jakarta, 9 June 1999.

120 *International Herald Tribune*, 16 July 2004. *Surprise: Muslim majority, fair election Indonesian voting.*

121 PPI took over the tabulation of the election result for South-East Sulawesi. It was conducted in Jakarta and witnessed by the chairman and representatives of PPD I from all over Indonesia and all political party representatives.

122 Article 66, Law No. 3/1999, on General Elections.

123 As stated by Rasyidi of *SPSI Party* (*Serikat Pekerja Seluruh Indonesia* – Indonesian Workers Association). *Senayan* is the name of the complex where the MPR buildings are located.

KPU to consider the value of the many residual votes<sup>124</sup> that should also be represented in Parliament.<sup>125</sup> This request of 27 small political parties prevented the KPU's 53 members from deciding or compiling the 1999 election results at a national level.

Commenting on this situation, the author testified that there were discussions among certain elements in the political parties to thwart the elections and let the KPU function as the KNIP (Central National Committee of Indonesia),<sup>126</sup> which in August 1945 functioned as the provisional MPR that formed the new government.<sup>127</sup> Anticipating the worst possibility, namely the failure of the democratic 1999 elections, the author, Adnan Buyung Nasution, and Oka Mahendra, together with Ryas Rasyid,<sup>128</sup> advised President Habibie to take over determining the election outcome. Habibie was by law in charge of the implementation of 1999 elections.<sup>129</sup> Then, as the PPI chairman, the author also sent the final tabulation directly to the President.<sup>130</sup> Based on the tabulation, and with a final check by the Election Supervisory Committee, President Habibie decided and promulgated the results of the 1999 elections with Presidential Decree No. 92/1999 on 4 August 1999.

In response, 18 small political parties, led by Sri Bintang Pamungkas of PUDI (the Indonesian Democratic Union Party),<sup>131</sup> reported the author to the police, on charges of manipulating the election results.<sup>132</sup> Years later, in 2004, these small parties still claimed that the 1999 election was invalid. They submitted their case to the International Tribunal in The Hague, the Netherlands, but it was rejected.<sup>133</sup>

Subsequently, the drawing of the DPR seats was conducted proportionally by PPI, based on the national votes obtained by each political party. The

124 The total vote gained by the small parties was 9,700,658 out of 105,786,661 active voters, equal to 9.17% of total votes. Source: KPU.

125 As stated by Mardinsyah of the *Partai Persatuan* (United Party). *Republika Daily*, 28 July 1999, *Partai Gurem Jangan Lagi Minta Kursi* ("Chicken lice" parties should not ask for seats anymore).

126 KNIP stands for *Komite Nasional Indonesia Pusat*.

127 See Jakob Tobing, *Berusaha untuk Turut Melayani, Memoar Politik Jakob Tobing*, KonPress, Jakarta, First Printing, 2008, p. 115.

128 Adnan Buyung Nasution and Oka Mahendra were members of the KPU representing government; Ryas Rasyid was the Director of the Institute of Governance Studies.

129 Article 8 paragraph (1) Law No. 3/1999 on General Elections.

130 PPI decision No. 335/15/VII/1999 on the Minutes and Certificate of Tabulation of PPD II, PPD I throughout Indonesia, and PPI, dated 26 July 1999.

131 PUDI stands for *Partai Uni Demokrasi Indonesia*.

132 *Media Indonesia*, newspaper, 12 October 1999, p. 13. Sri Bintang Pamungkas reported the author to the police headquarters, along with Adnan Buyung Nasution, Adi Andoyo, Andi Malarangeng, Afan Gafar, and Oka Mahendra.

133 *Pelita Online*, discussion on "2004 election: Who will benefit?", Jakarta, 23 April 2004, accessed on 24 January 2012.

political parties newly entering the DPR<sup>134</sup> obtained 282 seats (61%), thereby outnumbering the established political parties, which won 180 seats or 39% of the total. The 462 elected members were added to the 38 appointed members from the military and the police, to make up a total of 500 DPR members. By law, the 1999 MPR had 700 members, which consisted of 500 DPR members plus 135 members elected by the provincial DPR (DPRD) and 65 members appointed by the President as the delegation of the functional groups. This composition fairly reflected the political landscape of the time.<sup>135</sup>

Thus, the 1999 democratic elections, with high voter turnout, the peacefulness of the process, observed by independent domestic and international observers, outweigh the accusations of result manipulation. It succeeded in forming an MPR with strong legitimacy for taking the necessary constitutional steps to overcome the various problems at hand. The 1999 democratic elections being held in the reform context shaped the basic attitude of elected MPR members to support the reform program. The establishment of the new MPR as the outcome of a broad-based political agreement, as manifested in the 1998 MPR Special Session decrees, effectively ended the conflict between those who demanded an extra-parliamentary solution to the crisis and those who wanted it conducted based on the existing rules. Likewise, this political agreement prevented unconstitutional attempts to take power. Although there was still some dissatisfaction with the intra-constitutional process, this step effectively turned an uncertain situation into a manageable political order necessary for undertaking a peaceful reform process.<sup>136</sup>

Thereby, the outcomes of both the 1998 MPR Special Session and the 1999 general election built a bridge for an intra-parliamentary and constitutional transition from an authoritarian to a democratic regime.

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134 The new political parties were populated by opposition groups. Some of them were political prisoners during the old regime. On the other hand, the old political party leaderships were already in the hands of the reformists.

135 The hard-line Islam political parties were surprised by the outcomes. They assumed that the Islamic parties would win the 1999 election. See Sabili Magazine, July 1999 edition.

136 See also Donald L. Horowitz, *op.cit.*, pp. 1–15.

### III.4.1 The outcome of the 1999 election

19 political parties managed to win seat(s) in the MPR. PDI-P successfully won the most, followed by the GOLKAR Party and the United Development Party (PPP). 10 political parties won less than 4 seats or less, in which 7 political parties won 1 seat each.<sup>137</sup>

### III.5 THE NEW MPR

Based on Law no. 4/1999, the 1999 MPR had 695 members consisting of 500 DPR members, 130 members (18.7%) elected by the provincial DPR or DPRD I,<sup>138</sup> and 65 presidentially appointed MPR members (9.4%) from functional groups. The 500 DPR members consisted of 462 members (66.4%) from political parties elected in the elections and 38 members (5.5%) from the military and police appointed by the president.<sup>139</sup>

The composition of the 1999 People's Consultative Assembly was as follows:

- 1) 85.1% were elected members, and the president appointed 14.9%.
- 2) At least 424 (61%) members were from nationalist political parties and groups and 198 (28.6%) were from Islamist political parties,<sup>140</sup> although all religion-based political parties also had a nationalist character and vice versa.
- 3) The functional group was a cluster of loose and diverse political orientations of representatives of functional groups in society.
- 4) Many prominent figures of opposition groups, dissidents, and reform activists, including former political prisoners,<sup>141</sup> were elected in the 1999 election.<sup>142</sup>

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137 See Attachment III.1.

138 DPRD I stands for *Dewan Perwakilan Rakyat Daerah Tingkat I*.

139 UUD 1945 stipulated that the MPR should consist of DPR members plus delegations from the provinces and appointed members from functional groups. According to Law no. 4/1999, the total number of MPR members was 700, but 5 memberships from the East Timor province were cancelled, because East Timor voted for independence and became the Republic of Timor Leste.

140 For this analysis, FPDI-P, F-PG, and F-KKI were nationalist factions. Islamist factions were F-PPP, F-KB, F-PBB, F-Reformasi, and F-PDU. F-TNI/POLRI could be assumed to belong to nationalist groups. F-PDKB was a Christian/Catholic faction.

141 Some of them were former political prisoners, such as Soewarno (F-PDIP) and A.M. Fatwa (F-Reformasi).

142 Former opposition/dissident activists were now the MPR elected members from new political parties, such as Megawati Soekarnoputri, Amien Rais, Matori Abdul Djailil, and the author, and most of the presidentially appointed and DPRD I elected MPR members.

### III.5.1 The MPR's factions

In its plenary meeting on 2 October 1999, in accordance with its order, the MPR established its factions. Out of the 19 political parties which obtained seats in the MPR, 11 factions were established and ratified<sup>143</sup>: F-PDIP,<sup>144</sup> F-PG,<sup>145</sup> F-UG,<sup>146</sup> F-PPP,<sup>147</sup> F-KB,<sup>148</sup> F-Reformasi,<sup>149</sup> F-TNI/Polri,<sup>150</sup> F-PBB,<sup>151</sup> F-KKI,<sup>152</sup> F-PDU,<sup>153</sup> and F-PDKB.<sup>154</sup>

It should be noted from the outset that the MPR, in its plenary session on 3 October 1999, decided not to form a separate faction for MPR members from the Regional Delegates.<sup>155</sup> Instead, each of them was required to join one of the factions, except the F-TNI/Polri.

#### III.5.1.1 F-PDIP

The F-PDIP stands for *Fraksi Partai Demokrasi Indonesia Perjuangan* – The Faction of the Indonesian Democratic Party – Struggle. The F-PDIP, the faction of PDI-P (*Partai Demokrasi Indonesia Perjuangan* – the Indonesian Democratic

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143 See Attachment III.2.

144 F-PDIP stands for *Fraksi Partai Demokrasi Indonesia Perjuangan* – the Faction of the Indonesian Democratic Party of Struggle.

145 F-PG stands for *Fraksi Partai GOLKAR* – the Faction of the GOLKAR Party.

146 F-UG stands for *Fraksi Utusan Golongan* – the Faction of the Delegations of Functional Groups.

147 F-PPP stands for *Fraksi Partai Persatuan Pembangunan* – the Faction of the United Development Party.

148 F-KB stands for *Fraksi Kebangkitan Bangsa* – the Faction of the National Awakening Party.

149 F-Reformasi stands for the Faction of the Reformation.

150 F-TNI/Polri stands for *Fraksi Tentara Nasional Indonesia/Kepolisian Negara Republik Indonesia* – the Faction of the Indonesian National Armed Forces/Indonesian Police.

151 F-PBB stands for *Fraksi Partai Bulan Bintang* – the Faction of the Crescent Moon and Star Party.

152 F-KKI stands for *Fraksi Kesatuan Kebangsaan Indonesia* – the Faction of the Unitary of Indonesian Nationhood.

153 F-PDU stands for *Fraksi Partai Daulatul Ummah* – the Faction of the People's Sovereignty.

154 F-PDKB stands for *Fraksi Partai Demokrasi Kasih Bangsa* – the Faction of the Democracy and Love the Nation Party.

155 Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 1999, Edisi Revisi, Sekretariat Jenderal, 2010, p. 9. According to the original provisions of Article 2 paragraph (1) of the 1945 Constitution, the MPR was made up of members of Parliament and augmented by regional territory delegates and groups as provided by statutory regulations. Previously, MPR members who were regional territory delegates were grouped into a particular faction, i.e., the Faction of Regional Delegates. But during the MPR General Session in October 1999, the Faction of Regional Delegates was abolished, and its members were prompted to join other factions. Then, during the MPR 2000 Annual Session, a Faction for Regional Delegates was revived. However, MPR members from the Regional Delegates were not required to join. From then on, the MPR had 12 factions.

Party – Struggle)<sup>156</sup> and the winner of 1999 election, had 185 members in the MPR. Its membership comprised of 145 DPR members from the PDI-P and 40 MPR members from the Regional Delegates.

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156 PDI-P is a nationalist party which was founded in 1997 as the successor of the Indonesian Democratic Party or the PDI (*Partai Demokrasi Indonesia*). The PDI-P, based on the ideology of *Pancasila*, the 1945 Constitution, adheres to a unitary form of the Republic of Indonesia, and the principle of *Bhinneka Tunggal Ika* (unity in diversity). PDI-P's chairperson is Megawati Soekarnoputri, the daughter of Soekarno, the founder of PNI and the first Indonesian President. Later, Megawati Soekarnoputri would become the 5th Indonesian President (2001–2004).

At the beginning of the reform era in the early 1990s, Megawati Soekarnoputri had invited several politicians and activists to join the PDI. They subsequently became involved in establishing the PDI-P. These included Arifin Panigoro (former student activist leader in the 1966 era), Theo Syafei (retired army Major General and former leader of the Armed Forces Faction of the DPR), Raja Kami Sembiring (retired army Major General and former leader of the Armed Forces Faction in the DPR), the author, Jakob Tobing (former student activist of the 1966 era, former member of the DPR for GOLKAR (1968–1997), former executive and First Deputy Chairman of GOLKAR National Executive Board and former Head of GOLKAR Board of Trustees Political Team (1973–1988; 1988–1993), and Zainal Arifin (former student activist leader of the 1966 era). Besides, several other activists and university lecturers were elected as members of the People's Consultative Assembly by the Provincial People's Representative Council (DPRD) and joined the F-PDIP. These included J.E. Sahetapy, Harjono, Frans Matrutry, Hobbes Sinaga, and I Gusti Dewa Gede Palguna.

Soekarno's political thoughts and views, such as Marhaenism, *Pancasila*, nationalism, the unitary state, unity in diversity, and so on, were very influential in the PNI and later in the PDI-P. The 1945 Constitution or the UUD 1945 (*Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*) is perceived by many in the PDI-P, especially those with a long-standing PNI background, as President Soekarno's legacy that must be honoured and maintained.

Marhaenism is an ideology developed by Soekarno, which is essentially a struggle ideology formed by Socio-Nationalism, Democracy, and Socio-Religiosity. Although Marhaenism is occasionally related to Indonesian socialism, Marxism, and communism, it does not refer to the proletariat's spirit. Soekarno also used this term to refer to all Indonesians who lived in poverty, including laborers, small business merchants, fishermen, and any other low-income occupation group. Soekarno insisted that Marhaenism should be able to convince the low-income groups to unite and fight against anything that caused their troubles, including the colonizers. The ideology's goal was to throw off any kind of imperialism and reclaim the rights of the "small people" or the Marhaens in Indonesia. Apparently, the focus of Marhaenism was related to political independence, nationalism, and patriotism, and not so much to socio-economic equality, such as that promoted by Marxist socialism. (See Soekarno, *Indonesia Merdeka Suatu Jembatan*, in Ir. Soekarno, *Dibawah Bendera Revolusi*, Fifth Printing, June 2005, Publisher: Yayasan Bung Karno, pp. 285–289). The PDI was established on 10 January 1973, as the imposed fusion of nationalist parties in the beginning of the New Order: The Indonesian National Party (*Partai Nasional Indonesia*), The Common People Deliberation Party or the Murba (*Partai Musyawarah Rakyat Banyak*) or the IP-KI (*Ikatan Pendukung Kemerdekaan Indonesia*), The Indonesian Christian Party or the Parkindo (*Partai Kristen Indonesia*), and the Catholic Party (*Partai Katolik*).

Footnote 156 continues on the next page.



### III.5.1.2 F-PG

The F-PG stands for *Fraksi Partai Golongan Karya* – The Faction of the Functional Groups Party. The F-PG is the faction of the GOLKAR Party (*Partai GOLKAR*), a metamorphosis of the non-party political ruling power, the GOLKAR (*Golongan Karya*) of Suharto's era.<sup>157</sup> The F-PG had 182 members in the MPR, which comprised of 120 DPR members from the Partai GOLKAR and 62 MPR members from the Regional Delegates.

### III.5.1.3 F-UG

The F-UG stands for *Fraksi Utusan Golongan* – The Faction of the Delegations of Functional Groups. The F-UG was comprised of 73 members of the MPR. The president appointed 65 of them. 8 members from the Regional Delegates joined the faction. This faction represented different functional groups, such as lawyers, farmers, women, labourers, teachers, and businessmen. It consisted of assorted groups with a variety of political colours.<sup>158</sup>

### III.5.1.4 F-PPP

The F-PPP stands for *Fraksi Partai Persatuan Pembangunan* – The Faction of the United Development Party. This is the faction of the Islam-based United

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The PNI was a nationalist party founded by Soekarno in 1927 and was the largest party in the PDI. Murba is a left-leaning political party, which was founded on 7 November 1948 by Tan Malaka, Sukarni, Chaerul Saleh, and Adam Malik, after the failed Communist rebellion in September 1948. IP-KI or The Association of Indonesian Independence Defenders was founded by General (ret.) A.H. Nasution in 1954. IP-KI's ideology was based on *Pancasila* and the 1945 Constitution.

In the 1999 election, both Murba and IP-KI were revived and contested but failed to win a seat. In the 2004, 2009, and 2014 elections, Murba and IP-KI did not meet the requirements to participate.

The Indonesian Christian Party or Parkindo (*Partai Kristen Indonesia*) was a Christian-based political party. Founded by Johannes Leimena and Melanton Siregar on 10 November 1945, it was dissolved on 11 January 1973.

The Catholic Party (*Partai Katolik*) was declared on 12 December 1949 as the fusion of seven existing Catholic parties.

157 GOLKAR based its ideology on corporatism, *Pancasila*, the 1945 Constitution, the unitary form of the Republic of Indonesia, and the principle of *Bhinneka Tunggal Ika* (Unity in Diversity). In the aftermath of President Suharto's resignation, led by Akbar Tanjung, the so-called reform-minded groups within GOLKAR managed to take over the organization, change its status and turn it into a political party, the GOLKAR Party. They labelled it a reformist political party.

The GOLKAR Party managed to obtain the second largest vote in the 1999 election. It did so by benefitting from the extensive and localized networks that GOLKAR had built during Sudharmono's era, its experienced organizers, and GOLKAR's agile politics during the MPR 1998 Special Session.

158 President Habibie appointed 65 members. Subsequently, 8 members from the Regional Delegates joined the Faction of the Delegations of Functional Groups. See pp. 105 and 109.

Development Party or the PPP (*Partai Persatuan Pembangunan*).<sup>159</sup> The F-PPP had 69 members, comprised of 58 DPR members of the PPP and 11 MPR members from the Regional Delegates.

### III.5.1.5 F-KB

F-KB stands for *Fraksi Kebangkitan Bangsa* – The Faction of the National Awakening Party. This is the faction of National Awakening Party or PKB (*Partai Kebangkitan Bangsa*).<sup>160</sup> F-KB had 58 members, comprised of 51 members of the DPR (DPR of Representatives) from the PKB and 7 members from the Regional Delegates.

### III.5.1.6 F-Reformasi

The F-Reformasi stands for The Faction of the Reformation. It had 48 members, which consisted of a merger of 34 DPR members from the National Mandate Party or the PAN (*Partai Amanat Nasional*),<sup>161</sup> 7 members

159 The PPP was established on 5 January 1973, as the government-imposed fusion of Islamic political parties at the beginning of the New Order. The PPP consisted of the Nahdlatul Ulama Party (*Partai NU*), the Muslim Party of Indonesia or the Parmusi (*Partai Muslimin Indonesia*), the Islamic Association Party of Indonesia or the PSII (*Partai Syarikat Islam Indonesia*), and the Islamic Educational Movement or the Perti (*Persatuan Tarbiyah Indonesia*). Partai NU was founded in Jakarta on 16 August 1998, with its main supporters coming from the environment of Nahdlatul Ulama. Parmusi (*Partai Muslimin Indonesia*) or the Muslim Party of Indonesia was officially declared on 20 February 1968 as a grouping of various Islamic organizations, with resemblances to Masyumi. PSII (*Partai Syarikat Islam Indonesia*) or Islamic Association Party of Indonesia was one of the Islamic political parties that had its root in the *Syarikat Islam* (Islamic League) founded by Haji Oemar Said Tjokroaminoto in 1912. PSII participated in the 1971 election. Perti (*Persatuan Tarbiyah Indonesia*) or the Islamic Educational Movement was established on 20 May 1930 in West Sumatera.

160 The PKB was founded on 11 May 1998 at Pesantren of Langitan, Central Java, with a strong endorsement by prominent *Kyai* (religious scholars), such as Kyai Cholil Bisri, Kyai Muchid Muzadi, and Kyai Abdurrachman Wahid (Gus Dur), and usually categorized as a moderate and conservative Islam-based political party. In the October 1999 MPR General Session, K.H. Abdurrachman Wahid was elected as the fourth President of the Republic of Indonesia.

161 The PAN was declared on 23 August 1998. It was declared by, among others, Amien Rais, Goenawan Mohammad, Albert Hasibuan, Emil Salim, A.M. Fatwa, Zoemrotin, and Alvin Lie Ling Piao. The PAN based its ideology on upholding and enforcing the people's sovereignty, justice, balanced material, and spiritual development, and based the party's ideals on religion, morality, humanity, and diversity. The PAN also emphasises its adherence to non-sectarian and non-discriminatory principles. The PAN's main support base comes from the environment of Muhammadiyah, one of the largest Islamic organizations in Indonesia. Amien Rais was once Muhammadiyah's chairman. This background, along with its collaboration with Partai Keadilan, an Islam-based political party, explains to some extent the distinct stance of F-Reformasi during the amendment process.

of the Justice Party (*Partai Keadilan*),<sup>162</sup> and 7 members from the Regional Delegates.

#### III.5.1.7 F-TNI/Polri

F-TNI/Polri stands for *Fraksi Tentara Nasional Indonesia/Kepolisian Negara Republik Indonesia* – The Faction of Indonesian National Armed Forces and Indonesian Police. In accordance with Law No. 4/1999, the Armed Forces or ABRI (*Angkatan Bersenjata Republik Indonesia*), which consisted of the military and the police, had 38 MPR representatives who were concurrently members of F-TNI/Polri in the DPR.<sup>163</sup>

#### III.5.1.8 F-PBB

The F-PBB stands for *Fraksi Partai Bulan Bintang* – The Faction of the Crescent Moon and Star Party. It is the faction of the Crescent Moon and Star Party or the PBB (*Partai Bulan Bintang*).<sup>164</sup> The F-PBB had 14 members in the MPR, which included 13 DPR members from the PBB and 1 member from the Regional Delegates.

#### III.5.1.9 F-KKI

The F-KKI stands for *Fraksi Kesatuan Kebangsaan Indonesia* – The Faction of the Unity of Indonesian Nationhood. It was a faction with 14 members, which included MPR members from several political parties. 4 members came from the Justice and Unity Party or the PKP.<sup>165</sup> 2 members came from

162 The Justice Party or the PK (*Partai Keadilan*) declared its existence at the Al-Azhar Mosque, Kebayoran Baru, Jakarta, on 20 July 1998, and raised Nurmahmudi Isma'il as its first president. The PK's formation began with the Islam *da'wah* (proselytize) movements in leading college campuses in Indonesia in the 1980s. The Islam *da'wah* movement itself was initiated in 1967 by Muhammad Natsir, the fifth Prime Minister of the Republic of Indonesia from Masyumi (12 March 1946 – 26 June 1947). It was developed as a student *da'wah* movement by Imanuddin Abdulrahim in Masjid Salman in the Bandung Institute of Technology or ITB (*Institut Teknologi Bandung*) campus in Bandung. Based on Islam, the PK is the predecessor of the Prosperous and Justice Party or the PKS (*Partai Keadilan Sejahtera*).

163 Law No. 4/1999 on the Composition and Position of the MPR, the DPR, the DPRD, Chapter III, Article 11, paragraph (3). As initiated by ABRI and agreed by the main political powers prior to the 1999 election, this was a reduction from the previous 78 members of ABRI during the New Order era. See Deklarasi Ciganjur, 1998.

164 The PBB, established on 17 July 1998, is an Indonesian political party based on Islam. It regards itself as the successor of the political party Masyumi, successful during the early decades of independence. Masyumi is an Islam-based political party, which was originally founded in Yogyakarta on 8 November 1945 and was revived in Jakarta on 28 August 1998.

165 The PKP stands for *Partai Keadilan dan Persatuan*. It was founded in December 1998. It split from GOLKAR, initiated by retired General Wiranto, former commander of the Armed Forces at the end of Suharto's presidency.

the Indonesian Democratic Party or the PDI,<sup>166</sup> 1 member each came from the Association of Indonesian Independence Supporters Party or the IP-KI,<sup>167</sup> the Marhaen Mass Indonesian National Party or the PNI-MM,<sup>168</sup> the Marhaenist Front Indonesian National Party or the PNI-FM,<sup>169</sup> the Unity in Diversity Party or the PBI,<sup>170</sup> and the United Party or the PP.<sup>171</sup> 3 members came from the Regional Delegates.

### III.5.1.10 F-PDU

The F-PDU stands for *Fraksi Persatuan Daulatul Ummah* – The Faction of the Unity of the Islamic Community. It was a faction in the MPR with 9 members, which included 4 members from the Congregation Awakening Party or the PNU,<sup>172</sup> 2 members from the People’s Sovereignty Party or the PDR,<sup>173</sup> and 1 each from the Indonesian Islamic Association Party or the PSII<sup>174</sup> and the Indonesian Muslim Shura Council or Masyumi,<sup>175</sup> and 1 member from the Regional Delegates.

### III.5.1.11 F-PDKB

F-PDKB stands for *Fraksi Partai Demokrasi Kasih Bangsa* – The Faction of Democracy and Love the Nation Party. The F-PDKB was a faction of 5 members from the Democracy and Love the Nation Party or the PDKB.<sup>176</sup>

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166 PDI stands for *Partai Demokrasi Indonesia*. It was one of the political parties during the New Order period, founded on 10 January 1973.

167 IP-KI stands for *Ikatan Pendukung Kemerdekaan Indonesia*. The IP-KI, founded by General A.H. Nasution on 20 May 1954, was a co-founder of the PDI.

168 PNI-MM stands for *Partai Nasional Indonesia Massa Marhaen*. The PNI-MM was a nationalist political party founded on 21 May 1998 in Jakarta, intended to revive the old PNI, which was founded by Soekarno in Bandung on 4 July 1927.

169 PNI-FM stands for *Partai Nasional Indonesia Front Marhaenis*. PNI-FM was initiated by Probosutedjo, Suharto’s half-brother, and founded in Jakarta on 10 February 1999. Probosutedjo was a member of *Pemuda Marhaenis* (Marhaenist Youth), the PNI’s youth-wing in 1927.

170 PBI stands for *Partai Bhinneka Tunggal Ika*. It was established on 11 June 1998.

171 PP stands for *Partai Persatuan*. The PP was a moderate Islam-based political party founded by HJ Naro in Jakarta on 3 January 1999 and was a splinter of the PPP.

172 The PNU stands for *Partai Nahdlatul Ummah*. The PNU, a political party based on Islam, founded in Jakarta on 16 August 1998, had its main support base in the environment of the Nahdlatul Ulama.

173 PDR stands for *Partai Daulat Rakyat*. The PDR was founded on 1 January 1999 and claimed to have its basis among workers, peasants, the informal business sector, fishermen, and other marginalized sectors.

174 PSII stands for *Partai Syarikat Islam Indonesia*.

175 Masyumi stands for *Majelis Syuro Muslimin Indonesia*. The PSII was an Islam-based political party that was originally founded in Solo on 16 October 1905 and was revived in Jakarta on 29 May 1998.

176 PDKB stands for *Partai Demokrasi Kasih Bangsa*. The PDKB was founded in Jakarta on 5 August 1998, with its main support base among Christians, Catholics, and Chinese descendants.

### III.6 THE COMPOSITIONS OF THE FACTIONS

For details on this, see Attachment III.2.

### III.7 THE MPR LEADERS

Following the MPR's procedural rules, the MPR's leadership shall consist of a chairman and seven vice-chairmen. For that purpose, the MPR's factions shall propose eight candidates to be elected by the MPR's members. The candidate who receives the most votes will be the chairman, and the other seven candidates will become vice-chairmen.<sup>177</sup> Then, in the fourth MPR plenary meeting on 3 October 1999, the MPR leadership election was held. Prof. Amin Rais (F-Reformation) was elected as the Chairman and Matori Abdul Jalil (F-KB), Hari Sabarno (F-TNI / Polri), Prof. Ginandjar Kartasasmita (F-Golkar), Kwik Kian Gie (F-PDIP), H.A. Nazri Adlani (F-UG), Husni Thamrin (F-PPP) and Prof. Jusuf Amir Faizal (F-PBB) were elected as the MPR's Vice-Chairmen. Further, the MPR's leadership shall, among others, determine tasks and work division among the MPR's Chairman and Vice-Chairmen.<sup>178</sup>

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177 MPR Decree no. II/1999 on Rules of Procedure of the People's Consultative Assembly of the Republic of Indonesia.

178 See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 1999, Edisi Revisi, Sekretariat Jenderal, 2010, p. 11.

