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

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The Fourth Amendment Stage of the 1945 Constitution: 9 January 2002 – 11 August 2002

VIII.1 THE ACTING INSTITUTIONS AND THE AMENDMENT PROCESS

The MPR plenary session on 8 November 2001 determined how to finish the amendment of the 1945 Constitution. Its Decree No. XI/2001 assigned preparing draft changes to the MPR Working Body. This had to be completed by the 2002 MPR Annual Session's end at the latest, according to the Decree. It further provided that the amendments that had been approved and ratified during the first, second and third amendment stages could not be changed. Thus, the fourth amendment stage of the 1945 Constitution continued and completed the previous amendment stages.

The first Working Body meeting took place on 10 January 2002. The chairman, Amien Rais, reminded the government to immediately start preparing for establishing several new state institutions, mandated by the previous amendments, such as the Regional Representative Council, the Constitutional Court, and the Judicial Commission.¹

The MPR Working Body factions reconfirmed their commitment to continue the amendment process and accomplish the amendment in due time.

During their first meeting, the MPR Working Body decided to have PAH I² prepare the draft constitutional amendment and PAH II prepare the draft MPR decrees as mandated by the MPR 2001 Annual Session and as proposed by the factions.³

Further, as in the beginning of the previous stages, in the first PAH I plenary meeting on 11 January 2002, the PAH I leadership was rearranged. There was no change in leadership: the Chairman was Jakob Tobing (F-PDIP); the Vice Chairmen were Harun Kamil (F-UG) and Slamet Effendy Yusuf (F-PG); and the Secretary was Ali Masykur Musa (F-KB).⁴ PAH I formed a small team to organize the working schedule, which it reported to PAH I on 22 January 2002, including a program to intensify public commu-

1 Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Satu, Edisi Revisi, Sekretariat Jenderal, 2010, p. 34.

2 In the meantime, the Faction of Regional Delegations (F-UD – *Fraksi Utusan Daerah*), which was revoked during the MPR 2000 Annual Session, was re-established during the MPR 2001 Annual Session. As a result, during the fourth amendment process PAH I once again counted twelve factions.

3 Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Satu, Edisi Revisi, Sekretariat Jenderal, 2010, p. 75.

4 *Ibid.*, p. 82.

nication and seminars.⁵ Further, PAH I agreed to conduct the amendment process by 1) discovering public aspirations, 2) discussing and formulating the draft changes to the 1945 Constitution, 3) validating the draft amendments, and 4) synchronizing and finalizing the draft constitutional amendments.⁶

As during the previous stages, PAH I conducted public hearings in several provinces by working with universities and other institutions. These hearings were attended by participants from all nearby provinces. The meeting records were meant as input for the PAH I discussions. In May 2002, PAH I conducted similar validation meetings in various cities with several universities. In Jakarta, this took place from 16 to 17 May 2002. From 20 to 23 May 2002, 12 universities outside Jakarta held such meetings.⁷

Previously, on 1 May 2002, PAH I received a visit from a European Union delegation, which expressed the need for the constitution to respect human rights and for Constitutional changes made through a referendum.⁸

During this stage, which was clearly meant to be the last, PAH I would have to finalize all draft changes. MPR Decree No. XI/2001 stipulated that the material for the changes would be the reported pending the previous session's work (2000 – 2001). The outstanding matters included the MPR's composition (i.e., the existence of appointed MPR members); the second presidential election round (i.e., whether the people or the MPR should conduct the second round); what occurred if the President and the Vice President became incapable simultaneously; the proposals related to Article 29 on Religion; and the constitutional commission's formation.

5 Ibid., pp. 99 – 101.

6 Ibid., p. 523.

7 Universitas Sumatera Utara (USU – University of North Sumatera) in Medan, Universitas Sriwijaya (UNSRI – Sriwijaya University) in Palembang, Universitas Pajajaran (UNPAD – Pajajaran University) in Bandung, Universitas Diponegoro (UNDIP – Diponegoro State University) in Semarang, Universitas Gajah Mada (GAMA – Gajah Mada State University) Yogyakarta, Universitas Brawijaya (UNIBRAW – Brawijaya University) in Malang, Universitas Lambung Mangkurat (UNLAM – Lambung Mangkurat University) in Banjarmasin, Universitas Tanjung Pura (UNTAN – Tanjung Pura University) in Pontianak, Universitas Hasanuddin (UNHAS – Hasanuddin University) in Makassar, Universitas Sam Ratulangi (UNSRAT – Sam Ratulangi University) in Manado, Universitas Udayana (UNUD – Udayana University) in Denpasar, and Universitas Mataram (UNRAM – Mataram University) in Mataram.

8 See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Satu, Edisi Revisi, Sekretariat Jenderal, 2010, pp. 533 – 541. PAH I explained to the delegation that the provisions on human rights had been incorporated in the 1945 Constitution in the second amendment phase in 2001. While the procedures for making decisions on the promulgation of or constitutional amendment had been regulated in Article 3 and Article 37 of the 1945 Constitution.

In June 2002, whilst finalizing the pending matters, PAH I began to synchronize all amendment process outcomes.⁹ Eventually, the MPR plenary meeting on 10 August 2002 would ratify the fourth amendment,¹⁰ thereby concluding the whole amendment process to the 1945 Constitution.

VIII.1.1 The factions' composition in PAH I, 2001-2002

With the reestablishment of the Faction of the Regional Delegations, there were 12 factions in PAH I,¹¹ with F-PDIP and F-PG the largest ones.

VIII.1.2 The list of PAH I members, 2001-2002

Adjusting to the proportionality of the 12 MPR factions, the number of PAH I members increased from 44 to 48.

VIII.1.3 The fourth amendment's working schedule

The MPR plenary session on 10 January 2002 approved the draft working schedule of 2002 MPR annual session, which the MPR Working Body prepared.¹²

VIII.2 DISCUSSING THE CONSTITUTION'S ARTICLES

During this final amendment stage, public attention increased. In the public debate, there were those who wanted to alter or cancel various outcomes of the first, second, or third amendments, as well as those who demanded the immediate establishment of a constitutional commission. Deliberations and informal consultations at various levels, such as with PAH I, MPR, faction, and political party leaders intensified to overcome the stalemate.

Almost all issues would be resolved by deliberation, apart from the MPR's composition. Deciding whether the MPR should comprise only of DPR and Regional Representative Council members or be augmented by appointed delegates from functional groups would be the only decision during the entire four-year amendment process that was taken through voting.¹³

9 See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Tiga, Edisi Revisi, Sekretariat Jenderal, 2010, p. 13.

10 See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Lima, Edisi Revisi, Sekretariat Jenderal, 2010, pp. 747-751.

11 See Attachment VIII.1.

12 See Attachment VIII.3.

13 See Attachment VIII.2.

VIII.2.1 The MPR's composition

This section summarizes the chronological debate on the MPR's composition, including numerous insights from public hearings chronicling the factional gridlock that delayed an agreement. This was the only amendment decision throughout the 1999-2002 process decided by vote. Ultimately, the ratified amendment stated the MPR would consist of elected DPR and Regional Representative Council representatives, excluding appointed delegates from functional groups (i.e., profession-based organizations).

In the previous stages, constitutional amendments concluded that the MPR shall hold certain authorities, such as to amend and determine the Constitution and conduct impeachment. However, the MPR's actual existence remained unclear. Apart from the above composition disagreement, certain factions had argued that the MPR is a permanent state institution, while others thought that the MPR is a bicameral joint session of the DPR and the Regional Representative Council.

These positions were still reflected in the beginning of the fourth amendment process. In the MPR Working Body meeting, F-PDIP, F-PPP, F-UD, and F-PG reiterated that the MPR shall comprise of elected DPR and Regional Representative Council members, so that the MPR reflects the aspirations of both the people and the regions.¹⁴ However, F-KB stated that, to improve the people's MPR representation, appointing MPR members should be discussed.¹⁵ Then, a F-UG member stated that the MPR's composition in the original Article 2 (1) was the appropriate implementation of the Preamble. Therefore, the MPR's appointed functional group delegations should be maintained.¹⁶ On the other hand, F-UD and F-KB contended that the MPR is a bicameral joint session between the DPR and the Regional Representative Council.¹⁷

VIII.2.1.1 Public Insight on MPR Membership

In a PAH I public hearing with *Koalisi Ornop*¹⁸ (NGO coalition), *Ikatan Advokat Indonesia* (Indonesian Bar Association), *Asosiasi Hukum* (Law Association) and *Ikatan Notaris Indonesia* (Indonesian Public Notary Association) on 27 February 2002, an NGO coalition speaker regretted that the MPR did not dare abandon the old Constitution's original framework and values and still regarded the MPR as a *supra* institution. The MPR should adopt

14 As stated by Zainal Arifin (F-PDIP), Abdul Azis Imron Pattisahusiwa (F-PPP), Hatta Mustafa (F-UD), and Agun Gunandjar Sudarsa (F-PG). Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Satu, Edisi Revisi, Sekretariat Jenderal, 2010, pp. 49, 53, 60, 135.

15 As stated by Ida Fauziah (F-KB). *Ibid.*, p. 64.

16 As asserted by Soedijarto (F-UG). PAH I meeting, 28 January 2002. See, *Ibid.*, p. 146.

17 As stated by Januar Muin (F-UD) and Erman Suparno (F-KB). *Ibid.*, pp. 142, 154.

18 Ornop refers to Organisasi Non Pemerintah, a non-governmental organization.

a pure bicameral system, which ensures checks and balances between the DPR and Regional Representative Council. Therefore, the MPR should be a joint session of the DPR and the Regional Representative Council. The speaker also deplored that the MPR was still open to appointing functional group, military, and police representatives.¹⁹ Likewise, another NGO coalition delegation asserted that the Constitution should strictly rule out any political role of the military.²⁰ However, a Law Association delegation stated that the MPR is the embodiment of all the people. Since not all aspirations could be absorbed through political parties, representing functional groups would still be necessary.²¹

Agreeing, a F-UG member refuted the notion that having appointed MPR members would mean the system was undemocratic. In Canada, 172 Senate members are proposed by the Prime Minister and inaugurated by the Governor General. In Germany, *Bundesrat* (Federal Council) members are the prime minister and individuals from executive councils of state, not elected by the people for that *Bundesrat* position. In Turkey, 15 of the Congress members are appointed from the military in honour of Kemal Ataturk. Those countries are regarded as democratic. Further, with capitalism's expansion, the *bourgeoisie* dominates political parties. To ensure that workers and cooperatives are represented, their delegates must be appointed. He also referred to Arend Lijphart,²² who found that two-thirds of the world's states implement a unicameral system, while only one-third implement a bicameral system. Meanwhile, nine out of ten federal countries implement a bicameral system and 84% of unitary states use a unicameral system.²³ Thailand had 16 constitutions, 8 unicameral systems, and 8 bicameral systems between 1932 and 1997. In 1953, all Scandinavian countries (Sweden, Denmark, Norway, and Finland), along with New Zealand and Iceland, changed to a unicameral system. Therefore, there is no theoretical basis to support a bicameral system for Indonesia. In addition, when the DPR could make special autonomy laws and fight for the region's interests, suddenly there was desire for a bicameral system. This raised questions.²⁴

On the other hand, in a PAH I public hearing on 28 February 2002, a CSIS (Centre for Strategic and International Studies) delegation argued that the MPR's post-amendment existence seemed too imposed, that its tasks could be taken over by other institutions, and they questioned whether the MPR should continue to exist.²⁵ Likewise, Roeslan Abdulgani asserted in

19 As stated by Bambang Widjajanto. *Ibid.*, pp. 317, 319.

20 As stated by Munir. *Ibid.*, p. 329.

21 As argued by Arry Supratno. *Ibid.*, p. 334.

22 As argued by Soedijarto (F-UG). *Ibid.*, p. 337. Soediyarto said that Lijphart is from Yale University. Arend Lijphart is from Leiden University, the Netherlands and University of California, San Diego, USA.

23 *Ibid.*, p. 337.

24 As expressed by Soedijarto (F-UG). *Ibid.*, p. 338.

25 As conveyed by Tommy Legowo. *Ibid.*, pp. 406-407.

a PAH I public hearing on 4 March 2002, that the MPR's nature is ambiguous.²⁶ Seeking balance and harmony, our elders mixed up the systems, synthesizing a mono and bicameral system with group and regional elements in the MPR. Abdulgani proposed removing the MPR, rendering the bicameral discussion irrelevant.²⁷

In the ensuing public hearing on 5 March 2002, delegations from *Universitas Kristen Indonesia* (UKI – Indonesian Christian University) and *Universitas Nasional* (UNAS -National University) stated that the MPR's functional group delegates should be removed, including the military and police,²⁸ and that all MPR members should be elected.²⁹ On the other hand, a *Universitas Bung Karno* (UBK – University of Bung Karno) delegation asserted that it resolutely did not agree with amending the 1945 Constitution from the beginning. The laws required amending, not the constitution.³⁰

Similarly, a *Universitas Pancasila* (Pancasila University) delegation argued that the Article 1(2)³¹ amendment eliminated the current MPR's constitutional basis. Therefore, after the amendments, none of the current MPR's decisions were legitimate.³² The delegation further stated that the MPR's original position as the embodiment of all the people should be maintained. As the "reincarnation" of all people, it could not be created by a one-person-one-vote election. Instead, the selection procedure of functional group and regional delegates needed to be improved.³³ In response, a F-PBB member stated that by intention, deciding the MPR's composition was postponed to the final stage to acquire a complete patterned and systematic change in the constitutional framework. Furthermore, he asserted that the MPR does not disappear because of the new formulation of Article 1(2).

26 Roeslan Abdulgani was a prominent figure from the 1945 generation.

27 *Ibid.*, pp. 426-427. Previously, Roeslan Abdulgani stated before a PAH I meeting on 13 December 1999, that the MPR is a patchwork concept, like *gado-gado* (Indonesian mixed-vegetable salad).

28 As stated by Anton Reinhart from *Universitas Kristen Indonesia* (UKI – Indonesian Christian University) and Ramlan Siregar from *Universitas Nasional* (National University). *Ibid.*, p. 463.

29 As asserted by Ramlan Siregar. *Ibid.*, p. 465.

30 As expressed by Jemmy Palapa from *Universitas Bung Karno* (UBK- University of Bung Karno). *Ibid.*, p. 470.

31 Article 1(2) states that "sovereignty is in the hands of the people and is exercised according to the Constitution".

32 Further, the delegation argued, in comparison with the United States Constitution Article 1, section 1 which states "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and the House of Representatives", the original Article 1(2) of the 1945 Constitution, which says "sovereignty is in the hands of the people and is exercised in full by the MPR", provides the MPR with a legal status to implement the people's sovereignty. Therefore, the new Article 1(2) eliminated the MPR as a legal subject that carries out sovereignty, thereby eliminating the MPR's existence. As stated by Abdul Kadir Besar of the *Universitas Pancasila* *Ibid.*, p. 478.

33 *Ibid.*, p. 496. BG. Abdul Kadir Besar served as Secretary General of the Provisional People's Consultative Assembly during the period when General Abdul Haris Nasution was the MPR Speaker in 1966-1972.

Indeed, the MPR would no longer exercise the people's sovereignty in full. However, the Constitution gives the MPR certain authorities, including the authority to amend and determine the Constitution.³⁴

Meanwhile, the pressure mounted to reject changes to the MPR's composition and cancel the amendment process. As disclosed in a PAH I meeting on 11 March 2002, several MPR members held a meeting in Central Java, demanding that the original 1945 Constitution should not be changed.³⁵ Similarly, a member reported that he was asked to sign a petition to reject and cancel all constitutional amendments. However, he refused to sign the petition that had been signed by 199 MPR members.³⁶ In response, the PAH I chairman stated that these were political dynamics in a democratic state. There were others who demanded a totally new constitution. However, he asserted that "we are bound to our assignment."³⁷

At a subsequent public hearing on 12 March 2002, a *Universitas 17 Agustus* (University of 17 August) delegation, Semarang read a university brainstorming session's conclusion, which stated that the MPR should review the changes of Article 1(2) and that there was no need to amend the 1945 Constitution. Further, the Article 1(2) amendment had damaged the state's democratic principles because it turned the MPR into a constitutional amendment institution. Therefore, the 2002 MPR annual session no longer needed to discuss any constitutional amendment.³⁸

In response, the PAH I chairman reminded all that aborting the ongoing amendment process would be dangerous. Lacking a completed constitution would be a national calamity. The shortcomings of the original 1945 Constitution should be addressed, such as the MPR being a supreme political institution with unlimited power, jeopardizing the checks and balances and the rule of law. It would be unimaginable to have a political institution that acts as both the prosecutor and judge in the impeachment of a president. This would substantially weaken the presidential system. The same applied to the MPR conducting judicial review through a political process. Implementing the constitution and rule of law were at stake if they depended on the MPR's political interests.³⁹

34 As argued by Hamdan Zoelva (F-PBB). *Ibid.*, p. 489.

35 Such as, among others, Abdul Majid (F-PDIP). As reported by Hatta Mustafa (F-UD) and confirmed by Slamet Effendy Yusuf (F-PG). *Ibid.*, p. 648.

36 As stated by Asnawi Latief (F-PDU). *Ibid.*, p. 518. It was initiated by Abdul Madjid and Dimiyati Hartono, both from F-PDIP and Hartati Murdaya from F-UG. The 1999-2004 MPR comprises of 695 members.

37 *Ibid.*, p. 519.

38 As conveyed by Hendro Sukmono of *Universitas 17 Agustus* (University of 17 August), Semarang. *Ibid.*, p. 530. The event was attended by Abdul Madjid (F-PDIP), Bambang Pranoto (F-PDIP), and Stefanus Sukirno, the rector of the university, as resource persons.

39 *Ibid.*, pp. 536 – 539.

Subsequently, between 6 and 8 March 2002, PAH I conducted several public hearings, centralized in eight cities: Bandung, Semarang, Banjarmasin, Denpasar, Palembang, Surabaya, Makassar, and Medan. The public hearing participants came from all adjacent provinces, so all Indonesian provinces were represented. Participants included government officials from provincial and district levels, governors, city mayors, heads of districts, local DPR members, political party delegations, NGOs, civic organizations, teachers, students, *civitas academica* (society of academicians) from public and private universities, professional associations, women's organizations, and other public figures.

In a PAH I meeting on 19 March 2002, a member reported the notes of a public hearing conducted at *Universitas Pendidikan Indonesia* (UPI – Indonesia University of Education), Bandung, held on 6-7 March 2002. The hearing recorded that most participants proposed that the MPR should comprise of DPR members and the Regional Representative Council. Regarding the presence of functional group delegates, this should be investigated by using the historical interpretation method.⁴⁰ Another member reported on a similar public hearing held at the *Universitas Lambung Mangkurat* (UNLAM – University of Lambung Mangkurat), Banjarmasin, South Kalimantan. At this forum, also attended by East Kalimantan and Central Kalimantan participants, certain people argued that the future MPR should consist of DPR and Regional Representative Council members, whereas others thought that functional group delegates should be added.⁴¹ The Bali forum, held at the *Universitas Udayana* (University of Udayana), was also attended by participants from West Nusatenggara and East Nusatenggara provinces. It noted that there were those who wanted to maintain the MPR as before and those who wanted the MPR to consist of elected DPR and Regional Representative Council members.⁴² In the provinces of Central Java and the Special Region of Yogyakarta, the meetings were held in Semarang, at the University of Diponegoro, and in Solo, at the *Universitas Sebelas Maret* (University of Eleventh March). Most participants in Semarang argued that all MPR members of the MPR should be elected. However, certain participants argued that the functional group, military, and police delegates should be appointed to the MPR.⁴³

From the *Universitas Sriwijaya* (UNSRI – University of Sriwijaya), Palembang, the forum was attended by participants from all provinces in Southern Sumatra, i.e., South Sumatra, Jambi, Bengkulu, and Lampung. They argued that all MPR members should be elected.⁴⁴ The East Java public hearing, held at the University of Airlangga, Surabaya, recorded that all MPR members should be elected or that elected members be augmented by

40 As reported by Abdul Azis Imran Pattisahusiwa (F-PPP). *Ibid.*, p. 623.

41 As reported by Soedijarto (F-UG). *Ibid.*, p. 626.

42 As reported by Sutjipno (F-PDIP). *Ibid.*, p. 627.

43 As reported by Hatta Mustafa (F-PG). *Ibid.*, p. 630.

44 As reported by Rully Chairul Azwar (F-PG). *Ibid.*, p. 634.

appointed functional group members.⁴⁵ The hearing in *University of Hasanuddin*, Makassar, was also attended by participants from Maluku, Papua, and West Papua. They argued that the MPR should consist of elected members.⁴⁶

In almost all those public hearings, the opinions were as divided as in PAH I. The exceptions were Sriwijaya University, Palembang, and University of Hasanuddin, Makassar, which did not agree with the appointed MPR members. Besides the public hearings, PAH I also conducted interactive discussions through the radio, such as in Medan, Bandung, and Banjarmasin, and through a television talk-show in Denpasar. In general, the topics discussed and positions were similar. However, in an interactive dialogue in Banjarmasin, there were those who argued that the Constitution and Pancasila were unnecessary. For Muslims, the Koran and Hadith of the Prophet are the only scripts that mattered.⁴⁷

The above reports show that the constitutional amendment process went on openly amid the dynamic and quite turbulent political environment. The reports and the discussions in the MPR demonstrate that the stances toward the MPR's composition were still grouped into those who wanted the MPR to comprise of DPR and Regional Representative Council members and those who proposed including appointed members from functional groups, the military, and the police. Besides, there were those who proposed retaining the old MPR's composition as described in the original 1945 Constitution.

VIII.2.1.2 *Resource Persons Insight: Kamil, Haysom, and Schneier*

On 16 May 2002, PAH I conducted a meeting to test the validity of the fourth amendment draft on the presidential election and the new composition of the MPR's membership.⁴⁸ It was arranged in two parts. The first part was on the second round of the presidential election. The second part focused on the MPR's composition. For that purpose, PAH I agreed to invite three speakers as resource persons, namely Harun Kamil from F-UG, the faction of appointed MPR members, Nicholas Haysom⁴⁹ from South Africa, and Edward Schneier⁵⁰ from the United States of America. NGO and university representatives were also invited to participate.

45 As reported by Retno Triani Johan (F-UG). *Ibid.*, p. 638.

46 As reported by Ali Hardi Kiaidemak (F-PPP). *Ibid.*, p. 640.

47 As reported by Soedijarto (F-UG). *Ibid.*, p. 645.

48 Validity test was to discuss whether the new formula on the new composition of the MPR's members and the second round of the president's election were in accordance with the intended changes.

49 Nicholas Roland Haysom, Trustee: Nelson Mandela Foundation, Johannesburg; Advisor, South Africa Constituent Assembly, 1994 – 1997; Legal Advisor, President of South Africa, Cape Town, 1994 – 1999.

50 Edward ("Ned") Schneier, Emeritus Professor of Political Sciences at City College, City University, New York, and at John Hopkins University, Princeton, Columbia, and Colgate, USA.

On that occasion, Kamil reiterated that including functional groups in the MPR would enhance political with economic, social, and cultural justice. Furthermore, Kamil stated that excluding functional groups from the MPR would reduce its existence as a forum of deliberation. The reduction, inconsistent with the founders' wisdom, would mean viewing the state as a political unity, rather than a political, economic, and cultural unity. The founding fathers introduced the functional groups to prevent the bias of political parties, which emphasize political interests and put aside the economic, social, and cultural interests of the constituents. Further, including functional groups in the representative body meets the law of insufficient representation, implemented in Germany, France, New Zealand, and Canada.

However, Kamil admitted that among F-UG members, opinions differed regarding the existence of functional groups in the Assembly. First, certain F-UG members contended that in a real democracy, people should elect every representative. Second, previously, the ruling regime had manipulated functional groups to strengthen the regime. Third, the undemocratic selection process of the functional group delegates in the MPR was the largest distortion factor on democracy. Against that background, F-UG proposed maintaining the idea of the founding fathers, with several improvements. First, by defining the functional group and determining how many representatives were appropriate. Second, candidates from functional groups would be democratically elected by the group itself before being proposed to the DPR. Third, the DPR would select MPR members from F-UG from the nominees proposed by functional groups.⁵¹

Regarding non-elected MPR members, Nicholas Haysom conveyed that the diversity in Indonesia indeed raised the question of whether additional forms of representation could enrich the political system and provide proper gratification to groups that otherwise might not find a place in the system. Further, in his opinion, the authority and legitimacy of the second House of Representatives was often directly connected to whether they were elected on a specific basis. Non-elected members contradicting elected members could lead to legitimacy problems and conflict.⁵²

On the other hand, Edward Schneier argued that the more democratic and representative the body, the greater its power. The more democratic the election process, the more likely that a country is democratic. Having a second House of Representatives is inefficient. It is like having two people do the work of one. It costs more, it slows down the process and stops things from getting done. In the United States, it was deliberate: the founding fathers wanted a government that could not govern, which is what the US now has. Furthermore, Schneier stated that the more democratic the second

51 Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Dua, Edisi Revisi, Sekretariat Jenderal, 2010, pp. 621-623.

52 *Ibid.*, p. 626.

House of Representatives, the less necessary its existence. Recently, several countries that once had a bicameral system where both chambers were popularly elected, abolished them, including Sweden and New Zealand. Furthermore, it was better for functional groups to be outside the MPR to fight for their interests. Within the MPR, the functional groups are forced to compromise and sacrifice their interests, while outside, they can maintain and fight for their original aspirations.⁵³

Regarding bicameralism, although Schneier had a strong point, Indonesia's diversity and imbalanced demography are important. Implementing the principle of one-person-one-vote and following the principles of democracy would mean that the Java seats would weigh more than non-Java seats. With four Regional MPR members elected from each province, the seats from outside Java would weigh more than the Java members. In a bicameral system, there are checks and balances between the two chambers.⁵⁴

Commenting on the issue of appointing versus electing, a participant stated that the appointed MPR members should have been abolished from the beginning. The spirit of reform was to abolish all seats that were not obtained through elections. There was no clear argument why certain functional groups should be represented, while others are not. Many arguments were in favour of retaining the appointed seat, similar to how *demokrasi Pancasila* (Pancasila democracy) or Guided Democracy were seen as unique and suited system for Indonesia, whereas, in reality, they distorted the principles of democracy itself. Another participant contended that all MPR members should be elected. The representation proposed by Harun Kamil was for a situation in 1945, which had now passed.⁵⁵

Then, a F-UG member, also objecting to Kamil, asserted that all members of parliament should be elected. The functional group delegates, confirming what Edward Schneier had said, would be better off outside parliament, where they would have more power to pressure parliament, the executive, and the judiciary.⁵⁶

Other participants had differing opinions, partly accepting and rejecting appointing MPR members. Delegations from Nashiatul Aisiyah, the women's sister organization of Muhammadiyah, IPB (*Institut Pertanian Bogor* – Bogor Agricultural University), the National University, and the Association of Indonesian Political Scientists, argued that appointing members should be abolished.⁵⁷ On the other hand, Awaluddin Djamin (former

53 Ibid., pp. 626-628.

54 As argued by Andi Malarangeng. Ibid., p. 630. Andi Malarangeng is an expert on political science and in 1998 and was a government team member drafting political laws.

55 As stated by Hasyim Djalal. Ibid., p. 632.

56 As argued by Valina Subekti (F-UG). Ibid., p. 633. Harun Kamil was a F-UG member.

57 As stated by Istiana from *Nashiatul Aisiyah*, the sister organization of Muhammadiyah, Yusuf Hadi from IPB (*Institut Pertanian Bogor* – Bogor Agricultural University), and Diana Fauziah from the National University and Association of Indonesian Political Scientists. Ibid., pp. 636, 640, 641.

Head of the National Police), delegations from IPPNU (*Ikatan Putera-Puteri NU – Association of Sons and Daughters of NU*) and *Perhimpunan Pemuda Hindu Indonesia* (Association of Indonesian Hindu Youth), argued that the functional group delegates in the MPR should be accommodated. In that regard, a Hindu Youth delegation stated that the small groups in Indonesia, such as Hindus, should be represented in the MPR, not because they were seeking power, but to contribute to the historical and cultural aspects of state life.⁵⁸

In a meeting at the University of Tanjung Pura, Pontianak, on 21 May 2002, differences regarding the functional group delegates once again came to the fore. Certain people endorsed the functional groups' appointed delegates, while others argued that they were redundant.⁵⁹ Reports from assessment forums in Manado, Mataram, Makassar, Denpasar, Banjarmasin and Semarang stated that all MPR members should be elected by the people.⁶⁰ In Medan, Palembang, Bandung, Pontianak, Malang, Jogjakarta, and Solo, certain participants argued that all MPR members should be elected, while others argued that the functional groups' appointed delegates were still necessary.⁶¹

Thus, on 4 June 2002, the PAH I chairman reported to the MPR Working Body plenary meeting that there were still two alternative views on the MPR's composition.⁶²

VIII.2.1.3 Differences Persist: Synchronization Meetings

Later, in a PAH I synchronization meeting on 6 June 2002, F-UG reiterated that the functional groups should be represented in the MPR. Changing Article 2(1) would contradict the Preamble.⁶³ Therefore, the original Article 2(1) should be maintained and establishing the Regional Representative Council should be reviewed, affirmed F-UG.⁶⁴ In response, a F-UD member

58 As conveyed by Ratu Dian from IPPNU (*Ikatan Putera-Puteri NU – Association of Sons and Daughters of NU*), Ngurah Wirawan from *Perhimpunan Pemuda Hindu Indonesia* (Association of Indonesian Hindu Youth). *Ibid.*, p. 642.

59 Imam Subekti, former member of the local DPR and Sugeng from SMK-2 (*Sekolah Menengah Kejuruan – Vocational School*) endorsed the appointed MPR members, whereas Candra Hasan from the Muhammadiyah's regional leadership in West Kalimantan, Budi Rahman from HMI (*Himpunan Mahasiswa Islam – Islamic Students Association*) argued that appointing members should be abolished. *Ibid.*, pp. 710, 714, 731.

60 As reported by Ali Hardi Kiaidemak, Pataniari Siahaan, Hamdan Zoelva, I Dewa Gede Palguna, Erman Suparno, and Aris Munandar. *Ibid.*, pp. 830, 832, 834, 836, 841, 843.

61 As reported by Lukman Hakim Saifuddin, Amidhan, A.M. Luthfi, Baharuddin Arintonang, Zain Bajeber, and Soedijarto. *Ibid.*, pp. 831, 833, 835, 838, 840, 844.

62 Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Tiga, Edisi Revisi, Sekretariat Jenderal, 2010, p. 6.

63 In synchronization meetings, participants' opinions should be the official opinions of each faction.

64 As stated by Soedijarto (F-UG). *Ibid.*, pp. 45, 47. Forming the Regional Consultative Council was agreed in the previous third amendment.

argued that the *Pancasila's* fourth principle of the *Pancasila* does not refer to certain institutions but to the spirit and the decision-making process.⁶⁵ Then, a F-UG speaker stated that abolishing the MPR's functional group delegates would not solve the problem. The previous regimes' mistakes were not the fault of functional group representatives. There was also no guarantee that without appointed functional groups in the MPR, Indonesia would be a democratic country.⁶⁶

In response, a F-PDIP member reiterated that since, according to the Preamble, sovereignty is in the people's hands, all MPR members should be elected by the people.⁶⁷ Further, a F-PG member reiterated that the fourth principle of *Pancasila* should be understood as the process consisting of deliberations within the representatives' institution. Therefore, there should be no appointed members in the representative institution because they will represent those who appointed them, not the people.⁶⁸

Another F-PDIP member argued that establishing the Regional Representative Council did not have many tangible benefits, as it created double representation. Moreover, "the new MPR composition was not in accordance with the democracy practiced for centuries by our ancestors." However, he would comply with F-PDIP's stance.⁶⁹ F-TNI/Polri asserted that general elections were the most appropriate way to determine the representation. There should be no privilege in that regard.⁷⁰ On the other hand, F-UG argued that all the people should be represented in the MPR, including those who do not use their voting rights (e.g., those in remote areas who are unable to exercise their rights) and intellectuals who are not interested in being politically active.⁷¹ Eventually, the PAH I vice chairman, chairing the synchronization meeting, concluded that the alternative Article 2 drafts should remain as before, expecting that further informal consultations could solve the matter.⁷²

In the meantime, regarding the MPR's composition, in a PAH I plenary meeting on 24 June 2002, F-TNI/Polri reminded all that in the draft Additional Provisions, it was agreed that "the MPR members as referred to in Article 2 section (1) of this Constitution are augmented with the delegates of TNI/Polri until 2009 at the latest." F-TNI/Polri proposed omitting this phrase from the Additional Provision because the Constitution reached much further into the future, certainly beyond 2009. However, a similar provision

65 As stated by Hatta Mustafa (F-UD). *Ibid.*, p. 52. F-UD was revived in the process. The fourth principle is embedded in the Preamble and states 'Democracy led by the wisdom of deliberations among representatives.'

66 As stated by Sutjipto (F-UG). *Ibid.*, p. 53.

67 As expressed by Katin Subiyantoro (F-PDIP). *Ibid.*, p. 54.

68 As conveyed by Andi Mattalatta (F-PG). *Ibid.*, pp. 58, 59.

69 As argued by Frans Matrutty (F-PDIP). *Ibid.*, pp. 64, 65.

70 As asserted by Kohirin Suganda (F-TNI/Polri). *Ibid.*, p. 82.

71 As argued by Harun Kamil (F-UG). *Ibid.*, p. 90.

72 Slamet Effendy Yusuf (F-PG) was the vice PAH I chairman. *Ibid.*, p. 92.

in MPR Decree No. VII/2000 should not be changed.⁷³ Other factions, such as F-UG, F-Reformasi, F-KB, F-PDIP, and F-PG endorsed the proposal. F-PG stated that MPR Decree No. VII/2000 should be discussed later.⁷⁴

In the ensuing meeting to synchronize the draft amendments on 28 June 2002, F-Reformasi proposed a compromise. The MPR's composition should also include functional group delegates. However, instead of being appointed, they could be elected in a staged way.⁷⁵ In what followed, the same arguments were formulated once again. F-PDU reiterated that the MPR should comprise only of elected DPR and Regional Representative Council members. If the factions could not agree, they must vote on the issue. F-Reformasi's compromise would create complications.⁷⁶

In response, F-UG argued that a direct election was not the only democratic way. People outside of political parties with good ideas who wanted to help shape national policy should have a chance to be included. The MPR should form an incarnation of all the people. In that regard, a phrase could be added to Article 2(1), stating "augmented with the functional group delegates who are elected according to the law."⁷⁷ Further, F-UG cited Bung Karno and reiterated that in Western democratic history, parliament was dominated by political party members, who were dominated by capital owners. Therefore, there were marginal groups of people who had no access to parliament, namely workers, cooperatives, and other collective groups, but also teachers, intellectuals, scholars, and clerics. In Canada, Senate members are appointed and have the right to vote, as are members in Malaysia's *Dewan Negara* (State Council), France's Senate, and Germany's *Bundesrat*.⁷⁸

In response, F-PG argued that representing people in the MPR who do not want to campaign and are allergic to politics was undemocratic. In school, one should follow a school regulation. To achieve a doctorate, one should follow the relevant regulation. In a democracy, there should be no *privilegium*, or exclusive rights, since such rights had been abolished in Indonesia since the proclamation of independence on 17 August 1945.⁷⁹ For that reason, F-Reformasi proposed that functional group delegates be elected by the DPR rather than appointed by the President. However, F-PDIP disagreed, since the DPR electing functional groups would disrupt

73 As reminded by I Ketut Astawa (F-TNI/Polri). The provision is derived from MPR decree No. VII/2000. See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Tiga, Edisi Revisi, Sekretariat Jenderal, 2010, p. 331.

74 As stated by Sutjipto (F-UG), A.M. Luthfi (F-Reformasi), Yusuf Muhammad (F-KB), Frans Matrutty (F-PDIP), and Theo Sambuaga (F-PG). *Ibid.*, pp. 332, 342, 350, 374, 378.

75 As proposed by A.M. Luthfi (F-Reformasi). *Ibid.*, p. 496.

76 As argued by Asnawi Latief (F-PDU). *Ibid.*, p. 497.

77 As argued by Harun Kamil (F-UG). *Ibid.*, p. 499.

78 As stated by Soedijarto (F-UG). *Ibid.*, p. 501. Bung Karno is the *nom de guerre* of the first Indonesian President Soekarno.

79 As stated by Andi Mattalatta (F-PG). *Ibid.*, p. 503.

the concept of representation. By contrast, F-UG accepted the idea because it seemed that other factions were allergic to the term ‘appointed’.⁸⁰

Thus, the debates continued. The meeting chair, Slamet Effendy Yusuf (F-PG), reminded members that the debate was “about choosing alternative 1 or alternative 2 of the draft.”⁸¹ After the debates, Yusuf concluded that the alternatives remained unchanged, with no agreement.⁸²

VIII.2.1.4 Differences Persist: Consultation Meetings

Subsequently, the MPR Working Body chairman, in a consultation meeting between the MPR leadership Working Body and the MPR Ad-Hoc Committees on 12 July 2002, reminded members that the deadline for finalizing the amendment was nearing, while many important issues were far from concluded, including the MPR’s composition.⁸³ In response, F-PDIP and F-PG proposed intensifying inter-faction informal consultations.⁸⁴ F-Reformasi expected that consultations could also be conducted between the political party’s leaders. For the sake of the nation, every party should strive to lower their respective targets to the best optimum level to achieve agreement.⁸⁵ However, in the PAH I finalization meeting on 19 July 2002, factions still held onto their initial stances. While all other factions agreed that the MPR should be composed of elected DPR and Regional Representative Council members, F-UG still argued that the MPR’s composition should be augmented with delegates from professional groups. In this situation, F-TNI/Polri stated that because factions could not agree by consensus, the alternatives should remain.⁸⁶ Thus, in the MPR Working Body meeting on 25 July 2002, the PAH I chairman reported the two alternatives of Article 2(1) on the MPR’s composition.⁸⁷ Then, after a final review by the factions, the MPR Working Body decided to submit the report as it was to the MPR plenary meeting for a further decision.⁸⁸

On 29 July 2002, a consultation meeting between the MPR, faction, and Ad-Hoc Committee leaders discussed the decision-making mechanism on matters that had not been resolved. On that occasion, F-PG, F-PDKB and F-PDIP suggested continuing deliberations, while F-PDU emphasized that if a compromise could not be reached, then in accordance with the MPR

80 As proposed by A.M. Luthfi (F-Reformasi) and Harun Kamil (F-UG) and contested by Zainal Arifin (F-PDIP). *Ibid.*, p. 507.

81 *Ibid.*, p. 514.

82 *Ibid.*, p. 517.

83 Amien Rais, the MPR Speaker was also the MPR Working Body chairman. Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Empat, Edisi Revisi, Sekretariat Jenderal, 2010, p. 100.

84 As proposed Arifin Panigoro (F-PDIP), the F-PDIP Chairman and Fahmi Idris (F-PG). *Ibid.*, pp. 105, 106.

85 As stated by A. M. Luthfi (F-Reformasi). *Ibid.*, p. 108.

86 As argued by I Ketut Astawa (F-TNI/Polri). *Ibid.*, pp. 111-118.

87 *Ibid.*, p. 345.

88 *Ibid.*, p. 351. See also Attachment VIII.4

standing order, a decision should be made by voting.⁸⁹ As a way out, F-PPP suggested finding a solution in the next Commission A meeting.⁹⁰

VIII.2.1.5 Differences Persist: Commission A Meetings

Subsequently, the MPR plenary meeting on 4 August 2002 formed Commission A to finalize the fourth amendment draft. At the start of the Commission A plenary meeting on 4 August 2002, F-PDIP reiterated its hope that solutions to the unresolved matters would be sought through deliberation and consultation.⁹¹ However, during the next day's Commission A meeting on 5 August 2002, impatient with the excessive deliberations, F-PPP urged that a decision should be taken and reminded that voting was not prohibited.⁹² In response, a F-PDIP member pointed out that the factions had agreed to avoid voting if facing a deadlock. Time should not impede the deliberations, since it was about the Constitution's amendment, which could by necessity be delayed by one or two years.⁹³

Then F-PG, F-PPP, F-KB, F-PBB, F-KKI, F-PDU, F-PDKB, F-TNI/Polri, and F-UD reiterated their respective opinions in the Commission A plenary meeting, namely that the MPR should comprise only of elected DPR and Regional Representative Council members.⁹⁴ By contrast, F-UG argued that the MPR system, which includes all essential elements of Indonesian democracy, is more advanced than the representative system, which is limited to only elected members.⁹⁵ Thus, at the start of the 2002 MPR Annual Session, the last MPR session to finalize the amendment, the differences on the MPR's composition remained.

F-UG was the only full faction supportive of the MPR comprising of elected members augmented by functional groups' appointed delegates. However, certain members of F-PDIP and F-KB agreed with F-UG. They insisted on maintaining the old MPR's composition, as written in Article 2(1) of the 1945 Constitution.⁹⁶ For instance, a F-PDIP member asserted that both

89 As stated by Fahmi Idris (F-PG), Gregorius Seto Hariyanto (F-PDKB), Arifin Panigoro (F-PDIP) and Asnawi Latief (F-PDU). *Ibid.*, pp. 424, 428.

90 As suggested by Aisyah Amini (F-PPP). *Ibid.*, p. 427.

91 As conveyed by Didi Supriyanto (F-PDIP). *Majelis Permusyawaratan Rakyat Republik Indonesia, op.cit.*, Tahun Sidang 2002, Buku Lima, Edisi Revisi, Sekretariat Jenderal, 2010, p. 38.

92 As demanded by M. Abduh Paddare (F-PPP). *Ibid.*, p. 65.

93 As argued by Bambang Pranoto (F-PDIP). *Ibid.*, p. 66.

94 Andi Mattalatta (F-PG), Lukman Hakim Saifuddin (F-PPP), Ali Masykur Musa (F-KB), Bondan Abdul Madjid (F-PBB), Birinus Joseph Rahawadan (F-KKI), Hartono Mardjono (F-PDU), Gregorius Seto Hariyanto (F-PDKB), R. Sulistyadi (F-TNI/Polri), Retno Triani Djohan (F-UD). *Ibid.*, pp. 40, 41, 67, 73, 75, 78, 79, 80, 82. Certain factions did not mention their opinion on this occasion but referred to earlier statements.

95 As reiterated by Sumyaryo Sumiskum (F-UG). *Ibid.*, p. 85.

96 Article 2 paragraph 1 of the original 1945 Constitution states that the People's Consultative Assembly shall consist of the DPR members augmented by the delegates from the regional territories and groups as provided for by statutory regulations.

changes to the MPR's composition, with or without appointed members, denoted new state structure elements that required the people's approval. 200 MPR member signatures demanded such approval.⁹⁷ Likewise, a F-UG member emphasized that the Elucidation of the 1945 Constitution was still valid, stating that the whole people from all groups and all territories should have representatives in the MPR to become the incarnation of all people.⁹⁸ In response, a F-PG member reiterated that the situation had changed. The range of political party affiliations had reached all of society. Therefore, the parties could aggregate societal interests. Even if a political party was not trusted, there were still NGOs. In addition, appointing group representatives would lead to double representativeness.⁹⁹ On the other hand, F-PDIP and (later) F-UG members urged finalizing an agreement during the MPR plenary meeting, rather than in Commission A.¹⁰⁰

Regarding double representativeness, a F-UG speaker stated that the UK's House of Lords, Canada's Senate, and Germany's *Bundesrat* members are all appointed and can still vote in elections within democratic countries.¹⁰¹ Responding to the functional groups' desire to be well-represented in the MPR, other factions argued that they could establish functional group political parties, such as a labour party, fishermen party, or lawyers' party.¹⁰² However, a F-UG member claimed that in 9 out of 13 validity sessions conducted by PAH I in various cities in Indonesia, there were participants who wanted to have appointed functional group delegates in the MPR.¹⁰³

The subsequent informal consultation meeting and the small team did not manage to agree on the MPR's composition. They eventually noted the two alternatives, which were reported to the MPR plenary meeting on 9 August 2002.¹⁰⁴

VIII.2.1.6 *Deciding By Vote – MPR Plenary Meetings*

Subsequently, in the factions' final remarks during the MPR plenary meeting on 9 August 2002, factions did not change their stances. In its final remark, F-TNI/Polri emphasized that representation through a general

97 As expressed by Amin Aryoso (F-PDIP). Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Lima, Edisi Revisi, Sekretariat Jenderal, 2010, p. 107.

98 As stated by A. Djoko Wiyono (F-UG). *Ibid.*, p. 110.

99 As stated by Immanuel Ekadianus Blegur (F-PG). *Ibid.*, p. 113.

100 As stated by Haryanto Taslam (F-PDIP) and later by Aziddin (F-UG). *Ibid.*, pp. 115, 127.

101 As stated by Soedijarto (F-UG). *Ibid.*, p. 123.

102 As stated by Hartono Mardjono (F-PDU). *Ibid.*, p. 125.

103 As stated by Usep Fathudin (F-UG). *Ibid.*, p. 130.

104 *Ibid.*, p. 609. The first alternative states that the MPR shall consist of the DPR members and the Regional Representative Council members who have been elected through a general election, augmented by the functional group delegates who shall be chosen by the DPR and shall be further regulated by law. The second alternative states that the MPR shall consist of the DPR members and the Regional Representative Council members who have been elected through a general election and shall be further regulated by law.

election is an ideal norm in a developing democracy. Regarding the military and police's MPR membership, TNI/Polri stated its agreement with the people's will, to return to its natural character (*fitriah*) as an instrument of defence and state security. It was determined not to get involved in practical politics and that it had no intention to be included in the MPR's functional group delegates.¹⁰⁵ On the other hand, F-UG stated that for the sake and in honour of the country's founding fathers, although 11 factions did not want functional group delegates in the MPR, it would be a severe moral burden for F-UG to give up so easily. However, "F-UG will accept and support honestly and sincerely any MPR decision," the speaker affirmed.¹⁰⁶

The F-PDIP chairman then asserted that his faction agreed that the MPR should comprise only of elected members, which shall be further regulated by law.¹⁰⁷ In the subsequent informal consultation meeting between the MPR and faction leaders, this issue was not discussed. Eventually, in the MPR plenary meeting on 10 August 2002, the factions agreed to decide by voting.¹⁰⁸

Presided by Amien Rais, the MPR Speaker, the voting was conducted openly. 614 MPR members attended the plenary meeting. 475 voted for the second alternative, 122 members voted for the first alternative, and 3 members abstained. The first alternative was that the MPR shall comprise of elected members augmented by appointed delegates from functional groups. The second alternative was that the MPR shall consist of elected DPR and Regional Representative Council members.

Looking at their factions, 80 out of 144 F-PDIP members and 1 out of 51 F-UG members voted for the second alternative. Meanwhile, all members of the F-TNI/Polri voted for the second alternative.¹⁰⁹ This new MPR composition was ratified in the MPR plenary meeting on 10 August 2002, as the new Article 2(1) of the amended 1945 Constitution.

It is worth noting that this decision was the only one taken by vote throughout the entire constitutional amendment process between 1999-2002. The way in which the debate and voting were conducted illustrates the incredible attempts from various parties in the final stages to block the reform process of the 1945 Constitution.

VIII.2.2 Presidential election: the second round

This section details the debate on whether a second presidential election round should occur, and, if so, whether it should be conducted by the people (i.e., be people-led) or the MPR (i.e., be MPR-led). It summarizes

105 As stated by E. Tatang Kurniadi (F-TNI/Polri). *Ibid.*, p. 655.

106 As conveyed by Rais Abin (F-UG). *Ibid.*, pp. 673-674.

107 As affirmed by Arifin Panigoro, the F-PDIP Chairman. *Ibid.*, p. 681. In the meantime, around 60 F-PDIP members opposed the new MPR's composition.

108 *Ibid.*, p. 733.

109 *Ibid.*, pp. 734-735.

the insights from public hearings and the debates from validity meetings. It concludes with the ratified amendment that a second presidential election round, if necessary, should be conducted directly by the people.

During the 2001 Annual Session, the MPR had decided that the candidate pair who won more than 50 percent of the total national votes, obtaining at least 20 percent of the votes in each province in more than half the provinces in Indonesia would be elected President and Vice President (See VII.3.7).¹¹⁰ However, until then, the MPR had been unable to agree on how to determine the winner if there was no candidate who qualified as the winner in the first round.

In general, the factions were divided into two camps. The first wanted the second round to be conducted directly by the people and the second camp preferred the MPR to conduct the second round.

Only F-PDIP and F-UG elements argued that the second round should be conducted by the MPR. All other factions contended that the second presidential election round should be conducted directly by the people. F-PDIP argued that a direct second round makes an election very expensive, both financially and politically. Prolonged political tensions during the two rounds of elections would be detrimental for society, the member stated. Further, if the MPR members were elected in democratic ways, the MPR's second round of elections would also be legitimate and democratic.¹¹¹ In this regard, choosing a presidential election system through the MPR did not mean that the choice was not reformist or undemocratic.¹¹² However, other factions argued that an MPR-led second round was less democratic and could diverge from the people's preferences.¹¹³

During the first MPR Working Body meeting on 10 January 2002, a F-PG member urged the MPR to consider that the presidential election should be conducted in just one round. The double ticket that won the most votes would be declared the president and vice president. He argued that it would be difficult for any candidate to meet the above requirements and a people-directed second round election would be inefficient. Moreover, if the second round was conducted by the MPR, its choice would likely confer with the people's choice in the election.¹¹⁴

Other members argued that by assuming that all MPR members, elected individuals, realized the representation of communities and regions with all their diversities and distinctiveness, then it followed that an MPR-led

110 See VII.3.7. Article 6A paragraph (3) of the amended 1945 Constitution.

111 As argued by Zainal Arifin (F-PDIP) and Soedijarto (F-UG). See *Ibid.*, pp. 46, 50.

112 See Valina Singka Subekti, *Menyusun Konstitusi Transisi, Pergulatan Kepentingan dan Pemikiran dalam Proses Perubahan UUD 1945, PT Raja Grafindo Persada, 2008*, p. 284.

113 As stated by, among others Ida Fauziah (F-KB). See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Satu, Edisi Revisi, Sekretariat Jenderal, 2010, p. 151.

114 As stated by Hajrianto Y Thohari (F-PG). See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Satu, Edisi Revisi, Sekretariat Jenderal, 2010, p. 46.

second round maintained the real essence of direct elections. Moreover, it would prevent a prolonged presidential election that would create a power vacuum and lead to social tension, or even social conflict, and a financial cost to both the state budget and political parties.¹¹⁵

Others disagreed, arguing that the second round should be undertaken directly by the people. The social-political cost would be high if the MPR-led second round outcome differed from what most people want.¹¹⁶

VIII.2.2.1 *Public Hearings: Second Presidential Election Rounds*

At this stage, PAH I scheduled programs to absorb the people's aspirations regarding the fourth amendment topics. In the public hearings, NGO Coalition and UKI (*Universitas Kristen Indonesia* – Indonesian Christian University) delegates asserted that the second round should be people-led.¹¹⁷ By contrast, Law Association and UNAS (*Universitas Nasional* – National University) delegations argued that the second round should be MPR-led, considering the consequences.¹¹⁸ Another delegation stated that the people were not ready for a direct presidential election, so the first round should also be conducted by the MPR.¹¹⁹ A UBK (*Universitas Bung Karno* – Bung Karno University) delegation argued that the presidential election should be conducted in one round.¹²⁰ On the other hand, a University of Pancasila delegation argued that the original 1945 Constitution's system should be revived, with the president elected by the MPR.¹²¹

In early March 2002, PAH I also organized public hearings in the regions.¹²² A Bandung report stated that certain participants preferred the second round to be people-led, while others preferred a one round presidential election.¹²³ The Banjarmasin report stated that the participants were divided into those who proposed a direct second round election, those who preferred a MPR-led second round, and those who preferred an overall MPR-led presidential election.¹²⁴ Denpasar public hearing participants pro-

115 As stated by Zainal Arifin (F-PDIP) and Soedijarto (F-UHG). *Ibid.*, pp. 50, 144.

116 As emphasized by Ida Fauziah (F-KB). *Ibid.*, p. 151.

117 As conveyed by Bambang Widjanto on 27 February 2002 and by Anton Reinhart (UKI – Indonesian Christian University) on 5 March 2002. See *Ibid.*, pp. 318, 463.

118 As argued by Arry Supratno and Ramlan Surbakti. *Ibid.*, p. 334.

119 As stated by Ramlan Surbakti. *Ibid.*, p. 466.

120 As stated by Jemmy Palapa (UBK – Bung Karno University). *Ibid.*, p. 472.

121 As argued by Abdul Kadir Besar (University Pancasila). *Ibid.*, pp. 496, 497.

122 The public hearings were held in Bandung, Banjarmasin, Denpasar, Semarang, Solo, Palembang, Surabaya, Makassar, and Medan. The participants in the hearings were elements from the regional governments, factions in the regional DPRDs, civic organizations, MPR members from the regions, professional organizations, universities, public figures, non-governmental organizations, high school teachers, and so forth. They came from various cities, so that the meetings covered all provinces in Indonesia. See *Majelis Permusyawaratan Rakyat Republik Indonesia, op.cit.*, Tahun Sidang 2002, Buku Satu, Edisi Revisi, Sekretariat Jenderal, 2010, pp. 623 – 647.

123 As reported by Abdul Azis Imran Pattisahusiwa (F-PPP). *Ibid.*, p. 623.

124 As reported by Soedijarto (F-UG). *Ibid.*, p. 625.

posed a candidate be elected if their ticket won a majority of votes in $\frac{3}{4}$ of the provinces.¹²⁵ In Semarang and Solo, the participants preferred a people-led second round.¹²⁶ Palembang and Surabaya participants preferred a people-led second round. In Surabaya, East Java Governor, Muhammad Noor argued that people should elect candidates, with candidates explaining their programs to the public.¹²⁷ In Makassar, most participants wanted a people-led second round, although some argued for an MPR-led second round.¹²⁸ In Medan, participants wanted a people-led second round.¹²⁹

VIII.2.2.2 *Validity Sessions: Both Public and Faction Differences Persist*

Subsequently, on 16 May 2002, PAH I conducted a validity meeting on the second round of the presidential election. There were two presenters: Jakob Tobing, the PAH I chairman, and Andrew Ellis from NDI (National Democratic Institute, USA).¹³⁰

Until then, the factions had already agreed that the presidential election should be a direct presidential election. However, if the election did not produce a winner, a second round would be needed. Until the end, members either thought the second round should be people or MPR-led.

In the validity meeting, the chairman underlined the presumption that the presidential election should be completed in one round. The second round is a back-up, an emergency system in case the first round did not produce a new president. Further, Indonesia is a plural society, so the election system must be compatible with the principle of *Bhinneka Tunggal Ika*, unity in diversity. Whether the second round was people or MPR-led, the presidential system should remain valid. The presidential tenure is fixed, and the President is not accountable to the MPR.

While proponents of people-led second round elections argued they were more legitimate, especially if there were non-elected MPR members, MPR-led supporters argued their method was better and legitimate, since all MPR members would be elected. The MPR will function as an electoral college, able to be implemented more quickly. Therefore, it is less costly, with no long timespan between the first and second rounds, so that political tensions and horizontal conflicts in the very diverse community could be avoided.

125 As reported by Sutjipno (F-PDIP). *Ibid.*, p. 628.

126 As reported by Hatta Mustafa (F-UD). *Ibid.*, pp. 630, 632.

127 As reported by Rully Chairul Azwar (F-PG) and Retno Triani Djohan (F-UD). *Ibid.*, pp. 634, 637.

128 As reported by Ali Hardi Kiaidamak (F-PPP). *Ibid.*, p. 640.

129 As reported by Aries Munandar (F-PDIP). *Ibid.*, p. 642.

130 The meeting was attended by among others Ramlan Surbakti from KPU (General Election Commission), Hadar Gumay from CETRO (Center for Electoral Reform), and Hasyim Djalal, a scholar, Taufikurrahman from KOSGORO (*Kesatuan Organisasi Serba Guna Gotong Royong* – The Unity Organization of Multipurpose Mutual Cooperation), Tarman Azzam from *Harian Terbit* (Terbit daily newspaper), and Chusnul Maryah, a woman activist. See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Dua, Edisi Revisi, Sekretariat Jenderal, 2010.

Ellis stated that there was no ideal solution. A people-led second round election is costly. Given the country's size and spread, preparation takes time, which should be considered in relation to political and security dynamics. For an MPR-led second round, since the MPR is a smaller body than the electorate, a legitimacy problem may arise. If the ticket that comes second in the first round is then chosen by the MPR, that could be particularly damaging if linked to money politics. The issue revolved around commitment, culture, and atmosphere. It may take time to overcome it.¹³¹ The MPR would need to assess the political implications of each option.

Both speakers acknowledged that there would be specific disadvantages in each option. Each option's advantages should be capitalized so that the new presidential election system could be implemented in 2004 and the country could continue to move forward.¹³²

Surbakti stated that an MPR-led second round is no longer a direct election, but rather a back-up system.¹³³ Likewise, Gumay reiterated that if sovereignty is in the people's hands, there is no other choice and the second round should be people-led.¹³⁴ In contrast, Djalal argued that an MPR-led second round would be better, considering the economic and political costs, if all MPR members are elected. Due to the existing criticisms of the MPR and DPR, money politics will not be more prominent in an MPR-led election compared to a people-led election.¹³⁵ Taufikurrahman, Tarman Azzam, and Chusnul Mariyah asserted that a people-led election has more legitimacy than an MPR-led election. The MPR should no longer have a role in electing the President, Azzam stressed. Money politics will be even worse in the MPR than in society, stated Mariyah.¹³⁶

In an ensuing validity meeting at the University of Tanjung Pura, Pontianak, on 21 May 2002, participants argued for a people-led second round. The University of Muhammadiyah participants stated that an MPR-led second round would be a half-hearted reform.¹³⁷

On 27 May 2002, PAH I conducted a meeting to review the fourth amendment draft, also attended by the Expert Group. On that occasion, an expert reiterated his preference of an MPR-led second round. It would not reduce the round's democratic value, since the MPR will choose from the first and second winners according to the people's preference. With Indonesia's peculiar social cultural condition, the political cost of national stability is what matters.¹³⁸ On the other hand, another expert questioned whether the president is accountable to the MPR and whether the presiden-

131 *Ibid.*, p. 616.

132 *Ibid.*, pp. 586 – 594.

133 *Ibid.*, p. 599.

134 *Ibid.*, p. 603.

135 *Ibid.*, p. 606.

136 Taufikurrahman *Ibid.*, pp. 607, 609, 610.

137 As stated by Candra Hasan from Muhammadiyah in West Kalimantan and Nasirwan from Muhammadiyah University. *Ibid.*, pp. 711, 739.

138 As argued by Hasyim Djalal. *Ibid.*, p. 753.

tial system is still valid if the MPR conducts the second-round election.¹³⁹ In response, a F-PPP member reminded all that there are various types of presidential systems, such as in the USA, France, and Egypt. Those countries all acknowledged that their system follows their needs.¹⁴⁰

In a meeting on 27 May 2002, PAH I members reported from the validity meetings from several cities. Reports from Manado, Medan, Mataram, Makassar, Bandung, Denpasar, Banjarmasin, and Semarang stated that the participants opted for a people-led second round.¹⁴¹ On the other hand, reports from Palembang, Pontianak, Malang, Jogjakarta, and Solo stated that the participants were divided into people and MPR-led second rounds.¹⁴²

Subsequently, PAH I met to finalize the deliberated topics on 19 July 2002. In that meeting, factions reiterated their respective positions. F-PDIP and F-PG argued for a people-led second round, while F-UG supported an MPR-led second round.¹⁴³ Regarding the alternative, the F-PDU speaker jokingly confirmed that F-PDU had chosen a direct presidential election since the *Majapahit* era.¹⁴⁴ When the PAH I chairman attempted to conclude the stances, F-UG urged that the alternatives be maintained as they were, as suggested by F-TNI/Polri.¹⁴⁵

In the Small Team's meeting to finalize the fourth amendment draft on 24 July 2002, chaired by the PAH I secretary, the team concluded that stances on the presidential election's second round remained divided.¹⁴⁶

VIII.2.2.3 Ratification: People-Led Second Round

The draft was then reported to the MPR Working Body plenary meeting on 25 July 2002. In that meeting, most F-UG members endorsed a people-led second round.¹⁴⁷ All other factions reiterated their agreement with a people-

139 As questioned by Sri Soemantri. *Ibid.*, p. 759.

140 As stated by Zain Bajeber (F-PPP). *Ibid.*, p. 764.

141 As reported by Ali Hardi Kiaidemak, Lukman Hakim Saifuddin, Pataniari Siahaan, Hamdan Zoelva, A.M. Luthfi, I Dewa Gede Palguna, Erman Suparno and Aris Munandar. *Ibid.*, pp. 830, 831, 832, 834, 835, 836, 841, 843.

142 As reported by Amidhan, Baharuddin Aritonang, Zain Bajeber and Soedijarto. *Ibid.*, pp. 833, 838, 840, 845.

143 As argued by Pataniari Siahaan (F-PDIP), Andi Mattalatta (F-PG) and Soedijarto (F-UG). See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Empat, Edisi Revisi, Sekretariat Jenderal, 2010, pp. 117-118.

144 As stated by Asnawi Latief (F-PDU). *Ibid.*, p. 119. Majapahit was a vast archipelagic empire based on the island of Java (modern-day Indonesia) from 1293 to around 1500. According to the *Nagarakretagama* (Desawarñana) written in 1365, Majapahit was an empire of 98 tributaries, stretching from Sumatra to New Guinea, and consisted of the present day Indonesia, Singapore, Malaysia, Brunei, Southern Thailand, Sulu Archipelago, Manila, and East Timor.

145 As demanded by Sutjipto (F-UG). *Ibid.*, p. 121.

146 *Ibid.*, p. 334.

147 As conveyed by Soedijarto (F-UG). *Ibid.*, p. 371.

led second round. However, the F-TNI/Polri speaker contended that it was better to keep the two alternatives and seek the best decision in the coming MPR plenary meeting.¹⁴⁸ Thus, the two alternatives were reported to the MPR plenary meeting on 2 August 2002.

F-PDIP expressed that the election of the president and vice president should strengthen national unity and accommodate the people's aspirations, especially those outside Java. Thus, returning the election's second stage to the people is an important decision. This procedure, F-PDIP confirmed, does not contradict the Constitution's ideology, which affirms the people's sovereignty, as embedded in the 1945 Constitution's Preamble.¹⁴⁹ Likewise, F-UG reiterated its endorsement of a people-led presidential election, in both the first and second rounds.¹⁵⁰ Subsequently, in the ensuing MPR plenary meeting on 3 August 2002, F-KKI, F-PDU, and F-PDKB endorsed a people-led second round of the presidential election.¹⁵¹

The discussion on the issue was resumed in the Commission A meeting on 4 August 2002. On that occasion, F-PG reiterated that the second round should be people-led.¹⁵² Then, in the next Commission A meeting on 5 August 2002, F-KB asserted the same opinion.¹⁵³

Eventually, F-PDIP, with firm directives from the political party leadership,¹⁵⁴ alongside F-UG, agreed that the second round of presidential elections should be conducted directly by the people.

Then, in the Commission A meeting on 6 August 2002, all factions confirmed that the second round should be conducted directly by the people.¹⁵⁵ Thus, the MPR plenary meeting on 10 August 2002 ratified this amendment. This decision completed the provision on direct presidential elections. Ultimately, on 10 August 2002, the plenary MPR meeting ratified that the second round of the presidential election should be conducted directly by the people as further stipulated in Article 6A of the 1945 Constitution.¹⁵⁶

148 As stated by Kohirin Suganda Saputra (F-TNI/Polri). *Ibid.*, p. 383.

149 As conveyed by Agustin Teras Narang (F-PDIP). *Ibid.*, p. 461.

150 As stated by Said Agil Siradj (F-UG). *Ibid.*, p. 469.

151 As stated by Sutradara Ginting (F-KKI), Achmad Sjatari (F-PDU) and Manasse Malo (F-PDKB). *Ibid.*, pp. 493, 496, 497.

152 As expressed by Andi Mattalatta (F-PG). *Majelis Permusyawaratan Rakyat Republik Indonesia*, op.cit., Tahun Sidang 2002, Buku Lima, Edisi Revisi, Sekretariat Jenderal, 2010, p. 40.

153 As confirmed by Ali Masykur Musa (F-KB). *Ibid.*, p. 68.

154 As instructed by Megawati Soekarnoputri in an expanded national executive party meeting in Novotel Hotel on the outskirts of Bogor in early August 2002. PDI-P believed that a direct presidential election would manifest the people's aspiration without bias. Personal notes.

155 As confirmed by Mutammimul Ula (F-Reformasi), Hartono Mardjono (F-PDU), Hamdan Zoelva (F-PBB), Tjetje Hidayat Padmadinata (F-KKI), Kohirin Suganda (F-TNI/Polri), Pataniari Siahaan (F-PDIP), Lukman Hakim Saifuddin (F-PPP), Gregorius Seto Harianto (F-PDKB), Januar Muin (F-UD) and Achmad Zacky Siradj (F-UG). *Ibid.*, pp. 195 – 214.

156 *Ibid.*, p. 766.

VIII.2.3 Article 29 and obligation to implement Islamic Sharia

This section chronicles the debate surrounding the proposed amendment to Article 29, including insights from the Ministry of Religious Affairs, public hearings, factions, resource persons, and the President and Vice President at the time. It summarizes how the factions avoided a decision by vote and compromised by amending Article 31 while retaining the original Article 29, excluding the obligation to implement Islamic Sharia from this section of the Constitution.

The debate started in a PAH I meeting on 28 January 2002. The F-UD speaker reiterated that the original Article 29 should be maintained. F-UD affirmed that changes would certainly cause national upheaval and social conflict. Further, F-UD warned that the North Sulawesi DPRD, as well as MPR delegates from East Nusa Tenggara, Central Kalimantan, Maluku, and Papua had declared to secede from the Republic of Indonesia if the Jakarta Charter (*Piagam Jakarta*), in which the *tujuh kata* were embedded, was incorporated into the 1945 Constitution.¹⁵⁷ A F-Reformasi speaker reminded that the people's moral decadence was plunging to its nadir. Overcoming it by implementing harsh punishments as in the *jahiliyah* (pagan) times would be absurd. The only answer was to increase the people's piety, whatever their religions were. In olden days, in the event of moral decadence, the prophet and holy texts would be sent to halt the decadence. However, since there would be no new prophets, the MPR should now take care of the problems.¹⁵⁸

VIII.2.3.1 *Insight from the Ministry of Religious Affairs*

In a PAH I meeting on 26 February 2002, Faisal Ismail, the Secretary General of the Ministry of Religious Affairs stated that the Ministry did not recommend any changes to Article 29 and stressed maintaining the original Article 29(1) and (2). In 1945, the people of eastern Indonesia had declared their objection to the *tujuh kata* ('the seven words'), determined to exit the Republic if the clause were included. As a result, the original Article 29 had become the meeting point of various theological views of pluralistic Indonesian society. Therefore, it should be preserved and maintained. Further, the mainstream philosophies in society wanted to keep Article 29, reflected in the views of the Indonesia Ulema Council (MUI), Muhammadiyah, Nahdlatul Ulama (NU), Communion of Churches in Indonesia (PGI), Bishop's Conference of Indonesia (KWI), Council of Buddhist Communities (Walubi), and Parisadha Hindu Dharma Indonesia. Ismail reiterated that keeping Article 29 was a mainstream view, representing all walks of life of

157 As stated by Januar Muin (F-UD). Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Satu, Edisi Revisi, Sekretariat Jenderal, 2010, p. 143. See II.3.

158 As stated by A.M. Luthfi (F-Reformasi). *Ibid.*, p. 152.

the Indonesian people. Furthermore, Article 29 governs sensitive matters. Therefore, to avoid undesirable outcomes that could lead to the nation's disintegration, it is better to maintain Article 29 as is. Instead, the Article should be elaborated into statutes to regulate the inter-religion relationships at a practical level so that interfaith life takes place in harmony.¹⁵⁹

Regarding *kepercayaan*, the Secretary General stated that according to Mohammad Hatta, the first Vice President of Indonesia, the term *kepercayaan* refers to religions, and does not represent a separate entity. Later in 1980, it became an issue when the followers of *kepercayaan* claimed that the term refers to a specific set of beliefs.

Regarding the idea that state officials should not act in a way that contradicts a religion's teachings, the Secretary General supported the idea, since every official pledges in their oath of office to act in accordance with their religion's teachings. However, the Secretary General disagreed with explicitly stating that religious believers should be obliged to implement religious teachings. If someone believes in one religion, implicitly it already means that he/she agrees that the religion obliges him/her to implement the teachings.¹⁶⁰

VIII.2.3.2 *Insights from Public Hearings and Delegations*

Likewise, in the next day's PAH I meeting, the Indonesian Notary Association delegation stated that, to prevent the nation from disintegrating, the initial Article 29 should be maintained.¹⁶¹ In the next public hearing on 4 March 2002, elder statesman Roeslan Abdulgani also agreed that Article 29 should be maintained.¹⁶² On that occasion, Abdulgani revealed the background of including the Jakarta Charter (Piagam Jakarta) in the consideration of Presidential Decree 5 July 1959, which re-enacted the 1945 Constitution. According to Abdulgani, this was a way to gain support for the re-enactment of the 1945 Constitution, especially from the Muslim community. In the consideration of the Decree, it is written that "We believe that the Jakarta Charter, dated 22 June 1945 animates the 1945 Constitution and forms a continuum with the Constitution."¹⁶³ Although the statement was included in the consideration of the Decree and thus not law, it still gained the support of prominent Islamic figures, such as Idham Chalid, NU Chairman and Deputy Prime Minister, Zainul Arifin, vice DPR chairman of the Nahdlatul Ulama, and of other communities, such as J. Leimena, then

159 As stated by Faisal Ismail, Secretary General of the Ministry of Religious Affairs. *Ibid.*, pp. 274-275.

160 *Ibid.*, pp. 304-305.

161 As stated by Arry Supratno. *Ibid.*, p. 335.

162 *Ibid.*, p. 427.

163 In Indonesian, it states: "*Bahwa kami berkeyakinan bahwa Piagam Jakarta tertanggal 22 Juni 1945 menjitwai Undang-Undang Dasar 1945 dan adalah merupakan suatu rangkaian kesatuan dengan konstitusi tersebut.*"

the Deputy Prime Minister and Indonesian Christian Party Chairman, and I.J. Kasimo, former Minister and Indonesian Catholic Party Chairman.¹⁶⁴

Accordingly, delegations from the Indonesia Christian University and the University of Bung Karno stated in a PAH I public hearing on 5 March 2002 that Article 29 should not be changed.¹⁶⁵ On the other hand, a public hearing conducted by PAH I in Bandung from 6 to 7 March 2002, reported that most participants contended that Article 29 should be changed. They proposed that the first clause should say that the state should oblige people to implement their respective religions and the second clause should state that the people should worship in accordance with their religious teachings (*beribadah menurut kepercayaan agamanya*).¹⁶⁶

In a similar Banjarmasin public hearing, the audience had intensely debated the issue. Three different stances regarding Article 29 were discernible: to maintain the original formulation, to insert the *tujuh kata*, or to apply the obligation upon every religions' followers.¹⁶⁷ In Semarang and Solo, most participants wanted to maintain the original Article 29.¹⁶⁸ In Palembang, although participants preferred maintaining the original Article 29, if it were to be changed, they held that the obligation should apply to all other religions.¹⁶⁹ A similar Surabaya forum asserted that the original Article 29 should be final.¹⁷⁰ Likewise, Makassar's general audience favoured maintaining the original Article 29, although certain people argued to revise it.¹⁷¹

In the subsequent PAH I plenary meeting on 21 March 2002, the F-UD speaker stated that Article 29 is the main pillar of national integration. Therefore, the Article should not be changed. Further, F-UD warned that in North Sulawesi, a "great people's council" had been convened and the Province's DPRD had met. Both events declared that if Article 29 would be changed and 'the seven words' from the *Piagam Jakarta* (the Jakarta Charter) inserted, North Sulawesi would secede from the Republic of Indonesia. F-UD members from Central Kalimantan, East Nusa Tenggara, and Papua confirmed a similar attitude in these provinces.¹⁷²

164 Presidential Decree, 5 July 1959. This is the reason why factions such as F-PPP and F-PDU insisted that the object of the amendment is the 1945 Constitution which was re-enacted by the Presidential Decree of 5 July 1959, not the 1945 Constitution which was promulgated on 18 August 1945. This confirmation adds to the reasons for certain factions to reinstate 'the seven words' (*tujuh kata*) in the 1945 Constitution. See *Ibid.*, pp. 454-455. Ruslan Abdulgani was one of the prominent figures of the Indonesian revolution of 1945 – 1950.

165 As stated by Anton Reinhart from the Indonesia Christian University and Jemmy Palapa from the University of Bung Karno. *Ibid.*, pp. 464, 473.

166 As reported by Abdul Azis Imran Pattisahusiwa (F-PPP). *Ibid.*, p. 624. The formulation of the 2nd clause means that *kepercayaan* (the belief) is not acknowledged as a separate set of beliefs outside of religions.

167 As reported by Soedijarto (F-UG). *Ibid.*, p. 628.

168 As reported by Hatta Mustafa (F-UD). *Ibid.*, p. 632.

169 As reported by Rully Chairul Azwar (F-PG). *Ibid.*, p. 635.

170 As reported by Retno Triani Johan (F-UD). *Ibid.*, p. 638.

171 As reported by Ali Hardi Kiaidemak (F-PPP). *Ibid.*, p. 641.

172 As asserted by Hatta Mustafa (F-UD). *Ibid.*, p. 683.

VIII.2.3.3 Faction Debates in PAHI Meetings

On 29 March 2002, the PAHI meeting began to formulate the conclusion on Article 29. F-Reformasi argued religions should increase the piety of their followers and proposed adopting an alternative: "The State is based on the One and Only God, with the obligation to implement the religion's teachings of their respective followers." Further, the term *kepercayaan* should be removed from Article 29, because it does not belong to religion. The term was already described in Article 28 regarding human rights.¹⁷³ However, F-PDIP asserted that the original formulation, "The State is based on the One and Only God", is quite appropriate to assure people embracing their religions.¹⁷⁴

F-PBB put forward that the most important thing for a state based on the Almighty God was the recognition of religions and the assurance that followers implement their religions' teachings. Regarding Islam, there is something specific that is not present in other religions, especially regarding the public sector and society. Sharia regulates worship, which is the relation between the human being and God. Sharia also regulates the relationship between the human being and their surroundings, including human relationships. Indeed, in one's relationship with God, an authority's intervention is unnecessary; it is up to the individual. However, relationships with other people, including the issues of inheritance and murder, are *qot'i* (fixed), and require an authority's intervention. Therefore, Islamic Sharia cannot be implemented properly without state intervention. This is a principled view that religion and the state, especially in Islam, are inseparable. This framework reflects the aspirations and beliefs of certain community groups. Nonetheless, the public should learn to engage in mature politics that respect political mechanisms. Whatever decision is made after a democratic process, it must be accepted. If people threaten each other from the beginning, they do not learn about democracy. F-PBB agreed with the people's aspiration to add the *tujuh kata* into Article 29(1). To them, this was something normal. However, whatever decision was made at the end, they would respect it. Further, regarding Article 28E (2), which confirms that "every person shall have the right of the freedom to adhere to their beliefs (*kepercayaan*), and to express their thoughts and attitudes, in accordance with their conscience", F-PBB reiterated that the proposal to remove *kepercayaan* from Article 29 (2) does not mean abolishing *kepercayaan* (belief) itself.¹⁷⁵

In response, a F-TNI/Polri speaker underlined that the original Article 29 should be retained. No other formulations regarding the substance of certain religions or religions in general should be inserted, such as the obligation to implement Sharia and religious teachings. There were four reasons for this argument. First, the Republic of Indonesia is not a theocratic

173 As stated by A.M. Luthfie (F-Reformasi). Ibid., pp. 685-686.

174 As stated by Zainal Arifin (F-PDIP). Ibid., p. 688.

175 As stated by Hamdan Zoelva (F-PBB). Ibid., pp. 689-690.

state. Second, the state is not capable of controlling the physical, let alone spiritual, implementation of religious teachings thoroughly and comprehensively. Third, implementing religious teachings is the responsibility of the individual and the community, which is driven by conscience, not the state or through coercion. Fourth, in the nation's overall life, the moral messages of universal religious values could be expressed. Furthermore, the original clause "*agama dan kepercayaannya itu*" (religion and belief) in Article 29(2) must be maintained, because it accommodates the understanding of religions at the macro level, and the reality of a heterogeneous society.¹⁷⁶

Likewise, the F-PDKB speaker argued that the state may not compel anyone to exercise a religion's teachings, though religion may become the basic framework of a man's behaviour. Indonesia is neither a theocratic state nor a secular state. Indonesia is a religious nation. It is well understood how believers, such as Muslims, materialize the values of religion into daily life. However, the answer is not in the fundamental law which comprises everyone without exception. Religious specificities may be embodied in various forms of legislation. In the realm of the court system, there are religious courts, and everyone knows that this means Islamic courts. In essence, they are discriminatory. However, they constitute the acceptable specificity to accommodate cases such as those involving inheritance law. There are noble religious values in Islam, i.e., Sharia, that could be accepted by other religions, which can be embodied in various forms of legislation without negating the fundamental law that covers the entire nation without exception. *Kepercayaan* presumes recognition of a religion is a private matter, that people should be free to assume their *kepercayaan* as their religion. Thus, the original Article 29 should be maintained.¹⁷⁷

Subsequently, a F-UG member representing a heterogeneous faction, including delegates from various religions and *kepercayaan*, argued that the original Article 29 should be maintained. However, as a country based upon God Almighty, moral decadence such as corruption should not worsen. God Almighty has become just a symbol and does not enlighten the nation. There should be enlightenment by one's faith in being ashamed of doing immoral things.¹⁷⁸

Similarly, the F-PG speaker emphasized that the original Article 29(1) should be maintained. Article 29 was the agreement of the founding fathers and a national consensus. Changes to the consensus could bring severe societal upheaval. Further, religion or faith is an intact entity. The state should not intervene in religion, and vice-versa. The state cannot oblige people to follow a religion. However, regarding the term *kepercayaan* in Article 29(2), this can be changed. Here, *kepercayaan* should mean religious belief, not an independent set of beliefs. To equate religion with *kepercayaan*, which is the sets of traditional beliefs rooted in the pre-"modern religions" era, is sensi-

176 As underlined by Affandi (F-TNI/Polri). *Ibid.*, p. 692.

177 As stated by Gregorius Seto Harianto (F-PDKB). *Ibid.*, pp. 694-695.

178 As stated by Ahmad Zacky Siradj (F-UG). *Ibid.*, p. 696.

tive and unacceptable to the people. This is the stance of mainstream Islam in Indonesia, i.e., of NU and Muhammadiyah. Moreover, the formulation may stimulate the emerging of new religions or cults, such as Watch Tower, Children of God, or David Koresh in the United States. F-PG proposed adding a third section to Article 29, stating: "The State policy should not be in conflict with values, norms and religious laws". This new section intended to assure that the state will not intervene and contradict the values, norms, and laws of religions. Muhammadiyah argued that the additional section does not need to be included in the Constitution, it being sufficiently guaranteed by the law. *Dewan Dakwah* (The Islamic Missionary Council) and *Majelis Ulama Indonesia* (Council of Indonesia's Ulema) argued that it should be regulated in the Constitution.¹⁷⁹

F-PDIP invited others to discuss the topic from a historical perspective. One of the crucial topics that threatened and disturbed the declaration of independence regarded the formulation of religion (see II.3). There was deliberation to seek a common platform where a peaceful and tranquil life of the heterogeneous nation could be built. Considering all aspirations surrounding the proclamation of independence, the founding fathers produced Article 29. The formulation was the fruit of a difficult process under hard circumstances that had enabled the birth of a new nation. The formulation had been tested during half a century, providing space and tolerance for everyone to worship peacefully. As a Muslim, the F-PDIP speaker continued, under this formulation people can worship as perfectly as the Prophet did. We can also live life as set by the Prophet. Thus, the original Article 29 should be maintained.¹⁸⁰

Another F-PDIP member reiterated that the original formulation could unite heterogeneous groups and communities. It should be understood in its *historische bepaaldheid* (historical determination). It is not only the legal logic, but also the *geistlicher Hintergrund* (the spiritual background) and the *historische wording van het recht* (historical development of the law).¹⁸¹

A F-PPP member explained why F-PPP had proposed changes to Article 29 (see VI.2.3.9 and VII.3.12). First, *kepercayaan* (belief) is different and separate from religion. Moreover, *kepercayaan* had been stipulated in Article 28 on human rights. Supposedly, Article 29 should talk only about religion and nothing more. Therefore, anything about *kepercayaan* should be removed from Article 29. Article 29(1) is about the relationship between religion and the state, which are both distinguishable and inseparable. The state has no obligation to advance religions. However, the state is obliged to develop the "people of religions". Thereby, the state's objective is to realize the people's welfare, both physically and spiritually. In that regard, the state can control the manifestation of religious teachings by the society it helps shape. Religious teachings are about the relationship between people and

179 As stated by Amidhan (F-PG). *Ibid.*, pp. 697-699.

180 As stated by Soewarno (F-PDIP). *Ibid.*, p. 700.

181 As conveyed by Sutjipno (F-PDIP). *Ibid.*, pp. 702-703.

God, or *mandho*, and about the relationship between people, other creatures and nature. Similarly, through the ten commandments, the state can control people so that God's instruction will not be breached. Thus, a state based on One Almighty God should be obliged to implement Islamic Sharia to its followers, to prevent moral decadence and the decline of humanity. In terms of history, many mysteries surround the change, which occurred at the last moment (see II.3). Furthermore, the proposal should be addressed proportionately, not by presuming that it was a factor of disintegration and countered with the threat of secession. This proposal should be seen similarly to the MPR's composition or the second presidential election round. The MPR will see which alternatives receive a majority support, in which case, everyone should be subject to the democratic process.¹⁸²

During the meeting on the morning of 21 March 2002, a F-KB member underlined that every religion teaches and has an interest in taking care of its believers and its advancement. How it is manifested depends on how the religion has developed. Historically, the advancement of Islam to the North and South of the Arabian Peninsula resulted in different characteristics. In the North, it has a strong formal-structural and power-based approach, as manifested by the section stating: "*umirtu an uqotilannas*, I am instructed to fight others until they confess *syahadat*." To the South, the Prophet clearly told Muaz, disciples of the Prophet, that "you will come to varying communities, then educate." This instruction to educate is a cultural and substantive approach. Both approaches will never cease since both have a basic foundation. In Indonesia, both the formal-structural and cultural-substantive approach developed and entered the political realm. Regarding the formulation of Article 29, whether it was a substantial or situational agreement among the founding fathers, it was situational and developing thereafter. Therefore, the amendment depends on agreement and need. F-KB expected an amendment to answer the same question, whether it is substantial or situational, stated the member.¹⁸³

F-PDU argued that by recognizing that the *Piagam Jakarta* (Jakarta Charter) animates the 1945 Constitution, several laws regarding Islamic interests are then made, such as the laws on pilgrimage, *zakat* (tithe), marriage, the Islamic court, and the compilation of Islamic laws.¹⁸⁴ Therefore, from the beginning, F-PDU did not want any changes to Article 29(1). Moreover, the Nahdlatul Ulama national conference (*muktamar*) confirmed in 1984 that *Pancasila* is final. Therefore, as a Nahdlatul Ulama member, the speaker

182 As conveyed by Lukman Hakim Saifuddin (F-PPP). *Ibid.*, pp. 704-706.

183 As stated by Yusuf Muhammad (F-KB). *Ibid.*, p. 710. *Syahadat* is the confession of faith in Islam.

184 The Presidential Decree of 5 July 1959 which re-enacted the 1945 Constitution, in its consideration stated, among other things, that the Jakarta Charter animates the 1945 Constitution. At the beginning of the amendment process, the factions in the MPR agreed that the 1945 Constitution to be amended was the 1945 Constitution which was re-enacted through the presidential decree of 5 July 1959. See V.2.1.

should conform with the confirmation.¹⁸⁵ Regarding the first principle of Pancasila, the existence of God is asserted as *Yang Maha Esa* (The One and Only God), which is not present in the Jakarta Charter.¹⁸⁶ Hence, the founding fathers' agreement is not situational, but rather substantial, since the first principle's new formulation affirms the One and Only God which is *tauhid*, the acknowledgement of the One and Only God (*qul huwallahu ahad*), and the essence of the confession. Therefore, without changes, the original Article 29(1) is sufficient. However, F-PDU would accept if the formulation were expanded so that all religions should be obliged to implement their respective religion's teachings. Further, F-PDU agreed to remove the term *kepercayaan* from Article 29(2).¹⁸⁷

Likewise, F-Reformasi emphasized that there should be a statement in the Constitution to remind all people that implementing religion's teachings is an obligation. Regarding the religious courts, they should not be considered discriminatory. Such courts respond to people's needs regarding implementing Islamic teachings on civil matters, such as *nikah* (marriage), *talak* (divorce), *rujuk* (reconciliation), and *wasiat* (wills). No recognized religious teachings contradict state constitutional practices.¹⁸⁸ Regarding *kepercayaan*, F-Reformasi argued that it has been stipulated in Article 28 on human rights. Article 29(2) should be interpreted as the *kepercayaan* (faith) in religious teachings.

Anticipating the impact of this sensitivity issue, the Chairman of PAH I reminded members of the importance of maintaining a comfortable atmosphere of togetherness, *bhinneka tunggal ika*, different but still one. Some of us are large, some are small, some are on the yonder island, some are on this island, but we are all in a very comfortable shared living-space. In connection with that, the chairman emphasized, everyone has the right to freedom to believe in *kepercayaan* (beliefs), to express thoughts and attitudes according to his conscience. These are the very fundamental things when we talk about Article 29.¹⁸⁹

At that meeting's end on 21 March 2002, F-PBB proposed that the conclusion on Article 29 could be made in a PAH I plenary meeting. PAH I did not need to form a small team to resume the discussion.¹⁹⁰ The PAH I chairman then decided to convene an informal consultation meeting with the faction leaders. The meeting agreed to form a formulation team to complete all pending materials, including discussions on Article 29.¹⁹¹

185 As stated by Asnawi Latief (F-PDU). Ibid.

186 The first principle in the Piagam Jakarta (Jakarta Charter) is "the belief in God, with the obligation to implement Islamic Sharia to its followers." The first principle in *Pancasila* is "the belief in One and only God."

187 Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Satu, Edisi Revisi, Sekretariat Jenderal, 2010, pp. 710-711.

188 As stated by Patrialis Akbar (F-Reformasi). Ibid., pp. 713-714.

189 Ibid, p. 715-716.

190 As argued by Hamdan Zoelva (F-PBB). Ibid., p. 716

191 Ibid, p. 727.

VIII.2.3.4 Further Meetings: Disagreements Persist

As scheduled, a formulation team was formed, and the topic was resumed in a team meeting on 4 April 2002. F-KB offered a new formulation, namely “the State upholds ethical values and human morality taught by every religion”, as the middle way.¹⁹² However, the meeting failed to choose from the various alternatives previously proposed. Thus, the PAH I chairman postponed the discussion until the synchronization stage in June 2002.¹⁹³

Then, in an assessment forum in Pontianak, West Kalimantan, on 21 May 2002, responding to the draft amendment, a participant argued that the term *kepercayaan* (belief) should be removed because it caused obscurity. By contrast, another participant argued that the original Article 29 should be maintained, but it would be acceptable if the changes obliged all people to implement their respective religion’s teachings. Further, the term *kepercayaan* should be removed and replaced with the term *keyakinan agama* (religious convictions). Furthermore, to ward off communism and atheism, the state should protect people from teachings that are contrary to the Belief in God Almighty.¹⁹⁴ However, a SMP I (Junior High School) Pontianak participant asserted that to believe in a religion is a fundamental human right. Therefore, it is contradictory for the state to oblige people to exercise their belief. If it was an obligation, we would have to report neighbors to the police if they did not practice their religion.¹⁹⁵

In the same vein, a Law Faculty participant from the University of Tanjungpura reminded the audience that in the articles on human rights, the Constitution includes the freedom of conscience. It is a reality that there are people who believe in God and do not embrace a specific religion. Thus, removing the word *kepercayaan* from Article 29(1) would cause the Constitution to contain two contradictory mindsets.¹⁹⁶

VIII.2.3.5 Insights from Resource Persons: Djalal and Soemantri

To gain more insights to the matter, on 27 May 2002, PAH I invited Hasyim Djalal and Sri Soemantri as resource persons. Both were former PAH I Team of Experts members.¹⁹⁷

192 As proposed by Yusuf Muhammad (F-KB). Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Dua, Edisi Revisi, Sekretariat Jenderal, 2010, p. 233.

193 *Ibid.*, p. 240.

194 As expressed by Firdaus Mian, a participant from KNPI (*Komite Nasional Pemuda Indonesia* – National Committee of Indonesian Youth) and Candra Hasan from the Muhammadiyah’s leadership in West Kalimantan. *Ibid.*, p. 712.

195 As stated by Tanrizal from SMP I (Junior High School) Pontianak. *Ibid.*, p. 728.

196 As stated by Ibrahim Sago from the Law Faculty, University of Tanjungpura. *Ibid.*, p. 730.

197 Both Hasyim Djalal and Sri Soemantri are experts in law and were members of Team of Experts. See VII.2.1.

Hasyim Djalal argued that changes to Article 29 would have complicated consequences. Obliging people to carry out their religion would require law enforcement, in this case undertaken by the police. It would be unrealistic to educate hundreds of thousands of police officers to master every religious teaching. Further, there was a problem with determining who had the authority to interpret religious norms. Differences in interpretation would inevitably lead to conflicts within the religion. Stability will be more at risk if norms must be interpreted by the government since religious followers may challenge the government. In that situation, vigilante groups may emerge, as was happening in Jakarta, to implement the obligations.¹⁹⁸ Sri Soemantri endorsed Djalal's opinion regarding changing Article 29.¹⁹⁹

In response, F-PPP argued that implementing the obligation should not be a problem, as long as the related instrumental legislation is made through a democratic mechanism.²⁰⁰ F-Reformasi added that the term '*kewajiban*' (obligation) in that article does not mean '*mewajibkan*' (to oblige). It is inherent, so it does not require state intervention.²⁰¹

The discussions regarding Article 29 were resumed in the PAH I meeting on 13 June 2002. The meeting chair recalled the alternatives recorded in previous meetings.²⁰² An F-PPP member stated that the proposal to insert the *tujuh kata* was not an attempt to adopt the scattered remnants of the *Piagam Jakarta*. Instead, the psychological factor of 'the seven words' was necessary to bridge the psychological barriers within society.²⁰³

A F-UD member asserted that the original Article 29 reflected the people's will to live harmoniously in a unitary Republic of Indonesia. Therefore, it must be maintained, so that the change does not cause the state to be broken.²⁰⁴ Likewise, F-PG reiterated that Article 29(1) should be maintained. Only the term *kepercayaan* (belief) in Article 29(2) should be clarified to mean a religious belief. Additionally, it was no problem if the limitation that "the state should not contradict the values, norms, and religious laws" were not accepted.²⁰⁵

On the other hand, the F-TNI/Polri speaker emphasized that the formulation in the original Article 29 had been moulded comprehensively and brilliantly by the founding fathers in the spirit of togetherness. It can embrace the nation's heterogeneity, so there is no differentiation and discrimination. From a transcendental perspective, this article is not contrary

198 Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Satu, Edisi Revisi, Sekretariat Jenderal, 2010, p. 754.

199 *Ibid.*, p. 758.

200 As argued by Lukman Hakim Saifuddin (F-PPP). *Ibid.*, p. 769.

201 As argued by Patrialis Akbar (F-Reformasi). *Ibid.*, p. 777.

202 The meeting was chaired by Harun Kamil (F-UG), the vice PAH I chairman.

203 As stated by Ali Hardi Kiaidemak (F-PPP). Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Tiga, Edisi Revisi, Sekretariat Jenderal, 2010, p. 168.

204 As stated by Hatta Mustafa (F-UD). *Ibid.*, p. 170.

205 As expressed by Amidhan (F-PG). *Ibid.*, p. 171.

to religious norms. From a horizontal perspective, it can foster harmony. Therefore, Article 29 does not need to change and there should be no additional section.²⁰⁶

F-PDIP also reminded the committee of the circumstances surrounding the ratification of the original Article 29 on 18 August 1945. This nation only had the fighting spirit and the text of the proclamation of independence. All others were under the rule of the Japanese. At that critical moment, the agreement to approve the formulation of Article 29 must have come from a truly holy and pure conscience.²⁰⁷

Then, F-KB proposed modifying Article 29(1) as follows: “The state is based on the belief in the One and Only God with a sincerity to implement the teachings of each religion for its adherents.” The term “obligation” was replaced by “sincerity” (*kesungguhan*). For Article 29(2), F-KB suggested omitting the word *kepercayaan*.²⁰⁸ Yet, another F-KB member asserted that if no agreement would be achieved, F-KB preferred to maintain the original Article 29(1).²⁰⁹

Regarding the proposal, a F-UG member commented that the term “obligation” requires a law to enforce the stipulation, while the term “sincerity” highlights the moral side. Further, the proposal could become the starting point for further development.²¹⁰ Another F-UG member stated that it seemed the committee only talked about words, not about meaning. They questioned what would happen to the state of Indonesia, especially for Muslims, if one of those alternatives was chosen.²¹¹

In response, the PAH I chairman emphasized that, although the debate was ostensibly about words, on the dots and the commas, it manifested philosophical and conceptual arguments. If not by ratio, the underlying concepts could be understood by intuition, as everyone involved was a longstanding politician. If necessary, one could elaborate one’s respective arguments. However, considering that the discussion had lasted quite some time, the focus should remain on the formulation and the arrangement of the words.²¹²

However, the debate continued without the positions of the factions changing, let alone agreeing. Finally, the chairman concluded that the alternatives remained as they were, and the ideas presented in the discussion would be noted for further discussion.²¹³

206 As stated by Kohirin Suganda (F-TNI/Polri). *Ibid.*, p. 172.

207 As stated by Soewarno (F-PDIP). *Ibid.*, p. 177.

208 As proposed by Ida Fauziah (F-KB). *Ibid.*, p. 202.

209 As stated by Ali Masykur Musa (F-KB). *Ibid.*, p. 204.

210 As stated by Harun Kamil (F-UG). *Ibid.*, p. 205.

211 As stated by Soedijarto (F-UG). *Ibid.*, p. 206.

212 *Ibid.*

213 *Ibid.*, p. 219.

VIII.2.3.6 Synchronization Meeting: Attempting to Overcome Differences

In a meeting on 28 June 2002, PAH I convened a synchronization meeting to overcome the differences regarding Article 29. At the meeting's outset, the meeting chair conveyed certain notes from the previous meetings.²¹⁴ The factions immediately reiterated their respective previous stances. F-PG appealed for consideration of proposing changes to the Article. Article 29 contained sensitive issues, whose changes would render misunderstandings among the people if not handled carefully. In proposing changes, one should consider the *manfaat* (benefit) that might be acquired relative to the *mudharat* (disadvantage) that might occur because of the issue's sensitivity. Taking the *manfaat* should be put aside if by putting it aside, *mudharat* could then be prevented.²¹⁵

In response, a F-PDIP member cited Article 27 section (1) of the 1945 Constitution: "All citizens shall be equal before the law and the government and shall be required to respect the law and the government without exceptions". Hence, the gravels that could lead to the nation's disintegration should be removed. Mohammad Hatta, whose Islamic faith and intellectuality no one doubted, was the key figure who had managed previously to overcome this crisis (see II.3). Further, in South Sulawesi and Nanggroe Aceh, there were attempts to impose Islamic law, which would cause trouble that would spread throughout the body of the nation.²¹⁶

In response, a F-PBB speaker hoped the state's seeming volatility did not stem from the proposed changes. "Personally, there is no doubt about Mohammad Hatta, but Hatta's comprehension about Islam does not represent my view about Islam." There was no intention to disturb other people. But both mosques and churches were being burnt. If a Muslim obeys Islam's teachings, they will not burn churches. If a Muslim understands Islamic Sharia, even in war, they will not burn a church. Further, F-PBB had agreed to maintain Article 29(1) and to insert the *tujuh kata* into Article 29(2). However, he continued, if we are suspicious from the beginning, it is impossible for us to solve the problem wisely. Furthermore, he stated that they had no objection if this matter would be decided by voting in the plenary session. He added that if so, F-PBB would return to its original proposal.²¹⁷

A F-PDU member reiterated that from the beginning, F-PDU wanted to maintain the original manuscripts, although the aspirations to insert the obligation to implement Islamic Sharia were legitimate. However, inserting it into Article 29(1), which is about the state's foundation, would mean

214 The meeting was chaired by Harun Kamil (F-UG), the vice PAH I chairman.

215 As conveyed by Slamet Effendy Yusuf (F-PG). Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Tiga, Edisi Revisi, Sekretariat Jenderal, 2010, p. 579.

216 As conveyed by Frans Matrutty (F-PDIP). *Ibid.*, p. 582.

217 As conveyed by Hamdan Zoelva (F-PBB). *Ibid.*, p. 584.

changing the state's foundation. Factions may consider obliging Muslims to implement Islamic Sharia in another section.²¹⁸

Then, a F-PDIP member noted that the MPR had committed to maintaining the Preamble and to regard it as a reference. Indonesia is neither a theocratic state nor a secular state. The state is based on *Pancasila*, which provides a condition for every religion to be free without state interference. That is a precious and particular value of Indonesia that should be maintained and developed.²¹⁹

A F-KB member emphasized that in formulating the sections, one should maintain the harmony of the state's and religions' relationship. The best choice is to put the position of the state and religions as mutually supportive and strengthening. In that regard, Article 29(1) could be maintained, and Article 29(2) can be amended to emphasize the harmonious relationship between the state and the religions. That relationship is not institutional, but rather cultural, and provides religions with the opportunity to develop their respective teachings, along with the nation's life into the future. In that connection, the state's guarantee is not institutional. In terms of *pengayoman* (protection), it is to encourage the people of Islam, Christianity, and others to have an awareness and increase their role in the state and the nation.²²⁰

The F-Reformasi speaker reiterated supporting the third alternative proposal of Article 29(1): "the State is based on the One and only God Almighty with the obligation to carry out their respective religious teachings."²²¹ In response, F-TNI/Polri recalled the magnitude of the possible risks. The regional autonomy problem alone has shaken the country hard enough, even more so if coupled with religious issues. Therefore, the original text of Article 29(1) and (2) still needs to be maintained.²²²

The synchronization meeting chair offered to conclude the proposals as Article 29(1), "the State shall be based upon the belief in the One and Only God," and as Article 29(2), "the State guarantees all persons the freedom to embrace and implement their respective religion's obligations and to worship according to their religion."²²³

In response, F-Reformasi and F-PPP withdrew their respective proposals and endorsed the formulation.²²⁴ However, the F-TNI/Polri speaker insisted that, even though the existence of *kepercayaan* (set of beliefs) was accommodated in Article 28 on Human Rights, from a historical perspec-

218 As asserted by Asnawi Latief (F-PDU). Ibid., p. 585. Article 29 paragraph (1) states that, the State shall be based upon the belief in the One and only God.

219 As reminded by Katin Subiyantoro (F-PDIP). Ibid., p. 586.

220 As stated by Yusuf Muhammad (F-KB). Ibid., p. 587.

221 As conveyed by A.M. Luthfi (F-Reformasi). Ibid., p. 589.

222 As asserted by Kohirin Suganda (F-TNI/Polri). Ibid., p. 590.

223 The meeting was presided by Harun Kamil (F-UG), the vice PAH I chairman. Ibid., p. 594.

224 As stated by A.M. Luthfi (F-Reformasi) and Ali Hardi Kiaidemak (F-PPP). Ibid., p. 595. Paragraph (2) was proposed by Yusuf Muhammad (F-KB).

tive, it was necessary to accommodate *kepercayaan* in Article 29(2). The linkage of Article 29(1) and Article 29(2) had become the recorder of harmony among religious people and adherents to beliefs. Therefore, the original Article 29 should be retained.²²⁵ Eventually the synchronization meeting did not manage to conclude the debates regarding Article 29.

VIII.2.3.7 Further Attempts at Agreement: PAH I Meetings

In a PAH I meeting on 19 July 2002, to finalize the fourth amendment draft, factions once again reiterated their respective stances.²²⁶ A F-PDU speaker stated that the proponents of the *tujuh kata* retained their position.²²⁷ In the ensuing PAH I meeting on 25 July 2002, factions conveyed their respective opinions regarding the fourth amendment draft, including on Article 29. Again, they reiterated their initial stances, as represented by the following statements.

F-PDIP viewed the original Article 29 as a proper sociological portrait of Indonesia's diverse community, proven as a pillar of national unity that should be maintained.²²⁸ A F-PPP member reiterated that the Islamic Sharia does not only regulate the vertical relationship between people and God. Islamic Sharia is more concerned with the horizontal relationships between humans.²²⁹ A F-UG member stated that most of its members wanted to maintain the original Article 29(1) and accept alternative 2 of Article 29(2).²³⁰ F-TNI/Polri reaffirmed that, since the original Article 29 had become a national consensus and changes risked disturbing religious harmony, the unity of the nation, and even break down the territorial integrity of the unitary state, they wanted to maintain the original Article 29.²³¹

In that regard, F-PBB emphasized that there were no concerns while the issue was discussed in the corridors of democracy, respecting the law and the agreed decision-making mechanism. As the 1945 Constitution was reinstated by the 5 July 1959 Presidential Decree, framing the Jakarta Charter as an inseparable part of the 1945 Constitution, changes to Article 29 are the logical consequence.²³²

225 As asserted by Kohirin Suganda (F-TNI/Polri). *Ibid.*, p. 599.

226 Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Empat, Edisi Revisi, Sekretariat Jenderal, 2010, pp. 127- 135. In the meantime, President Abdurrahman Wahid was dismissed, and Vice President Megawati Soekarnoputri was inaugurated as the President. As the new Vice President, Soekarnoputri proposed Hamzah Haz, the PPP chairman (*Partai Persatuan Pembangunan* – United Development Party), an Islamic party, which was then endorsed by the MPR.

227 As stated by Asnawi Latief (F-PDU). *Ibid.*, p. 273.

228 As stated by I Dewa Gede Palguna (F-PDIP). *Ibid.*, p. 360.

229 As stated by Abdul Azzis Imran Pattisahusiwa (F-PPP). *Ibid.*, p. 368.

230 As conveyed by Soedijarto (F-UG). *Ibid.*, p. 383.

231 As confirmed by Kohirin Suganda (F-TNI/Polri). *Ibid.*

232 As stated by Hamdan Zoelva (F-PBB). *Ibid.*, p. 389.

VIII.2.3.8 PAH I Reporting Alternatives to the MPR Working Body

On 25 July 2002, PAH I reported the following versions of Article 29 to the MPR Working Body plenary meeting:

- Article 29(1):
Alternative 1:
 The State is based on belief in the One and Only God (Ketuhanan Yang Maha Esa) (original).
Alternative 2:
 The State is based on belief in the One and Only God (Ketuhanan Yang Maha Esa) with the obligation to implement Islamic Sharia for its followers.
Alternative 3:
 The State is based on belief in the One and Only God (Ketuhanan Yang Maha Esa) with the obligation to implement the teachings of the religions by its respective followers.
- Article 29(2):
Alternative 1:
 The State guarantees all persons the freedom of worship, each according to their own religion or belief (original).
Alternative 2:

The State guarantees all persons the freedom of religious conviction and to worship in accordance with their religion.

VIII.2.3.9 Further Discussions: Commission A Meetings

On 4 August 2002, in his introductory remarks to the Commission A plenary meeting, a F-PG speaker reiterated that Article 29(1) should be maintained and the term *kepercayaan* (belief) in Article 29(2) should be understood as belief of the religion.²³³

On 5 August 2002, F-KB said it accepted the original Article 29 as a universal formulation that acknowledges the One and Only God (*tauhid*), which has proven to be the adhesive of this diverse society.²³⁴ F-TNI/Polri and F-UD affirmed that Article 29 should be maintained as it is.²³⁵ By contrast, the F-Reformasi speaker reiterated that Article 29(1) should become ‘The State is based on belief in the One and Only God (Ketuhanan Yang Maha Esa) with the obligation to implement the teachings of the religions by its respective followers’, with the word *kepercayaan* in Article 29(2) referring to religion.²³⁶

233 As stated by Andi Mattalatta (F-PG). Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Lima, Edisi Revisi, Sekretariat Jenderal, 2010, p. 40.

234 As affirmed by Ali Masykur Musa (F-KB). *Ibid.*, p. 68.

235 As affirmed by R. Sulistyadi (F-TNI/Polri) and Retno Triani Djohan (F-UD). *Ibid.*, pp. 82, 83.

236 As stated by Patrialis Akbar (F-Reformasi). *Ibid.*, p. 71.

On 6 August 2002, a F-Reformasi member reminded those present that the original Article 29(1) is the middle way proposed by Ki Bagus Hadikusumo, the then Muhammadiyah chairman, which enabled the 1945 Constitution to be ratified on 18 August 1945. Although F-Reformasi is not opposed a priori to adding the 'seven words' (*tujuh kata*) to Article 29(1), implementing Islamic Sharia will be more appropriate through a legislative process, rather than a constitutional one.²³⁷ However, F-PPP asserted that they agreed with alternative 2, which states that 'The State is based on belief in the One and Only God (*Ketuhanan Yang Maha Esa*) with the obligation to implement Islamic Sharia for its followers.' The additional 'seven-words' are clearly only aimed at Muslims; therefore, other religious followers should not be afraid. There would be no coercion to embrace Islam.²³⁸

On the other hand, F-PG reiterated that the original Article 29(1) is a wisdom that had saved the newly born Republic of Indonesia. Therefore, the original article should be maintained. As for the term '*kepercayaan*' in Article 29(2), it should be understood as belief of the religions. *Kepercayaan* as a system of beliefs has been accommodated in the Chapter on Human Rights, Article 28E.²³⁹

A F-PDIP speaker noted that incorporating the obligation to implement Islamic Sharia in the Constitution would have broad implications. Islamic Sharia, relative to the concept of the state, is a vast subject with various interpretations that can lead to clashes. Therefore, Article 29 should not be changed.²⁴⁰ Another F-PDIP member argued that the original Article 29 is a noble agreement of the nation, which had been proven able to unite the diverse nation and maintain the unitary republic. Furthermore, the original Article 29 has guaranteed religious freedom for all Indonesians.²⁴¹ Another F-PDIP member, from Bali, reminded the commission that the discussions about Article 29 could not be regarded as merely intellectual discourses. Others may have different perceptions on this issue. Article 29 was a pillar of national unity for minorities. Each time it was disputed, there were disturbing psycho-politics, with rhetorical questions arising about where the minorities would go.²⁴²

F-TNI/Polri reiterated their wish to maintain the original Article 29 and warned that changes could become entry points of disharmony and

237 As stated by A.M. Fatwa (F-Reformasi). *Ibid.*, pp. 222, 223.

238 As asserted by Khodijah H.M. Saleh (F-PPP). *Ibid.*, p. 228.

239 As stated by Amidhan (F-PG). *Ibid.*, pp. 229, 230.

240 As stated by Zulvan Lindan (F-PDIP). *Ibid.*, p. 234.

241 As stated by Frans Matrutty (F-PDIP). *Ibid.*, p. 236.

242 As expressed by I Dewa Gede Palguna (F-PDIP). *Ibid.*, p. 238. I Dewa Gede Palguna is a Balinese, whereas most of the people embrace Hinduism (Hindu-Bali). Palguna was reminding the historical memories that exist within the community regarding the efforts of certain parties, such as the armed rebellion of DI/TII (Darul Islam/Tentara Islam Indonesia – House of Islam/Indonesian Islamic Army), where minority religions such as Hinduism, Christianity and others would experience discrimination and pressure.

instability.²⁴³ A F-UD speaker emphasized that Islamic Sharia has very great, noble, and broad meanings. It covers all Islamic teachings, be it *aqidah* (spiritual arrangement, *imaniah*), worship (ritual arrangement, *ubudiyah*), *muamalah* (social arrangement), or morals (moral arrangement). On that basis, a Muslim can certainly implement Sharia without it being sustained by the state in a formal constitution. Further, there is no obligation in the Qur'an to establish an Islamic state or to incorporate Islamic Sharia into the Constitution. The Qur'an includes the basic principles of social ethics, including the ethics of a nation and state life. Thus, Islamic teachings could be implemented in any space and time without being restricted by territorial demarcation or state borders.²⁴⁴

F-UG was split into two stances. One member affirmed that there was no coercion to become a Muslim. However, once a person becomes a Muslim, he or she is obliged to implement Islamic Sharia. Therefore, the state's involvement in this matter is not an intervention, but instead part of the state's responsibility to protect the basic rights of Muslim citizens. Hence, F-UG should accept adding 'the seven words' into Article 29(1) and the term *kepercayaan* should be omitted from Article 29(2).²⁴⁵ On the contrary, another F-UG member asserted that Article 29(1) should be maintained, but Article 29(2) should omit the word *kepercayaan*.²⁴⁶

F-PDKB and F-KKI confirmed their wish to maintain the original Article 29.²⁴⁷ Then, F-PDU, in contrast with their previous stance, stated that the *tujuh kata* should be added to Article 29(1). There were no concerns, as the implementing Hinduism law in Bali was not perceived as discriminatory by the followers of other religions. Further, F-PDU argued that the word *kepercayaan* should be omitted from Article 29(2).²⁴⁸ Regarding the alternatives, the F-PBB speaker confirmed that the *tujuh kata* should be added to Article 29(1) and the word *kepercayaan* should be omitted from Article 29(2). It is the state's, the DPR's, and the government's obligation to make legislation based on Islamic Sharia, which is valid for the followers of Islam. As for the followers of *aliran kepercayaan* (set of belief or cults), their right is guaranteed in Article 28E on Human Rights.²⁴⁹ On the other hand, F-KB confirmed maintaining the original Article 29, based on the messages of the ulema in the National Conference of Ulema of Nahdlatul Ulama.²⁵⁰

243 As emphasized by Abdul Rahman Gaffar (F-TNI/Polri). *Ibid.*, pp. 238, 239.

244 As expressed by Harifuddin Cawidu (F-UD). *Ibid.*, pp. 239 – 240.

245 As stated by Shidiq Aminullah (F-UG). *Ibid.*, p. 243. Later, A. Djoko Wiyono, F-UG member from KWI (*Konferensi Waligereja Indonesia* – Indonesian Bishop's Conference), elucidated that F-UG has 65 members, in which 20 members are elements of religious groups, i.e., 15 Muslims, 2 Protestants, 1 Hindu, 1 Buddhist, and 1 Catholic. See *Ibid.*, p. 258.

246 As stated by Sulasmi Bobon Tabroni (F-UG). *Ibid.*, p. 244.

247 As affirmed by Gregorius Seto Harianto (F-PDKB) and Tjetje Hidayat Padmadinata (F-KKI). *Ibid.*, pp. 246, 248.

248 As affirmed by Asnawi Latief (F-PDU). *Ibid.*, p. 247.

249 As confirmed by Hamdan Zoelva (F-PBB). *Ibid.*, p. 248.

250 As confirmed by Yusuf Muhammad (F-KB). *Ibid.*, p. 250.

Eventually, at the Commission A meeting's end, it was concluded that alternatives of the draft of Article 29 remained as before.²⁵¹

VIII.2.3.10 Suggested Compromise: Amending Article 31 and 29 Together

On 7 August 2002, in an ensuing informal Commission A consultation meeting, the Commission A chairman who presided the meeting concluded that he would allocate two further opportunities for the factions to discuss the unsettled topics, including Article 29.²⁵²

In that regard, a F-PDIP speaker admitted they needed more time because of different opinions within the faction.²⁵³ In response, a F-TNI/Polri speaker suggested that after the consultation meeting, a formulation team with a full mandate from the factions should be assigned to conclude the items. The formulation team's work would be final, so the plenary meeting would be only for ratification.²⁵⁴ F-UD endorsed F-TNI/Polri's suggestion and stated that if the deliberation could not solve the differences, voting at the Commission level should be allowed.²⁵⁵

In that regard, the Commission A chairman appealed against hastily voting on a decision. There were still opportunities for informal consultations, whilst the result of voting at this stage could be revoked in the plenary meeting.²⁵⁶ Eventually, the consultation meeting agreed to resume the discussion in the formulation team.²⁵⁷

Simultaneously, on 7 August 2002, an informal consultation meeting was held between the faction leaders from the MPR and Commission A. Arifin Panigoro, the F-PDIP Chairman in the MPR who chaired the meeting, said that the leaders of all MPR factions had met Vice President Hamzah Haz. Vice President Haz, who was also the Chairman of PPP, advised solving the issue regarding Article 29 elegantly and simultaneously with alternatives in Article 31 on education. The proposed Article 31 amendment could be accepted by all factions, and it was agreed that the original Article 29 be maintained as it is.²⁵⁸ Further, Panigoro disclosed that he had also met President Megawati Soekarnoputri, the PDI-P chairperson, who encouraged

251 The meeting was presided by Zain Bajeber (F-PPP), the Vice Commission A chairman. *Ibid.*, p. 256.

252 *Ibid.*, p. 376.

253 As conveyed by Zainal Arifin (F-PDIP). *Ibid.*, p. 379. At that time, in F-PDIP, contention regarding the existence of delegates of functional groups in the MPR and the demand to revive the MPR as the highest state institution was at its peak.

254 As stated by Slamet Supriyadi (F-TNI/Polri). *Ibid.*, p. 383.

255 As stated by Harun Kamil (F-UD). *Ibid.*, p. 385.

256 *Ibid.*, p. 390. As stated by Jakob Tobing, the Commission A chairman.

257 *Ibid.*, p. 392.

258 *Ibid.*, p. 399. The proposal for a third paragraph of Article 31 states that *'The government shall manage and organize one system of national education which shall enhance faith and piety and noble character in the frame of educating the life of the nation and shall be regulated by law(s).*

a similar solution.²⁵⁹ Accordingly, the F-TNI/Polri representative revealed that Vice President Hamzah Haz expected that the solutions to Article 29 and Article 31 were linked. The original Article 29 could be maintained as long as the new Article 31 would be adopted.²⁶⁰

In response, a F-PPP speaker confirmed that F-PPP was not unanimous and needed some time.²⁶¹ Likewise the F-PBB speaker, while admitting that the issue was quite difficult, confirmed it strove to unite its internal positions. For that purpose, F-PBB asked for time to resolve internal disagreements.²⁶² Accordingly, the F-PDU speaker disclosed that in a consultation with President Megawati Soekarnoputri, the President had also appealed against deciding by voting. Therefore, F-PDU urged that, if possible, Article 29 should not be solved by voting. They stated that, *Insyah Allah* (by God's will), they would do their best.²⁶³ Likewise, the rainbow faction F-UG speaker stated that with those signs from F-PPP, F-PBB, and F-PDU, F-UG would follow.²⁶⁴ F-PG proposed that the consultation should conclude that all factions agreed that they would not withdraw their proposal and maintain the original Article 29.²⁶⁵

However, a F-Reformasi member insisted that the third alternative should not just be eliminated. For F-Reformasi, the third alternative was considered a solution to the long and endless debate.²⁶⁶ To that end, another member asserted that the hotspot of the issue had been solved, therefore a different solution was no longer needed.²⁶⁷ However, factions agreed not to publicly disclose that Article 29 and Article 31 would be agreed on in one package.²⁶⁸

VIII.2.3.11 Avoiding Deciding by Voting

Subsequently, with that understanding in the background, the Commission A chairman reported the alternative amendments of Article 29 to the plenary of Commission A on 8 August 2002, along with other materials, including alternatives to Article 31.²⁶⁹ Regarding Article 29, the highest faction leaders were seeking the wisest solution for the unity of the nation and the country. The process was still ongoing, and since everyone was of good

259 Ibid.

260 As disclosed by Slamet Supriyadi (F-TNI/Polri). Ibid.

261 As stated by Ali Hardi Kiaidemak (F-PPP). Ibid.

262 As stated by Hamdan Zoelva (F-PBB). Ibid., p. 400.

263 As stated by Sayuti Rahawarin (F-PDU). Ibid.

264 As confirmed by Zacky Siradj (F-UG). Ibid., p. 401.

265 As conveyed by Fahmi Idris (F-PG). Ibid.

266 As stated by A.M. Fatwa (F-Reformasi). Ibid. The third alternative states that '*The State shall be based upon the belief in the One and only God with the obligation for the followers to implement their respective religious teachings.*'

267 As asserted by Fahmi Idris (F-PG). Ibid.

268 See Ibid., pp. 402-403.

269 Ibid., p. 529.

intentions and working in a close and friendly atmosphere, the best solution could be expected.²⁷⁰

Then, in a MPR plenary meeting on 9 August 2002, the chairman reported Commission A's work, including the complete alternatives of Article 29 and Article 31.²⁷¹

In the subsequent MPR plenary meeting, factions stated their respective final opinions. Despite the mutual understanding achieved in the previous informal consultation, factions still adhered to their initial positions. In that meeting, the F-PDU speaker asserted that the proposal and hope of the Islamic parties to ratify inserting the *tujuh kata* into the Constitution was valid and fair. It was so naïve that the aspiration of a "small tribe" reverberated in the MPR, allergic towards (or even rejecting) the aspiration of 88% of Indonesian people who are Muslim. The MPR should not be allergic to the word 'Islamic Sharia'. Islam is not what the Zionists campaign for, which continuously describes Islam as identical with terrorism, tragedy, suspicion, ignorance, and backwardness.²⁷²

Likewise, the F-PBB speaker stated that the proposal to add the *tujuh kata* into the Constitution was unproblematic, if it was pursued within the corridor of democracy, respected the law, and followed the agreed upon decision-making mechanism. The efforts were not intended to set aside pluralism from national life. It is not possible to enforce Islamic law on individuals without the state's involvement, and Islamic law cannot only be followed by the freedom to worship. Therefore, the enforcement of Islamic law should be stipulated at the constitutional level.²⁷³ Regarding the proposed changes to Article 29, a F-Reformasi member, in the continuation of the MPR plenary meeting on 10 August 2002, reiterated that the proposal was intended to implement the values of religions into daily life, which will encourage mutual respect among religious followers, which subsequently would prevent discrimination and disintegration.²⁷⁴

By contrast, F-UD emphasized that the founding fathers had a profound understanding of multiculturalism, as reflected in Article 29(1) and Article 29(2). Therefore, F-UD did not intend to disturb it.²⁷⁵ Likewise, F-KB confirmed the wish to maintain the original Article 29, convinced it had contributed to an atmosphere of togetherness, freshness, and peacefulness, since Islam exists in the world to bring happiness and peace. That is the meaning of *darussalam*, a country of peace.²⁷⁶

270 Ibid., 539. In a meeting with the Chairperson of PDI-P, Megawati Soekarnoputri on 1 August 2002, F-PDIP decided that, although there were fewer people in favor of revising Article 29, the decision should be taken by consensus considering the sensitivity of the matter and in order not to hurt anyone.

271 Ibid., p. 610. See VIII.2.5.

272 As expressed by Hartono Mardjono (F-PDU). Ibid., p. 640.

273 As stated by M.S. Kaban (F-PBB). Ibid., p. 648.

274 As stated by Irwan Prayitno (F-Reformasi). Ibid., p. 661.

275 As stated by M. Iskandar Mandji (F-UD). Ibid., p. 663.

276 As confirmed by Yusuf Muhammad (F-KB). Ibid., p. 665.

In response, F-PPP believed that by improving Article 29, the unity and the integrity of the nation would be more secure. F-PPP is convinced that the improvement of Article 29 is a sacred mission worth fighting for, but F-PPP would never think of conducting a political struggle beyond the democratic system's limits or beyond the corridor of the Constitution.²⁷⁷

F-PG asserted that the original Article 29 had guaranteed broad and deep comprehension, implementing religious teachings. Further, with the article, the development of religion is good and the harmony among religious followers is safeguarded. Therefore, F-PG appealed to all factions to maintain the original Article 29.²⁷⁸ Likewise, F-PDIP confirmed their wish to maintain the original Article 29. F-PDIP appealed to factions to take the important decision together, as a large, united family that puts wisdom first, as the founding fathers did.²⁷⁹

VIII.2.3.12 *Compromising to Retain the Original Article 29*

In the second phase of the plenary meeting on 10 August 2002, F-UG reminded the plenary that alternatives still circulated of the two "sacred" articles, namely Article 2(1) on the MPR's composition and Article 29. F-UG urged the leaders of the political parties and factions to deliberate to achieve consensus.²⁸⁰ Likewise, a F-PDIP member urged the leaders to do their utmost to reach a unanimous decision and to avoid decisions that could further damage wounded hearts. The member proposed adjourning the meeting.²⁸¹

The MPR Speaker who chaired the meeting obliged and adjourned the meeting.²⁸² After the meeting was resumed, the F-PPP speaker conveyed the party's final remarks and asserted that PPP, from the beginning until now, supported Islamic Sharia and would always strive democratically through constituted institutions, based on politics, devotion, and *amar ma'ruf nahi mungkar* (commanding the good and forbidding the evil) to reinstate the obligation to implement Islamic Sharia for its followers in the 1945 Constitution. Further, F-PPP trusted the MPR completely to take the best decision following the dynamics of the current political conditions. F-PPP apologized to all Muslims in Indonesia because the struggle to meet their aspirations and the demands of their conscience was still hampered.²⁸³

Similarly, F-PBB was determined to choose the option of amending Article 29(1) to "The State is based on One and Only God with the obligation to implement Islamic Sharia to its followers." It did not have the slight-

277 As stated by Chozin Chumaidy (F-PPP). *Ibid.*, p. 669.

278 As stated by Fahmi Idris (F-PG). *Ibid.*, p. 677.

279 As confirmed by Arifin Panigoro, the F-PDIP Chairman. *Ibid.*, p. 681.

280 As stated by Sutjipto (F-UG). *Ibid.*, p. 686. See VIII.2.1.

281 As expressed by Jakob Tobing (F-PDIP). *Ibid.* p. 687.

282 *Ibid.*, p. 688.

283 As conveyed by Syahfriansyah (F-PPP). *Ibid.*, p. 690.

est intention to recede from that conviction, waiting until the time came to continue the journey, since nothing is impossible with God's will. Therefore, if the MPR rejected the proposal and reinstated the original Article 29, F-PBB asked that it be recorded that F-PBB did not participate in making that decision.²⁸⁴

The F-PDU speaker submitted a written position statement that although the proposal to insert the *tujuh kata* into Article 29 was rejected, the position of the Jakarta Charter was still animating and being a continuum of the Constitution, philosophically, judicially, and sociologically. F-UD stated that it would allow the MPR to take a decision.²⁸⁵

A F-UG member asked to be recorded as not joining the agreement. However, he was aware that if the deliberations had concluded, as a citizen, he should follow the decision.²⁸⁶

F-Reformasi would accept the MPR's decision to maintain the original Article 29, as both a political and theological statement.²⁸⁷ However, a F-Reformasi member from Partai Keadilan (the Justice Party) asserted that while 7 F-Reformasi members from the Justice Party did not agree with maintaining the original Article 29, they would not hamper the decision. Therefore, he would not participate in the decision-making.²⁸⁸ Another F-Reformasi member also affirmed that she would not participate in the decision-making.²⁸⁹

Ultimately, the MPR plenary meeting on 10 August 2002 decided not to amend Article 29, with a record that several members did not agree with the decision, although they attended the plenary and allowed the MPR to take the decision.²⁹⁰ Accordingly, the MPR plenary also decided on amending Article 31 on Education as agreed (see VIII.2.5).

Thus, when the fourth amendment was ratified in the MPR plenary meeting, late in the evening of 10 August 2002, confirming the original Article 29 would be unchanged, the MPR Speaker, Amien Rais, expressed appreciation. Gratitude was especially expressed to the factions who were proponents of 'the seven words,' as they had shown great commitment in fighting for the aspirations of their constituents. They did not vote against Article 29(1) and Article 29(2) so that an agreement could be reached. The Speaker stated that the moment was very touching.²⁹¹

284 As conveyed by Nadjih Ahjad (F-PBB). *Ibid.*, p. 691.

285 As stated by Asnawi Latief (F-PDU). *Ibid.*, p. 692.

286 As stated by Shiddiq Aminullah (F-UG). *Ibid.*, p. 693.

287 As stated by A.M. Fatwa (F-Reformasi). *Ibid.*

288 As asserted by Muttammimul'Ula (F-Reformasi). *Ibid.*, pp. 694, 695. F-Reformasi comprises of members from PAN and PK. The 7 members from PK are Muttammimul'Ula, Mashadi, Syamsul Balda, Irwan Prayitno, Zirlyrosa Jamil, Abdul Roqib, and Tb. Soemandjaja.

289 As expressed by Nurdiati Akma (F-Reformasi). *Ibid.*

290 *Ibid.*, 696.

291 *Ibid.*, pp. 758, 759.

Proponents of the Article 29 amendment recognized that they were outnumbered and would surely lose if the decision was made by vote. That would put them in an inflexible posture in front of other factions, while they were still trying to advance ideas in other areas, such as in education and economics. By allowing decisions to be made by deliberation and consensus, while they did not take a stand, they could hope to maintain flexibility in discussing other topics. On the other hand, this attitude was accompanied by a statement that they would continue to fight for the inclusion of ‘the seven words’ in Article 29 in a democratic and constitutional manner. This allowed them to maintain support from their traditional followers.

On the other hand, those who wanted to maintain Article 29 did not want a decision by voting because it could reduce the sacred historical value of the article in the memory of the nation’s history, while also possibly increasing the militancy of supporters who wanted to enforce Islamic law in Indonesia.

VIII.2.4 Discussing Article 31 on Education

This section details the debates on Article 31 on Education, including concerns on setting the education budget in the constitution, whether ‘education’ should refer to morality, and whether state-funded ‘education’ should extend to the family and private sectors. It concludes with the ratification of the new Article 31, which guarantees every citizen the right to education, obliges citizens to enrol in basic education, and obliges the government to fund this education.

In the MPR Working Body plenary meeting on 10 January 2002, F-PDIP’s preliminary view was that it was determined to finalize the pending issues, such as Article 31 on Education, as one of the pillars of Indonesia as a nation state.²⁹² F-UD asserted that the government should manage and prioritize education by setting aside a large budget at the national and regional levels. To confirm that education is a basic right and that every citizen is required to get primary education requires a fundamental constitutional change.²⁹³

In the next PAH I meeting on 28 January 2002, a F-PG member proposed that the Constitution should stipulate that 20% of the national budget shall go to education.²⁹⁴ An F-TNI/Polri member stated that efforts to develop the nation’s intellectual life, as addressed in the Preamble, should be elaborated in the related articles. Therefore, education requires prioritization in the state budget. Further, F-TNI/Polri argued that the participation of

292 As conveyed by Zainal Arifin (F-PDIP). See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Satu, Edisi Revisi, Sekretariat Jenderal, 2010, p. 51.

293 As conveyed by Hatta Mustafa (F-UD). *Ibid.*, p. 65.

294 As expressed by Agun Gunandjar (F-PG). *Ibid.*, p. 136.

other economic actors in developing education needed to be considered.²⁹⁵ Then, a F-UG member argued that education and culture should remain in one chapter, to confirm that education and culture are the instruments to achieve a nation state that is intellectually developed and civilized. It is the provision that serves as the basis for implementing a national education system to achieve national development, an intelligent nation, and an advanced national culture.²⁹⁶

VIII.2.4.1 Minister of Finance and Including Flexibility

In a hearing on 25 February 2002, PAH I invited the Minister of Finance, the Governor of the Central Bank, the Coordinating Minister for Small and Medium Enterprises, and the staff of the Coordinating Minister of Economy and Finance. Responding to the PAH I draft that stipulated a 20% budget allocation to education, Minister of Finance Boediono argued that the constitution should not include figures, because it would limit flexibility.²⁹⁷

In the subsequent hearing on 26 February 2002, Minister of Education Abdul Malik Fadjar stated that Article 31(1) and Article 31(2), as the foundation of ideals, political will, and policy in education, although brief, were solid, concise, and clear. The Minister argued that the objective of national education should not be too detailed because the objective is always dynamic and, therefore, legal regulation is sufficient. The Minister promised to contemplate the proposed amendments to Articles 31 and 32. Amendments to the articles would continue to rely on the ideals set forth in the Preamble, which were not to be modified.²⁹⁸

VIII.2.4.2 Insight on Education from Public Hearings

In a subsequent public hearing on 4 March 2002, Sapardi Djoko Darmono, an intellectual and humanist, stated that the government was obliged to organize and manage education. However, uniformity in higher education should be avoided. The uniqueness of an education institution should be recognized.²⁹⁹ Frans Magnis Suseno, a scholar and humanist, endorsed that schooling is compulsory. There is no more valuable investment for the future than a high-quality basic education, affirmed the scholar.³⁰⁰

On the other hand, in a public hearing on 5 March 2002, a Christian University of Indonesia delegation suggested omitting the proposed Article 31(5) (see VII.3.13) and regulating this matter through lower legislation.³⁰¹

295 As stated by I Ketut Astawa (F-TNI/Polri). *Ibid.*, p. 139.

296 As stated by Soedijarto (F-UG). *Ibid.*, p. 145.

297 *Ibid.*, p. 229.

298 *Ibid.*, pp. 277 – 278.

299 *Ibid.*, p. 444.

300 *Ibid.*, p. 446.

301 As stated by Anton Reinhart from Christian University of Indonesia (UKI). *Ibid.*, p. 464.

A University Bung Karno delegation stated that the figure of the budget for education should not be specified but should be prioritized. Further, the delegation argued that the article was sufficient to stipulate that the government should advance science and technology to increase human resources without any further elaboration.³⁰²

In the meantime, PAH I teams visited the regions to get input from public hearings. In almost all public hearings, the participants agreed that primary education should be compulsory, and that the Constitution should specify a 20% budget allocation or more to education. The exception was Makassar, where most participants did not agree to specify the educational budget figure in the Constitution.³⁰³

VIII.2.4.3 *Faction Debates on Education*

In the PAH I discussion on 3-7 April 2002, three alternatives to Article 31 paragraph (1) were agreed.

- 1) The government shall undertake and shall conduct one national education system to enhance intellectual life which is regulated by law.
- 2) The government shall undertake and shall conduct one National Education System to enhance the nation's life and to form human beings with noble character which is regulated by law.
- 3) The government shall undertake and shall conduct one National Education System which enhances faith and piety, as well as noble character in the frame of educating the life of the nation, which shall be regulated by law.³⁰⁴

The discussion on education was continued in a PAH I meeting on 25 March 2002. In that meeting, the meeting chair reminded everyone that PAH I had concluded the draft of a new section to Article 31 on Education, which stated that "every citizen has the obligation to enrol in basic education and the government has the obligation to fund this." The previous meeting, reiterated the chairperson, had also agreed to replace the term *pengajaran* (teaching), which was used in the old Constitution, with the term *pendidikan* (education).³⁰⁵ A F-KKI member reiterated his endorsement of the draft made in the previous meeting and emphasized the importance of using

302 As stated by Jemmy Palapa of University Bung Karno. *Ibid.*, p. 473.

303 *Ibid.*, pp. 622 – 643.

304 See Rancangan Perubahan Keempat Undang-Undang Dasar 1945, Hasil Perumusan Panitia Ad Hoc I Badan Pekerja MPR, tanggal 3-7 April 2002, Sekretariat Jenderal MPR-RI, 2002.

305 The meeting was led by Harun Kamil (F-UG), vice PAH I chairman. See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Dua, Edisi Revisi, Sekretariat Jenderal, 2010, p. 2.

the word *wajib* (compulsory, obliged to) in the article.³⁰⁶ Similarly, F-KB, F-PPP, F-PDIP, F-PG, F-TNI/Polri, F-PDU, F-PDKB, F-UG, F-Reformasi and F-UD speakers reiterated their respective endorsements to the draft as the reference for further discussion.³⁰⁷ The F-KB speaker added that providing education for the people is not only the government's obligation, but also the state's.³⁰⁸ Then, F-PPP, F-PG, F-PDU and F-Reformasi speakers reiterated that their preferred choice remained alternative (3) of Article 31(3) and alternative (2) of Article 31(5).³⁰⁹ The F-PDKB speaker responded that his faction was ready to discuss the matter,³¹⁰ while F-KKI, F-TNI/Polri and F-PDIP stated that they preferred alternative (1).³¹¹

On the budget allocation, most factions agreed that the Constitution should stipulate a minimum of 20% of the state budget as well as regional budgets to meet the needs of national education.³¹² Only F-TNI/Polri and F-PDIP speakers argued that it should be flexible. However, the F-TNI/Polri speaker admitted that prioritizing the budget for education purposes required the government to allocate a sufficient budget for education.³¹³

The PAH I chairman advocated using the term 'education' with care. The Preamble clearly referred to the whole of humanity, intelligence, and national life. Education is comprehensive and thorough, consisting of various processes, including processes at home, in religious education, at school, social spaces, and so forth. For each process, it should be questioned whether the government should intervene. It would be undesirable to *menegarakan* everything (to make everything a state affair). At the time the articles regarding human rights were discussed, consciously, the position and balance between the people's, community's, and state's interests were carefully noted.³¹⁴

In the subsequent PAH I meeting on 26 March 2002, a F-PDIP member emphasized that education should apply the values inherent in the Preamble, which is an education system that pays attention to diversity. Education is not only concerned with one group, guarding against the values of one religion characterizing and dominating education in Indonesia.³¹⁵

306 As expressed by Vincent T. Radja (F-KKI). See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Dua, Edisi Revisi, Sekretariat Jenderal, 2010, p. 3. Radja said that in East Nusa Tenggara, the ratio of educated to non-educated people was 1 to 10.

307 As stated by Erman Suparno (F-KB), Ali Hardi Kiaidemak (F-PPP), Zainal Arifin (F-PDIP), Baharuddin Aritonang (F-PG), I Ketut Astawa (F-TNI/Polri), Asnawi Latief (F-PDU), Gregorius Seto Harianto (F-PDKB), Soedijarto (F-UG), A.M. Luthfi (F-Reformasi), and Retno Triani Djohan (F-UD). *Ibid.*, pp. 5 – 23, 39.

308 *Ibid.*, p. 4.

309 As stated by Ali Hardi Kiaidemak (F-PPP), Baharuddin Aritonang (F-PG), Asnawi Latief (F-PDU) and A.M. Luthfi (F-Reformasi). *Ibid.*, pp. 5, 9.

310 As stated by Gregorius Seto Harianto (F-PDKB). *Ibid.*, p. 15.

311 As stated by Antonius Rahail (F-KKI), I Ketut Astawa (F-TNI/Polri) and Pataniari Siahaan (F-PDIP). *Ibid.*, pp. 17, 29.

312 *Ibid.*, pp. 4 – 28, 38.

313 *Ibid.*, pp. 11, 30.

314 *Ibid.*, p.31.

315 As expressed by Frans Matrutty (F-PDIP). *Ibid.*, p. 41.

In response, a F-PPP speaker argued that what was lacking in national human resources was not knowledge, but a lack of morality, faith, and piety. Therefore, religious and moral education were very important. Hence, alternative (3) should be chosen for Article 31 section (3).³¹⁶

Agreeing with the previous speaker, a F-PG member argued that alternative (3) of Article 31(3) is the proper choice, because it is consistent with Article 29(1), which states that the State is based on the belief in the One and Only God. Regarding the budget, this was related with societal class structures. Without having to be a Marxist, one can see that the layers in society have produced a certain class which is powerless to do anything or acquire education. Therefore, education should be prioritized by confirming 20% in the state budget.³¹⁷

Similarly, a F-UG speaker endorsed alternative (3) of Article 31(3).³¹⁸ A F-PDIP speaker contended that the Preamble's message, *mencerdaskan kehidupan bangsa* (to develop the nation's intellectual life) has a very broad meaning, including intellectuality, morality, and culture. Hence, the articles' formulations should not be too detailed and could be elaborated in lesser laws.³¹⁹ Then, a F-KB speaker stated that education's purview covers three areas: spirituality or morality, *ta'zib*, which is the internalization process of developing a personality and *ta'lim*, the teaching. Further, F-KB endorsed alternative (3) Article 31(3). If the nation accepts *iman* (faith) and *taqwa* (piety) as common terms, there is no problem if those terms are used.³²⁰

Subsequently, the education discussion was continued in a PAH I formulation team meeting on 4 April 2002. In that meeting, the F-PBB speaker questioned whether Article 31 should stipulate the right to obtain an education because it was already stated in Article 28 on Human Rights.³²¹ In response, the PAH I chairman elucidated that Article 31(2) asserts that it is mandatory for every citizen to participate in primary education, which is education in schools or schooling. A welfare state is one where the state should educate the people.³²²

Commenting on state building, a F-UG member emphasized that Indonesia is also building a nation state. In that regard, every state that builds a nation state, such as Germany, the United States of America, the United Kingdom, and France, adopts a national education system, i.e., the schooling system that is called education. In the United States, they use schooling as a process to Americanize heterogenous students and to abolish the barriers of ethnicity.³²³ However, it should be clear from the beginning, lest the

316 As argued by Abdul Azis Imran Pattisahusiwa (F-PPP). Ibid., p. 43.

317 As argued by Slamet Effendy Yusuf (F-PG). Ibid., p. 46.

318 As expressed by Sutjipto (F-UG). Ibid., p. 47.

319 As stated by Katin Subiyantoro (F-PDIP). Ibid.

320 As conveyed by Yusuf Muhammad (F-KB). Ibid., p. 61.

321 As conveyed by Hamdan Zoelva (F-PBB). Ibid., p. 244.

322 Ibid.

323 As emphasized by Soedijarto (F-UG). Ibid., pp.245, 246.

education process be taken over totally by the state, emphasized the PAH I chairman. Under Kim Il-sung, the state even taught pupils a uniform way to greet their parents, he added.³²⁴ The chairman concluded that education is conducted by the state in the school, by the family, and by society. The article refers to education by the school, not by the family or society. The question remained whether state-funded education is limited to education in school and excludes education in the family and society.

In response, a F-KB speaker stated that the state should also support education organized by the private sector, by society. Compulsory basic education could be conducted either by the state or by society and the state should fund it.³²⁵ Likewise, a F-PPP speaker argued that without differentiating between education managed by the government and by the private sector, the government is obliged to fund education, which is the right of every citizen.³²⁶ A F-PDIP speaker added that the right to education had been set out in Article 28. Further regulation was required on how the government facilitates education, so that the people's rights can be realized.³²⁷

Regarding Article 31(3), another F-PDIP member argued that all alternatives began with the same phrase, "the State organizes and manages one national education system." Only the following phrases differed, hence the three alternatives could be condensed to one.³²⁸ Accordingly, a F-TNI/Polri speaker argued that developing the nation's intellectual life, embodied in the Preamble, has a broad meaning, including intellectual intelligence, faith, morality, and piety. Therefore, if Article 31(3) states that the system shall be further regulated by law, then the phrase *mencerdaskan kehidupan bangsa* (to develop the nation's intellectual life) could be sufficient, because it contains all those meanings.³²⁹ Likewise, the F-UG speaker confirmed that alternative (1) of Article 31(3) was sufficient.³³⁰

Further, a F-PDIP speaker emphasized that developing the nation's intellectual life is related to the Preamble, especially *Pancasila's* second principle, a just and civilized humanity. Therefore, Article 31(3) should state, "The state shall organize one national education system in the frame of educating the life of the nation."³³¹ A F-PG member reiterated that, as a logical consequence of Article 29(1), which states that the State shall be based upon belief in the One and Only God, F-PG endorsed alternative (3).³³²

324 As stated by Jakob Tobing, the PAH I chairman. *Ibid.*, pp. 244, 245. Kim Il-sung was the leader and the founder of the People's Democratic Republic of Korea.

325 As stated by Yusuf Muhammad (F-KB). *Ibid.*, pp. 249, 250.

326 As stated by Lukman Hakim Saifuddin (F-PPP). *Ibid.*, p. 252. Saifuddin cited the concept of the Bill on National Education System which was being prepared by the DPR.

327 As stated by Pataniari Siahaan (F-PDIP). *Ibid.*, p. 254. Articles 28C and 28E stipulate the people's rights to develop him/herself and to choose one's education.

328 As stated by Soewarno (F-PDIP). *Ibid.*, p. 259.

329 As stated by I Ketut Astawa (F-TNI/Polri). *Ibid.*, pp. 259, 262.

330 As stated by Retno Triani Djohan (F-UG). *Ibid.*, p. 260.

331 As stated by Pataniari Siahaan (F-PDIP). *Ibid.*, pp. 262, 263.

332 As proposed by Happy Bone Zulkarnain (F-PG). *Ibid.*, p. 263.

F-KB underlined that education is indeed holistic, concerning the mind and the character. Therefore, the education system should be organized to develop both aspects, as formulated in alternative (2) of Article 31(2). One formulation covered all the imaginable considerations, embodying the topic's essence: *Prophet Muhammad s.a.w. said innama bu'itsu liutammima makarimal akhlaq* (that I was sent to enhance human morality).³³³ Further, a F-UG member asserted that developing the nation's intellectual life is not the responsibility of and cannot rely on the education system alone, but also involves the political and economic system. Therefore, the article should state that the education system is organized "in order" to develop the nation's intellectual life, not "to" educate the life of the nation.³³⁴ In that regard, the PAH I chairman underlined that there should be many efforts to develop the nation's intellectual life, including education. Therefore, the nation's quality of life is not only the result of the education system, but also of political life, culture, and art.³³⁵

Regarding the relationship between religion and science in the draft Article 31(5), a F-UG speaker stated that they seemed to contradict each other. As if religion is the police watching the science's development. Basically, science and religions are oriented towards the dignity of human beings. Therefore, the section's formulation should put science and religion in a positive relationship.³³⁶ Quoting the chairman of PAH I, a F-Reformasi speaker asserted that science and technology's development should adhere to the religious values. The member argued that, according to the chairman, it was easier to measure adherence than to judge the "contradiction" formulated in "advances science and technology which is not contradictory to religious values", in the draft Article 31(4) attached to MPR Decree No. XI/2001.³³⁷ In the end, all factions accepted the change to the draft Article 31(4).³³⁸

VIII.2.4.4 *Validity Meeting Insights on Education*

In the subsequent validity meetings, Article 31's draft changes obtained various responses. In Pontianak, the participants argued that it was not right to stipulate the 20% budget allocation in the Constitution.³³⁹ In a crisis, the government would potentially be unable to allocate that percentage.³⁴⁰ It is better to specify a certain percentage in the laws. Stating that the government

333 As stated by Yusuf Muhammad (F-KB). *Ibid.*, p. 263.

334 As asserted by Soedijarto (F-UG). *Ibid.*, p. 265.

335 *Ibid.*

336 As stated by Zacky Siradj (F-UG). *Ibid.*, p. 53.

337 As stated by A.M. Luthfi (F-Reformasi). *Ibid.*, p. 268. See Attachment VIII. 5.

338 *Ibid.*, p. 271.

339 As argued by Chandra Hasan of Muhammadiyah, chapter of West Kalimantan, Urain Kusna Asmara from University of Tanjungpura, Ibrahim Sago from the Law Faculty, University of Tanjungpura and Syarifah Mardiana from ICMI (Association of Indonesia Muslim Intellectuals). *Ibid.*, pp. 712, 718, 730, 741.

340 As stated by Ibrahim Sago. *Ibid.*, p. 712.

should prioritize the education budget is sufficient.³⁴¹ However, another participant disagreed. The provision of a tangible allocation for education spending is necessary to secure the lives of teachers.³⁴² A Muhammadiyah University participant made a comparison. In the United States, for example, the state is prohibited from interfering in religious education. It becomes a private matter, with prayer in public classrooms not allowed because it is the public domain. It is different in Indonesia. This country is based on God Almighty and there is religious education. Therefore, it is necessary to allocate the state budget for education, he stated.³⁴³

From the other regions, most meetings reported that participants warmly welcomed allocating a minimum of 20% of state and regional budgets to education. In Mataram, the participants even urged increasing the budget allocation to 30%.³⁴⁴ In Bandung, the participants proposed that the state should also advance art, alongside science and technology.³⁴⁵ In Bali, the participants contended that if education is a right, it should not be stated as an obligation, since it is then up to a person to use it.³⁴⁶

Regarding technology's advancement in relation to religions, in a PAH I review meeting on 27 May 2014, the scholar Hasyim Djalal reminded everyone to be careful. There are certain religious teachings that are based on beliefs that can hinder the advancement of science and technology, such as biotechnology and anthropology. Djalal questioned how one can determine that a certain technology is not in conformity with a religion and where Indonesia will be in 20, 30, or 40 years from now.³⁴⁷

VIII.2.4.5 PAH I Agreeing on Article 31(1), (2), (4), and (5)

In the ensuing meeting, PAH I agreed on Article 31(4) and Article 31(5) and reported the draft to the MPR Working Body plenary meeting on 4 June 2002.³⁴⁸ In the subsequent PAH I plenary meeting on 18 June 2002, a F-PDIP speaker stressed that in Article 31 verses (1) and (2), the term 'education' is intended to develop the nation's intellectual life, as embodied in the Preamble. Therefore, the term also contains values. Hence, it is not necessary to elaborate those elements again in Article 31(3). The formulation in alternative 1 was therefore sufficient.³⁴⁹

341 Ibid., p. 718.

342 As stated by Mailan Panggabean from the Economic Faculty, University of Tanjungpura. Ibid., p. 726.

343 As stated by Nasirwan from University of Muhammadiyah. Ibid., p. 739.

344 As reported by Pataniari Siahaan (F-PDIP). Ibid., p. 832.

345 As reported by A.M. Luthfi (F-Reformasi). Ibid., p. 836.

346 As reported by I Dewa Gede Palguna (F-PDIP). Ibid., p. 837.

347 Ibid., pp. 818-819.

348 Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Tiga, Edisi Revisi, Sekretariat Jenderal, 2010, p. 8. See also Attachment VIII.6.

349 As stated by Katin Subiyantoro (F-PDIP). Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Tiga, Edisi Revisi, Sekretariat Jenderal, 2010, pp. 224, 242.

A F-PDU speaker reiterated that, in consistency with Article 29, “the State shall be based upon the One and Only God”, the 3rd alternative should be chosen since it absorbed the 1st and 2nd alternatives.³⁵⁰ However, to develop the nation’s intellectual life should take precedence over other objectives.³⁵¹ Then, F-PG asserted that education in alternative (3) should not only achieve intellectuality, morality, faith, and piety, but also nationalism and patriotism.³⁵² To that end, a F-TNI/Polri speaker argued that alternative (1) has a very broad purview and relates to developing the nation’s intellectual life as mandated by the Preamble. Therefore, alternative (1) was preferable.³⁵³

A F-PPP speaker disagreed, arguing that alternative (1) of Article 31(3) states only the national education system’s orientation, to educate the nation’s life. In alternative (2), ‘improving the noble characters’ is added as a goal, and alternative (3) adds ‘increasing faith and piety.’ Further, F-PPP contended that the three alternatives do not duplicate each other and the longer alternatives are not merely elaborations of the shorter ones. The longest, alternative (3), is the more complete formulation and so it was F-PPP’s chosen option. F-PPP rejected that society should be obliged to be involved in the education system alongside the government. Society should be involved, but it is the government’s obligation.³⁵⁴

Likewise, the F-Reformasi speaker reiterated that alternative (3) was more complete. That provision treated subjects as diverse as religion, character, morality, and ethics, in addition to exact sciences, national awareness, and civic education. Thus, quoting the F-PG speaker, pupils will not just be intelligent, but also patriotic.³⁵⁵ Then, the F-KB speaker remarked that alternative (2) adopts both alternative (1) and alternative (3). Yet, F-KB said it had no objection to alternative (3), it being better to have more rather than less.³⁵⁶ Similarly, F-PDKB stated that the faction had no objection to alternative (3). One can have a noble character without believing in God. Indonesia should emphasize the uniqueness of its nation’s vision. Although Indonesia is not a theocratic state, it still believes in God as manifested by various religions.³⁵⁷

350 See VII.3.12 and VIII.2.4., discussions on Article 29 on religion.

351 As argued by Asnawi Latief (F-PDU). Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Tiga, Edisi Revisi, Sekretariat Jenderal, 2010, p. 227.

352 As asserted by Andi Mattalatta (F-PG). *Ibid.*, p. 228. See also MPR Decree no. IX/MPR/2000.

353 As stated by Kohirin Suganda (F-TNI/Polri). Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Tiga, Edisi Revisi, Sekretariat Jenderal, 2010, p. 231.

354 As stated by Lukman Hakim Saifuddin (F-PPP). *Ibid.*, p. 231.

355 As reiterated by Fuad Bawazier (F-Reformasi). *Ibid.*, p. 233.

356 As stated by Yusuf Muhammad (F-KB). *Ibid.*, p. 234.

357 As stated by Gregorius Seto Harianto (F-PDKB). *Ibid.*, p. 235.

In response to these statements, a F-PDIP member reminded ‘*not to mix oil with water*’ by including all the elements.³⁵⁸ He then suggested the following alternative, “the State organizes and manages one national education system that is based on *Pancasila*”. Another F-PDIP member argued that if education is also about improving faith and piety, then it has entered a theological domain. In that regard, it will create the problem of how to elaborate the provisions into laws and what theological interpretation should be used as guidance.³⁵⁹

Eventually, PAH I agreed on Article 31(1), Article 31(2), Article 31(4), and Article 31(5). However, Article 31(3) remained unresolved.

VIII.2.4.6 Debating Article 31(3)

In the PAH I synchronization meeting on 28 June 2002, the meeting chair reminded everyone that there were still 2 alternatives of Article 31(3). Alternative (1) states that the Government organizes and manages a national education system to develop the nation’s intellectual life, that shall be further regulated by law. Alternative (2) states that the Government organizes and manages a national education system to increase faith and piety, the noble character, and to develop the nation’s intellectual life, which shall be further regulated by law.³⁶⁰

The discussion continued in a PAH I finalization meeting on 19 July 2002, in which F-PDIP and F-TNI/Polri reiterated they preferred alternative (1), while F-PPP, F-KB, F-Reformasi, and F-KKI chose alternative (2), and F-UG stated it remained undecided. Other factions did not state their respective positions.³⁶¹

In the subsequent PAH I meeting on 25 July 2002, F-UG confirmed it would endorse alternative (2) of Article 31(3). In the meantime, F-KB attempted to overcome the differences by proposing a new Article 31(3), which states that the government organizes and manages a national education system in the frame of educating the life of the nation and forming men and women with noble character that shall be further regulated by law.³⁶² However, others did not respond to this proposal. Thus, PAH I reported the outcomes to the MPR Working Body plenary meeting on 25 July 2002, in which Article 31(3) had two alternatives.³⁶³

358 As stated by Frans F.H. Matruty (F-PDIP). *Ibid.*, p. 240. ‘Not to mix oil with water’ (*Jangan mencampur air dengan minyak*) is a common saying in Indonesia, means do not mix the things that do not coincide with each other.

359 As conveyed by I Dewa Gede Palguna (F-PDIP). *Ibid.*, p. 241.

360 The meeting was chaired by Harun Kamil (F-UG). *Ibid.*, p. 601.

361 The meeting was led by Harun Kamil, the vice PAH I chairman. *Majelis Permusyawaratan Rakyat Republik Indonesia, op.cit.*, Tahun Sidang 2002, Buku Empat, Edisi Revisi, Sekretariat Jenderal, 2010, pp. 135 – 137.

362 As stated by Soedijarto (F-UG) and Ida Fauziah (F-KB). *Ibid.*, pp. 373 – 374.

363 See *Ibid.*, p. 347. There is a technical error in the minutes of the MPR: the MPR Working Body meeting was conducted after the PAH I meeting. However, the minutes of the MPR Working Body meeting was placed before the minutes of the PAH I meeting.

Trying to resolve the differing opinions among the factions, while the August 2002 amendment deadline drew near, a consultation meeting between the MPR and faction leaders was conducted on 29 July 2002. On that occasion, Amien Rais, the MPR Speaker who led the consultation, stated that the MPR leadership would open the broadest possibilities for deliberation so that the decision on the matter could be achieved by consensus. However, following the MPR rules of procedure, if a consensus was not reached before the deadline, the decision would be taken by a majority vote.³⁶⁴

Then, a F-PG speaker stated that Article 31(3) related to Article 29(1) and Article 29(2). Hence, these matters could be exchanged.³⁶⁵ In response, F-PPP argued that the topics could be brought to the MPR's Commission to find a solution.³⁶⁶ Accordingly, F-PDIP argued that informal consultations proposed by the MPR leadership would be very helpful to achieve an understanding, while the Commission would try to find a way out. In the meantime, cross-faction meetings would try to find rapprochement (see VIII.2.4).³⁶⁷

Thereby, the MPR Working Body completed its task and reported its results to the MPR plenary meeting. The same process was followed as before: the plenary session set up commissions to complete the drafting of the MPR decisions. Commission A was formed to complete the drafting of the last constitutional amendments.³⁶⁸

In the subsequent Commission A meeting on 5 August 2002, the alternatives of Article 31(3) were debated further. A member from F-Reformasi reiterated the faction's choice of alternative (2). The terms of *iman* and *taqwa* (faith and piety) belong to all religions.³⁶⁹ On the other hand, F-TNI/Polri affirmed that the phrase 'educating the nation's life' contained a broad meaning, including raising the nation's faith, piety, and noble character.³⁷⁰

Similarly, in the Commission A meeting on 6 August 2002, F-PDU, F-PBB, F-Reformasi, F-PPP, F-PG, F-UD, and F-UG confirmed their choice of alternative (2), while F-KKI, F-PDIP, and F-TNI/Polri endorsed alterna-

364 Ibid., p. 418.

365 As stated by Fahmi Idris (F-PG). Ibid., p. 424.

366 As stated by Aisyah Amini (F-PPP). Ibid., p. 427.

367 As stated by Arifin Panigoro (F-PDIP). Ibid.

368 Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Lima, Edisi Revisi, Sekretariat Jenderal, 2010, pp. 11, 23. The Commission A leadership consisted of Jakob Tobing (F-PDIP) as chairman, H. Slamet Effendy Yusuf (F-PG), H. Zain Bajeber (F-PPP), K.H. Amroe Al Mutaksin (F-KB), K.H. Najih Ahjad (F-PBB), Gregorius Seto Harianto (F-PDKB), I Ketut Astawa (F-TNI/Polri), Muhammad Hatta Mustafa (F-UD), and Harun Kamil (F-UG) as vice chairmen. Jakob Tobing from F-PDIP was re-elected Commission A chairman, having earlier been rejected by several F-PDIP members. See Ibid., p. 11.

369 As stated by Patrialis Akbar (F-Reformasi). Ibid., pp. 71 – 72.

370 As affirmed by R. Sulistyadi (F-TNI/Polri). Ibid., p. 80.

tive (1).³⁷¹ In that meeting, F-PDKB proposed a new formulation that was intended to address the differences of alternatives (1) and (2), which stated “the government organizes and manages a national education system which enhances the faith and the piety, intellectuality and a noble character to develop the nation’s intellectual life.” Subsequently, F-PDKB stated that if that proposal was unacceptable, F-PDKB would choose alternative (1).³⁷² Similarly, the F-KB speaker proposed a new formulation, which stated “the government organizes and manages a national education system to develop the nation’s intellectual life and to form the people with noble character which shall further be regulated by law(s).”³⁷³

VIII.2.4.7 *Formulating Article 31(3)*

To overcome a further stalling of the discussions, the MPR faction leaders, led by Arifin Panigoro, the F-PDIP Chairman, organized an informal consultation meeting with the Commission A leadership on 7 August 2002. As explained in the previous section on Article 29, during this meeting, both articles were agreed to be discussed in tandem. In that regard, a F-PPP member reminded to maintain harmony and respect each other.³⁷⁴ A F-PDU member reminded of the messages of President Megawati Soekarnoputri, Chairperson of the PDI-P and Vice President Hamzah Haz, the Chairperson of PPP, to avoid voting in the whole amendment process. Therefore, the member urged, let’s strive to avoid voting on Article 29.³⁷⁵ Further, factions agreed not to disclose to the public that Article 29 and Article 31 had been agreed in one package (see VIII.2.4).³⁷⁶

Subsequently, Commission A editors formulated Article 31(3), stating: “the government organizes and manages a national education system that enhances faith, piety, and noble character, to develop the nation’s intellectual life that shall be further regulated by law(s).” They reported this formulation to the Commission A plenary meeting on 8 August 2002.³⁷⁷ In that meeting, as expected, F-KKI confirmed it accepted the new Article 31 if the original Article 29 was maintained. F-PBB stressed that the decision about Article 29 should not be taken by majority vote.³⁷⁸ Commission A agreed to

371 As conveyed by Sayuti Rahawarin (F-PDU), Aminuddin Jayanegara (F-PBB), Mohamad Asikin (F-Reformasi), Khodidjah H.M. Saleh (F-PPP), Marwah Daud Ibrahim (F-PG), Harifuddin Cuwidu (F-UD) and Shidiq Aminullah (F-UG), and Birinus Joseph Rahawadan (F-KKI), Zulvan Lindan (F-PDIP) and Abdul Rahman Gaffar (F-TNI/Polri). *Ibid.*, pp. 220 – 242. The meeting was chaired by Zain Bajaber (F-PPP), the vice Commission A chairman.

372 As conveyed by Gregorius Seto Harianto (F-PDKB). *Ibid.*, pp. 219, 247.

373 As stated by Amin Sa’id Husni (F-KB). *Ibid.*, p. 226.

374 As stated by Ali Hardi Kiaidemak (F-PPP). *Ibid.*, p. 400.

375 As stated by Sayuti Rahawarin (F-PDU). *Ibid.*, p. 400.

376 As stated by Fahmi Idris (F-PG). *Ibid.*, p. 403.

377 *Ibid.*, p. 529.

378 As stated by Astrid Susanto (F-KKI) and Amaruddin Djajasubita (F-PBB). *Ibid.*, p. 535.

report the draft to the MPR plenary meeting on 9 August 2002, where it was approved by acclamation.³⁷⁹

Ultimately, on 10 August 2002, the MPR ratified the new Article 31 on Education, which asserts that every citizen has the right to education and the obligation to enrol in basic education, while the government has the obligation to fund this education.³⁸⁰

VIII.2.5 National Economy and Social Welfare

This section sets out the discussion on Articles 33 and 34, including insights from financial leaders, experts, public hearings, and faction debates. It concludes with the ratified amendments to both articles.

During the previous stage, PAH I had discussed Social Welfare and had agreed to revise Article 33. PAH I had not managed to finish the changes. Various existing proposals were summarized in the enclosures to MPR Decree No. XI/2001 for later discussion. The topic is related to the principles of the rule of law, which among others emphasize that the government should respect and strive to fulfil the social and economic rights of citizens. In the previous stage, PAH I considered changing the title of Chapter XIV, which consists of Article 33 on Economy and Article 34 on Social Welfare, from ‘Social Welfare’ to ‘National Economy and Social Welfare’. The draft new Article 33 did not contain the term ‘*asas kekeluargaan*’ (kinship/familial principle) (see Attachment VIII.7)

The discussion of the Chapter on Social Welfare was resumed in the MPR Working Body plenary meeting on 10 January 2002. In that meeting, F-PDIP emphasized that the changes to the Constitution’s articles, including Articles 33 and 34, should translate the spirit and philosophy contained in the Preamble of the 1945 Constitution. F-UG and F-Reformasi reminded the committee that the changes to Article 33 should be finalized.³⁸¹ F-UD reiterated that based on economic democracy, the welfare of society should be prioritized over individual welfare. Hence, the state economy should be arranged as a collective venture based on the familial principle, to achieve common prosperity.³⁸² Likewise, F-UG emphasized the importance of maintaining the spirit of Article 33 as the foundation of developing an economic system which ensures social justice for all the people. Countries such as Scandinavia and Germany are strong global economic players, whose economic systems are not fully based on the concept of a free market economy.³⁸³

379 Ibid., p. 698. See also above “*Compromising to Retain the Original Article 29*”.

380 Ibid., p. 751.

381 As conveyed by Zainal Arifin (F-PDIP), Ami Syamsidar Budiman (F-UG) and Umirza Abidin (F-Reformasi). See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Satu, Edisi Revisi, Sekretariat Jenderal, 2010, pp. 51, 57, 63.

382 As stated by Hatta Mustafa (F-UD). Ibid., p. 65.

383 As argued by Soedijarto (F-UG). Ibid., p. 145.

VIII.2.5.1 *Insights from Financial Leaders*

Minister of Finance, Boediono, affirmed in the PAH I meeting on 25 February 2002, that Article 33's spirit should be maintained. Changes to the article should be aimed at clarifying the guidelines and concepts regarding the foundation of the national economy. Further, the national economy should be based on a concept of national economic unity, which should be explicitly contained in the Constitution. Furthermore, the Minister argued that the economic actors are broader than just cooperatives, state enterprises, and private enterprises, including personal businesses. The state, through its state budget, is also an actor at the macro-level, while the consumer, the whole society, is an economic actor at the micro-level.³⁸⁴

The Governor of *Bank Indonesia* (the Central Bank), Syahril Sabirin, underlined that the economic system should be more flexible with the involvement of the private sector and the government's guidance so that efficiency could be achieved without sacrificing public interests.³⁸⁵

On that occasion, the Minister of Cooperatives, Small and Medium Enterprises, Ali Marwan Hanan, stated that Indonesia does not have to choose between either a market economy or socialism, but can opt for a popular economy, based on economic democracy and a just market, in which the production is done by all for all, under the guidance and supervision of the public, which is opposed to an individualistic economy and etatism. The Constitution should confirm that the production branches that are important for the state and dominate people's lives should not only be in the government's hands. To prevent an abuse of power, they should also be regulated through legislation. Regarding economic actors, the minister argued that it should not be limited to cooperatives only but include state and private enterprises. Further, in an economic democracy, welfare is the right of all people. Therefore, to prevent the oppression of the people, the control of production should not be in the hands of individuals in power. Therefore, Article 33(1) should not be changed.³⁸⁶

In response, a F-PG member reminded the committee that the market's role is important. Communist China dealt with the global economy, adopted a pragmatist approach, and replaced the planned economy system with a planned market economy system. By contrast, Indonesia should choose a market economy without hesitation.³⁸⁷ Other F-PG and F-PPP members noted that PAH I had witnessed a sharp polemic on Indonesia's economic system among the Team of Experts between Article 33 reformists (Syahrir, Bambang Soedibyo, Sri Mulyani, and Sri Adiningsih) and originalists

384 *Ibid.*, pp. 229-231.

385 *Ibid.*, p. 233.

386 *Ibid.*, pp. 237-239.

387 As stated by Amidhan (F-PG). *Ibid.*, p. 248.

(Mubyarto and Dawam Raharjo). This even led to Mubyarto's resignation from the Expert Team (see VII.2.1).³⁸⁸

Referring to this debate, minister Boediono argued that the familial principle is a very elastic term that can cause misunderstandings, so it should be replaced with more measurable terms, such as efficiency, justice, sustainability, and economic democracy.³⁸⁹ Likewise, the Governor of the Bank of Indonesia argued that the terms 'popular' or 'familial' economy should be clarified.³⁹⁰ Minister Marwan Hanan added that any economic system should consider the prevailing market system.³⁹¹

VIII.2.5.2 *Insights from Experts and Public Hearings*

In a PAH I public hearing on 28 February 2002, a CINAPS (Centre for Indonesian National Policy Studies) expert stated that the new draft Article 33's term, 'the collective venture of all the people',³⁹² is confusing, especially relative to the expansion of economic actors, including state enterprises, the private sector, and individual ventures.³⁹³ Likewise, a CSIS (Centre for Strategic and International Studies) researcher proposed clarifying the term '*usaha bersama*' (collective venture) relative to individual businesses. Article 34, which states 'Impoverished persons and abandoned children shall be taken care of by the State', should also be clarified, because of its broad and complex implications. The social security system should not mean that the state will take care of all people, as this would discourage people from working and overload the state.³⁹⁴

Discussing the topic, a CIDES (Centre for Information and Development Studies) scholar asserted that one cannot apply a neutral spirit and free choice to the economic system articles. The (original) title of Chapter XIV, Social Welfare, indicates that the economy should be organized to develop social welfare, not something that stands alone. The economy is not value-free. Following the principles of *Pancasila*, the economic system should be oriented to the Almighty God, which means that ethics and morals apply, not materialism. What should be sought is virtue. As the first Vice President Mohammad Hatta once said, Article 33 is an attempt to realize the image of God's kingdom in the world, full of love and justice. In considering the economic articles, one should prioritize the people's economic lives and social justice. We should firmly reject *exploitation de l'homme par l'homme*, affirm the

388 As stated by Happy Bone Zulkarnaen (F-PG) and previously by Ali Hardi Kiademak (F-PPP). *Ibid.*, pp. 243, 251.

389 *Ibid.*, p. 256.

390 *Ibid.*, p. 259.

391 *Ibid.*, p. 262.

392 In Indonesian, this reads: "*usaha bersama seluruh rakyat*".

393 As conveyed by Has Tampubolon of CINAPS (Centre for Indonesian National Policy Studies). *Ibid.*, p. 373.

394 As conveyed by Anton Legowo of CSIS (Centre for Strategic and International Studies). *Ibid.*, p. 377.

link between people and justice, and not get stuck in the law of the jungle, *homo homini lupus*. Yet, the scholar acknowledged that Article 33 should be reformed to accommodate the dynamics of change. Independence should be added to the article.³⁹⁵ Regarding developing a social security system in Article 34, another CIDES scholar also reminded everyone to consider the limits of the state's capability.³⁹⁶

Erfan Maryono³⁹⁷ stated that a market economy seems to bind the government's hands to help its people. The state is not allowed to provide subsidies to people in fear of distorting the market, which eventually torments people. Countries that implement a market economy seldom get out of that situation, except through radical social change. Therefore, the original Article 33 should be maintained.³⁹⁸

In response, a F-PG speaker argued that in the prevailing global reality, in the interdependent world, upholding economic independence is not feasible.³⁹⁹ Another F-PG speaker reiterated that the article on economy is not value-free. The statement that the economy is a function of social welfare is a commitment, an alignment that should be embedded in the Constitution. Furthermore, the familial principle is more the soul and spirit of the nation, the character and morality of Indonesia's economy. This opens the way to including the principles of independence and efficiency.⁴⁰⁰

Responding to the discussions, the CSIS researcher denied that he was against the ideas of developing a social security system. Adopting social welfare ideas, as embedded in Article 34, must be followed by contextual thinking about applicability. The ideas should not stop at spiritual and substantive levels. They should be broken down to be implementable.⁴⁰¹ In that regard, a CIDES speaker noted that after independence, the economic structure remained in place and most assets were in the hands of a tiny fraction of the people. That is why Article 33 begins with the imperative sentence that 'the national economy shall be organized', an instruction to re-structure the national economy, which had not been carried out.⁴⁰² Further, another CIDES speaker admitted that the familial principle is opposed to efficiency. However, it is the government's and DPR's responsibility to reconcile these conflicting objectives, as the state's *mission sacré* to obtain economic growth with justice and equality.⁴⁰³

395 As conveyed by Adi Sasono of CIDES (Centre for Information and Development Studies). *Ibid.*, pp. 381-382.

396 As stated by Umar Juoro (CIDES). *Ibid.*, p. 387.

397 A researcher from the Institute for Development of Rural Technology (Lembaga Pengembangan Teknologi Pedesaan – LPTP), Surakarta.

398 As conveyed by Erfan Maryono from the Institute for Development of Rural Technology or LPTP (*Lembaga Pengembangan Teknologi Pedesaan*), Surakarta. *Ibid.*, p. 390.

399 As asserted by Happy Bone Zulkarnaen (F-PG). *Ibid.*, p. 395.

400 As stated by Theo Sambuaga (F-PG). *Ibid.*, p. 400.

401 As asserted by Tommy Legowo (CSIS). *Ibid.*, p. 406.

402 As stated by Adi Sasono (CIDES). *Ibid.*, p. 409.

403 As stated by Umar Juoro (CIDES). *Ibid.*, p. 412.

In the subsequent PAH I public hearing on 4 March 2002, Roeslan Abdulgani contended that the original Article 33 should not be changed. Quoting Soekarno, Abdulgani stated that Article 33 formulates the popular economy, which Hatta named *het economische Pancasila* (economy of Pancasila).⁴⁰⁴

In the next PAH I public hearing on 5 March 2002, a UKI delegation proposed clarifying the branches of production that are important to the state and the definition of ‘under the authority of the state’ (*dikuasai negara*). Further, the delegation proposed including the principles of justice and democracy in Article 33.⁴⁰⁵ PAH I compiled the materials regarding the national economy and social welfare. Then, PAH I introduced them, other materials, and the enclosures of MPR Decree No. XI/2001 to the public through various regional forums, such as public hearings and assessment forums.

Subsequently, PAH I teams that attended the forums reported to the PAH I meeting on 19 March 2002. The Bandung audience wanted to maintain the principle of the familial economy as the foundation of the national economy. The Banjarmasin audience argued that the new title of Chapter XIV, ‘National Economy and Social Welfare’ and the proposed changes included the popular economy concept. The Bali audience proposed reforming Article 33 and maintaining Article 34, which states that ‘the impoverished persons and the abandoned children should be taken care of by the government’. By contrast, Semarang and Palembang participants proposed maintaining the original Article 33 and Article 34. Surabaya participants argued for reforming Article 33. In Makassar, certain participants argued for implementing the familial principle, while others proposed including the principles of justice, efficiency, and democracy in Article 33.⁴⁰⁶

VIII.2.5.3 *Factions Debate the Economy*

PAH I resumed the discussion on Article 33 and Article 34 on 27 March 2002. A F-PDKB member asserted that the economy should be based on the principles of justice, efficiency, and economic democracy. About Article 34, F-PDKB affirmed that instead of merely providing the facility, the state should be resolutely responsible for health care and public services, as they are fundamental to humanity.⁴⁰⁷ A F-UD member questioned whether the

404 Ibid., p. 423.

405 As proposed by Anton Reinhart from UKI (*Universitas Kristen Indonesia* – Christian University of Indonesia). Ibid., p. 464.

406 As reported by Abdul Azis Imran Pattisahusiwa from Bandung, Soedijarto from Banjarmasin, Sutjipno from Bali, Hatta Mustafa from Semarang, Rully Chaerul Azwar from Palembang, Retno Triani Johan from Surabaya, and Ali Hardi Kiaidemak from Makassar. Ibid., pp. 624-641.

407 As stated by Gregorius Seto Harianto (F-PDKB). *Majelis Permusyawaratan Rakyat Republik Indonesia, op.cit.*, Tahun Sidang 2002, Buku Dua, Edisi Revisi, Sekretariat Jenderal, 2010, pp. 75-76.

principle of efficiency should be included in the Constitution, since it (rather than equitable distribution) is beneficial for the people and regions.⁴⁰⁸ On the other hand, F-PDIP asserted that the familial principle in the national economy should be maintained. However, it should be implemented with the principles of efficiency, justice, and economic democracy. In that regard, the original Article 33 should be maintained with certain new provisions.⁴⁰⁹ F-PDU contended that Article 33 should be amended to ensure it is based on the principles of collectivity, familiarity or brotherhood, democracy, and justice. Since 'efficiency' is a principle at the implementation level, it should not be inserted in the Constitution. Further, on Article 34, F-PDU proposed accentuating health care services.⁴¹⁰

Commenting on the discussion, a F-Reformasi member stated that, as far as he knew, the term economic democracy is not known in the text-book.⁴¹¹ Further, a F-PPP member argued that since there is no just and fair market, the familial principle should be included in Article 33. In this regard, efficiency is not a principle, hence the national economy should be based on the general principles of familiarity or brotherhood, justice, independence, and democracy.⁴¹² F-TNI/Polri added that the original 'Social Welfare' title of Chapter XIV should be maintained. It reflects the idea that the economy in Article 33 should be fostered to increase state capability to provide social welfare service to the people as stipulated in Article 34. Ultimately, both articles are about social welfare.⁴¹³

A F-UG member argued that Article 33 should contain the principle of a familial economy to develop an interdependent economy, in which the large and small ventures are mutually supportive in a social market economy. Then, the economy should be developed as a sustainable collective venture based on the principles of a familial economy, justice, and efficiency. Further, the economy should be developed as an all-encompassing concept, prioritizing social welfare and health care services.⁴¹⁴ A F-PG member argued that the new "National Economy and Social Welfare" title of Chapter XIV was appropriate. Then he suggested including the principle of *ekonomi kekeluargaan* (familial economy), which was not included in the MPR Working Body's draft, without sacrificing the modern economic principles. Further, it was not sufficient if the vital sectors stipulated in Article 33(2) were only controlled by the state. They should be further regulated by law, based on the principles of justice and efficiency.⁴¹⁵ Similarly, another F-PG member acknowledged that the term *kekeluargaan* (familial) is controversial, as it

408 As argued by Hatta Mustafa (F-UD). *Ibid.*, p. 77.

409 As stated by Hobbes Sinaga (F-PDIP). *Ibid.*, p. 79.

410 As stated by Asnawi Latief (F-PDU). *Ibid.*, p. 81.

411 As stated by Fuad Bawazier (F-Reformasi). *Ibid.*, p. 84.

412 As argued by Ali Hardi Kiaidema (F-PPP). *Ibid.*, p. 86.

413 As expressed by Affandi (F-TNI/Polri). *Ibid.*, p. 88.

414 As argued by Soedijarto (F-UG). *Ibid.*, pp. 91-92.

415 As conveyed by T.M. Nurlif (F-PG). Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Dua, Edisi Revisi, Sekretariat Jenderal, 2010, p. 93.

can be interpreted in various ways and cannot be interpreted clearly as an understanding of economic development. Therefore, PAH I should replace the term with “justice, efficiency, and economic democracy.” Furthermore, the F-PG member agreed with Mubiyarto, that the spirit of *kekeluargaan* may lead to the left or right, as long as not too much. Therefore, Article 33 should not omit the term *kekeluargaan* and include the principles of justice, efficiency, and economic democracy. It seems that Indonesia embraces shy capitalism and disguised socialism.⁴¹⁶

Regarding the terms, the meeting chairman argued that the term *kekeluargaan* (familial) is the opposite of *perseorangan* (individual), describing the struggle between individualism and collectivism, which dominated at the time. Now, all ideologies have entered a new variant, shifted to the middle, and meet each other at some point.⁴¹⁷ In response, a F-PDIP member stated that Article 33 should be consistent with the Preamble’s messages, with the principle of a state based on the rule of law, and especially with *grondrechten*, fundamental rights. Therefore, Chapter XIV’s original “Social Welfare” title should be maintained.⁴¹⁸

On the other hand, a F-UD member stressed that economic development should pay attention to both the ecological and sustainability aspects of renewable and non-renewable natural resources. Further, development should respect *hak ulayat* (traditional communal rights) of the people and guarantee the equitable development of all regions.⁴¹⁹ Similarly, a F-KB speaker underlined that economic development should protect the ecosystem, adhere to human rights, and keep regional development equitable.⁴²⁰ Then, a F-PDIP speaker reminded the committee of the economic system under President Suharto, *Suhartoism*, which caused a deep discrepancy between the rich and the poor. It marred all policies and is difficult to eradicate, like the *hydra*. It must be ended, and thus, the original Article 33 should be maintained. Therefore, Chapter XIV’s original “Social Welfare” title should be kept.⁴²¹ Regarding *hak ulayat* (traditional communal rights), especially land rights, a F-UG speaker stated that the recognition of *ulayat* rights has been resolved under the agrarian law. Therefore, if it was included in the Constitution, it could lead to complicated excesses.⁴²²

A F-KB speaker agreed that the phrase on *hak ulayat* could be omitted since it was already included in Article 18B on Human Rights, but that equitable regional development should be included.⁴²³ Subsequently, a F-PDIP speaker asserted that the state is obliged to achieve social justice

416 As underlined by Ahmad Hafiz Zawawi (F-PG). *Ibid.*, p. 95.

417 The meeting was presided by Slamet Effendy Yusuf. *Ibid.*, p. 100.

418 As expressed by Sutjipno (F-PDIP). *Ibid.*, p. 102.

419 As expressed by Vincent T. Radja (F-UD). *Ibid.*, p. 105.

420 As stated by Ida Fauziah (F-KB). *Ibid.*, p. 106.

421 As conveyed by Frans Matrutty (F-PDIP). *Ibid.*, p. 109.

422 As reminded by Sutjipto (F-UG). *Ibid.*, p. 112.

423 As conveyed by Erman Suparno (F-KB). *Ibid.*, p. 113.

for all Indonesian people. Article 33 stipulates that the national cake should be distributed based on the familial principle. There is distributive justice and consumptive justice. In distributive justice, everyone receives the same amount, which is not just about contribution to production. In that regard, the familial principle can do better, although there are many tools required, such as agrarian law, labor law, the fiscal system, and the subsidy system. Thus, F-PDIP concluded, the term *asas kekeluargaan* (familial principle) is the appropriate term for the purpose. Regarding Article 34, F-PDIP asserted that the state is obliged to develop a social security system for all people to achieve a welfare state.⁴²⁴ Another F-PDIP member argued that the Constitution does not necessarily specify the economic actors, such as state enterprises, cooperatives, and so forth. The economic actors are the people.⁴²⁵

Eventually, the meeting chair concluded that the economic actors would not be specified in the Article. Let it evolve according to development. Further, *hak ulayat* (traditional communal rights) should also not be included. The principle of national economic unity should be upheld. Do not let autonomy, a necessary concept, create excessive *peraturan daerah* (regional regulations) that weaken national economic unity.⁴²⁶

In the subsequent formulation team meeting on 5 April 2002, the PAH I chairman stated that in the previous meeting, most PAH I members expressed the will to maintain the original Article 33 and only to add the clauses of justice, efficiency, and that Indonesia is one national economic unity.⁴²⁷ Further, he asserted that Article 33(1), Article 33(2), and Article 33(3) are the ultimate goals, which are not fully rational and pragmatic. The goals are about *das Sollen* (the envisioned future), which is asymptotic, a condition that will never be reached, but could be approximated and should be always pursued. They are the dreams that inspire us on how the economy should develop. Therefore, the sections should not be changed. In Article 33(4), there are the guiding principles on how the dreams can be pursued. Furthermore, the principle of efficiency is often (mis)understood as financial efficiency, being about the right way of allocating resources, a concept based on the real opportunity value of resources. Therefore, its measurement is not financial, but about its contribution to the national economy. Hence, it is possible that a project is financially loss-making, but has a positive value because it boosts the national economy. "Control by the state" is an accordion-like principle. To be more efficient, the state can choose between using the resources directly, or giving them to private actors. With this principle, the government should be held accountable and not waste resources. Furthermore, sustainability has accommodated the intention of environmentally sound and sustainable development. It means

424 As stated by Harjono (F-PDIP). *Ibid.*, p. 116.

425 As stated by Soewarno (F-PDIP). *Ibid.*, p. 120.

426 The meeting was chaired by Slamet Effendy Yusuf (F-PG), the vice PAH I chairman. *Ibid.*, pp. 120, 122.

427 As stated by Jakob Tobing (F-PDIP). *Ibid.*, p. 305.

that renewable resources are protected and for non-renewable resources, alternatives should be available. Similarly, maintaining equitable regional development and unity of the national economy is very important.

In conclusion, the PAH I chairman stated that Article 33(1), Article 33(2), and Article 33(3) should remain, and Article 33(4) should be added, noting sustainability, environment, equitability of development, and unity of the national economy. Regarding the cooperative ventures, one should not accentuate any particular economic actor. With the familial principle implemented, along with principles of efficiency and justice, not only the cooperatives will have a familial venture character. However, the ventures that go public that offer shares in small nominal fractions will also reflect the familial character.⁴²⁸

Then, F-UG, F-Reformasi, and F-PDIP speakers argued that the term *dikuasai* (to be under the authority of) should be maintained, since it may mean ‘to own and/or to control.’⁴²⁹ However, a F-KB member contended that, if not restricted, Article 33(1), Article 33(2), and Article 33(3) will adopt etatism as the model of managing the Indonesian economy. Therefore, if those sections are to be maintained, they should be accompanied by Article 33(4), which will open a healthy competition as in a market system; or else economic etatism coupled with a market economy will develop, as practiced in the Scandinavian countries. Further, the cooperative as the trademark of the Indonesian economy would be preserved.⁴³⁰

Regarding the proposal for changes, a F-PDIP member stressed that the original Article 33(1) is perfect. The speaker also approved of the term *menguasai* (under the authority of) because it could mean *mengatur* (to control) while reflecting that the national assets belong to the people, as represented by the state. Further, he stressed that the equitable distribution aspect should be emphasized in the article.⁴³¹ A speaker from F-UG reminded that up until that point, Article 33 had had no impact on the national economy. That is because the article is not imperative, merely a statement of principles. Therefore, there should be a fifth section that contains instructions for implementing the principles by law.⁴³²

In response, a F-PDIP speaker proposed replacing the term “*dikuasai*” (under the authority of) with the terms “*diatur dan ditentukan oleh negara*” (regulated and determined by the state). With such a formulation, the new section is unnecessary because it already means that it should be regulated

428 Jakob Tobing, the author, proposed the term *effisiensi berkeadilan* (efficiency with justice) which is based on opportunity value concept, which is different from the notion in efficiency in micro financial concept, in a Komisi A meeting on 7 August 2002. See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Dua, Edisi Revisi, Sekretariat Jenderal, 2010, pp. 313, 314.

429 As stated by Sutjipto (F-UG), Fuad Bawazir (F-Reformasi) and Frans Matrutty (F-PDIP). *Ibid.*, pp. 316, 317, 321.

430 As argued by Ali Masykur Musa (F-KB). *Ibid.*, pp. 318, 319.

431 As stated by Soewarno (F-PDIP). *Ibid.*, p. 323.

432 As stated by Soedijarto (F-UG). *Ibid.*, p. 324.

further by laws.⁴³³ Accordingly, a F-PG speaker argued that the term *diatur* (regulated) by the state should be included. Under certain circumstances, the state may not be able to invest when the project is needed by the people. In that case, the state should give the private sector the opportunity to invest, but since it relates to the people's basic needs, the state should retain control of the venture.⁴³⁴

Another F-PDIP speaker argued that all the factions had agreed on the content of the changes to Article 33, which just required refinement. Article 33(1) to Article 33(4) were intended for implementers to follow, i.e., state, government, and economic actors. The Article required a phrase stating that it must be further regulated by law.⁴³⁵

Eventually, the meeting chair concluded that in principle, the changes to Article 33 had been agreed and only required refinement. Since no faction had commented on Article 34, the chair concluded that the draft in the Attachment of MPR Decree No. XI/2001 was agreeable to all factions.⁴³⁶

VIII.2.5.4 Refining Article 33

Subsequently, PAH I discussed refining Article 33. A F-KB speaker argued that there was a controversy about the principles of familial and market economies because the definition of a 'national economy' required a principle that would ensure proportional justice to everyone. Therefore, the justice principle should be incorporated into Article 33(1) instead of into the new Article 33(4).⁴³⁷ However, as concluded by the meeting chairman, other factions did not agree with the proposal and wanted to maintain the original Article 33(1), Article 33(2), and Article 33(3).⁴³⁸

Further, PAH I deliberated on the principles that should be included in Article 33(4). Thus, PAH I agreed to put efficiency with justice, continuity, environmental perspective, self-sufficiency, maintaining balanced progress, and unity of the national economy in Article 33(4). However, a F-PDKB speaker reiterated that economic democracy should be the basis for economic development.⁴³⁹ In a similar vein, a F-KB member argued that the unity of national economy should be coupled with a just market economy system or a social market economy.⁴⁴⁰

In response, a F-PDIP member emphasized that the market economy is a managed or intervened market, in which justice, efficiency, and sustainability are the principles in the democratically intervened market

433 As stated by Hobbes Sinaga (F-PDIP). *Ibid.*, p. 326.

434 As argued by T.M. Nurlif (F-PG). *Ibid.*, p. 327.

435 As stated by Harjono (F-PDIP). *Ibid.*, p. 328.

436 The meeting was presided by Slamet Effendy Yusuf. *Ibid.* See Attachment VIII.7.

437 As stated by Yusuf Muhammad (F-KB). *Ibid.*

438 *Ibid.*, p. 329.

439 As argued by Gregorius Seto Haryanto (F-PDKB). *Ibid.*, p. 332.

440 As argued by Ali Masykur Musa (F-KB). *Ibid.*, p. 334.

economy.⁴⁴¹ Then, a F-PG speaker argued that the national economy is the people's collaborative effort. Therefore, the togetherness principle should be included in this article as well.⁴⁴²

Then, PAH I agreed that there should be a clause that requires implementing these provisions stipulated by law. Thus, the draft new Article 33 was agreed and subsequently reported on for further deliberation.⁴⁴³

VIII.2.5.5 Regional Forums and Validity Meetings on the Economic System

In the subsequent regional assessment forums, economic issues did not attract many responses from local participants. However, participants in Pontianak made an important suggestion, proposing that demography and population insights should also be considered as principles of economic development and that Article 34 should stipulate that the state shall develop a system of social and economic security for all people and to protect and empower the weak and the incapable, in accordance with human dignity.⁴⁴⁴

Further, a validity meeting in Bali proposed clarifying the term *dikuasai oleh negara* (controlled by the state) in Article 33(3). The term may imply the danger of state expansion over the people's rights. The meeting also proposed changing the term with "shall be regulated by the state with laws."⁴⁴⁵

In a PAH I subsequent meeting to review the reports from the validity meetings on 27 May 2002, Hasyim Djalal, a resource person, agreed that Article 33(1) and Article 33(2) should not be changed since they contain a certain philosophy. However, Article 33(3) should be adjusted. For instance, the term *bumi* (the land), is a geographical term, rather than a legal one. The term used should conform the sovereign rights recognized internationally. There are two objects that fall into the term *dikuasai* (under the authority of): territory and natural resources. Indonesia has a 200-mile economic zone, not all of it Indonesian territory. Its resources are under the authority of Indonesia. Therefore, the terms in Article 33(3) should be adjusted to conform to international legal conventions.⁴⁴⁶

VIII.2.5.6 Faction Disagreements Persist

Thus, on 4 June 2002, PAH I reported the draft to the MPR Working Body plenary meeting.⁴⁴⁷ In the final MPR Working Body plenary meeting on 25

441 As stated by Jakob Tobing (F-PDIP). Ibid.

442 As stated by Ahmad Hafiz Zawawi (F-PG). Ibid., p. 335.

443 Ibid., p. 338.

444 As conveyed by Mailan Panggabean from the University of Tanjungpura, Pontianak and by Pabali, also from University of Tanjungpura. Ibid., pp. 726, 737. The validity meeting was conducted in Pontianak, on 21 May 2002.

445 As reported by I Dewa Gede Palguna. Ibid., p. 837.

446 Ibid., p. 786.

447 Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Tiga, Edisi Revisi, Sekretariat Jenderal, 2010, p. 7. See Attachment VIII.8.

July 2002, it was agreed that the Chapter XIV draft should not be changed, except its title, which would change from Social Welfare to National Economy and Social Welfare.⁴⁴⁸

In the ensuing Commission A meeting on 6 August 2002, factions discussed the drafts. In general, factions could agree on the drafts of the amended Articles 33 and 34. However, a F-UG speaker questioned the agreement on the title and the sections of Article 33 and 34. F-UG argued that the title change had caused a serious distortion. “Social Welfare” emphasizes that the main objective is the people’s welfare. In that regard, the national economy is the derivative of that objective. Regarding the principles in Article 33(4), F-UG argued that efficiency may change the production process to become capital intensive and would neglect labour intensive processes. Efficiency also contradicts the intention to achieve independence. Therefore, the terms efficiency with independence, efficiency with justice, and so forth, should be included.⁴⁴⁹

A F-PDIP member also disagreed with Article 33’s revision. Article 33(1) contains the principles of economic democracy. The instruments to implement those principles are absent.⁴⁵⁰ In that regard, another F-PDIP member asserted that discussing the national economy and social welfare could not be separated from the *rechtsstaatgedachte* or a state based on the rule of law and *volkssoevereiniteit* (sovereignty of the people). In a *materiële rechtsstaat* (substantive state based on the rule of law), besides the civil and political basic rights, there are economic, social, and cultural rights. Hence, the substance of Articles 33 and 34 is related to the rule of law, which is confirmed in Article 1(2) and Article 1(3). Further, F-PDIP accepted the formulation of the drafts of Article 33(4) and Article 33(5).⁴⁵¹

Similarly, a F-PG member reiterated that F-PG agreed with the draft amendments to Articles 33 and 34. Articles 33(1)-(3) emphasizes economic democracy, to achieve prosperity for the people. However, neither the state nor market forces should fully dominate the economy. Further, Chapter XIV’s title should be changed from Social Welfare to National Economy and Social Welfare. Article 33 is about the national economy and Article 34 is about social welfare.⁴⁵² Likewise, the F-PPP, F-KB, F-Reformasi, F-PBB, F-KKI, F-PDU, F-TNI/Polri, and F-UD speakers endorsed the draft amendments to Articles 33 and 34.⁴⁵³ Accordingly, F-UG agreed with the draft

448 Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Empat, Edisi Revisi, Sekretariat Jenderal, 2010, p. 347.

449 As conveyed by Sri Edi Swasono (F-UG). Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Lima, Edisi Revisi, Sekretariat Jenderal, 2010, p. 277.

450 As argued by Ramson Siagian (F-PDIP). *Ibid.*, p. 280.

451 As argued by Sutjipno (F-PDIP). *Ibid.*, p. 283.

452 As reiterated by Zawawi (F-PG). *Ibid.*, p. 285.

453 As affirmed by Sjaful Rahman (F-PPP), Ali Masykur Musa (F-KB), A.M. Luthfi (F-Reformasi), Bondan Abdul Madjid (F-PBB), Sutradara Ginting (F-KKI), Asnawi Latief (F-PDU), Sugih Mangunsukarto (F-TNI/Polri) and Vincent Radja (F-UD). *Ibid.*, pp. 285 – 291.

Chapter XIV changes, including the title. However, the term efficiency should be discussed further.⁴⁵⁴ Eventually, the meeting chairman concluded that the substance of amendment to Articles 33 and 34 had been agreed and the formulation team would refine the formulation.⁴⁵⁵

VIII.2.5.7 Commission A: Refining the Formulation

In the Commission A formulation team meeting on 7 August 2002, the Commission A chairman stated that some consider that efficiency is capitalistic efficiency. In fact, the meaning of efficiency depended on which book one read. Further, sustainability and environmental insights are a single concept, so that the term 'environmental insight' could be omitted.⁴⁵⁶ However, a F-UD member objected to omitting the term. The term was a demand of the public and the NGOs.⁴⁵⁷

Then, Sri Edy Swasono, a FUG member, reiterated that the objective of national development is not economic growth. Rather, the measure of development's success is the increase or decrease of social welfare, while efficiency is a technical matter. Another problem is that micro-efficiency may contradict macro-level efficiency. Even in the theoretical realm, these two efficiencies are an unsolvable contradiction. Further, he proposed that the cooperative as the appropriate enterprise for the economic system, as discussed in the Elucidation of the 1945 Constitution, should be explicitly mentioned in Article 33.⁴⁵⁸ In response, a F-PG member stressed that the objective, the greatest prosperity of the people, had been confirmed in Article 33(3). Indeed, development should be just and efficient as well.⁴⁵⁹ Likewise, F-Reformasi argued that it is better to have an overlap of principles in Article 33(4) rather than an omitted principle.⁴⁶⁰ More critically, a F-PDIP member emphasized that efficiency may contradict togetherness or *gotong-royong* (mutual help).⁴⁶¹

Then, the PAH I chairman asserted that the term efficiency should be understood through the opportunity cost concept, not as a micro-finance concept. As he had stated previously, a project may be financially loss-making for the government. However, if it provides significant employment and benefit many people, that is efficiency. Any investment should be considered as resulting in the greatest prosperity for the people, with no sources wasted.⁴⁶²

454 As stated by Hariyadi B. Sukamdani (F-UG). *Ibid.*, p. 291.

455 The meeting was presided by I Ketut Astawa (F-TNI/POLRI). *Ibid.*, p. 294.

456 *Ibid.*, p. 496.

457 As stated by Hatta Mustafa (F-UD). *Ibid.*, p. 497.

458 *Ibid.*, pp. 498-500.

459 As stated by Ahmad Hafiz Zawawi (F-PG). *Ibid.*, p. 500.

460 As stated by Fuad Bawazir (F-Reformasi). *Ibid.*, p. 501.

461 As argued by Amin Aryoso (F-PDIP). *Ibid.*, p. 502.

462 *Ibid.*, p. 502. See also Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Dua, Edisi Revisi, Sekretariat Jenderal, 2010, p. 313.

A F-PG member added that efficiency is necessary to prevent a high-cost economy. However, justice could not be neglected. Hence, both principles should be coupled, not juxtaposed.⁴⁶³ In response, Swasono stated that the term 'efficiency' in economic studies can have a double meaning. What should be achieved is productive and economical, not wasteful. Therefore, the term 'efficiency' may well be too technical for a constitution.⁴⁶⁴

To that end, the chairman stressed that both principles, justice, and efficiency, should be comprehended jointly. In that regard, we should make use of the latest developments in science and technology. Considering the time constraints, the chairman concluded by urging all to finalize the differences in the subsequent informal consultation between the Commission A and faction leaders.⁴⁶⁵

In the ensuing informal consultation meeting, conducted right after the formulation meeting, the leadership of F-UG stated that F-UG, in which Eddy Swasono was a member, confirmed that F-UG approved the draft amendments to Articles 33 and 34. With that confirmation, all factions agreed to accept the draft amendments to Articles 33 and 34, with a small change to Article 33(4).⁴⁶⁶ The Commission A chairman then reported the outcomes of the consultation to the Commission A plenary, which agreed to it. Subsequently, the draft was reported to the MPR plenary meeting on 9 August 2002.⁴⁶⁷

Ultimately, with endorsement from all factions, in the MPR plenary meeting on 10 August 2002, the draft was ratified as the amendment to Chapter XIV on National Economy and Social Welfare of the 1945 Constitution.⁴⁶⁸

VIII.3 THE CONSTITUTIONAL COMMISSION

During this last amendment stage process, faction discussions about the constitutional commission were not as intense as in the previous stages. However, civil society continued to demand a constitutional commission take over the amendment process.

In the first MPR Working Body meeting on 10 January 2002, a F-PPP speaker reminded the committee that in the previous annual session, F-PPP proposed constitutional commission's formation had not been concluded.

463 As conveyed by Ahmad Hafiz Zawawi (F-PG). *Ibid.*, p. 503.

464 *Ibid.*, p. 503.

465 *Ibid.*, p.522

466 The informal meeting was led by Arifin Panigoro (F-PDIP). *Ibid.*, p.p. 395-409.

467 Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Dua, Edisi Revisi, Sekretariat Jenderal, 2010, p. 530. See also Attachment VIII.9.

468 *Ibid.*, pp., 704, 751. Regarding the decision, Sri Edi Swasono (F-UG) stated objection to the change of the title of Chapter XIV from 'Social Welfare' to 'National Economy and Social Welfare' and mentioned that the term 'cooperative' is not specified in Article 33. See *Ibid.*, pp. 703-704. See also VIII.5.

However, F-PPP modified the proposal. Rather than under the MPR, the constitutional commission should be formed by the MPR Working Body and be responsible to the MPR Working Body. Further, F-PPP proposed that PAH I should determine the other commission's requirements. F-PPP admitted that its previous idea to task the constitutional commission with the overall amendment revision would not be possible due to time constraints. Therefore, F-PPP suggested that such a commission could be established by the next 2004 election. However, the possibility of forming such a commission should be stated in Article 37.⁴⁶⁹

In the same vein, a F-KB speaker stated that in anticipation of difficulties in achieving logic formulations that may hamper the amendment's completion, F-KB would continue proposing a draft MPR Decree on the constitutional commission's formation.⁴⁷⁰ Regarding the constitutional commission, F-UD argued that its formation should not reduce the MPR's role and function in conducting the constitutional amendment.⁴⁷¹ On that occasion, F-TNI/Polri called for caution in revamping fundamental issues in the Constitution to prevent the nation's disintegration. Therefore, instead, PAH I should seek assistance from the Expert Team in finalizing the amendment.⁴⁷²

In its first meeting on 11 January 2002, PAH I formed a small team to prepare the working schedule for finalizing the amendments and a plan to form a constitutional commission.⁴⁷³ Regarding this schedule, F-UG and F-PPP speakers argued that sufficient time should be allocated for in-depth discussions and communicating with the people. Further, the F-PPP speaker reminded others that although the draft could be made by a constitutional commission, it still needed approval from the plenary MPR meeting. There would be no guarantee that the draft would not be changed. Therefore, by adopting the working plan, it was no longer necessary to discuss a constitutional commission itself.⁴⁷⁴

VIII.3.1 Views on a Constitutional Commission

Then, in a PAH I meeting on 28 January 2002 for the factions to express their Introductory Views on the amendment, only F-KB talked about a constitutional commission. In that meeting, the F-KB speaker stated that the constitutional commission should be discussed in more depth. Effectiveness of a fundamental law needs all the people as determinants, not just certain

469 As stated by Abdul Azis Imron Pattisahusiwa (F-PPP). *Majelis Permusyawaratan Rakyat Republik Indonesia, op.cit.*, Tahun Sidang 2002, Buku Satu, Edisi Revisi, Sekretariat Jenderal, 2010, pp. 54-55.

470 As stated by Ida Fauziah (F-KB). *Ibid.*, p. 61.

471 As argued by Hatta Mustafa (F-UD). *Ibid.*, p. 66.

472 As proposed by Mardiono (F-TNI/Polri). *Ibid.*, p. 67.

473 The small team was led by Ali Masykur Musa (F-KB). *Ibid.*, p. 96.

474 As stated by Soedijarto (F-UG) and Zain Bajeber (F-PPP). *Ibid.*, pp. 113, 115.

people, particularly not only the ruling elite.⁴⁷⁵ Furthermore, the F-KB speaker criticized the MPR for still being open to appointing MPR members from functional groups, the military, and the police. He also deplored that the MPR's chosen system was not purely bicameral. If the DPR and Regional Representative Council were equal, then there would be checks and balances.

Moreover, in a PAH I public hearing on 27 February 2002, a Coalition of NGOs delegation demanded that the MPR should stop the amendment process. The Coalition strongly denounced the constitutional amendments that had already been adopted. They considered that the amendment process was counter-productive to the development of democracy in Indonesia, since the amendment process was elitist, with only a handful of people making the decisions and public involvement being minimal. Furthermore, the MPR did not publicize the draft content of all changes to the constitution, which would allow the public to participate in the process. Similarly, the MPR did not have the in-depth knowledge of what a democracy means, its terms and principles, and its checks and balances. Changes were only partial, because the MPR did not venture out of the frame and the value system of the 1945 Constitution, which was not worth keeping. The MPR had also not succeeded in determining a fully direct presidential election. The second-round election was still to be conducted by the MPR. Further, a checks and balances system had not been realized and the outcome tended to become legislative heavy, creating an overly strong parliament. Moreover, the mere *trias politica* was outdated. The separation of powers no longer only concerned the three power branches. For example, the constitutions of Thailand and South Africa now noted state auxiliary agencies, such as a national commission of human rights, ombudsman, national commission for corruption eradication, and a general equality commission.

Furthermore, the F-KB speaker criticized the MPR for still being open to appointing MPR members from functional group, military, and police delegates. He also deplored that the MPR's chosen system was not purely bicameral. If the DPR and Regional Representative Council were equal, then there would be checks and balances.

The delegation reiterated that an independent commission would be better suited, as it would be free from ulterior motives. Thus, the MPR should no longer conduct the amendment process and determine the outcomes. The process must be handed over to an independent constitutional commission. A constitutional commission should no longer work on amending the Constitution and instead make a new one, the NGO coalition speaker asserted.⁴⁷⁶

In response, a F-UG member said that state institutions could change the constitution not only in Indonesia. In certain countries, representatives rather than the people have the right to change the constitution. Consti-

475 As conveyed by Erman Suparno (F-KB). *Ibid.*, pp. 154,155.

476 As conveyed by Bambang Widjajanto (Coalition of NGOs). *Ibid.*, pp. 315-325, 363.

tutional amendments are passed by the United States' Congress and Germany's *Bundesversammlung* (Federal Assembly).⁴⁷⁷ Then, a F-PDIP member emphasized that the MPR had met and received many different ideas and aspirations from many organizations, NGOs, and the public since 1999. PAH I had also received input and considerations from experts. Therefore, if one aspiration is not acceptable, it does not mean that the MPR has failed to accommodate people's aspirations. Further, an NGO with a partial opinion has no right to claim it speaks for the people. It is the people's representatives in the MPR who are entitled to conclude what is in accordance with the people's interests and what is not.⁴⁷⁸ Accordingly, a F-PG speaker noted that the F-PG once proposed forming a constitutional commission with full authority. However, the proposal was criticized because it was unclear whom the commission represented. The MPR has the constitutional authority to ratify the constitution and its members may also have certain intellectual capacities. Of course, citizens also have intellectual competence. Those who had the knowledge could draft a complete constitution and show it to the MPR and the public, so that the MPR would have a comprehensive (rather than a partial) overview of the matter.⁴⁷⁹

On that matter, a NGOs speaker stated that the NGOs did not want to negate the MPR's authority in determining the final draft new constitution. However, because a constitution should principally prevent an abuse of power, the draft constitution should be drafted by an independent constitutional commission.⁴⁸⁰ Another NGO delegation emphasized that it was unacceptable to leave the constitution-making process to the political struggle of political powers without involving the public. The people should decide, not the interests of political powers. Therefore, Article 37 should be amended to allow an independent constitutional commission to do the work, rather than a process that is full of trivial political interests stemming from political powers.⁴⁸¹

In a PAH I public hearing on 28 February 2002, a CSIS delegation stated that the amendment process seemed elitist. The MPR allocated only 20% of its time to conduct public hearings and another 36% for arranging informal consultations and formulation, which were conducted in closed sessions. This led the public to not know how the amendment process had taken place. In reviewing the 1945 Constitution, the MPR should have a clear basic concept of the future state. Whether as an amended or new constitution, it should develop an integrative, adaptive Constitution that guarantees human rights and adopts checks and balances. The MPR may have difficulties in doing that. Likewise, another CSIS speaker stated that the MPR, consciously or not, had preserved the basic concept of the original

477 As expressed by Soedijarto (F-UG). *Ibid.*, p. 338.

478 As stated by Frans Matrutty (F-PDIP). *Ibid.*, pp. 346-347.

479 As stated by Andi Mattalatta (F-PG). *Ibid.*, pp. 352-353.

480 As stated by Smita Notosusanto (NGOs). *Ibid.*, pp. 359-360.

481 As stated by Munir (NGOs). *Ibid.*, p. 362.

1945 Constitution, some of which constituted the reasons for reforming the Constitution. Therefore, CSIS proposed forming an independent constitutional commission to undertake the task. This did not mean removing the MPR's authority to ratify the new constitution.⁴⁸²

In response, a F-PG speaker reiterated that from the beginning, the MPR wanted to reform the constitution, not replace it. The basic reference is the 1959 version of the 1945 Constitution, especially the Preamble as the benchmark of the grand design for absorbing the new dynamics, such as democratization, *reformasi*, law enforcement, and human rights.⁴⁸³ Likewise, a F-UG speaker reiterated that the reference was the Preamble, which contains the ideology. As the successor to and heir of the state's founders, the reform should be based on the state's ideology.⁴⁸⁴ A CSIS speaker later recognized that the constitution's reform ideology is the declaration of independence and the Preamble. Whereas the state's form was open to reconsideration, whether a unitary or a federal state, the republic's form should be maintained.⁴⁸⁵

Regarding the MPR's authority to amend the 1945 Constitution, a University of Pancasila delegation addressed this in a PAH I public hearing on 5 March 2002. It stated that with the new Article 1(2) stating that people's sovereignty is no longer exercised by the MPR, the MPR had lost its authority to amend the constitution and therefore the amendment could not be continued.⁴⁸⁶

In a PAH I public hearing on 12 March 2002, a UNTAG (*Universitas Tujuh Belas Agustus* – University of 17 August) delegation from Semarang also urged the MPR to discontinue the constitutional amendment. The MPR should evaluate the previous constitutional amendments. The fourth amendment draft would most likely have a negative impact on the country, because the amendment had been conducted carelessly and in haste.⁴⁸⁷

In response, a F-PDIP speaker stated that all opinions would be considered by the MPR as input alongside thousands of other opinions. The MPR would continue to revamp the Constitution's articles that were incompatible with the Preamble's messages.⁴⁸⁸ Further, the PAH I chairman asked the university delegates to develop a well-informed mentality in society, in the spirit of intelligentsia and discourses based on facts, not prejudice, to contribute to the Constitution.⁴⁸⁹

482 As conveyed by Tommy A. Legowo and Anton Djarumaku, both from CSIS. *Ibid.*, pp. 375, 377

483 As stated by Theo Sambuaga (F-PG). *Ibid.*, p. 400.

484 As underlined by Soedijarto (F-UG). *Ibid.*, p. 403.

485 As stated by Tommy A. Legowo (CSIS). *Ibid.*, p. 406.

486 As conveyed by Abdul Kadir Besar (University of Pancasila). *Ibid.*, p. 478.

487 As stated by Hendro Sukmono (UNTAG). *Ibid.*, p. 530.

488 As stated by Sutjipno (F-PDIP). *Ibid.*, p. 535.

489 *Ibid.*, p. 543.

Meanwhile, a FKIK (*Forum Kajian Ilmiah Konstitusi* – Forum of the Scientific Study of the Constitution) delegation met with Soetardjo Soerjogoeritno, the DPR's Vice Speaker from F-PDIP. Believing the changes had deviated from what they considered to be the values contained in the Preamble, the delegation urged the MPR to stop the constitutional amendment. Soerjogoeritno expressed his support of the demand.⁴⁹⁰ In addition, a *Forum Demokrasi* (the Democracy Forum) speaker stated that an independent constitutional commission was the best alternative to avoid a total amendment failure of the 1945 Constitution. He expressed concern over the legislators of the MPR who were occupied by the struggle to further their own interests within the amendment process.⁴⁹¹

On 1 May 2002, a delegate from the European Union visited Indonesia to learn about the country's development and met with PAH I. One of the delegate's questions was whether PAH I had invited NGO input during the amendment process and then they suggested that PAH I invite the NGOs.⁴⁹²

VIII.3.2 Intervention Attempts Increase

In the meantime, in many places, particularly along the northern coast of the island of Java, riots began to occur, while demands to stop the amendment process intensified. Responding to the situation, the military sent a mixed signal. They were not satisfied with the outcome of the amendment process. However, they adjured the MPR to accomplish the task and said they would accept the outcome as a transitional constitution that should be reviewed after the 2004 election. To that end, they proposed that an independent constitutional commission should fix the amendment.⁴⁹³

Regarding the amendments' comprehensiveness as a system, in a PAH I plenary meeting on 5 June 2002 to synchronize the amendment outcomes, a F-PDIP speaker stated that MPR members should allocate time to review whether the system built by the amendments was workable.⁴⁹⁴ Another F-PDIP member reminded that the amendments' completions involved the good name of PAH I and the MPR. In society, there seemed to be many

490 The delegation consisted of, among others, Budi Harsono, A.S.S. Tambunan, Sri Mulyono Herlambang (F-UG), Amin Aryoso (F-PDIP), Sadjarwo Sukardiman (F-PDIP). See *Kompas Daily*, 9 April 2002.

491 As stated by Rahman Tolleng from *Forum Demokrasi* (the Democracy Forum). See *The Jakarta Post*, Daily Newspaper, 19 April 2002.

492 Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Dua, Edisi Revisi, Sekretariat Jenderal, 2010, p. 537. The delegates were from Ireland, United Kingdom, Austria, and Spain.

493 *Suara Pembaruan Daily*, 26 April 2002.

494 As stated by Pataniari Siahaan (F-PDIP). Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Tiga, Edisi Revisi, Sekretariat Jenderal, 2010, p. 17.

disturbing demands and dissatisfaction, although among MPR members, there were no problems.⁴⁹⁵ Likewise, a F-Reformasi member emphasized that if PAH I failed to finalize the amendments, it was the failure of those who were striving for reform and civil supremacy. A vacuum created by no constitution is very dangerous and must be avoided.⁴⁹⁶ A F-PDIP member stressed once again that in synchronizing the outcomes, it should be reviewed whether the system would be compatible with the basic principles embedded in the Preamble, the unitary form of the Republic of Indonesia that adheres to *Bhinneka Tunggal Ika* (Unity in Diversity), the principles of the presidential system, and the principles of checks and balances.⁴⁹⁷ Then, a F-KB member reminded all that establishing checks and balances should not cause the pendulum to swing too far towards over-empowering the legislature.⁴⁹⁸

Later, in a PAH I public hearing on 10 July 2002, a GMNI (*Gerakan Mahasiswa Nasional Indonesia* – Indonesian National Student Movement) delegation conveyed a statement asserting that the amendment endangered the safety of the nation and the state. Amendments had changed fundamentally the state structure, the political system, and the economic system of the country. Therefore, the fourth amendment must be stopped, the first, second, and third amendments ought to be revoked, and the original 1945 Constitution should be reinstated.⁴⁹⁹ Then, another delegate added that GMNI was not a priori against amendments, but that amendments should be editorial improvements of existing articles or adding new sections without changing the substance of the existing ones.⁵⁰⁰

Despite this pressure, factions were not that interested in establishing a constitutional commission. It appeared that factions were more focused on finalizing the amendment. However, various parties outside the MPR continued to press for establishing a constitutional commission.

In a PAH I plenary meeting on 25 July 2002 to finalize the amendment draft, in its final remarks, the F-UG speaker criticized the foreign funded NGOs, which were vigorously discrediting the MPR. These NGOs considered the MPR as not radical enough in amending the 1945 Constitution, so they proposed a constitutional commission to draft a new constitution. However, because of the MPR's solidity, the MPR still had the mandate to continue the amendment.⁵⁰¹ On the other hand, the F-KB speaker stated that

495 As expressed by Soewarno (F-PDIP). *Ibid.*, p. 18.

496 As asserted by A.M. Luthfi (F-Reformasi). *Ibid.*, p. 20.

497 As stated by Sutjipno (F-PDIP). *Ibid.*, p. 27.

498 As expressed by Ali Masykur Musa (F-KB). *Ibid.*, p. 29.

499 As conveyed by Dihot P. Simarmata from GMNI (*Gerakan Mahasiswa Nasional Indonesia* – Indonesian National Student Movement). *Majelis Permusyawaratan Rakyat Republik Indonesia, op.cit.*, Tahun Sidang 2002, Buku Empat, Edisi Revisi, Sekretariat Jenderal, 2010, p. 96.

500 As expressed by Bambang Ramada (GMNI). *Ibid.*

501 As stated by Soedijarto (F-UG). *Ibid.*, p. 370.

a constitutional commission (once proposed by F-KB) could be considered if it was necessary to formulate a more systematic and comprehensive Constitution.⁵⁰²

VIII.3.3 Military Calls for Stopping the Amendment

While the MPR Annual Session was getting closer to its end, on 7 June 2002, General Endriartono Sutarto was appointed as the new TNI Chief, replacing Admira Widodo Adisutjipto. The new TNI chief, General Endriartono Sutarto said that the amendment process had deviated from its original purpose. Further, Sutarto confirmed that the military supported establishing a constitutional commission, comprising of constitutional law experts and non-political groups to take over the amendment process. Furthermore, Sutarto asserted that in case the process failed, the military and the police would support the President reinstating the original unamended 1945 Constitution.⁵⁰³

Endorsement of the military's proposal to form a constitutional commission came from various parties. In Padang, West Sumatera, the Coalition for a New Constitution demanded that the MPR establish a constitutional commission by changing Article 37. Further, the Coalition insisted that the amended Constitution should be declared as a transitional Constitution and that a constitutional commission should draft a new Constitution. Furthermore, the Coalition demanded that a new MPR would ratify the draft new Constitution. If the MPR refused, the draft should be brought to a referendum.⁵⁰⁴ Likewise, a Coalition for a New Constitution speaker said that the process and result of the ongoing constitutional amendment violated the spirit of reform. A constitutional commission is a must and the MPR must endorse it this year. A LBH (*Lembaga Bantuan Hukum* – the Legal Aid Institute) Jakarta speaker added that the amended Constitution should be declared as a transitional Constitution and a constitutional commission should be tasked with drafting changes or drafting a new Constitution.⁵⁰⁵

502 As expressed by Ida Fauziah (F-KB). *Ibid.*, p. 374.

503 *The Jakarta Post*, newspaper, 31 July 2002. See also, "*Sikap TNI dan POLRI terhadap amandemen Undang-Undang Dasar 1945*" (The stance of Indonesia's National Army and Republic of Indonesia's Police towards the amendment of UUD 1945), 30 July 2002.

504 *Media Indonesia*, newspaper, 1 August 2002, p. 25.

505 As conveyed by Hadar N. Gumay, the Coalition for a New Constitution and Paulus Mahulette from LBH (*Lembaga Bantuan Hukum* – the Legal Aid Institute). *The Jakarta Post*, newspaper, 1 August 2002. The Coalition for a New Constitution consisted of CETRO (Center for Electoral Reform), the Jakarta Legal Aid Institute, the Indonesian Forum for the Environment, the Women's Coalition, the Commission for National Law Reform, and individuals.

In the meantime, Saiful Sulun, the secretary general of the *Front Pembela Proklamasi '45* (Front of the Defenders of the '45 Proclamation) issued a statement rejecting and not recognizing any of the MPR decisions that ratify the constitutional amendments.⁵⁰⁶ According to Sulun, the amendment had left out the soul and spirit of the original 1945 Constitution.⁵⁰⁷ Further, Sulun stated that the amendment had adopted a bicameral system that could lead to federalism. Sulun was suspicious that the system was nothing more than a Western agenda, including that of the U.S. Indonesia could not apply American values, he stated.⁵⁰⁸ Resistance also spread to the MPR itself. Amin Aryoso, a F-PDIP member, along with other F-PDIP members, on behalf of *Gerakan Nurani Parlemen* (Parliament's Conscience Movement), declared that the constitutional amendment was not only excessive, but foolish.⁵⁰⁹ In the meantime, this fraction in F-PDIP actively collected signatures to reject the amendments. A PDIP deputy leader stated that they attempted to obtain support from F-PDIP, F-KB, and F-TNI/Polri members.⁵¹⁰ Matori Abdul Djalil, Minister of Defense, and a PKB (Partai Kebangkitan Bangsa – Party of National Awakening) leader agreed and endorsed the military proposal.⁵¹¹

In a statement, a political scientist group under AIPI (*Asosiasi Ilmu Politik Indonesia* – Indonesian Political Science Association) declared that the constitutional amendment showed signs of evolving without a direction, arbitrarily, and even partially. There was a risk of deadlock and that could cause a constitutional crisis. It could also lead to President Megawati issuing a decree ordering a return to the original 1945 Constitution. Further, AIPI warned that readopting the original 1945 Constitution would set back the country's reform movement. However, they agreed that the amended Constitution should be transitional.⁵¹²

There were also counter forces. Adnan Buyung Nasution, a constitutional law expert and an icon of resistance against the New Order, stated that the constitutional amendment should be conducted since constitutional reform is part of the reform processing society, the nation, and the state. The process should not be halted even if a constitutional commission should be established.⁵¹³

506 *Kompas*, newspaper, 1 August 2002, p. 2. *Front Pembela Proklamasi '45* mainly consisted of retired military personnel. Saiful Sulun is a retired lieutenant general of the Army, former commander of East Java Regional Military Command (1985-1987) and People's Consultative Assembly Deputy Speaker (1987-1992).

507 *Media Indonesia*, newspaper, 1 August 2002, p. 25.

508 *The Jakarta Post*, newspaper, 1 August 2002.

509 *Kompas*, newspaper, 1 August 2002, p. 2. Other F-PDIP members were Permadi, Marah Simon, Sukono, and Mat Alamin Kraying.

510 As stated by Imam Mundjiat, a national PDI-P leadership deputy chairman. *Tempo*, newspaper, 1 August 2002.

511 Ibid.

512 As stated by Syamsuddin Haris, one of the AIPI chairmen. *The Jakarta Post*, newspaper, 1 August 2002.

513 *Media Indonesia*, newspaper, 1 August 2002, p. 26.

Vice President Hamzah Haz, the PPP chairman, rejected the Armed Forces Commander's proposal to declare the amended Constitution a transitional Constitution.⁵¹⁴ A transitional Constitution would cause instability.⁵¹⁵ Similarly, Jimly Asshidiqqie, a constitutional law expert, rejected enacting the amended Constitution as a transitional Constitution, since it would cause legal uncertainty. Further, the armed forces' statement was alarming and caused suspicion that the military would return to their old political role.⁵¹⁶ Bagir Manan, the Chief Justice of the Supreme Court argued that a provisional constitution would be inappropriate and weaken its position as the fundamental law.⁵¹⁷

VIII.3.4 Attempts to Stop or Promote the Amendment

Protests were not limited to the media or public hearings. Student activists staged demonstrations in various cities all over the country, such as in Jakarta, Makassar, Yogyakarta, Kediri, and Bogor, demanding the amendment's completion. Others demanded a referendum to amend the Constitution. The students warned the anti-reformists that they would confront them.⁵¹⁸

Thus, approaching the 2002 MPR Annual Session's end, demands to establish a constitutional commission escalated into various and at-times contradictory objectives. For certain people, a constitutional commission would be an instrument to correct the draft amendment formulations, considered as driven by political group interests. For others, a commission would be an instrument to cancel certain or all changes, especially those of the political system, such as the MPR's lowered position from the highest state institution and sole executor of people's sovereignty. There were also those who argued that the existence of a constitutional commission would open the opportunity to cancel the changes and replace the 1945 Constitution with a completely new Constitution. However, there were also those who considered that the constitutional commission would be a middle way to prevent the constitutional amendment from ending up in a deadlock.

Then, several MPR members attempted to foil the MPR plenary session, which would be convened on 1 August 2002. Soetardjo Soerjogoeritno⁵¹⁹ and Bambang Pranoto, both from F-PDIP, stated that they would interrupt the plenary session by questioning the MPR's legitimacy to perform the amendment after the third amendment declared that the MPR would no longer implement the people's sovereignty. Another F-PDIP member,

514 *Media Indonesia*, newspaper, 1 August 2002, p. 1.

515 *Tempo*, newspaper, 1 August 2002, p. 8.

516 *Media Indonesia*, newspaper, 1 August 2002, p. 1.

517 *Media Indonesia*, newspaper, 2 August 2002, p. 8.

518 *Kompas*, newspaper, 1 August 2002, p. 2.

519 Soetardjo Soerjogoeritno was also the DPR deputy speaker from F-PDIP.

Mundjiat, and the deputy PDIP chairman declared that their action would be supported by 60 F-PDIP and 40 F-KB members.⁵²⁰

In an internal PDIP meeting, one of the F-PDIP members proposed issuing a decree to reinstate the original 1945 Constitution. President and PDI-P Chairperson Soekarnoputri refused and instructed F-PDIP to overcome the matter. Further, Soekarnoputri warned F-PDIP members not to disturb the MPR session.⁵²¹

In his opening remarks at the MPR plenary meeting on 1 August 2002, Amien Rais, the MPR Speaker, emphasized that constitutional reform is a demand of history. The amendment ensures a democratic Indonesia.⁵²²

However, attempts to foil the amendment continued. Sri Hartati Moerdaja (F-UG) disclosed to journalists that 58 out of 60 F-UG members wanted to review the amendment. Likewise, Soerjogoeritno added that F-PDIP, F-UG, and F-KB had agreed to reject the amendment.⁵²³ There were about 200 MPR members rejecting the amendment, Soerjogoeritno confirmed.⁵²⁴ Then Soewignyo, F-PDIP's deputy secretary, claimed that Taufik Kiemas, Megawati Soekarnoputri's husband, and Guruh Soekarnoputra, President Soekarno's youngest son, had also signed the amendment rejection. Confirmed by journalists, Kiemas asserted that he never rejected the amendments, but he did refuse "excessive changes" to the Constitution.⁵²⁵

VIII.3.5 The Factions' Response

Likewise, in the first MPR plenary meeting on 1 August 2002, certain F-UG and F-PDIP members asserted that the MPR, which had lost its supreme power, no longer had the authority to ratify the fourth amendment. Therefore, all amendments should be cancelled and the MPR should be restored as the executor of the people's sovereignty in full. Further, they asserted that this MPR annual session had no constitutional basis to continue.⁵²⁶

However, in the MPR plenary meeting on 2 August 2002, according to the preliminary faction views on the MPR Working Body's work, all factions wanted to finalize the amendment. Only F-PG, F-UG, F-KKI, and F-PDKB mentioned a constitutional commission. A F-PG speaker proposed forming a constitutional commission, to be described in the Additional Provisions, reporting to the new MPR composed by the 2004 election. However, this

520 Mundjiat was a PDIP Central Board deputy chairman.

521 As proposed by Syahrul Azmir Matondang. See also *Koran Tempo*, newspaper, 1 August 2002, p. 1.

522 *Kompas*, newspaper, 2 August 2002, p. 1.

523 *Koran Tempo*, newspaper, 2 August 2002, p. 1.

524 *Media Indonesia*, newspaper, 2 August 2002, p. 1.

525 *Koran Tempo*, newspaper, 2 August 2002, p. 1.

526 As stated by Arief Biki (F-UG), Muhammad Ali (F-PDIP) and Syahrul Azmir Matondang (F-PDIP). Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Empat, Edisi Revisi, Sekretariat Jenderal, 2010, pp. 442, 443, 444.

should not postpone finalizing the amendment.⁵²⁷ Furthermore, a member of the F-UG stated that if later it turned out that there were still parts that were not aligned, the Constitutional Commission could later harmonize them.⁵²⁸ A F-KKI speaker also proposed tasking a constitutional commission with conducting a comprehensive amendment synchronization, which should be completed by mid-2003 and ratified during the 2003 MPR Annual Session.⁵²⁹ Only a F-PDKB speaker went further, reiterating that F-PDKB had from the beginning proposed that changes to the 1945 Constitution should be conducted by establishing a state commission to maintain distance from practical political interests.⁵³⁰

In a Commission A meeting on 7 August 2002, the Commission A chairman explained that regarding the MPR plenary meeting on the next day, 8 August 2002, an informal consultation meeting of faction leaders and a formulation team meeting would be conducted intermittently. An informal consultation meeting between the MPR and Commission A leaders would also be held. Commission A would also receive delegations from *Front Nasionalis Marhaenis* (Nationalist Marhaenist Front).⁵³¹ Thus, throughout 7 and 8 August 2002, Commission A intermittently conducted a plenary meeting, a formulation team meeting, and an informal consultation of the factions. It also conducted an informal consultation meeting between the Commission A and MPR faction leaders and an informal consultation meeting with the Commission A faction representatives.⁵³²

In the 7 August 2002 meeting, F-UG agreed that forming the constitutional commission could be based on the MPR decree. The commission should have MPR members as its members.⁵³³ On that occasion, F-TNI/Polri reiterated that if the MPR rejected the constitutional commission's

527 As proposed by Agun Gunandjar Sudarsa (F-PG). *Ibid.*, pp. 466, 467.

528 As stated by Said Agil Siradj (F-UG). *Ibid.*, p. 469.

529 As stated by Sutradara Ginting (F-KKI). *Ibid.*, p. 494.

530 As stated by Manasse Malo (F-PDKB). *Ibid.*, p. 499.

531 Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Lima, Edisi Revisi, Sekretariat Jenderal, 2010, pp. 347-348. *Front Nasionalis Marhaenis* is a joint forum of organizations which support the political legacy of Soekarno, the founder of the Marhaenist movement, founder of the National Party of Indonesia and Indonesia's first president, it includes *Pemuda Demokrat Indonesia*, *Gerakan Mahasiswa Nasional Indonesia*, *Gerakan Rakyat Nasional Indonesia*, *Keluarga Besar Marhaenis*, *Gerakan Siswa Nasional Indonesia*, *Persatuan Tani Indonesia*, *Lembaga Putera Fajar*, and *Partai Nasional Indonesia (PNI)*. *Marhaen*, is the name of a poor peasant from West Java who was used by Soekarno as the symbol of the alignments of PNI's struggle for the poor and oppressed. PNI is the main founder of PDI-P.

532 The 2002 MPR Annual Session was scheduled to finish on 11 August 2002. Until 7 August 2002, several important issues, such as the MPR's composition, the second round of presidential elections, the proposal to amend Article 29, the revision of articles on education and culture, the revision of articles 33 and 34 on national economy and social welfare, and the proposal to establish a constitutional commission had not been concluded.

533 As affirmed by Soedijarto (F-UG). Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Lima, Edisi Revisi, Sekretariat Jenderal, 2010, p. 303.

work, the people should decide on that MPR's rejection through a referendum to ensure the work had firm legality and strong legitimacy.⁵³⁴

In the informal Commission A consultation meeting on 7 August 2002, the chairman invited the faction representatives to finalize establishing a constitutional commission. He reminded the Commission that all factions agreed the amendment formulation needed synchronization and improvement. All factions agreed that the process should not disturb preparing the 2004 election. Further, the factions agreed that the commission would be an instrument of and responsible to the MPR. However, the factions differed on whether the commission would be the MPR's internal instrument or an external commission that would be inserted into the MPR as an MPR instrument. Factions also differed on whether the commission should be a constitutional, national, or synchronization commission.⁵³⁵

A F-UG representative requested clarity on whether a constitutional commission would be formed to solve the deadlock articles in the amendment, to synchronize the amendment process outcomes, or to accommodate those who so far had not been involved in the amendment process. If it was merely for synchronization purposes, a constitutional commission was unnecessary.⁵³⁶ A F-Reformasi speaker argued that since the amendment would be accomplished in 2002, a constitutional commission was unnecessary. If the commission was to conduct the constitutional changes, the Constitution that constituted the MPR as the holder of this authority should be amended. Further, there was uncertainty around and difficulty in determining which civil society organization should be represented in the commission.⁵³⁷ A F-PDU speaker reiterated that forming a constitutional commission that is not chosen by the people had no constitutional basis.⁵³⁸ Likewise, a F-PDKB speaker concluded that the constitutional commission's formation was baseless.⁵³⁹

Subsequently and in line with the attitude of the Armed Forces' leaders, F-TNI/Polri urged the MPR to consider whether it would lose its legitimacy if a constitutional commission was established. If the constitutional commission would be responsible to the MPR, it was acceptable. In terms of political logic, public demand, the logic of the law, and its urgency, the constitutional commission could be established constitutionally by inserting a provision in the Additional Provisions or the Transitional Provisions.⁵⁴⁰

F-TNI/Polri was clearly worried about the conflict between the conservatives, who thought the changes to the Constitution were excessive and messy, and the "ultra-modernists" (progressive radicals), who insisted on

534 As conveyed by Ishak Latuconsina (F-TNI/Polri). *Ibid.*, p. 305.

535 *Ibid.*, p. 363. The informal meeting was led by Jakob Tobing, the Commission A chairman.

536 *Ibid.*, p. 416.

537 As argued by Patrialis Akbar (F-Reformasi). *Ibid.*, pp. 417-418.

538 As stated by Sayuti Rahawarin (F-PDU). *Ibid.*, p. 420.

539 As expressed by Gregorius Seto Harianto (F-PDKB). *Ibid.*, p. 421.

540 As stated by Slamet Supriyadi (F-TNI/Polri). *Ibid.*, p. 423.

more fundamental changes or even a new Constitution. Therefore, a way out should be found. The MPR should be shown as owned by everyone. The amendment process should not exclude multiple groups. Looking at current developments, increasing numbers of people became nervous that the amendment would be deadlocked, leaving the state without a constitution. Therefore, F-TNI/Polri filed options, i.e., to try to finalize the draft that was still disputed. If this was not successful, they would go back to the original texts. Alternatively, the suggestion was to finalize the fourth amendment, ratify a transitional Constitution, and set up a constitutional commission to reorganize the Constitution.⁵⁴¹

F-PBB argued that the factions' differing attitudes regarding the constitutional commission were a matter of political choice. Further, if the commission was merely to synchronize the amendment outcomes, it seemed too large for that purpose. That could be undertaken, for instance, by experts. Hence, the amendment outcomes should be maintained and, if necessary, reviewed again after the 2004 election.⁵⁴² Likewise, F-PDU argued that the constitutional commission's formation would not solve the problem, but rather create new problems.⁵⁴³ The F-PG speaker took a different position, assuming that the amendment outcome was the maximum that could be achieved and urged forming the constitutional commission. The commission could be supported by the Additional Provision. The issue was not an academic matter, but a way to contain public complaints. There was an urgency to establish it, even though the commission might not succeed. However, the commission should not interfere with preparing legislation for the 2004 election.⁵⁴⁴ Likewise, F-Reformasi, considering the possibility of turmoil in society, proposed accommodating the commission, to be formed by the post-election MPR.⁵⁴⁵

The PAH I chairman reminded the committee that persuasion or canalization of the demand was necessary but should not lead to new problems. PAH I was dealing with diverse demands. There were those who accused PAH I of having gone too far and being too messy, and those who denounced that PAH I had done nothing useful at all.⁵⁴⁶ In addition, F-PG stated that everyone would demand their respective aspiration be accommodated. Against that background, the constitutional commission's formation was a precaution to avoid political upheaval. There were issues in the amendment process that could become hotspots for social unrest.⁵⁴⁷

541 Ibid., p. 439.

542 As stated by Hamdan Zoelva (F-PBB). Ibid., p. 426.

543 As stated by Harifuddin Cawidu (F-PDU). Ibid., p. 427.

544 As stated by Andi Mattalatta (F-PG). Ibid., pp. 427-428.

545 As stated by A.M. Fatwa (F-Reformasi). Ibid., p. 430.

546 As stated by Jakob Tobing, the PAH I Chairman. Ibid.

547 As reminded by Fahmi Idris (F-PG). Ibid., p. 432.

Accordingly, F-PDIP proposed that the commission be established now and begin its work after the 2004 election. However, if there was an external commission to improve the MPR's work, it would undermine the MPR's credibility.⁵⁴⁸ Quipping F-PDIP as two-faced, F-PBB resolutely disagreed with forming a constitutional commission. The new MPR should tackle the issues, he asserted.⁵⁴⁹ Then, the F-PPP, F-KKI, and F-PDKB speakers stated that a constitutional commission was acceptable and would reduce pressure on the MPR. However, the new post-election MPR should form it.⁵⁵⁰ F-PDIP added that the commission's formation should be discussed after the amendment's completion.⁵⁵¹

The chairman concluded that the factions agreed that the fourth amendment should be completed and implemented, and the 2004 election should be conducted on time. There should be a conducive situation until the election.

Factions still differed on what kind of constitutional commission to establish, whether it would be large and powerful or a commission to help synchronize PAH I's work. The score of factions who supported or opposed establishing a kind of constitutional commission was not relevant. Then, the chairman invited factions for an informal consultation to overcome differences before the formulation team resumed the discussion.⁵⁵²

Until the end, factions maintained different positions. F-PDIP, F-PG, F-KKI, F-Reformasi, F-PDKB, F-PPP, F-KKI, and F-TNI/Polri agreed to form a commission. F-PBB, F-PDU, and F-UG rejected the idea. Yet, the factions that agreed differed on who would form the commission, to whom the commission would be responsible, the purview of its authority, and when it should be formed and commence its work.

VIII.3.6 The Draft MPR Decree

While the consultation took place, the PAH I chairman reported to the Commission A meeting that the informal consultation was still discussing forming a constitutional commission and had not yet reached an agreement.⁵⁵³ A F-PDIP member asked Commission A not to decide on the fourth amendment before the constitutional commission issue was clarified. For F-PDIP itself, the position of a constitutional commission was decisive.⁵⁵⁴

548 As proposed by Pataniari Siahaan (F-PDIP). *Ibid.*, p. 433.

549 As stated by Najih Ahjad (F-PBB). *Ibid.*, p. 435.

550 As stated by Lukman Hakim Saifuddin (F-PPP), Birinus Joseph Rahawadan (F-KKI), and Gregorius Seto Harianto (F-PDKB). *Ibid.*, p. 442.

551 As stated by Zainal Arifin (F-PDIP). *Ibid.*, p. 467.

552 *Ibid.*, pp. 446, 447.

553 *Ibid.*, p. 540.

554 As stated by Ramson Siagian (F-PDIP). *Ibid.*, p. 543.

Subsequently, in the Commission A informal meeting on 8 August 2002, most factions considered that the commission should be determined by an MPR decree instead of being included in the Additional Provisions. Further, the PAH I chairman proposed that a constitutional commission should be formed by the MPR Working Body.⁵⁵⁵

Thus, the formulation team drafted an MPR decree to confirm that a constitutional commission would be formed to conduct a comprehensive study of the constitutional amendment. In the draft, the MPR tasked the MPR Working Body to prepare forming the constitutional commission and to report preparation results to the MPR 2003 Annual Session at the latest for a decision.⁵⁵⁶ The PAH I chairman confirmed that the commission's name should be lower case, '*komisi konstitusi*' (constitutional commission), since it was not a specific institution, but rather a working unit.⁵⁵⁷ Further, the chairman asked the formulation team to confirm whether there was still a faction that wanted the Additional Provision as the legal basis for the constitutional commission's formation. To that end, Andi Mattalatta (F-PG) confirmed there was none.⁵⁵⁸

The F-TNI/Polri speaker confirmed that all factions agreed that the constitutional commission's formation would be regulated by an MPR decree, and it was unnecessary to include it as a constitutional provision.⁵⁵⁹ The formulation team incorporated the agreement in the draft MPR decree and reported it to the Commission A plenary meeting conducted after the consultation meeting.

In the meantime, Commission A continued receiving delegations from several organizations with different and even contradictory opinions. The *Barisan Rakyat Indonesia Penjaga Demokrasi* (Indonesia People's Ranks for Guarding Democracy) demanded the constitutional commission's formation. The Coalition for a New Constitution demanded the constitutional commission's formation to draft a new Constitution. The *Front Pembela Proklamasi 45* (The Front of the Defenders of the '45 Proclamation) called for discarding the three ratified amendments and the fourth amendment draft, and for forming a constitutional commission for a complete amendment overhaul. The *Front Nasionalis Marhaenis* (Nationalist Marhaenist Front) rejected the entire constitutional amendment, expressed a motion of no-confidence in the MPR, and mentioned that they expected a constitutional commission would be formed to revise the amended Constitution.⁵⁶⁰

555 Ibid., pp. 574-575.

556 Ibid., pp. 579-580.

557 Ibid., p. 581.

558 Ibid., p. 582.

559 As confirmed by Slamet Supriyadi (F-TNI/Polri). Ibid., p. 585.

560 Ibid., p. 590.

VIII.3.7 Commission A Agrees on Constitutional Commission

Subsequently, on 8 August 2002, Commission A discussed the draft MPR decree that the formulation team presented.⁵⁶¹ On that occasion, F-PDIP members urged clarifying the constitutional commission's task, which was 'to study comprehensively'. A lengthy study would prolong the problem and if the commission was formed in 2003, it would be too late.⁵⁶² Likewise, a F-UG member argued that the public wanted a constitutional commission to make a comprehensive draft Constitution, based on the first, second, third, and fourth amendments.⁵⁶³ In response, the Commission A chairman reminded everyone that 2003 was just four months away, and the MPR needed time to form the constitutional commission. Further, the Chairman stated that 'to study comprehensively' was broader than 'to synchronize'. It included the possibility of improvement, so that new drafts could be introduced.⁵⁶⁴ Ultimately, the draft MPR decree on establishing a constitutional commission was accepted by all Commission A members in a cheerful atmosphere. As Hamdan Zoelva (F-PBB) testified, members shook hands afterwards, some were tearful, and the meeting closed with a prayer of gratitude recited by Nadjih Ahjad (F-PBB).⁵⁶⁵

Subsequently, Commission A reported the draft to the MPR plenary meeting on the evening of 9 August 2002. An appointed delegate from the MPR's veteran organization interrupted, stating that what had occurred in the MPR was outrageous. Instead of resolving comprehensively the challenges facing the country, the MPR was dominated by short-term political interests. Therefore, Rais Abin, the veterans' speaker, expressed hope that a constitutional commission could be the last vehicle to convey their aspirations. The member asked if the veterans' representatives could participate in the constitutional commission.⁵⁶⁶ In the evening, on the suggestion of Arifin Panigoro, the MPR's F-PDIP chairman and MPR's leader convened a consultation meeting with the factions' chairpersons. He insisted an immediate consultation since F-TNI/Polri proposed changing the draft MPR decree on the constitutional commission.⁵⁶⁷

561 Ibid., p. 602.

562 As expressed by Haryanto Taslam and Ramson Siagian, both from F-PDIP. Ibid., pp. 595-596.

563 As stated by Usep Fathuddin (F-UG). Ibid., p. 598.

564 Ibid., p. 599.

565 Ibid., p. 603.

566 Interruption by Rais Abin from F-UG. See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Lima, Edisi Revisi, Sekretariat Jenderal, 2010, p. 616. See also *Koran Tempo*, newspaper, 10 August 2002, p. 8.

567 As suggested by Arifin Panigoro, the F-PDIP Chairman. Ibid., p. 619. Panigoro wanted to confirm F-PDIP's official stance on the constitutional commission, because there were several FPDIP members who had different opinions.

During that consultation, F-TNI/Polri stated that the draft MPR decree was confusing. The meaning of ‘to conduct a comprehensive study’ was obscure. The new 2003 MPR could convene and cancel the MPR’s decree on the commission, before the commission became operational. To be adopted as an improvement to the amendments, the product of the constitutional commission must meet the very complicated requirements of Article 37, which regulates the procedures for changes to the Constitution. Furthermore, the MPR should canalize the aspiration of the public who are continuously pressuring the MPR. For the purpose, the commission should be underneath and not competing with the MPR.⁵⁶⁸

In response, a F-PG speaker stated that psychologically, it was understandable that we had to canalize the feelings of the senior military. However, F-TNI/Polri should also respect the hard work of the factions that had struggled to reach an agreement. Political leaders must have dignity. The terror of those once in power should not intimidate people today.⁵⁶⁹ Likewise, F-Reformasi, F-PBB, F-KKI, F-KB, F-PDU, and other faction speakers contended maintaining the drafted decree. F-UG reminded others that the agreement was the most that could be achieved, while F-PG asserted that the formulation was a compromise between the two extremes of making a new constitution or amending the constitution.⁵⁷⁰ F-PDIP added that the MPR should avoid a deadlock at this late stage. The MPR must secure its works and should be ready to face any kind of pressure and threat.⁵⁷¹

At the consultation meeting’s end, the F-TNI/Polri speaker asserted that what the faction proposed was solely for the benefit of all. F-TNI/Polri will say goodbye to politics in 2004, with no ulterior motives. If F-TNI/Polri’s proposals were not accepted, it would cause no problems.⁵⁷² Nonetheless, another F-TNI/Polri speaker confirmed that the faction had consulted President Megawati Soekarnoputri to confirm the constitutional commission’s formation in 2002.⁵⁷³

568 As conveyed by Slamet Supriyadi (F-TNI/Polri). The draft new section (1) of the Additional Provision of the Constitution prepared by the MPR Working Body tasks the MPR with reviewing the substance and the legal status of the decree of the Provisional People’s Consultative Assembly and the People’s Consultative Assembly to be decided in the People’s Consultative Assembly 2003 Annual Session. See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Lima, Edisi Revisi, Sekretariat Jenderal, 2010, pp. 619 – 620.

569 As stated by Anwar Arifin (F-PG). *Ibid.*, pp. 620-621.

570 As expressed by A.M. Luthfi (F-Reformasi), Hamdan Zoelva (F-PBB), Anthonius Rahail (F-KKI), Yusuf Muhammad (F-KB), Asnawi Latief (F-PDU), Harun Kamil (F-UG) and Fahmi Idris (F-PG). *Ibid.*, pp. 621-628.

571 As asserted by Arifin Panigoro (F-PDIP). *Ibid.*, p. 629.

572 As asserted by Slamet Supriyadi (F-TNI/Polri). *Ibid.*, p. 630.

573 As confirmed by Ronggo Soenarso (F-TNI/Polri). *Koran Tempo*, newspaper, 10 August 2002, p. 1.

VIII.3.8 Protests Continue

In the meantime, in front of television cameras, broadcast nationwide, Bambang Widjajanto from the Coalition of NGOs for a New Constitution demonstratively tore to shreds the draft MPR decree on the constitutional commission's formation. He acclaimed that the suggested constitutional commission deceived the people.⁵⁷⁴ A *Kompas* newspaper article stated that the constitutional commission was toothless.⁵⁷⁵ Likewise, Mukti Fadjar, a professor of constitutional law at the University of Brawijaya, Malang, on behalf of the Coalition for a New Constitution, stated that the proposed constitutional commission was deceptive, a distortion of the ideal version.⁵⁷⁶

Meanwhile, hundreds of students gathered at the MPR building's compound, demanding the amendment finalization.⁵⁷⁷ To put political pressure on those who had been trying hard to hinder the reform of the 1945 Constitution, the demonstrators also awarded the trophy of "*Pengkhianat Reformasi*" (the Traitor of Reformasi) to Soetardjo Soerjogoeritno (the DPR deputy speaker from PDI-P), Taufik Kiemas (husband of Megawati Soekarnoputri), Amin Aryoso (a figure from the Movement of Parliamentary Conscience), and Hartati Murdaya (a F-UG member).⁵⁷⁸

VIII.3.9 MPR Plenary Meeting: Additional Provision versus Decree

In the MPR plenary meeting on 9 August 2002, no faction rejected the MPR Working Body's work. However, on that occasion, a F-TNI/Polri speaker reminded the meeting that the changes to the Constitution would have a significant impact on the people's lives and the nation for a long time. Therefore, the MPR should listen seriously and give attention to all aspirations in society. All were aware that the changes to the Constitution were far from perfect. That was why from the outset, F-TNI/Polri contended that through a give-and-take approach, the fourth amendment should be completed, so that the amended Constitution may be used to ensure that the nation conduct a general election in 2004. Afterwards, the amended 1945 Constitution should be improved again in a comprehensive way. Further, a constitutional commission that was formed based on an MPR decree contained uncertainty, because it could be revoked in the next MPR session. In that regard, the MPR should provide a stronger legal foundation for establishing the commission by incorporating it in the Additional Provision.⁵⁷⁹

574 *Media Indonesia*, newspaper, 10 August 2002, p. 6.

575 *Kompas*, newspaper, 10 August 2002, p. 6.

576 *Koran Tempo*, newspaper, 10 August 2002, p. 11.

577 *The Jakarta Post*, newspaper, 10 August 2002.

578 *Koran Tempo*, newspaper, 10 August 2002, p. 8.

579 As conveyed by E. Tatang Kurniadi (F-TNI/Polri). Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Lima, Edisi Revisi, Sekretariat Jenderal, 2010, p. 654.

Commenting on the issue in the media, a University of Brawijaya lecturer argued that the constitutional commission's legal basis was indeed quite weak. He noticed that MPR members were arrogant, considered themselves as authoritative and with the legitimacy to amend the Constitution, with no respect for other opinions.⁵⁸⁰ Likewise, a University of Andalas, Padang, Law Faculty lecturer considered the constitutional commission's formation as deceiving the people. The name did not reflect the substance.⁵⁸¹

When the MPR plenary meeting was continued on 10 August 2002, F-KB stated that although they accepted the MPR Working Body's outcomes, they preferred to have the legal basis for establishing a constitutional commission incorporated in the Additional Provision.⁵⁸² On the other hand, F-PPP pointed out that a constitutional commission could be understood as improving the amendment or be used to revoke the MPR's work. For that reason, the formulation in the MPR decree was a compromise that could be achieved.⁵⁸³ Likewise, F-UG and F-PG contended that the formulation regarding the constitutional commission was the best result that could be achieved.⁵⁸⁴ Similarly, Arifin Panigoro (F-PDIP) concluded that a constitutional commission was necessary to undertake the comprehensive study needed to improve the amendments formulations.⁵⁸⁵ Thus, although the process had reached the final stage, the factions had not reached an agreement on the constitutional commission's formation. Therefore, another informal consultation meeting between the MPR and faction leaders was conducted.

In that consultation, F-TNI/Polri proposed a new section to the Additional Provision, which stated, "The first, second, third and fourth constitutional amendments, are valid from its enactment until 2004, to bring the people to carry out the general election. These changes would be improved by a body or commission formed by the MPR in 2002 and to report its results to the MPR formed by the 2004 elections."⁵⁸⁶ In response, F-PBB reminded the meeting that initially they had assumed that a constitutional commission was unnecessary, since the Article 37 constitutional amendment procedure was simple. Further, F-PBB questioned whether there would be no Constitution if the new MPR rejected the commission's work. Furthermore, F-PBB questioned why establishing the commission should be included in the Additional Provision if the MPR had the authority to change the Constitution. Thereby, F-PBB appealed to all factions to accept the draft decree that had been painstakingly and happily agreed. The

580 As stated by Mukti Fadjar. *Media Indonesia*, newspaper, 11 August 2002, p. 2.

581 As stated by Saldi Isra. *Ibid.*, p. 4.

582 As stated by Yusuf Muhammad (F-KB). *Majelis Permusyawaratan Rakyat Republik Indonesia, op.cit.*, Tahun Sidang 2002, Buku Lima, Edisi Revisi, Sekretariat Jenderal, 2010, p. 666.

583 As argued by Chozin Chumaidy (F-PPP). *Ibid.*, p. 671.

584 As stated by Rais Abin (F-UG) and Fahmi Idris (F-PG). *Ibid.*, pp. 672, 678.

585 As concluded by Arifin Panigoro (F-PDIP), who led the meeting. *Ibid.*, p. 682.

586 As proposed by Ronggo Soenarso (F-TNI/Polri). *Ibid.*, p. 714.

speaker recalled how Commission A members shook hands and were even tearful, relieved after the long and tense debates.⁵⁸⁷

Nevertheless, the debates continued and the factions persisted with their respective opinions. Seemingly annoyed, Husni Thamrin, the deputy MPR Speaker from F-PPP, stated that the F-TNI/Polri proposal was a humiliation. Whatever would happen after 2004, as leaders, members should not be afraid, Thamrin asserted. "If we have to go to prison, we were in prison before. If we have to die, yes, if that is the time, nothing to be afraid of", Thamrin stated emotionally.⁵⁸⁸ Then, a F-Reformasi speaker emphasized that it was a matter of political choice. The amendments should be finalized, whatever the risk. In response, a F-TNI/Polri speaker reiterated their position (see V.2) and said that the proposal was to canalize the people's aspiration, in anticipation of chaos, and to include the public in making the Constitution.⁵⁸⁹ A F-PDIP member responded that so far, the so-called canalization process had brought uncertainty. According to the MPR code of conduct, unless the MPR Working Body has fully prepared or all parties have fully agreed an issue to be discussed, it cannot be included in the agenda. Hence, the discussion should return to the draft that had been agreed the night before. That was the best possible outcome.⁵⁹⁰

Eventually, the informal consultation meeting failed to reach a compromise on the issue. After the MPR plenary meeting was resumed, F-TNI/Polri emphasized that this time, they urged explicitly inserting the new section III into the Additional Provision, which stated "The First, the Second, the Third, and the Fourth Amendments to the 1945 Constitution are valid from the time they are enacted until 2004, to bring Indonesian people to carry out the 2004 elections, and to be completed by a MPR Commission formed by the Assembly in 2002, and to report the results to the MPR formed by the 2004 election." The F-KB and F-PDIP speakers were of the same opinion.⁵⁹¹

In accordance with Article 84 of MPR Decree No. II/1999 on the Standing Order of the MPR, if a deliberation in a MPR plenary meeting fails to reach agreement and time runs out, a decision can be made by voting. Thus, eventually, the MPR leadership decided that it had to vote on several issues that could not be decided by consensus.⁵⁹²

587 As stated by Hamdan Zoelva (F-PBB). *Ibid.*, p. 716.

588 *Ibid.*, p. 723.

589 As stated by Supriyadi (F-TNI/Polri) and A.M. Fatwa (F-Reformasi). *Ibid.*, pp. 724-725.

590 As stated by Jakob Tobing (F-PDIP). *Ibid.*, p. 725.

591 As stated by Abdul Rahman Gaffar (F-TNI/Polri), Amru Al-Mu'tashim (F-KB) and Syahrul Azmir Matondang (F-PDIP). *Ibid.*, pp. 728,729. The new paragraph is the paragraph that has been proposed previously by Ronggo Soenarso (F-TNI/Polri). See *Ibid.*, p. 714.

592 There were several issues that had not reached agreement, such as the MPR's composition, Article 29, on Amendment to the Additional Provision of the Constitution, and on the Establishment of the Constitutional Commission. Eventually, the composition of the People's Consultative Assembly was decided by voting. This is the only decision which was made by voting in the whole amendment process from 1999 to 2002; all others were decided by consensus.

The first vote concerned the MPR's composition, whereby the question regarded the alternative that all MPR members should be elected (see VII.3.2 and VIII.2.1).⁵⁹³ Then, a F-PDIP member proposed adjourning the meeting for an informal consultation. The draft Additional Provisions had been approved. If they were ratified, then there was already a new amended Constitution. Where would the additional constitutional commission rules be inserted? It was desirable to adjourn the meeting for an informal consultation, to use collective wisdom to solve the problem.⁵⁹⁴ Another F-PDIP member argued the opposite. The agreed draft should be ratified before discussing the new proposal.⁵⁹⁵

Eventually, the MPR Chairman, Amin Rais, adjourned the meeting for 30 minutes to give the factions time to prepare for the subsequent decision-making. When the meeting resumed, the plenary agreed unanimously to ratify the new clauses 1 and 2 of the Additional Provision.⁵⁹⁶ Again, the factions could not reach agreement on the proposed third clause. F-TNI/Polri insisted on incorporating the new clause in the Additional Provision.⁵⁹⁷ In response, F-PDIP asserted that the proposal had deviated from the previous agreement. Therefore, F-PDIP insisted that the decision should be taken by voting, and if the new clause would be rejected then the MPR constitutional commission decree should be revoked, so there would be no constitutional commission at all.⁵⁹⁸

VIII.3.10 Constitutional Commission by MPR Decree

At midnight on 10 August 2002, the MPR Chairman adjourned the meeting for another 30-minute break.⁵⁹⁹ When the meeting resumed, the Chairman reminded the members that time had almost run out, and the MPR 2002 Annual Session was scheduled to close that morning at 10:00.⁶⁰⁰ Eventually, a F-TNI/Polri speaker reiterated that the faction had no intention to impede the amendment process or violate the deliberation's result. A higher legal

593 Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Lima, Edisi Revisi, Sekretariat Jenderal, 2010, p. 735.

594 As proposed by Amin Aryoso (F-PDIP). *Ibid.*, p. 744.

595 As argued by I Dewa Gede Palguna (F-PDIP). *Ibid.* The agreed draft new Additional Provision comprises of clause 1 which states that the People's Consultative Assembly is tasked with undertaking a review of the content and the status of the Decrees of the Provisional People's Consultative Assembly and the People's Consultative Assembly for decision by the People's Consultative Assembly at its session in 2003. The 2nd clause states that with the enactment of the Amendment to the Constitution, the Constitution of the State of the Republic of Indonesia shall consist of the Preamble and the Articles. The new clause proposed is the proposal submitted by F-TNI/Polri. See *Ibid.*, p. 714.

596 *Ibid.*, pp. 746, 747.

597 As insisted by Slamet Supriyadi (F-TNI/Polri). *Ibid.*, p. 747.

598 As asserted by Zaenal Arifin (F-PDIP). *Ibid.*, pp. 747, 748.

599 *Ibid.*, p. 749.

600 *Ibid.*, p. 750.

basis for a constitutional commission was desirable, placed in the Additional Provision. However, paying close attention to the MPR's evolving aspirations, F-TNI/Polri eventually withdrew the proposal.⁶⁰¹ They stated support of the amendment.⁶⁰²

This meant that the MPR plenary meeting had accomplished its tasks. Moved by the historical event, a F-Reformasi member, Afni Achmad invited the plenary to close the meeting by singing the national anthem. Preceded by a prayer of gratitude recited by Muhammad Cholil Bisri (F-KB), led by Sukowaluyo (F-PDIP), MPR members stood up and sang the national anthem, *Indonesia Raya* (the Great Indonesia), before Amien Rais closed the meeting at 01.50 am.⁶⁰³

In an interview on 11 August 2002, the MPR Chairman, Amin Rais, guaranteed that a non-partisan expertise-based constitutional commission would be formed before the following year to synchronize the amended Constitution. Accordingly, the Commander of the Armed Forces, General Endriartono Soetarto, asserted that the Armed Forces accepted all MPR decisions and would guard the decisions. Similarly, Taufik Kiemas emphasized that F-PDIP wholeheartedly accepted the decisions. Yet, Todung Mulya Lubis, from the Coalition for a New Constitution, conveyed condolences upon forming the constitutional commission, which according to Lubis, should have a stronger legal basis.⁶⁰⁴

VIII.4 THE OUTCOMES. THE FOURTH AMENDMENT

Finally, on 10 August 2002, at the end of the 2002 MPR annual session, the MPR plenary session ratified the fourth amendment of the 1945 Constitution. Thus, the four-stage amendment process to the 1945 Constitution that had begun in October 1999 was completed. The results of the fourth amendment phase were as follows:

601 As asserted by Slamet Supriyadi (F-TNI/Polri). *Ibid.*

602 *Tempo News Room*, 11 August 2002.

603 Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Lima, Edisi Revisi, Sekretariat Jenderal, 2010, p. 753.

604 *Koran Tempo*, newspaper, 12 August 2002, p. 1.

Articles	Original (After the 1st, 2nd, and 3rd Amendments)	Fourth Amendment ⁶⁰⁴
CHAPTER II		
2	(1) MPR shall consist of the DPR members augmented by the delegates from the regional territories and groups as provided by the statutory regulations.	(1) The People's Consultative Assembly consists of members of the People's Representative Council (Dewan Perwakilan Rakyat) and members of the Regional Representative Council (Dewan Perwakilan Daerah) elected through general elections and to be further regulated by law.
3	--	(Correction in numbering)
6A	(4) (Still in alternatives)	(4) In the event no candidate President and Vice President is elected, two of the candidate President and the Vice President pairs acquiring the first and second majority vote in the general election shall be elected by the people directly, and the pair acquiring the majority votes of the people shall be inaugurated as the President and the Vice President.
8	(none)	(3) If the President and the Vice President pass away, resign, are discharged, or are not able to perform their obligations during their term of office simultaneously, the caretaker of the presidential office shall be jointly the Minister of Foreign Affairs, the Minister of Home Affairs, and the Minister of Defence. At the latest thirty days thereafter, the People's Consultative Assembly shall convene to elect the President and the Vice President from two candidate President and Vice President pairs proposed by a political party or a combination of political parties whose candidate President and Vice President acquired the first and the second majority vote in previous general election, up to the expiry of term of their office.

605 The English version of the 1945 Constitution published by the Office of Registrar and the Secretariat General of the Constitutional Court of the Republic of Indonesia, 2015.

11	(Reinstated, technical correction of the 3rd amendment)	(1) The President with the approval of the People's Representative Council declares war, makes peace and concludes treaties with other countries.
16	(none)	The President establishes an advisory council with the task of rendering advice and considerations to the President, which shall be further regulated by laws.
CHAPTER IV	SUPREME ADVISORY COUNCIL	Abolished
CHAPTER VIII	FINANCE	FINANCE
23B	(none)	The denomination and value of the currency shall be stipulated by laws.
23D	(none)	The State shall possess a central bank, the structure, position, authorities, responsibilities, and independence of which shall be regulated by laws.
CHAPTER IXA	THE STATE TERRITORY	THE STATE TERRITORY
25A		(Numbering correction)
CHAPTER XIII	CHAPTER XIII EDUCATION	CHAPTER XIII EDUCATION AND CULTURE
31	(1) Every citizen has the right to acquire teaching. (2) The government shall undertake and shall conduct one national education system which shall be further regulated by law.	(1) Every citizen shall be entitled to acquire education. (2) Every citizen shall follow basic education, and the government shall finance it. (3) The government shall undertake and shall conduct one national educational system, which enhances faith and piety as well as noble character in the frame of educating the life of the nation, which shall be regulated by laws. (4) The state shall prioritize the education budget by at least twenty percent of the state budget of income and expenditure as well as from the regional budgets of income and expenditure in order to fulfil the needs for the conduct of national education. (5) The state advances science and technology by upholding religious values and national unity for the advancement of civilization as well as prosperity of mankind.

32	The state advances Indonesia's national culture.	<p>(1) The state advances Indonesia's national culture amidst the world civilizations by guaran-teeing freedom of the society to maintain and to develop its cultural values.</p> <p>(2) The state respects and main-tains regional languages as a national cultural treasure.</p>
CHAPTER XIV	SOCIAL WELFARE	NATIONAL ECONOMY AND SOCIAL WELFARE
33		<p><i>(Additional new clauses):</i></p> <p>(4) The national economy shall be conducted by virtue economic democracy under the principles of togetherness, efficiency with justice, sustainability, environ-ment insight, autonomy, as well as by safeguarding the balance of progress and natio-nal economy unity.</p> <p>(5) Further provisions regarding the execution of this article shall be regulated by laws.</p>
34	Destitute people and neglected children shall be nurtured by the state.	<p>(1) Destitute people and neglected children shall be nurtured by the state.</p> <p>(2) The state shall develop a social security system for all the people and empower the poor and incapable society in with human dignity.</p> <p>(3) The state shall be responsible for the provision of decent health care facilities and public service facilities.</p> <p>(4) Further provisions regarding the execution of this article shall be regulated by laws.</p>
37	<p>(1) To amend the Constitution, no less than 2/3 of members of MPR shall be in attendance.</p> <p>(2) Decisions shall be taken with the approval of no less than 2/3 of its total members in attendance.</p>	<p>(1) A proposal for amendment to the articles of the Constitution can be set out in an agenda for a session of the People's Consultative Assembly if submitted by at least 1/3 of the sum of the members of the People's Consultative Assembly.</p> <p>(2) Every proposal to amend articles of the Constitution shall be submitted in writing and clearly indicate the part proposed for amendment and the reasons therefor.</p>

		<p>(3) In order to amend articles of the Constitution, a Session of the People's Consultative Assembly shall be attended by at least 2/3 of the sum of the members of the People's Consultative Assembly.</p> <p>(4) The resolution to amend articles of the Constitution shall be conducted by the approval of at least fifty percent plus one member of the People's Consultative Assembly.</p> <p>(5) Particularly regarding the form of the Unitary State of the Republic of Indonesia no amendment can be made.</p>
<i>TRANSITIONAL PROVISIONS</i>	<i>TRANSITIONAL PROVISIONS</i>	<i>TRANSITIONAL PROVISIONS</i>
Article I	The Preparatory Committee for Indonesian's Independence shall arrange and conduct the transfer of administration to the government of Indonesia.	All existing statutory rules and regulations shall remain in force to the extent no new ones are provided according to this Constitution.
Article II	All existing state institutions continue to function and regulations remain functioning to the extent no new ones are established in conformity with this Constitution.	All existing state institutions shall remain functioning to the extent of executing the provisions of the Constitution and no new ones are provided according to this Constitution.
Article III	For the first time, the President and the Vice President shall be elected by the Preparatory Committee for Indonesia's Independence.	The Constitutional Court shall be established on the 17 August 2003 at the latest and prior to its establishment all of its authorities shall be conducted by the Supreme Court.
Article IV	Prior to forming the People's Consultative Assembly, the People's Representative Council and the Supreme Advisory Council in accordance with this Constitution, all the power shall be exercised by the President assisted by a national committee.	(none)
<i>ADDITIONAL PROVISIONS</i>	<i>ADDITIONAL PROVISIONS</i>	<i>ADDITIONAL PROVISIONS</i>

Article I	Within six months after the end of the Great Asia War, the President of Indonesia shall take preparatory steps and execute all the provisions of this Constitution.	The People's Consultative Assembly is assigned to conduct a review against the material and legal status of the Stipulations of the Provisional People's Consultative Assembly and of the Stipulations of the People's Consultative Assembly for judgement in the Session of the People's Consultative Assembly of the year 2003.
Article II	Within six months after its formation, the MPR shall convene a sitting to enact the Constitution.	By the enactment to this the Constitution, the Constitution of the State of the Republic of Indonesia of the Year 1945 shall consist of the Preamble and the articles.

VIII.5 ANALYSIS AND COMMENTS

VIII.5.1 The process

The amendment process at this final stage was based on the MPR rules of procedures as set out in MPR Decree No. II/1999, similar to the procedure applied in the previous stages. Again, a PAH I was formed and assigned to finalize the third stage's pending materials as attached to MPR Decree No. XI/2001, which according to MPR Decree No. IX/2000 should be completed by the end of the 2002 MPR Annual Session.

All the materials, except the one on the appointed MPR members, were completed by deliberation and consensus, including the proposed amendments to Article 29 on religion, which was resolved through a special consensus at the end of the Annual Session. This topic was concluded in the plenary session, in which the proponents of change to Article 29 were present, asserting they were not involved in the decision-making process and understood that the decision was legitimate and binding on all (see VIII.2.4).

A conclusion about the MPR's composition was deliberately delayed until the final stage.⁶⁰⁶ This issue had been associated with the efforts, particularly by F-UG, to maintain the MPR's position as a consultative institution of all elements of society that determine the Broad Outlines of State Policy.⁶⁰⁷ Apparently, F-UG continued to push the decision-making by

606 As elucidated by Hamdan Zoelva (F-PBB). See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Satu, Edisi Revisi, Sekretariat Jenderal, 2010, p.

607 As emphasized among others by Djoko Wiyono (F-UG). See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Lima, Edisi Revisi, Sekretariat Jenderal, 2010, p. 110.

voting presuming that F-TNI/Polri, many F-PDIP members, and elements of other factions would support their position.⁶⁰⁸ Thus, the MPR had to solve the issue through voting.

Regarding the proposal to insert 'the seven words' (*tujuh kata*), "*Negara berdasar atas Ketuhanan dengan kewajiban menjalankan syariat Islam bagi pemeluk-pemeluknya*" (The State shall be based on Divinity with the obligation to implement Islamic Sharia for the adherents), factions kept their respective previous positions. As discussed in the previous chapters, although the group in favour of including 'the seven words' was much smaller in numbers, they urged taking the decision by voting. Other factions did not agree. For the proponents, voting would become an issue of accountability to their supporters. For others, voting could send the wrong message to the communities, as though the aspiration was not appreciated and had been treated arbitrarily. The discussions about Article 29 could not be regarded as merely an intellectual discourse. Thus, PAH I urged the leaders of the political powers to do their utmost to reach a unanimous decision and avoid decisions that could further "pain wounded hearts".⁶⁰⁹ Wisdom could be gleaned from an Indonesian proverb: "*Seperti menarik rambut dalam tepung, rambut jangan putus, tepung jangan berserak.*" It's like pulling hair from the flour, hair doesn't break, and flour doesn't scatter. The solution should not complicate the next process and this context, so as not to stir-up blind-fanaticism in Indonesia. Finally, through intensive informal consultations involving top leaders of political powers, such as PDI-P's Megawati Soekarnoputri and PPP's Hamzah Haz, all factions agreed to allow the plenary MPR meeting to maintain the original Article 29. The supporters of 'the seven words' (*tujuh kata*), although they had attended the plenary session, would not participate in the decision-making process, although they would not withdraw their proposal.⁶¹⁰ However, proponents of the Article 29 amendment affirmed that the MPR plenary decision is binding on everyone.⁶¹¹ An understanding was reached when all factions agreed on the Islamic factions' proposal concerning Article 31 on Education, which stated that education's purpose "... is to enhance faith and piety and noble character in the frame of educating the life of the nation" (*yang meningkatkan keimanan dan ketakwaan serta akhlak mulia dalam rangka mencerdaskan kehidupan bangsa*).⁶¹²

608 As indicated by Amin Aryoso (F-PDIP). See *Ibid.*, p. 107.

609 As stated by Jakob Tobing, the PAH I chairman. See *Ibid.*, p. 687.

610 As affirmed by, among others Syahfriansyah (F-PPP), Nadjih Ahjad (F-PBB), Asnawi Latief (F-PDU) and Muttammimul'Ula (F-Reformasi). See *Ibid.*, pp. 690 – 695.

611 As expressed by Shiddiq Aminullah (F-UG), when he asked to be recorded that he did not join the agreement, although aware that if the deliberations had concluded, as a citizen one should obey the decision. See *Ibid.*, p. 693.

612 As disclosed by Arifin Panigoro, F-PDIP Chairman and Slamet Supriyadi, F-TNI/Polri Chairman. See *Ibid.*, pp. 392, 399.

As a state based on *Pancasila*, in which one of the principles is “belief in One and Only God”, factions agreed that the religious values should guide the nation.⁶¹³ This was a unique way to overcome the stalemate in a heterogeneous country such as Indonesia. Deliberation and compromise would not directly solve the fundamental differences, but this approach maintains communication between communities and with state institutions. Further, it could prevent the alienation and radicalization process of certain groups in society. It provided opportunities and space for further communication and sustainable dialogue among the communities and with state institutions. At the same time, the progress of programs in all fields, including in education, can be expected to change attitudes towards the essence of religious life more than formal rules that allow for harmonious religious life in a pluralistic society.

The amendment process at this late stage was quite complicated. Inside the MPR, arguing that the changes endangered the nation’s integrity, elements of F-PDIP, F-UG and F-KB strove to stop the process. They argued that the amendment had rooted out the soul and spirit of the original 1945 Constitution. They claimed to have more than 200 supporters, including Taufik Kiemas, husband of Megawati Soekarnoputri and Guruh Soekarnoputra, the son of President Soekarno, who signed the petition to stop the amendment.⁶¹⁴ Several civil society organizations, such as Forum of Academic Studies of the Constitution (*Forum Kajian Ilmiah Konstitusi – FKIK*),⁶¹⁵ the Front of Defenders of 1945 Proclamation (*Front Pembela Proklamasi ‘45*), the Indonesian National Student Movement (GMNI – *Gerakan Mahasiswa Nasional Indonesia*), and Parliament’s Conscience Movement (*Gerakan Nurani Parlemen*) also demanded revoking the amendments and reinstating the original 1945 Constitution. They argued that there was nothing wrong with the original 1945 Constitution. It was the lesser laws that required improvement. Eliminating the MPR as the supreme state institution deviated from the original idea of an independent Indonesia. Forming the Regional Representative Council was a step towards building a bicameral system and establishing a federal state in Indonesia. Furthermore, some found that the

613 The proposed phrase to the new Article 31 points to the values of religions, not to the teachings of certain religion, in this case Islam. The words *iman* (faith) and *takwa* (piety), as many words in the Indonesian language, are derived from Arabic language and are not exclusively used by Islam. Whereas the word *iman* is commonly used by other religions, *takwa* is mostly used by Muslims.

614 As stated by Soewignjo, Deputy Secretary of F-PDIP, *Koran Tempo*, newspaper, 2 August 2002, and by Soetardjo Soerjogoeritno, DPR Deputy Speaker from F-PDIP. See also, *Media Indonesia*, newspaper, 2 August 2002. However, Taufik Kiemas refuted. Kiemas asserted that he never rejected the amendment, what he rejected is the excessive changes to the Constitution. See *Koran Tempo*, newspaper, 2 August 2002, p. 1.

615 The delegates of FKIK were among others, Budi Harsono, A.S.S. Tambunan, Sri Mulyono Herlambang (F-UG), Amin Aryoso (F-PDIP) and Sadjarwo Sukadiman (F-PDIP). *Kompas Daily*, 9 April 2002.

MPR, after the third amendment eliminated its highest position, no longer had the authority to amend the Constitution.⁶¹⁶ They even accused the proponents of PAH I of applying a Western, US-centric agenda in Indonesia.⁶¹⁷

Some NGOs and academics attempted to stop the amendment process by arguing that the amendment was elitist and tainted with ulterior political party interests, being partial and lacking clear direction, failing to ensure that the presidential election would be conducted directly by the people in both rounds. They argued that the amendment had formed only a weak bicameral system and tended to preserve the basic concept of the old 1945 Constitution, such as maintaining the functional groups' appointed delegates, the source of the Constitution's undemocratic character. These groups insisted on an independent and expertise-based constitutional commission, which would compose a comprehensive draft constitutional amendment.⁶¹⁸ Further, the comprehensive draft should be submitted to the MPR for approval. In case the MPR failed to approve the draft, the draft would be brought before the people to decide on in a referendum. Others contended that the amendment outcome had been counter-productive to reform. They argued that the original concept of the 1945 Constitution could not accommodate the reforms required to bring in a democratic Constitution. Therefore, *Koalisi Untuk Konstitusi Baru* (the Coalition for a New Constitution) demanded a totally new constitution that should be drafted by an independent constitutional commission.⁶¹⁹ For that purpose, they proposed adjusting Article 37.

616 As stated by among others, Abdul Kadir Besar, of University Pancasila, Jakarta. See, Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Satu, p. 478, and Soetardjo Soerjogoeritno (DPR Deputy Speaker from PDIP) and Sri Hartati Moerdaja (F-UG). See *Media Indonesia*, newspaper, 2 August 2002, p. 1.

617 As stated by MayGen (ret.) Saiful Sulun, the Secretary General of *Front Pembela Proklamasi '45*. *The Jakarta Post*, newspaper, 1 August 2002. In general, PAH I meetings were scheduled to be open to both domestic public and from abroad. As Indonesia is one of the largest countries in the world and is classified as a non-democratic country, strategically located at the confluence of the Indian and Pacific oceans, the ongoing democratization process had attracted the world's attention, so that PAH I open meetings were always attended by many observers from within and outside the country, including from the United States.

618 As stated by among others, Rahman Tolleng of Democracy Forum. *The Jakarta Post*, newspaper, 19 April 2002. At that time, the pressure to retain the appointed MPR members was quite strong, at least as reported in the mass media. There were several MPR members from various factions, mainly from F-PDIP and FUG who spoke out loudly in defending the existence of the appointed MPR members, including those appointed from the military and police. This impression was widespread and gave rise to the impression that the MPR could not be expected to bring about meaningful reforms to the 1945 Constitution.

619 *Media Indonesia*, newspaper, 1 August 2002. They considered that the existing political configuration could not be expected to reform. They sought to be in that role, as previous generations had done in the Indonesian national revival of the 1920s, in seizing and defending independence in the 1945s, in ending President Sukarno's rule in the mid-1960s and in ending the New Order's rule in the late 1990s.

The accusations are clearly wrong. The amendments had been carried out openly and involved a wide community of scholars, activists, community leaders, mass media, and so on, not only in Jakarta but also throughout Indonesia. As proven in the end, all the requirements of a democratic constitution were embedded in it, including people's sovereignty, separation of powers, rule of law, respect for human rights, a free and independent judiciary, periodic and fair circulation of power, and institutions and procedures for its implementation.

Certain others contended that the amendment should be finalized in 2002 and the amended Constitution should be declared as a transitional Constitution,⁶²⁰ to be reviewed later by an independent constitutional commission.⁶²¹ Factions such as F-TNI/Polri and F-PG argued that the constitutional commission should report its review to the new MPR formed by the 2004 general election.⁶²² To ensure the process, they proposed including the establishment of a constitutional commission in the clause of the Additional Provision of the 1945 Constitution. F-TNI/Polri considered that the mechanism was needed to build a bridge between the conservatives and ultra-modernists, and to canalize public aspirations.⁶²³ However, many others opposed framing the amended 1945 Constitution as a transitional Constitution, arguing that it would cause instability.⁶²⁴

In this political situation, all factions gradually asserted that the amendment should be completed during the 2002 MPR Annual Session as scheduled.⁶²⁵ The same attitude also evolved in the public.⁶²⁶ Factions argued that the amendment was almost done, that the principles of constitutionalism had already been installed, and a constitutional commission should not impede preparing the 2004 general election. However, acknowledging that the amendments might have weaknesses, there were also those who argued

620 As stated by, among others Bambang Widjajanto of the Coalition of NGOs. See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Lima, Edisi Revisi, Sekretariat Jenderal, 2010, pp. 315-325, 363. See also *Jakarta Post*, newspaper, 1 August 2002.

621 As argued by Syamsuddin Haris of the Indonesian Association of Sciences or AIPI (*Asosiasi Ilmu Pengetahuan Indonesia*). *Jakarta Post*, newspaper, 1 August 2002.

622 As proposed by Agun Gunandjar Sudarsa (F-PG), see Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Empat, Edisi Revisi, Sekretariat Jenderal, 2010, pp. 446-467.

623 As stated by Slamet Supriyadi (F-TNI/Polri), see Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Lima, Edisi Revisi, Sekretariat Jenderal, 2010, p. 439. He used the term "ultra-modernist".

624 As stated by among others, Hamzah Haz, Vice President and PPP chairman, *Tempo*, newspaper, 1 August 2002, p. 8 and Jimly Asshidiqqie of the Expert Group, *Media Indonesia*, newspaper, 1 August 2002, p. 1.

625 Gradually, factions who previously supported the idea of an independent constitutional commission, such as F-PPP, backed off. See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Satu, Edisi Revisi, Sekretariat Jenderal, 2010, pp. 54-55.

626 As stated by, among others Adnan Buyung Nasution, a prominent figure of the democratic movement. *Media Indonesia*, newspaper, 1 August 2002.

that after the amendment was done, the factions could consider establishing a constitutional commission.⁶²⁷

Experiencing all these obstacles and very formidable challenges, it is very encouraging that in the end, all MPR factions are united in completing the amendments to the 1945 Constitution. Although the amendments might have weaknesses, the factions contended that the authority to amend the Constitution was in the MPR's hands. Therefore, PAH I concluded that the constitutional commission must be an instrument of and be responsible to the MPR.⁶²⁸ Further, some asserted that the amendment process was quite open and responsive enough though not every aspiration could be acceptable to everyone.⁶²⁹ Therefore, the constitutional commission should academically review the amendment, checking the amendment's consistency with the principles embodied in the Preamble and the compatibility among the sub-systems included in the Constitution.⁶³⁰ Afterwards, the MPR had to decide. Certain factions argued that the commission could be formed before the 2003 MPR Annual Session and report to it.⁶³¹ Still others contended that it might be formed immediately and carry out its assignment after the 2004 general election. Others argued that the constitutional commission should be formed by the post-2004 election MPR,⁶³² while others proposed discussing the commission after the amendment's completion.⁶³³ There were also differences on who would become constitutional commission members.⁶³⁴ Many factions could not accept the commission being occupied by non-elected members.⁶³⁵

Amid the clamor, the Armed Forces, as conveyed by General Endriartono Sutarto, stated that the amendment had deviated from its original purpose and confirmed that the Armed Forces supported forming an independent constitutional commission to take over the amendment process. General Sutarto further asserted that the amended Constitution should be

627 As stated by Andi Mattalatta (F-PG). See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Lima, Edisi Revisi, Sekretariat Jenderal, 2010, pp. 427-428.

628 As concluded by Jakob Tobing in a Commission A informal consultation on 7 August 2002. *Ibid.*, p. 363.

629 As stated by Frans Matrutty (F-PDIP). See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Satu, Edisi Revisi, Sekretariat Jenderal, 2010, p. 346.

630 As proposed by Sutjipno (F-PDIP). See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Tiga, Edisi Revisi, Sekretariat Jenderal, 2010, p. 27.

631 As proposed by Sutradara Ginting (F-KKI), See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Empat, Edisi Revisi, Sekretariat Jenderal, 2010, p. 494.

632 As argued among others, by A.M. Fatwa (F-Reformasi), Najih Ahmad (F-PBB), Lukman Hakim Saifuddin (F-PPP), and Joseph Rahawadan (F-KKI). See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Lima, Edisi Revisi, Sekretariat Jenderal, 2010, pp. 430 – 443.

633 As stated by Zainal Arifin (F-PDIP). *Ibid.*, p. 467.

634 As stated by Patrialis Akbar (F-Reformasi). *Ibid.*, p. 418.

635 As emphasized by Sayuti Rahawarin (F-PDU). *Ibid.*, p. 420.

declared a transitional constitution, and if the amendment process failed, the Armed Forces would support the President, if the President reinstated the original 1945 Constitution.⁶³⁶

To ensure the constitutional commission's formation and that the subsequent 2003 MPR Annual Session could not annul it, F-TNI/Polri insisted that the constitutional commission's formation be included as a clause in the 1945 Constitution's Additional Provision.⁶³⁷ Thus, while the factions and public were engaged in the issue, some attempted to halt the amendment process, including a F-PDIP member who stated that he spoke without his faction's leadership permission, by insisting that further amendments should be undertaken by a commission that would also review the existing results.⁶³⁸

There were elements in the F-PDIP who tried to stop the amendments because of their belief that the 1945 Constitution is the legacy of President Soekarno, the founding father of Indonesia, with the amendments deviating from the ideals of the 1945 Constitution. F-UG elements wanted to maintain the existence of appointed delegates from functional groups and the military and police in the MPR as the embodiment of the familial political system. Elements of F-TNI/POLRI thought they ought to protect the existence of the unitary state of the Republic of Indonesia based on Pancasila, endangered by the amendments and interests of other factions.

Thereby, establishing a constitutional commission became the meeting point of various or contradictory political interests of various parties around the amendment process. These F-PDIP elements tried hard to stop the amendment. They demanded that President Megawati Soekarnoputeri issue a decree to stop the amendment and return to the original 1945 Constitution.⁶³⁹ Alleging that Jakob Tobing (F-PDIP) had directed the amendment process and caused it to deviate from the ideals of the nation, they bent over backwards to prevent Tobing from being re-elected as Commission A chairman.⁶⁴⁰

636 The statement of the Indonesian Armed Forces regarding "The stance of Indonesia's National Military and the Police of the Republic of Indonesia regarding the amendment of the 1945 Constitution" (*Sikap TNI dan POLRI terhadap amandemen Undang-Undang Dasar 1945*), issued on 30 July 2002. See also, *The Jakarta Post*, newspaper, 31 July 2002.

637 As asserted by Tatang Kurniadi (F-TNI/Polri), Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Lima, Edisi Revisi, Sekretariat Jenderal, 2010, p. 654. Previously, in a Commission A meeting, as stated by Slamet Supriyadi, F-TNI/Polri had agreed that forming the constitutional commission was not necessary to be included in the Additional Provision of the Constitution. See *Ibid.*, p. 585.

638 As insisted by among others, Ramson Siagian (F-PDIP), See *Ibid.*, p. 543.

639 *Koran Tempo*, newspaper, 1 August 2002, p. 1.

640 Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Lima, Edisi Revisi, Sekretariat Jenderal, 2010, pp. 11, 23. The leadership team of Commission A consisted of Jakob Tobing (F-PDIP) as chairman, H. Slamet Effendy Yusuf (F-PG), H. Zain Bajebber (F-PPP), K.H. Amroe Al Mutaksin (F-KB), K.H. Najih Ahjad (F-PBB), Gregorius Seto Harianto (F-PDKB), I Ketut Astawa (F-TNI/Polri), Muhammad Hatta Mustafa (F-UD), and Harun Kamil (F-UG) as vice chairmen.

Then, in a Commission A meeting on electing the Commission A leadership on 4 August 2002, which was chaired by an MPR leader, the F-PDIP spokesperson proposed re-appointing Jakob Tobing as the Chairman.⁶⁴¹ However, several F-PDIP members in Commission A expressed their disagreement and stated they would propose another member.⁶⁴² To overcome the matter, the Chairperson of the meeting, in accordance with the MPR meeting rules, handed over the solution to the internal F-PDIP. In response, Megawati refused to replace Jakob Tobing and instructed F-PDIP to maintain Tobing as the chairman of Commission A and not to hinder the completion of the amendment of the 1945 Constitution.⁶⁴³ In the end, only F-TNI/Polri insisted on including the constitutional commission provision in a clause of the Additional Provision.⁶⁴⁴ However, in the last minutes, after their proposal was fiercely and emotionally challenged by others,⁶⁴⁵ F-TNI/Polri, emphasizing the importance of maintaining the integrity of the nation and state, withdrew its proposal.⁶⁴⁶

The MPR finally decided to establish a constitutional commission that was tasked with conducting a comprehensive academic study of the changes and proposing necessary improvements to the MPR.⁶⁴⁷ However, certain groups, consisting of NGOs, scholars, and campus activists, were very disappointed. They expected a constitutional commission with the full authority to design a complete constitutional amendment or create an entirely new constitution.⁶⁴⁸

The political dynamics overarching the proposed constitutional commission show that the supporters and opponents of constitutional amendments were motivated by certain political views that were promoted by political groups, which were organized and fairly rooted in society. In society, there are still groups who want Indonesia to require the implementation of Islamic sharia for its adherents, those who want the dual-function role of ABRI, who want the MPR as the highest institution of the state – the holder of the people’s sovereignty in full. Therefore, it is not impossible that the political turmoil that occurred could provide an oppor-

641 Proposed by F-PDIP spoke person Didi Supriyanto. *Ibid.* p. 10.

642 As argued by F-PDIP members, Marah Simon, Haryanto Taslam, Amin Aryoso, Imam Mundijat. *Ibid.*, pp. 11-18.

643 *Ibid.*, pp. 10-23.

644 Stated by E. Tatang Kurniadi, F-TNI/Polri. See *Ibid.*, p. 654.

645 Previously, Anwar Arifin (F-PG) stated unequivocally that the MPR should not shrink just because of the terror by the people who were once in power. See *Ibid.*, pp. 620-621. Arifin Panigoro, the F-PDIP Chairman, asserted that the MPR should be ready to face any kind of pressure and any threat. See *Ibid.*, p. 629. Husni Thamrin (F-PPP), the deputy MPR Speaker stated emotionally that the F-TNI/Polri proposal was a humiliation. Nothing to be afraid of, Thamrin said, not prison nor death. See *Ibid.*, p. 723.

646 Stated by Slamet Supriyadi (F-TNI/Polri). See *Ibid.*, p. 750.

647 MPR Decree No. I/MPR/2002.

648 See e.g., Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Satu, Edisi Revisi, Sekretariat Jenderal, 2010, pp. 315-325, 363.

tunity for those aspirations to be fulfilled. Therefore, in the future, it can be predicted that if the amended 1945 Constitution has not been implemented properly, for whatever reason, contestation will emerge once again. It is not impossible that there will be a demand for a return to the original 1945 Constitution.

Meanwhile, a conclusion on the second round of presidential elections was achieved smoothly. With a firm directive from the party's leadership, F-PDIP, the only faction that disagreed with the provision, eventually agreed with the second round of the presidential election being conducted directly by the people.

At the end, it is interesting to note that after PAH I successfully completed its work, PAH I members shook hands and embraced each other. Similarly, at the time the MPR successfully completed the task, MPR members spontaneously recited prayers according to their respective religions and stood up, singing the national anthem, Indonesia Raya.⁶⁴⁹

The incidents reflect that the amendment process, with all the debates and contestations, was not a process of losing or winning. Rather, the inclusive and consensus-driven approach throughout the amendment process had built a sense of common responsibility that the constitutional amendment was a task that had to be completed together.

The amendment process had stimulated the MPR's members, especially PAH I members, to take a long-term view instead of focusing on short-term interests.⁶⁵⁰

VIII.5.2 The substance

Until the final amendment stage in the 2002 MPR Annual Session, the factions could not agree on the existence of the functional groups' appointed delegates as MPR members. The last informal consultation of the factions amid the last MPR plenary meeting failed to solve the stalemate, so it had to be decided by balloting.

Following the rules of procedure laid down in MPR Decree No. II/1999, in the final MPR plenary meeting, if deliberation failed to reach consensus, the decision could be made by voting, especially when the time for discussion had expired and a decision was indispensable. This was the only decision made by ballot during the entire 1999-2002 amendment process.

Both sides had their respective conceptual arguments. The side favouring augmenting the MPR's composition with an appointed functional group delegation said it represented poor people's interests, such as workers and

649 See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Lima, Edisi Revisi, Sekretariat Jenderal, 2010, p. 753.

650 See Adriaan Bedner, *The Need for Realism.*, p. 192.

peasants, who tended to be neglected by an open and free market democratic system dominated by the bourgeoisie. Therefore, there had to be a state institution that represented all groups in society with the authority to determine the outline of state policy, which would guarantee justice and the sustainability and consistency of development. The government should not select delegates, as it had in the past, but functional groups should choose them democratically themselves. This stance was adopted by most members of the F-UG and by several F-PDIP and other faction members. Proponents of the idea, estimating that they had enough support, then pushed the decision through voting,⁶⁵¹ which they expected could win, and further halted and reversed the entire amendment process.

However, most other factions contended that the MPR members should consist only of elected DPR and Regional Representative Council members. They argued that a general election is the best way to appoint people's representatives and there should be no exceptions.⁶⁵² Moreover, it could not be justifiable to select appointed delegates to represent backward people based on the magnitude of a particular tribe or group, and to consider their backwardness as something that was constitutionally permanent.⁶⁵³ Adopting adherence to human rights, such as freedoms of association, assembly, and expression, and affirming that democracy and people's sovereignty are subjugated to the Constitution's principles, prevented the possibility of manipulating groups in a democratic process.⁶⁵⁴ Further, improving the political party and general election systems could prevent the representative system from manipulation by rent seekers. The improvement of Chapter XIII on Education and Culture and Chapter XIV on National Economy and Social Welfare, which were concluded during this final stage, provide a constitutional basis and a state's obligation to enhance the quality of life and justice for everyone.

Regarding the Broad Outlines of State Policy, although it has benefits, such as the sustainability and integrity of the development programs for the entire country and in all sectors, it contains a systemic weakness. To be effective, the Broad Outlines need to have a binding legal position on the President and all other state agencies, which requires that all state institutions are subject and accountable to the institution that determines the Broad Outlines, the MPR. As discussed in the previous chapter, this kind of

651 The proponent claimed to have more than 200 F-PDIP members and of other factions supporting the stance. See among others, *Media Indonesia*, newspaper, 2 August 2002, p. 1.

652 As stated by, among others Kohirin Suganda (F-TNI/Polri). See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Tiga, Edisi Revisi, Sekretariat Jenderal, 2010, p. 82.

653 There is the question of appropriateness in deciding who will represent the backward people, such as in Papua or Kalimantan or else, where there are several tribes, large and small, with different cultures and traditions or even different languages.

654 As affirmed by Article 1 and Article 28A to 28J of the 1945 Constitution.

arrangement denies checks and balances while requiring a political system be based on the one-party system or be dominated by a political power to ensure its sustainability, which is authoritarian. Otherwise, a characteristically parliamentary system will be very unstable.⁶⁵⁵ Therefore, behind the appointed functional group delegate debates, there was contestation between an authoritarian system (with a supreme MPR embedded in the original 1945 Constitution) and the constitutional democratic system (with a supreme Constitution developed during the amendment process). For a developing and vast country such as Indonesia, sustainability and consistency in development programs are important. Besides the development goal stipulations as embodied in the 1945 Constitution's Preamble, and the provisions regarding basic rights, the education system, economic justice, and social welfare, an outline of development policy could be determined by law that binds all parties without sacrificing democratic values.

To accommodate the people's aspirations, the process should be open to the public, involving representatives from society's interest groups. The law-making process involving the DPR, Regional Representative Council, and President would be open to the public, while the constitutionality of laws could be reviewed by the Constitutional Court. Therefore, people's aspirations needed to be properly accommodated. To ensure the sustainability and consistency of the policy as statute, it could be valid for a certain period and all other development programs should conform to the statute. On the other hand, any necessary adjustment to the program could be done by a democratic law-making process as stipulated by the Constitution.

Eventually, the decision taken by ballot was to abolish the functional groups' appointed delegates from future MPR membership. Thus, ultimately, on 10 August 2002, the new Article 2(1) of the 1945 Constitution that states, "MPR consists of members of DPR and members of Regional Representative Council members elected through general elections and to be further regulated by laws", was ratified.⁶⁵⁶

Regarding the presidential election, in the third amendment phase, factions managed to agree that in the first round, the President and Vice President should be elected on one ticket directly by the people. The pair who can obtain more than 50% of the total national votes, with at least 20% in each province in more than half of the provinces, shall be declared as

655 During the era of President Soekarno (1959-1967) and President Abdurrahman Wahid (1999-2001), the main political job domestically for the President was to control the MPR. In the end, both Presidents were dismissed by the MPR. During the era of President Suharto (1967-1998), Suharto controlled the MPR and stayed in power for three decades. The system designed by BPUPK was coupled with a one-party system, the *Partai Nasional Indonesia*, known as *Partai Pelopor* (the Vanguard Party). See Sekretariat Negara Republik Indonesia, *op.cit.*, pp. 503 – 505.

656 See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Lima, Edisi Revisi, Sekretariat Jenderal, 2010, p.p. 734 – 735.

the elected President and Vice President.⁶⁵⁷ However, the MPR could not conclude what should be done if there was no candidate pair who would win the first round. Several PAH I regional validity meetings showed that the public were divided.⁶⁵⁸

Eventually, F-PDIP agreed that the second round of presidential elections should be conducted directly by the people.⁶⁵⁹ Thus, the MPR plenary meeting on 10 August 2002 ratified this amendment. This decision completed the provision on direct presidential elections as stipulated in Article 6A of the 1945 Constitution.

Regarding the proposal to amend Article 29, two main issues remained, mostly related to arguments that repeated the previous discussions. The discussion no longer concerned the rejection of Pancasila as the state ideology. There was no proposal to add 'the seven words' of the Jakarta Charter to the Preamble. Since the beginning, all factions, including Islamic factions, resolutely affirmed that Pancasila as embedded in the Preamble was final and should be maintained as the state ideology.⁶⁶⁰ Rather, the debate was on Article 29 regarding implementing Pancasila's first principle in daily practice: Belief in the One and Only God. It was about the state's role in the people's religious lives. Proponents argued that the state should actively require citizens to exercise their religion. In general, all factions acknowledged that in a state based on Pancasila, there should be enlightenment of one's faith so that people shun away from immoral things, such as corruption.⁶⁶¹

Amidst these different opinions, the factions tried to find a solution. Certain factions proposed maintaining the original Article 29 and adding a new section: "the state shall guarantee the implementability of Islamic

657 Article 6A of the amended 1945 Constitution.

658 Validity meetings in Palembang, Pontianak, Malang, Yogyakarta and Solo, for instance, reported that the participants were divided into those who endorsed a direct second round and those who preferred election by the MPR. See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Dua, Edisi Revisi, Sekretariat Jenderal, 2010, pp. 833-845. Nasirwan from Muhammadiyah University Pontianak, West Kalimantan, argued that the second round should be handed to the people. Conducting the second round by the MPR is a half-hearted attempt at reform, Nasirwan stated. *Ibid.*, p. 739. On the other hand, Hasyim Djalal argued, considering the economics and the political costs, a second-round election conducted by the MPR would be better, on the condition that the MPR comprises of elected members. Money politics won't be more prominent in an election by the MPR than in a direct election, said Djalal. *Ibid.*, p. 606.

659 See above, VIII.2.2. *Ratification: People-Led Second Round.*

660 As stated by among others, Asnawi Latief (F-PDU). As a Nahdlatul Ulama (NU) member who had affirmed that *Pancasila* is final, he conformed with the stance of NU. See *Ibid.* Hamdan Zoelva (F-PBB) during the second amendment asserted that Pancasila is final. See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2000, Buku Satu, Edisi Revisi, Sekretariat Jenderal, 2010, p. 93.

661 As stated by Zacky Siradj (F-UG). See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Satu, Edisi Revisi, Sekretariat Jenderal, 2010, p. 696. Further Siradj argued that the original Article 29 should be maintained.

Sharia which is obligatory for its followers.”⁶⁶² Others proposed that, because the state should be just to everyone, the obligation should be applied to every religion.⁶⁶³ Others argued that Article 29 was already a compromise and should be maintained, while implementing Islamic Sharia would be more appropriate through a legislation (rather than constitutional) process.⁶⁶⁴

Regarding the term *kepercayaan*, the debate was about whether it was understood as a set of traditional beliefs or as faith in a religion. The factions proposing the Article 29 amendment argued that it should be interpreted as faith in a religion, since the traditional beliefs (*aliran kepercayaan*) were already accommodated in the chapter on human rights. However, others rejected any revision to Article 29. Islamic Sharia, like the concept of the state, is a vast subject with various interpretations that could lead to clashes among believers.⁶⁶⁵ In addition, there would be problems concerning who would have the authority to interpret religious norms.⁶⁶⁶ Further, there were risks that could be caused by amending Article 29, especially amidst the political upheavals around the demands for regional autonomy that were shaking the country at the time.⁶⁶⁷

Thereby, the MPR was divided. There were F-PBB, F-PPP, F-PDU factions and F-Reformasi and F-UG elements who proposed inserting the obligation for Muslims to implement Islamic Sharia into the Constitution. Then, there were F-PDIP, F-PG, F-TNI/Polri, F-KB, F-UD, F-KKI, F-PDKB factions and F-Reformasi and F-UG elements who wanted to maintain the original Article 29. Proponents of maintaining the original Article 29 far outnumbered amendment advocates.⁶⁶⁸ However, the latter group retained its opinion and affirmed that it is not enough to enforce Islamic Sharia on the individual only through freedom of worship, that the state should be

662 As proposed by Yusuf Muhammad (F-KB). See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Tiga, Edisi Revisi, Sekretariat Jenderal, 2010, p. 579. Previously, Ali Masykur Musa (F-KB) stated that if the proposal was not acceptable, F-KB preferred to maintain the original Article 29. See *Ibid.*, p. 204.

663 As proposed by Patrialis Akbar (F-Reformasi). See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Lima, Edisi Revisi, Sekretariat Jenderal, 2010, p. 71.

664 As stated by A.M. Fatwa (F-Reformasi). See *Ibid.*, p. 223.

665 As reminded by Zulvan Lindan (F-PDIP) and Harifuddin Cawidu (F-UD). Cawidu further argued that a Muslim can certainly implement Sharia without having to be sustained by the state in a formal constitution. See *Ibid.*, pp. 234, 239.

666 As stated by Hasyim Djalal. See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Dua, Edisi Revisi, Sekretariat Jenderal, 2010, p. 758.

667 As reminded by Kohirin Suganda (F-TNI/Polri). See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Tiga, Edisi Revisi, Sekretariat Jenderal, 2010, p. 590.

668 See III.2. The composition of the faction in the People’s Consultative Assembly as the result of the 1999 election.

involved, and that this should be stipulated at the constitutional level.⁶⁶⁹ Thus, until the end of Commission A's 2002 August session, factions failed to agree on the issue.⁶⁷⁰ The public was similarly divided. Certain people argued that the obligation should be included in Article 29,⁶⁷¹ while others argued against.⁶⁷²

The discussion shows that there are people who believe that the state should require Muslims to practice Islamic law and that for certain political parties, the issue is a matter of political support. It also confirms that for certain communities, religious law is regarded as a positive law in addition to positive state law, which indicates a diversity of legal norms. On the other hand, certain people regard the issue as a real risk, and threatened to secede from Indonesia if the proposal was approved.⁶⁷³

It became clear that the issue is highly sensitive and reaches deep and far into the future. From constitutionalism's point of view, the debate showed that the 1945 Constitution as the supreme law would still face challenges posed by the interpretation of religious laws, in conjunction with customary laws and traditions.

Thus, PAH I and the subsequent Commission A could not achieve agreement regarding the proposal to amend Article 29. As discussed previously, the differences were resolved uniquely, through several informal consultations that involved the top leaders of political powers and compromises.

From an optimistic viewpoint, this settlement enabled an atmosphere conducive to an ongoing stakeholder dialogue, outlining how religious values could be integrated as rules in our daily lives. Although this is not a simple matter, a respectful atmosphere, tolerance, attention, and perseverance, supported by the progress of development, can produce positive results. In addition, such an approach can prevent the alienation of certain groups, which could otherwise foster radical attitudes in certain communities in society.

669 As asserted by M.S. Kaban (F-PBB). See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Lima, Edisi Revisi, Sekretariat Jenderal, 2010, p. 648.

670 See *Ibid.*, p. 399.

671 The participants of a public hearing in Bandung, for instance, argued that the state should oblige the people to implement their respective religions. See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Satu, Edisi Revisi, Sekretariat Jenderal, 2010, p. 624.

672 In a validity test meeting in Pontianak, for instance, Tanrizal, a teacher at the Junior High School (SMP) no. I expressed that belief in a religion is a basic human right. Therefore, it is a contradiction if the state obliges people to exercise their religion. Further, Tanrizal said that if it were the case, then one should report to the police if a neighbor did not practice their religion. See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Dua, Edisi Revisi, Sekretariat Jenderal, 2010, p. 728.

673 See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Satu, Edisi Revisi, Sekretariat Jenderal, 2010, p. 143.

Concerning education, factions believed that there was no more valuable an investment in the future than a quality basic education.⁶⁷⁴ Thus, PAH I managed to conclude fundamental changes to the Constitution's provisions. It affirmed that education is a basic right, that every citizen is required to obtain a preliminary education,⁶⁷⁵ and that the government is obliged to pay for it.⁶⁷⁶ For that purpose, factions agreed that at least 20% of state and local budgets should be set aside for education.

Meanwhile, lengthy debates on the national policy's goal took place. As reported by PAH I to the MPR Working Body, there were two opinions on the national policy's goal. The first argued that the government should organize and implement a national education system that aimed at enhancing the nation's intellectual life and creating humans with a noble character, that would be further regulated by law. This group argued that the nation's intellectual life as embodied in the Preamble has a broad meaning, including intellectual intelligence, faith, piety, and morality.⁶⁷⁷ The second group argued that the government should organize and implement a national education system that aimed at improving faith, piety, and morality, and at enhancing people's intellectual lives. In response to the second alternative, people pointed out that if education was also about enhancing faith and piety, then it had entered the theological domain and there would be problems in deciding whose interpretations were authoritative.⁶⁷⁸

In the last Commission A meeting, the first position was shared by F-PDIP, F-TNI/Polri, F-KKI, and F-PDKB. Conversely, F-PG, F-PPP, F-PBB, F-Reformasi, F-PDU, F-UD, and F-UG preferred the second alternative. Trying to solve the difference, F-KB proposed a new formulation that stated that "the Government organizes and manages a national education system to enhance the nation's intellectual life and to shape the nation's noble character, which shall be further regulated by law."⁶⁷⁹ Nevertheless, Commission A could not resolve the difference.

As already discussed, the differences regarding Article 31 were overcome through an informal consultation that involved political party leaders.

674 As asserted by, among others, Franz Magnis Suseno in a PAH I public hearing. See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Satu, Edisi Revisi, Sekretariat Jenderal, 2010, p. 446.

675 As stated by Hatta Mustafa (F-UD). See *Ibid.*, p. 65.

676 See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Dua, Edisi Revisi, Sekretariat Jenderal, 2010, p. 2.

677 As stated by I Ketut Astawa (F-TNI/Polri) and Retno Triani Djohan (F-UG). See *Ibid.*, pp. 259-262.

678 As argued by I Dewa Gede Palguna (F-PDIP). See *Ibid.*, p. 241.

679 As proposed by Amin Sa'id Husni (F-KB). See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Lima, Edisi Revisi, Sekretariat Jenderal, 2010, p. 226.

The factions agreed that the differences on Articles 29 and 31 should be solved jointly.⁶⁸⁰ All factions accepted Article 31's second alternative and in return, agreed that the MPR should maintain the original Article 29. The agreement was ultimately approved in the plenary MPR meeting on 11 August 2002.

Regarding Article 33 on Economy, at the outset, the factions concluded that the sections of Article 33 as attached to MPR Decree No. XI/2001 should be revised. However, in accordance with the public's aspirations, the factions decided not to revise the original sections in Article 33,⁶⁸¹ partially since it firmly stated its determination to end injustice and the growing discrepancy between the rich and poor.⁶⁸² In this context, some argued that the principle of familial economy (*ekonomi kekeluargaan*) would sacrifice modern economic principles,⁶⁸³ and the term "under the control of the state" (*dikuasai oleh negara*) could expose the danger of state expansion over the right of the people.⁶⁸⁴ However, others argued that, although the familial principle (*ekonomi kekeluargaan*) was considered contradictory with efficiency, it is the soul and spirit of the nation.⁶⁸⁵ Thus, the familial economy principle should be maintained and coupled with the principles of efficiency, justice, and economic democracy.⁶⁸⁶ The measure is the advancement of the national economy.⁶⁸⁷

Further, others argued that the market's role was important,⁶⁸⁸ and that although there is no just and fair market, it should not be neglected.⁶⁸⁹ The economy should be developed in a democratically managed or intervened

680 See *Ibid.*, p. 399. As also affirmed by Arifin Panigoro, the F-PDIP Chairman in the MPR, in an interview in Jakarta, 11 October 2014.

681 During the fourth stage, PAH I exposed the preliminary conclusion to the public through various forums, such as public hearings and validity tests. This was a hotly debated topic in the Expert Group that caused Mubyarto who wanted to retain the original Article 33, resigned. See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Satu, Edisi Revisi, Sekretariat Jenderal, 2010, pp. 243, 251.

682 As stated by, among others Soedijarto (F-UG). See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Satu, Edisi Revisi, Sekretariat Jenderal, 2010, p. 145.

683 As stated by T.M. Nurliff (F-PG). See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Dua, Edisi Revisi, Sekretariat Jenderal, 2010, p. 93.

684 As reported by I Dewa Gede Palguna (F-PDIP) during a validity meeting in Bali. See *Ibid.*, p. 837.

685 As asserted by Theo Sambuaga (F-PG). Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Satu, Edisi Revisi, Sekretariat Jenderal, 2010, p. 400.

686 As argued by Hobbes Sinaga (F-PDIP). See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Dua, Edisi Revisi, Sekretariat Jenderal, 2010, p. 79. See also VIII.2.6.

687 *Ibid.*, pp. 313-314.

688 As stated by, among others Amidhan (F-PG). See *Ibid.*, p. 248.

689 As reminded by Ali Hardi Kiaidemak (F-PPP). See Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Dua, Edisi Revisi, Sekretariat Jenderal, 2010, p. 86.

market, in which justice, efficiency, and sustainability are the leading principles.⁶⁹⁰ Therefore, its implementation would be consistent with the principles of the state based on the rule of law (*negara hukum*) and people's sovereignty, which adhere to economic, social, and cultural rights as well as civil and political rights.⁶⁹¹

Thus, they agreed to maintain the original Article 33(1), Article 33(2), and Article 33(3), and to add provisions regarding principles on how the economy should be developed and that it should be further regulated by law.⁶⁹²

Regarding Article 34, which states that "(1) Destitute and neglected children shall be nurtured by the state", the factions had no objection to the previous conclusions as attached to MPR Decree No. XI/2001. Likewise, all agreed on changing the title of Chapter XIV from 'National Economy' to 'National Economy and Social Welfare.'

There were proposals and attempts to amend Article 37 on the procedures for amending the 1945 Constitution. Among other things, to establish a constitutional commission that is authorized to make over-all changes to the Constitution.⁶⁹³ However, this proposal was not agreed on. Further, the MPR factions agreed to revise Article 37 with new provisions stating that the Preamble is not an object that can be amended and the form of the unitary state of the Republic of Indonesia is unamendable.

Additional and Transitional Provisions in the original 1945 Constitution regulate the transition from the Japanese colonial era to an independent Indonesia and, therefore, must be amended. Certain parties used this opportunity to try and replace it with provisions stating that the amended 1945 Constitution was a provisional Constitution and to establish a constitutional commission to redesign the Constitution. For that purpose, the additional provision would also contain an order to establish a constitutional commission.⁶⁹⁴ As discussed above, the proposal was not agreed.

In the end, the MPR decided that the Transitional and Additional Provisions stipulate that the Constitutional Court, which was agreed upon, should have been established on 17 August 2003, and assigned the MPR to review the contents and status of all existing MPR provisions to be decided in the 2003 MPR session, emphasizing that with the completion of the amendments, the 1945 Constitution consists only of the Preamble and the articles.

690 As concluded by Jakob Tobing who presided the conclusion meeting. See *Ibid.*, pp. 313-314, 334.

691 As asserted by Sutjipno (F-PDIP). See *Ibid.*, p. 100. See also Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Lima, Edisi Revisi, Sekretariat Jenderal, 2010, p. 283.

692 *Ibid.*

693 *Ibid.*, pp. 587-604.

694 Majelis Permusyawaratan Rakyat Republik Indonesia, *op.cit.*, Tahun Sidang 2002, Buku Lima, Edisi Revisi, Sekretariat Jenderal, 2010, p. 423.

Later, in a consultative meeting on the evening of 8 August 2002, Commission A agreed the proposal for the formation of a constitutional commission.⁶⁹⁵ Then, the consultation meeting was continued with the Commission A meeting, which was its last meeting in the 2002 MPR session, when the agreement was formalized.⁶⁹⁶ Also reported to the meeting the petitions of student delegation from University of Bung Karno, who refused the amendments to the UUD 1945, the statement of students' unit of the *Pemuda Pancasila* who asked that presidential election in both the 1st and the 2nd conducted directly by the people, to allocate education's budget of a minimum 25%, to restore Article 29 to its origin and to complete the amendment of the UUD 1945. Also from *Barisan Rakyat Indonesia* who demanded the establishment of a constitutional commission and from Coalition for New Constitution who demanded a totally new constitution.⁶⁹⁷ The last was *Lembaga Kordinasi Strategik Marhaenis* (LKSM – Marhaenis Strategic Coordination Institute) who firmly rejected all amendments to the 1945 Constitution that had been carried out by the MPR, conveyed a motion of no-confidence to the MPR of the 1999 election and hoped the formation of a constitutional commission to revise the amended Constitution.⁶⁹⁸

To ensure that the agreement would be accepted by the MPR plenary, at the suggestion of the Chair of the F-PDIP Faction in the MPR, Arifin Panigoro, the Speaker of the MPR and the faction leaders agreed to hold a deliberation meeting at midnight before 9 August 2002, factions reached agreement on the establishment of a constitutional commission.

Subsequently, on 9 August 2002, the MPR Commissions reported their works to MPR plenary meeting.

In the meantime, the MPR plenary meeting on 9 August 2002 approved the amendment to Chapter XIV by acclamation.⁶⁹⁹ The new provisions in Chapter XIII and Chapter XIV regarding education, culture, economy, and social welfare embrace a substantive strategy in achieving social justice and social welfare based on the rule of law.

The establishment of a constitutional commission was one of the last issues to be decided approaching the end of the 2002 MPR annual session. On 9 August 2002, MPR plenary session decided to issue Decree no. I/MPR/2002 which assigned the MPR Working to establish a constitutional commission to conduct a comprehensive study on the amendments to the 1945 Constitution.

In 2003 annual session, based on decision no. 4/MPR/2003, MPR formed the constitutional commission, that had 7 (seven) months working time. The commission was responsible to the MPR through the Working Body, who should then report its conclusion to the MPR plenary session on 7 September 2004.

695 Ibid., p. 586.

696 Ibid., pp. 587-604.

697 Ibid., p. 589.

698 Ibid., pp. 589-590.

699 Ibid., p. 698.

Then, the constitutional commission reported the study to MPR Working Body. But, after studying it, the Working Body did not approve the study because it was not in accordance with the MPR decision. Among other things, the constitutional commission decided on differences of opinion in the commission by voting, while the MPR decision no. 4/MPR/2003 does not allow voting in formulating the study results. On the other hand, the MPR Working Body concluded that the amendments to the UUD 1945 are good enough.

