

The 1945 Constitution of the Republic of Indonesia

Department of Information

Republic of Indonesia 1989

P r e f a c e

The translation of the current publication of "The 1945 Constitution" is a provisional revision to that of the previous editions which were based on the translation of its first edition published by the then Yogyakarta-based Information Ministry of the Republic of Indonesia in 1950.

This revision is still provisional owing to the flexible Constitution which includes a wider scope of philosophy, so that a more reliable translation is still expected.

We are aware that this translation is still far from perfect and yet this translation aims at helping those who want to study Indonesian laws by using English as its introductory language.

We'd very much appreciate constructive opinion and input from critics and any other interested party for our planned revised edition.

Thank you.

1. THE PREAMBLE TO THE CONSTITUTION

Whereas freedom is the inalienable right of all nations, colonialism must be abolished in this world as it is not in conformity with humanity and justice;

And the moment of rejoicing has arrived in the struggle of the Indonesian freedom movement to guide the people safely and well to the threshold of the independence of the state of Indonesia which shall be free, united, sovereign, just and prosperous;

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

Subsequent thereto, to form a government of the state of Indonesia which shall protect all the people of Indonesia and their entire native land, and in order to improve the public welfare, to advance the intellectual life of the people and to contribute to the establishment of a world order based on freedom, abiding peace and social justice, the national independence of Indonesia shall be formulated into a constitution of the sovereign Republic of Indonesia which is based on the belief in the One and Only God, just and humanity, the unity of Indonesia, democracy guided by the inner wisdom of deliberations amongst representatives and the realization of social justice for all of the people of Indonesia.

2. THE 1945 CONSTITUTION

Chapter I. Form of the State and Sovereignty

Article 1

1. The State of Indonesia shall be a unitary state which has the form of a republic.
- 2) Sovereignty shall be vested in the people and shall be exercised in full by the.

Chapter II. The Majelis Permusyawaratan Rakyat

Article 2

1. The Majelis Permusyawaratan Rakyat shall consist of the members of the Dewan Perwakilan Rakyat augmented by the delegates from the regional territories and groups as provided for by statutory regulations.
2. The Majelis Permusyawaratan Rakyat shall meet at least once in every five years in the capital of the state.
3. All decisions of the Majelis Permusyawaratan Rakyat shall be taken by a majority vote.

Article 3

The Majelis Permusyawaratan Rakyat shall determine the constitution and the guide lines of the policy of State.

Chapter III. The Executive Power

Article 4

1. The President of the Republic of Indonesia shall hold the power of government in accordance with the Constitution.
2. In exercising his duties, the President shall be assisted by a Vice-President.

Article 5

1. The President shall hold the power to make statutes in agreement with the Dewan Perwakilan Rakyat.
2. The President shall determine the government regulations to expedite the enforcement of laws.

Article 6

1. The President shall be a native Indonesian citizen.
2. The President and the Vice-President shall be elected by the Majelis Permusyawaratan Rakyat by a majority vote.

Article 7

The President and the Vice-President shall hold office for a term of five years and shall be eligible for re-election.

Article 8

Should the President die, resign or be unable to perform his duties during his term of office, he shall be succeeded by the Vice-President until the expiry of his term of office.

Article 9

Before assuming office, the President and the Vice-President shall take the oath of office according to their religions, or solemnly promise before the Majelis Permusyawaratan Rakyat or the Dewan Perwakilan Rakyat as follows:

The President's/Vice-President's Oath

"In the name of God Almighty, I swear that I will perform the duties of the President (Vice-President) of the Republic of Indonesia to the best of my ability and as justly as possible, and that I will strictly observe the Constitution and consistently implement the law and regulations in the service of the country and the people."

The President's/Vice-President's Promise

"I solemnly promise that I will perform the duties of the President (Vice-President) of the Republic of Indonesia to the best of my ability and as justly as possible, and that I will strictly observe the constitution and consistently implement the law and regulations in the service of the country and the people."

Article 10

The President is the Supreme Commander of the Army, the Navy and the Air Force.

Article 11

In agreement with the Dewan Perwakilan Rakyat, the President declares war, makes peace and concludes treaties with other states.

Article 12

The President declares the state of emergency. The conditions for such a declaration and the measures to deal with the emergency shall be governed by law.

Article 13

1. The President appoints ambassadors and consuls.
2. The President receives the credentials of foreign ambassadors.

Article 14

The President grants mercy, amnesty, pardon and restoration of rights.

Article 15

The President grants titles, decorations and other distinctions of honour.

Chapter IV. The Supreme Advisory Council

Article 16

1. The composition of the Supreme Advisory Council shall be determined by law.
2. The Council has the duty to reply to questions raised by the President and has the right to submit

recommendations to the government.

Chapter V. The Ministers of State

Article 17

1. The President shall be assisted by the Ministers of State.
2. These Ministers shall be appointed and dismissed by the President.
3. These Ministers shall head the government departments.

Chapter VI. The Regional Governments

Article 18

The division of the territory of Indonesia into large and small regions shall be prescribed by law in consideration of and with due regard to the principles of deliberation in the government system and the hereditary rights of special territories.

Chapter VII. The Dewan Perwakilan Rakyat

Article 19

1. The composition of the Dewan Perwakilan Rakyat shall be prescribed by law.
2. The Dewan Perwakilan Rakyat shall meet at least once a year.

Article 20

1. Every law shall require the approval of the Dewan Perwakilan Rakyat.
2. Should a bill not obtain the approval of the Dewan Perwakilan Rakyat, the bill shall not be resubmitted during the same session of the Dewan Perwakilan Rakyat.

Article 21

1. Members of the Dewan Perwakilan Rakyat have the right to submit a bill.
2. Should such a bill not obtain the sanction of the President notwithstanding the approval of the Dewan Perwakilan Rakyat, the bill shall not be resubmitted during the same session of the Dewan.

Article 22

1. In the event of a compelling emergency, the President has the right to issue government regulations in lieu of laws.
2. Such regulations shall have the consent of the Dewan Perwakilan Rakyat during its subsequent session.
3. Where the approval of the Dewan is not obtained, the government regulations shall be revoked.

Chapter VIII. Finance

Article 23

1. The annual state budget shall be sanctioned by law. In the event that the Dewan Perwakilan Rakyat does not approve a draft budget, the government shall adopt the budget of the preceding year.
2. All government taxes shall be determined by law.
3. The forms and denominations of the currency shall be determined by law.
4. Other financial matters shall be regulated by law.
5. In order to examine the accountability of the state finances, a State Audit Board shall be established by statutory regulation. The findings of the Board shall be reported to the Dewan Perwakilan Rakyat.

Chapter IX. The Judiciary Power

Article 24

1. The judiciary power shall be exercised by a Supreme Court and such other courts of law as are provided for by law.
2. The composition and powers of these legal bodies shall be regulated by law.

Article 25

The appointment and dismissal of judges shall be regulated by law.

Chapter X. The Citizens

Article 26

1. Citizens are native Indonesian persons or persons of other nations who have acquired a legal status as citizens.
2. Conditions to acquire and other matters on citizenship shall be determined by law.

Article 27

1. All citizens have equal status before the law and in government and shall abide by the law and the government without any exception.
2. Every citizen has the right to work and to live in human dignity.

Article 28

Freedom of association and assembly, of verbal and written expression and the like, shall be prescribed by law.

Chapter XI. Religion

Article 29

1. The State shall be based upon the belief in the One and Only God.
2. The State guarantees all persons the freedom of worship, each according to his/her own religion or belief.

Chapter XII. National Defence

Article 30

1. Every citizen has the right and duty to participate in the defence of the country.
2. The rules governing defence shall be regulated by law.

Chapter XIII. Education

Article 31

1. Every citizen has the right to education.
2. The government shall establish and conduct a national educational system which shall be regulated by law.

Article 32

The government shall advance the national culture.

Chapter XIV. Social Welfare

Article 33

1. The economy shall be organized as a common endeavour based upon the principles of the family system.
2. Sectors of production which are important for the country and affect the life of the people shall be controlled by the state.
3. The land, the waters and the natural riches contained therein shall be controlled by the State and exploited to the greatest benefit of the people.

Article 34

The poor and destitute children shall be cared for by the State.

Chapter XV. The Flag and the Language

Article 35

The national flag of Indonesia shall be the red-and-white.

Article 36

The national language of Indonesia shall be the Bahasa Indonesia or the Indonesian language.

Chapter XVI. Amendments to the Constitution

Article 37

1. In order to amend the Constitution, not less than two thirds of the total number of members of the Majelis Permusyawaratan Rakyat shall be in attendance.
2. Decisions shall be taken with the approval of not less than two thirds of the number of members in attendance.

3. TRANSITIONAL PROVISIONS

Clause I

The Preparatory Committee for Indonesia's Independence shall arrange and conduct the transfer of administration to the government of Indonesia.

Clause II

All existing state institutions continue to function and regulations remain valid as long as no new ones are established in conformity with this Constitution.

Clause III

For the first time, the President and the Vice-President shall be elected by the Preparatory Committee for Indonesia's Independence.

Clause IV

Prior to the formation of the Majelis Permusyawaratan Rakyat, the Dewan Perwakilan Rakyat and the Supreme Advisory Council in accordance with this Constitution, all their powers shall be exercised by the President assisted by a national committee.

4. ADDITIONAL PROVISIONS

1. Within six months after the end of the Great East Asia War, the President of Indonesia shall take preparatory steps and execute all the provisions of this Constitution.
2. Within six months after its formation, the Majelis Permusyawaratan Rakyat shall convene a session to decree the constitution.

5. ANNOTATIONS TO THE CONSTITUTION

General

I. The Constitution as a part of the Basic Law

The Constitution of the country is only a part of its basic law. It is the written part. In addition, there is the unwritten part of the basic law which comprises principal regulations that grow and are preserved in the conduct of state affairs.

Indeed, to study the basic law (*droit constitutionnel*) of a country we cannot only analyze the articles of the constitution (*loi constitutionnelle*). We need to know the circumstances and the spiritual

background (geistlicher hintergrund) that led to the drafting of the document.

We cannot understand the constitution of any country whatsoever by reading the text alone. To gain a thorough understanding of such constitution we have to know how the text came into existence, the conditions that prevailed at the time. In this way we can grasp the fundamental ideas and the basic reasoning underlying the constitution.

II. The basic thoughts in the Preamble

What are the basic thoughts which are embodied in the preamble to the constitution?

1. "The State", so it reads, "protects all the Indonesian people and the entire territory of Indonesia on the basis of unity. The State shall also establish social justice for all the people of Indonesia."

The preamble, therefore, incorporates the idea of a unitary state which protects and accommodates all the people with no exception. Thus, the state stands above all groups of the population and above all individual convictions. The state, in the context of the preamble, calls for the unity of all the Indonesian people. This is one of the principles of the state that must never be forgotten.

2. The state shall strive for social justice for all the people (This is the second principle).

3. The third basic thought in the preamble is that the state shall be based on the sovereignty of the people, on democracy and the deliberations of representatives. Hence, the political system envisaged in the Constitution shall be based on democracy and the deliberations of representatives. This line of thoughts conforms to the characteristics of the Indonesian society.

4. The fourth basic idea in the preamble is that the state shall be based on the belief in the One and Only God and on just and civilized humanity. It follows that the constitution must make it the duty of the state and all its institutions to foster high human ethical norms and to live up to the noble moral aspirations of the people.

III. The basic ideas in the preamble are embodied in the articles of the Constitution

The basic ideas reflect the spiritual atmosphere in which the constitution was drafted. These ideas gave rise to legal aspirations (Rechtsidee) which encompassed the basic law of the state, both the written (the constitution) and the unwritten. Thus the articles of the Constitution incorporate those ideas.

IV. The Constitution is concise and flexible

The Constitution is made up of only 37 articles. The clauses merely refer to transitional and additional aspects. Thus, this draft constitution is very brief if compared, for example, with the constitution of the Philippines.

It is adequate if the constitution only contains the fundamental provisions and guidelines as directives for the government and other state institutions to conduct state affairs and create public welfare. In particular for a new and young country, such a basic law is best to contain the basic provisions only while the operational procedures can be accommodated in laws which are easier to make, amend and repeal. Hence the system in which the constitution is drafted.

We always have to remember the dynamics of social and state life in Indonesia. The Indonesian society and state grow and time changes, especially during the period of physical and spiritual revolution. Therefore, we have to live a dynamic life; we have to watch all developments in social and political life. Consequently, we had better avoid hasty crystallization and moulding (Gestaltung)

of ideas that can easily change.

It is true that a written provision is binding. Hence the more flexible a provision, the better. We have to see to it that the system of the constitution does not lag behind the change of time. We must not make laws that quickly become obsolete. The important thing in government and state life is the spirit of the authorities, of the government leaders. Even though a constitution is characteristic of the family system, if the spirit of the authorities and the leaders of government is individualistic, then the constitution is in reality meaningless. On the other hand, even if a constitution is imperfect, but the spirit of the government leaders is right, such a constitution will in no way hinder the process of government. Thus, what is most important is the spirit. It must be a living and dynamic spirit. On the basis of these considerations, only the basic principles should be embodied in the constitution while the instruments of execution should be left to the law.

6. THE GOVERNMENT SYSTEM

The government system emphasized by the constitution is as follows:

I. Indonesia shall be a state based on law (rechtsstaat, a legal state).

1. As the Indonesian state is based on law, it is not founded on power alone (machtsstaat).

II. The constitutional system

2. The government is based on the constitution (basic law), not on absolutism (unlimited power).

III. The highest power of the state is vested in the Majelis Permusyawaratan Rakyat (Die gezamte staatsgewalt lieght allein bei der Majelis).

3. The sovereignty of the people is held by a body named the Majelis Permusyawaratan Rakyat which is the manifestation of all the people of Indonesia (Vertretungsorgan des Willens des Staatsvolkes). This Majelis determines the Constitution and the Guidelines of State Policy. This Majelis appoints the Head of State (President) and the Deputy Head of State (Vice-President).

It is this Majelis that holds the highest power of the state, whereas the President shall pursue the state policy as outlined by the Majelis. The President who is appointed by the Majelis shall be subordinate and accountable to the Majelis. He is the mandatory of the Majelis; it is his duty to carry out its decisions. The President is not in a equal position (neben) as, but subordinate to (untergeordnet) the Majelis.

IV. The President is the Chief Executive of the State under the Majelis

Under the Majelis Permusyawaratan Rakyat, the President is the Chief Executive in the state.

In the conduct of the state administration, the power and responsibility rest with the President (The original annotation reads: "(There is) concentration of power and responsibility upon the President" which may be misleading. The new annotation serves to clarify the point).

V. The President is not accountable to the Dewan Perwakilan Rakyat (the House of Representatives)

The position of the Dewan Perwakilan Rakyat is beside the President.

The President must obtain the approval of the Dewan to make laws (Gezetsgebug) and to determine the budget (Staatsbergroting).

Hence, the President has to cooperate with the Dewan, but he is not accountable to it, in the sense that his status does not depend upon it.

VI. The Ministers of state are the assistants of the President. They are not accountable to the Dewan Perwakilan Rakyat.

The President appoints and dismisses the ministers of state. They are not accountable to the Dewan Perwakilan Rakyat. Their status does not depend upon the Dewan but upon the President since they are his assistants.

VII. The Powers of the Head of State is not unlimited

Although the Head of State is not accountable to the Dewan Perwakilan Rakyat, he is not a dictator since his power is not unlimited.

As pointed out earlier, he is accountable to the Majelis Permusyawaratan Rakyat. Furthermore, he has to pay full attention to the voice (or the opinions) of the Dewan Perwakilan Rakyat.

The position of the Dewan Perwakilan Rakyat is strong.

The Dewan Perwakilan is in a strong position. The Dewan cannot be dissolved by the President unlike its position in a parliamentary system. Moreover, members of the Dewan Perwakilan Rakyat are concurrently members of the Majelis Permusyawaratan Rakyat. Hence the Dewan Perwakilan Rakyat can always control the actions of the President and if the DPR is of the opinion that the President has acted in contravention of the state policy as laid down in the Constitution or as determined by the MPR, the Majelis may convene a special session and request the President account for.

The Ministers of State are no ordinary senior officials.

Although the status of the ministers of state depends upon the President, they are no ordinary senior officials since they mainly exercise the executive power.

As head of a department, a minister ought to know all the matters related to his duties. Hence a minister has great influence upon the President to decide a policy on his department. In fact this asserts that ministers are leaders of the state.

To determine the government's policy and for the purpose of coordination in the administration, ministers have to work in close cooperation with one another under the leadership of the President.

Chapter I. Form of the State and Sovereignty

Article 1

The decision to form a unitary state and a republic is a manifestation of the basic idea of the people's sovereignty.

The Majelis Permusyawaratan Rakyat is the highest authority in the conduct of state affairs. The Majelis is the manifestation of the people who hold the sovereignty of the state.

Chapter II. The Majelis Permusyawaratan Rakyat

Article 2

Section 1

This article implies that all the people, all groups and all regions are represented in the Majelis such that this assembly can really be considered as the manifestation of the people.

The term "groups" refers to such bodies as cooperatives, labour unions and other collective organizations. This provision fits with the conditions of the time. In conjunction with the idea of creating a cooperative system in the economy, the first section of this article is a reminder of the existence of such groups in economic organizations.

Section 2

The Majelis with such a large membership should meet not less than once in every five years. The term "not less than" implies that, should it be necessary, the Majelis may meet more than once within its five-year term, that is, by calling a special session.

Article 3

Since the Majelis Permusyawaratan Rakyat is vested with the sovereignty of the state, its power is unlimited. To keep pace with social dynamics and by paying due attention to all developments and trends of the time, once in every 5 years the Majelis decides the policy of the state to be pursued in the future.

Chapter III. The Executive Power

Article 4 and Article 5, section 2

The President is the Chief Executive of the state. To enforce laws he has the power to issue government regulations (*pouvoir reglementair*).

Article 5, section 1

Beside the executive power, the President together with the Dewan Perwakilan Rakyat exercises the legislative power of the state.

Articles 6, 7, 8 and 9

These are self-explanatory.

Articles 10, 11, 12, 13, 14 and 15

The powers of the President referred to in these articles are the consequences of his position as the Head of State.

Chapter IV. The Supreme Advisory Council

Article 16

This body is a Council of State whose duty is to give recommendations to the government. It is only an advisory body.

Chapter V. The Ministers of State

Article 17

See above points VI and VII.

Chapter VI. The Regional Governments

Article 18

I. Since Indonesia is a unitary state (eenheidstaat), there will be no region under its jurisdiction that constitutes another state (staat).

The Indonesian territory will be divided into provinces which, in turn will be divided into smaller (administrative) regions.

All regions with an autonomous status "streek" and "locale rechtsgemeenschappen" or which merely form an administrative unit, must respect statutory regulations.

In regions with an autonomous status, a regional legislative body will be established since in the regions too the administration must be based on the principles of deliberations.

II. In the territory of Indonesia there are approximately 250 self-governing regions (zelfbesturende landschappen) and village communities (volksgemeenschappen), such as the "desa" (village) in Java and Bali, the "nagari" in Minangkabau, the "dusun" and "marga" in Palembang and other social-administrative units. These regional units have their own indigenous social systems and thus may be considered as special regions.

The Republic of Indonesia respects the status of the special regions and any government regulation on these regions shall have due regard to their hereditary rights.

Chapter VII. The Dewan Perwakilan Rakyat

Articles 19, 20, 21 and 23

The Dewan has to approve all bills submitted by the government. It also has the right to initiate bills.

III. Following article 23, the Dewan has the right to control the budget (begrooting). In this way the Dewan controls the government. It has to be borne in mind that all the members of the Dewan are also members of the Majelis Permusyawaratan Rakyat.

Article 22

This article concerns the emergency rights (noodverordeningsrecht) of the President. It is necessary to include this provision in order that in times of emergency the government can guarantee the safety of the country by taking prompt and appropriate actions. Nevertheless, the government cannot escape the control of the Dewan. Therefore, government measures referred to in this Article must obtain the approval of the Dewan must obtain the approval of the Dewan as they have the same validity as laws.

Chapter VIII. Finance

Article 23, sections 1, 2, 3, and 4

Section 1 refers to the right of the Dewan Perwakilan Rakyat to control the budget (begrooting). The

method to decide a budget is a yardstick to assess the characteristics of the government. In a fascist country the budget is exclusively determined by the government. In a democracy or a country based on the people's sovereignty, like the Republic of Indonesia, the budget is sanctioned by law, meaning with the approval of the Dewan Perwakilan Rakyat.

How the people will live as a nation and where to get the funds from, must be decided by the people themselves through their representatives in the Dewan. The people decide their own destiny and hence also their way of living.

Article 23 stresses that to decide a budget the Dewan is in a stronger position than the government. This reflects the sovereignty of the people.

Since the right of the people to decide their own destiny is involved in the process of adopting a budget, any measures which impose a burden on the people, such as taxes and the like, must be determined by law, which means that these must be approved by the Dewan.

In this connection, the authority of the Bank of Indonesia, which will issue and regulate the circulation of money, should be set out by law.

Section 5

How the government spends the money that has been approved by the Dewan must conform to the decision on the budget.

To examine the accounts of the government there must be a body that is free from government influence and authority. A body that is subordinate to the government will not be able to discharge such a difficult task. Nor does such a body stand above the government. Hence, its authority and duty should be determined by law.

Chapter IX. The Judicial Power

Articles 24 and 25

The judicial power is independent to such an extent that it is free from government interference. Thus, the status of judges should be guaranteed by law.

Chapter X. The Citizens

Article 26, Section 1

People of other nations, such as those of Dutch, Chinese and Arabic descents, whose domicile is Indonesia, recognize Indonesia as their home country and are loyal to the Republic of Indonesia, may become citizens.

Article 26, Section 2

Self-explanatory

Article 27, 30, 31 and, section 1

These articles concern the rights of citizens. Otherwise they are self-explanatory.

Articles 28, 29 section 2, and 34

These articles concern the status of residents. Articles which only concern citizens as well as those regarding the entire population, accommodate the aspirations of the Indonesian people to build a democratic state which will promote social justice and humanity.

Chapter XI. Religion

Article 29, section 1

This section emphasizes the belief of the Indonesian people in the One and Only God.

Chapter XII. National Defence

Article 30

Self-explanatory.

Chapter XIII. Education

Article 31, section 2

Self-explanatory.

Article 32

The national culture is the product of the mental and spiritual activities of the entire Indonesian people.

The old and indigenous cultures which were the peak of cultural life in all the regions of Indonesia, together form the national culture. Cultural activities should lead to the advancement of civilization and culture, and the strengthening of unity without rejecting new elements of foreign cultures which can develop or enrich the own national culture and raise the human dignity of the Indonesian people.

Chapter IX. Social Welfare

Article 33

Article 33 embodies the principle of economic democracy which states that production is done by all for all, under the leadership of supervision of members of the community. Social prosperity is the primary goal, not individual prosperity. Hence, the economy is organized as a common endeavour based on the principles of the family system. The form of enterprise which meets those conditions is the cooperative.

The economy is based on economic democracy which envisages prosperity for everybody. Therefore, economic sectors which are essential for the country and which affect the life of the people, must be controlled by the state. Otherwise the control of production might fall in the hands of powerful individuals who could exploit the people. Hence, only enterprises which do not affect the life of the general population may be left to private individuals.

The land, the waters and the natural resources therein are basic assets for the people's prosperity and should, therefore, be controlled by the state and exploited to the greatest benefit of the people.

Article 34

Self-explanatory.

Chapter XV. The Flag and the Language

Article 35

Self-explanatory.

Article 36

Self-explanatory.

Regional languages which are well preserved by the people, such as the Javanese, Sundanese, Madurese and other languages, will be respected and preserved by the state. Since these languages are also part of the Indonesian culture.

Chapter XVI. Amendments to the Constitution

Article 37

Self-explanatory.

THE 1945 CONSTITUTION OF THE REPUBLIC OF INDONESIA

Department of Information

Republic of Indonesia

First Edition

1. THE OPENING TO THE 1945 CONSTITUTION

Whereas Independence is the natural right of every nation, colonialism must be abolished in this world because it is not in conformity with Humanity and Justice.

And the Struggle of the movement for the independence of Indonesia has now reached the hour of rejoicing by leading the People of Indonesia safe and sound to the gateway of the Independence of an Indonesian State which is free, united, sovereign, just and prosperous.

Thanks to the blessing of God Almighty and impelled by the noble desire to lead their own free national life, the People of Indonesia hereby declare their independence.

Following this, in order to set up a government of the State of Indonesia which shall protect the whole of the Indonesian People and their entire native land of Indonesia, and in order to advance the general welfare, to develop the intellectual life of the nation and to contribute in implementing an order in the world which is based upon independence, abiding peace and social justice, the structure of Indonesia's National Independence shall be formulated in a Constitution of the Indonesian State which shall have the structural state form of a Republic of Indonesia with sovereignty of the people, and which shall be based upon: Belief in the One, Supreme God, just and civilized Humanity, the unity of Indonesia, and democracy which is guided by the inner wisdom in the unanimity arising out of deliberation amongst representatives, meanwhile creating a condition of social justice for the

whole of the People of Indonesia.

2. THE 1945 CONSTITUTION

Chapter I. Form and Sovereignty.

Article 1

1. The State of Indonesia shall be a unitary state which has the form of a Republic.
2. Sovereignty shall be in the hands of the People and shall be exercised in full by the Majelis Permusyawaratan Rakyat.

Chapter II. The Majelis Permusyawaratan Rakyat.

Article 2

1. The Majelis Permusyawaratan Rakyat *) shall consist of members of the Dewan Perwakilan Rakyat**) augmented by delegates from the regional territories and the groups in accordance with regulation prescribed by statute.
2. The Majelis Permusyawaratan Rakyat shall sit at least once in every five years in the capital of the State.
3. All decisions of the Majelis Permusyawaratan Rakyat shall be determined by majority vote.

Article 3

The Majelis Permusyawaratan Rakyat shall determine the Constitution and the guidelines of the policy of the State.

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Article 4

1. The President of the Republic of Indonesia shall hold the power of government in accordance with the Constitution.
2. In exercising his duties, the President shall be assisted by a Vice-President.

Article 5

1. The President shall hold the power to make statutes in agreement with the Dewan Perwakilan Rakyat.
2. The President shall determine the Government Regulations necessary to implement statutes.

Article 6

1. The President shall be a native-born Indonesian.
2. The President and Vice-President shall be elected by the Majelis Permusyawaratan Rakyat by majority vote.

Article 7

The President and Vice-President shall hold office for a term of five years and shall be eligible for re-election.

Article 8

Should the President die, ceased from executing or be unable to execute his duties during his term of office, his office shall be taken by the Vice-President until the expiry of that term.

Article 9

Before assuming the duties of office, the President and Vice-President shall take an oath according to the requirements of religion, or shall make a solemn promise, before the Majelis Permusyawaratan Rakyat, or the Dewan Perwakilan Rakyat as follows:

Oath of the President (Vice-President).

"I swear before God that, to the best of my ability, I will fulfill as justly as possible the duties of the President (Vice-President) of the Republic of Indonesia; that I will hold faithfully to the Constitution and conscientiously implement all statutes and regulations, and that I will devote myself to the service of Country and Nation".

Promise of the President (Vice-President).

"I solemnly promise that, to the best of my ability, I will fulfill as justly as possible the duties of the President (Vice-President) of the Republic of Indonesia; that I will hold faithfully to the Constitution and conscientiously implement all statutes and regulations, and that I will devote myself to the service of Country and Nation".

Article 10

The President shall hold the highest authority over the Army, the Navy and the Air Force.

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The President, with the agreement of the Dewan Perwakilan Rakyat, declares war, makes peace and concludes treaties with other states.

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The President declares the state of emergency. The conditions governing, and the consequences of, the state of emergency shall be prescribed by statute.

Article 13

1. The President appoints diplomatic representatives and consuls.
2. The President receives the diplomatic representatives of other states.

Article 14

The President grants grace, amnesty, abolition and restoration of rights.

Article 15

The President grants titles, decorations and other marks of honour.

Chapter IV. The Supreme Advisory Council

Article 16

1. The structure of the Supreme Advisory Council shall be prescribed by statute.
2. This Council shall submit replies to issues raised by the President and shall have the right to submit proposals to the Government.

Chapter V. The Ministers of State

Article 17

1. The President shall be assisted by the Ministers of State.
2. These Ministers shall be appointed and dismissed by the President.
3. These Minister shall lead the Government Departments.

Chapter VI. Local Government

Article 18

The division of the area of Indonesia into large and small regional territories together with the structure of their administration, shall be prescribed by statute, with regard for and in observance of the principle of deliberation in the governmental system of the State, and the traditional rights in the regional territories which have a special character.

Chapter VII. The Dewan Perwakilan Rakyat (The Legislative Body)

Article 19

1. The structure of the Dewan Perwakilan Rakyat shall be prescribed by statute.
2. Dean Perwakilan Rakyat shall sit at least once a year.

Article 20

1. Every statute shall require the agreement of the Dewan Perwakilan Rakyat.
2. Should a draft law not obtain the agreement of the Dewan Perwakilan Rakyat, the draft may not be submitted again during the same session of the Dewan Perwakilan Rakyat.

Article 21

1. Members of the Dewan Perwakilan Rakyat shall have the right to submit draft laws.
2. Should those drafts, although agreed to by the Dewan Perwakilan Rakyat, not be ratified by the President, those drafts may not be submitted again during the same session of the Dewan Perwakilan

Rakyat.

Article 22

1. Should exigency compel, the President shall have the right to determine Government Regulations in lieu of statutes.
2. Those Government Regulations must obtain the agreement of the Dewan Perwakilan Rakyat in its next session.
3. Should that agreement not be obtained, the Government Regulation shall be revoked.

Chapter VIII. Finance

Article 23

1. The estimates of revenue and expenditure shall be fixed each year by statute. Should the Dewan Perwakilan Rakyat not agree to the estimates proposed by the Government, the Government shall work to the estimates of the previous year.
2. All kinds of taxes for the needs of the State shall be based upon statutes.
3. All kinds and values of the currency shall be prescribed by statute.
4. Further matters of the finances of the State shall be regulated by statute.
5. In order to investigate the accountability for state Finances, a Body for the investigation of finances shall be set up, the regulation for which shall be prescribed by statute.

The results of that investigation shall be made known to the Dewan Perwakilan Rakyat.

Chapter IX. The Judicial Powers

Article 24

1. The judicial powers shall be exercised by a Supreme Court and other courts of law in accordance with statute.
2. The structure and powers of those courts of law shall be regulated by statute.

Article 25

The conditions for becoming a judge and for being dismissed shall be prescribed by statute.

Chapter X. Citizens

Article 26

1. Citizens shall be persons who are native-born Indonesians and persons of other nationality who are legalized by statute as being citizens.
2. Conditions with regard to citizenship shall be prescribed by statute.

Article 27

1. Without any exception, all citizens shall have equal positions in Law and Government and shall be obliged to uphold that Law and Government.
2. Every citizen shall have the right to work and to a living, befitting for human beings.

Article 28

Freedom of association and assembly, of expressing thoughts and of issuing writing and the like, shall be prescribed by statute.

Chapter XI. Religion

Article 29

1. The State shall be based upon Belief in the One, Supreme God.
2. The State shall guarantee freedom to every resident to adhere to his respective religion and to perform his religious duties in conformity with that religion and that faith.

Chapter XII. Defence

Article 30

1. Every citizen shall have the right and the duty to participate in the defence of the State.
2. Conditions concerning defence shall be regulated by statute.

Chapter XIII. Education

Article 31

1. Every citizen shall have the right to obtain an education.
2. The Government shall establish and conduct a national educational system which shall be regulated by statute.

Article 32.

The Government shall advance the national culture of Indonesia.

Chapter XIV. Social Well-Being

Article 33

1. The economy shall be organized as a common endeavour based upon the principle of the family system.
2. Branches of production which are important for the State and which affect the life of most people shall be controlled by the State.
3. Land and water and the natural riches contained therein shall be controlled by the State and shall

be made use of for the people.

Article 34

The poor and destitute children shall be cared for by the State

Chapter XV. Flag and Language

Article 35

The Flag of the Indonesian State shall be the Honoured Red-and-White.

Article 36

The Language of the State shall be the Indonesian Language.

Chapter XVI. Alterations to the Constitution

Article 37

1. In order to alter the Constitution, at least two-thirds of the total members of the Majelis Permusyawaratan Rakyat must be in attendance.
2. A decision shall be taken with the agreement of at least two-thirds of the total number of members who are in attendance.

3. TRANSITIONAL PROVISIONS

Clause I

The Preparatory Committee for Indonesia's Independence shall regulate and execute the transfer of government to the Indonesian Government.

Clause II

All existing institutions and regulations of the State shall continue to function so long as new ones have not been set up in conformity with this Constitution.

Clause III

The President and Vice-President shall be elected for the first by the Preparatory Committee for Indonesia's Independence.

Clause IV

Before the Majelis Permusyawaratan Rakyat, the Dewan Perwakilan Rakyat and the Supreme Advisory Council have been set up in conformity with this Constitution, all their powers shall be exercised by the President with the assistance of a National Committee.

4. ADDITIONAL PROVISIONS

1. Within six months after the end of the Greater East Asia War, the President of Indonesia shall regulate and implement all things which are stipulated in this Constitution.

1. Within six months after the Majelis Permusyawaratan Rakyat has been set up, the Majelis shall sit in order to determine the Constitution.

5. ELUCIDATION OF THE CONSTITUTION

GENERAL

I. The written Constitution, a part of Fundamental Law.

The written Constitution of a state is only a part of the Law which is the basis of the state. The Constitution is that part of the Fundamental Law which is written down, while besides that Constitution there also prevails a Fundamental Law which is not written down, namely, the basic rules which arise and are maintained in the practice of running a state, although they are not written down.

Certainly, in order to study the Fundamental Law (**Droit Constitutionnel**) of a state, it is not enough only to study the articles of its written Constitution (**Loi Constitutionnel**) alone, but one must also study how it is applied and what is the spiritual background (Geistlichen Hintergrund) of that written Constitution.

The Constitution of any state whatsoever can not be understood if merely its text is read alone. Truly, to understand the meaning of the Constitution of a state, we must also study how that text came into being, we must know the explanations made of it and we must also know under what conditions that text was made.

In this way we shall be able to understand what is the meaning and purpose of the Constitution we are studying, and what current of thought it was which became the foundation of that Constitution.

II. Fundamental ideals in the "Opening" (Preamble).

What are the fundamentals contained in the Preamble to the Constitution?

1. The State--so the text runs-- is what "shall protect the **whole** of the Indonesian People and their **entire** native land of Indonesia...based upon...unity...meanwhile creating a condition of **social justice for the whole** of the People of Indonesia".

2. In this Preamble, the current of thought is accepted of the **unitary state**, the state which protects and covers the whole of the people. Thus the state encompasses every kind of group opinion, encompasses all opinions of individuals. The state, in accordance with the concept of this Preamble, seeks unity, and extends over the whole of the Indonesian People. This is one foundation of the state which may not be forgotten.

3. The third fundamental idea contained in the Preamble is that of **sovereignty of the people**, based upon democracy and deliberation amongst representatives. Therefore, the system of state which is given form in the Constitution must be based upon sovereignty of the people and must be based upon **deliberation amongst representatives**. Indeed, this current of thought accords with the character of the Indonesian society.

4. The fourth fundamental idea contained in the Preamble is that the state is based upon that **Belief in the One, Supreme God** which conforms with the principles of just and civilised humanity.

Therefore, the Constitution must oblige the Government and other authorities of state to nurture the nobility of human character and to hold fast to the fine moral ideals of the people.

III. The Constitution gives form in its articles to the fundamental ideas contained in the Preamble.

The above fundamental ideas pervade the spiritual background of the Constitution of the State of Indonesia. These fundamental ideas give rise to those ideals of law (*Rechtsidee*) which dominate the Fundamental Law of the State, both written law (the constitution) and unwritten law.

The Constitution gives form to these fundamental ideas in its articles.

VI. The Constitution is short and flexible in character.

The Constitution has only 37 articles. The other paragraphs contain only additional and transitional provisions. This draft is thus very brief when compared, for instance, with the constitution of the Philippines.

It is enough if the Constitution contains only fundamental rules, contains only guidelines of instruction to the Central Government and to other authorities of the State for conducting the life of the State and providing social well-being. Especially for a new state and a young state, it is better if that written Fundamental Law contains only basic rules, whilst the provisions implementing those basic rules are left to statutes which are more easily drawn up, altered and revoked.

This is the system of the Constitution.

We must always remember the dynamic of the life of the Indonesian society and state. The Indonesian society and state are growing, the era is changing, especially during this present period of physical and spiritual revolution.

Therefore, we must live dynamically, we must watch every kind of movement in the life of the Indonesian society and state. In that connection, let us not precipitately crystallize, provide form to (**Gestaltung**), ideas which can still easily alter.

Certainly, it is the nature of those written rules to be binding. For that reason, the more flexible ("elastic") those rules are, the better. Thus we must guard against the constitutional system being left behind the times. Let us not go so far as to make a constitution which is quickly out-moded (**verouderd**). What is extremely important in the administration and in the life of the state is the spirit, the spirit of the authorities of the state, the spirit of the leaders of the administration. Although a constitution is drawn up which, according to the letter, is characterized by the family principle, if the spirit of the authorities of the state, the leaders of the administration, individualistic, that constitution is certain to have no meaning in practice. On the other hand, although that constitution is not perfect, if the spirit of the authorities of the administration is good, that constitution will certainly not obstruct the course of the state. Thus what is most important is the spirit. That spirit is a living thing, or, in other words, it is dynamic. In this connection, only the fundamental rules alone must be laid down in the constitution whilst what is necessary for executing those fundamental rules must be left to statutes.

6. THE SYSTEM OF GOVERNMENT OF THE STATE

The system of the government of the State which is stipulated in the Constitution is:

I. Indonesia is a State based on Law ("Rechtstaat").

1. The State of Indonesia is based upon law (**Rechtstaat**), it is not based upon more power (**Machtstaat**).

I. The System is Constitutional

2. The government is based upon constitutionalism (Fundamental Law) not absolutism (authority without limits).

III. The Highest Authority of the State is in the hands of the Majelis Permusyawaratan Rakyat ("die gesamte Staatsgewalt liegt allein bei der Majelis").

3. The sovereignty of the people is held by a body named the Majelis Permusyawaratan Rakyat as the embodiment of the whole of the People of Indonesia (**Vertretungsorgan des Willens des Staatvolkes**). This Majelis determines the Constitution and the guidelines of the policy of the State. The Majelis appoints the Head of State (President) and the Vice-Head of State (Vice-President).

It is this Majelis which holds the highest authority of the State, whilst the President must execute the policy of the State according to the guidelines which have been determined by the Majelis.

The President who is appointed by the Majelis, is subordinate to and responsible to the Majelis. He is the "mandatory" of the Majelis, he is obliged to execute the decisions of the Majelis.

The President is not "neben" but is "untergeordnet" to the Majelis.

IV. The President is the Highest Executive of the Government of the State below the Majelis

Below the Majelis Permusyawaratan Rakyat, the President is the Highest Executive of the government of the State.

In conducting the administration of the State, authority and responsibility are in the hands of the President (concentration of power and responsibility upon the President).

V. The President is not responsible to the Dewan Perwakilan Rakyat.

Besides the President there is the Dewan Perwakilan Rakyat. The President must obtain the **agreement** of the Dewan Perwakilan Rakyat in order to make laws (**Gesetz gebung**) and in order to fix the estimates of the revenues and expenditures of the State (**Staatsbegroting**).

Because of this, the President must work together with the Dewan Perwakilan Rakyat, but the President is not responsible to the Dewan, which means that the President's position is not dependent upon the Dewan.

VI. The Ministers of State are Assistants to the President: the Ministers of State are not responsible to the Dewan Perwakilan Rakyat.

The President appoints and dismisses the Ministers of State. Those Ministers are not responsible to the Dewan Rakyat. Their positions are not dependent upon the Dewan but are dependent upon the President. They are the assistants of the President.

VII. The Authority of the Head of State is not unlimited.

Although the Head of State is not responsible to the Dewan Perwakilan Rakyat, he is not a "dictator", which means that his authority is not unlimited.

It has been stressed above that he is responsible to the Majelis Permusyawaratan Rakyat. Apart from this, he must carefully and thoroughly pay attention to the voice of the Dewan Perwakilan Rakyat.

The position of the Dewan Perwakilan Rakyat.

The position of the Dewan Perwakilan Rakyat is strong. The Dewan can not be dissolved by the President. (This is at variance with the parliamentary system). Apart from this, members of the Dewan are **all of them concurrently members of the Majelis Permusyawaratan Rakyat**. For that reason the Dewan Perwakilan Rakyat can at all times control the acts of the President, and if the Dewan considers that the President has in fact transgressed against the policy of the State determined by the Constitution or by the Majelis Permusyawaratan Rakyat. The Majelis can be called for a special sitting so that can ask the President to account for his responsibility.

The Ministers of the State are not ordinary high-ranking Civil Servants.

Although the position of the Ministers of State is dependent upon the President, nevertheless they are not ordinary high-ranking civil servants, because it are those Ministers who, in the first place, in practice execute the authority of the Government (**pouvoir executif**).

As the leaders of Departments, the Ministers know the ins and outs of matters connected with their jurisdictions. In this connection, Ministers have a great influence upon the President in determining that part of the state's policy with which their Departments are concerned. Indeed, what is intended is that the Ministers are Leaders of the State.

In determining Government policy and in co-ordinating the administration of the State, the Ministers work together as closely as possible, one with the other, under the leadership of the President.

CONCERNING THE ARTICLES

Chapter 1. The Form and Sovereignty of the State.

Article 1

This prescribes that the form of the state shall be unitary and a Republic, and contains the fundamental idea of sovereignty of the State.

Chapter II. The Majelis Permusyawaratan Rakyat.

Article 2

Clause 1.

The intention is that the whole of the people, all the groups and all the regional territories throughout the country, shall have representatives in the Majelis, so that the Majelis can truly be considered to be the embodiment of the People.

What are referred to as "groups" are bodies such as co-operatives, workers' associations and other collective bodies. Such rule is indeed in harmony with the trend of the times. In connection with the recommendation to establish the co-operative system in the economy, this clause recalls the existence of groups in economic organizations.

Clause 2

This organ which will have a large total membership, sits at least once in five years. At least once, therefore if necessary of course it may sit more than once in five years by holding special sessions.

Article 3

Because the Majelis Permusyawaratan Rakyat holds the sovereignty of the State, its powers are not limited. In view of the dynamic of society, once in five years the Majelis reviews everything which has happened and considers all the trends at that time, and determines what policies it desires to be used for the future.

Chapter III. The Powers of Government of the State.

Article 4 and Article 5, clause 2.

The President is the head of the executive power in the State. In order to execute laws, he possesses the power to prescribe government regulations (*pouvoir reglementaire*).

Article 5, clause 1

Apart from the executive power, the President together with the Dewan Perwakilan Rakyat exercises the legislative power in the State.

Articles 6, 7, 8, 9.

Already clear

Articles 10, 11, 12, 13, 14, 15

The powers of the President provided by these articles are consequences of the President's position as Head of State.

Chapter IV. The Advisory Council

Article 16

This Council is a Council of State which is obliged to provide considered views to the Government. It is purely an advisory body.

Chapter V. The Minister of the State

Article 17

See above.

Chapter VI. Local Government

Article 18

I. Because the State of Indonesia is a unitary state, Indonesia, therefore, will not have within its jurisdiction areas which have the character of "states".

The area of Indonesia will be divided into provinces, and these provinces will likewise be divided into smaller regional territories. These regional territories will have an autonomous character (**streek- and locale rechtsgemeen-schappen**), titles of so-called autonomous areas during the colonial period, or have the character of purely administrative regions, all to be in accord with rules to be laid down by statute.

In those regional territories with an autonomous character, local representative bodies will be set up, because local government also will be founded upon the principle of deliberation.

II. Within the territory of the State of Indonesia there are to be found about 250 **zelfbesturende landschappen**, and **volksgemeenschappen**, titles of so-called selfgoverning localities during the colonial period, such as the **desa** of Java and Bali, the **nagari** of Minangkabau, the **dusun** and **marga**: names of various social-administrative units.

Those localities have their own traditional structures, and for this reason can be considered to have a special character.

The State of the Republic of Indonesia respects the position of the said special regional territories, and all its regulations affecting those areas will bear in mind their traditional rights.

Chapter VII. The Dewan Perwakilan Rakyat

Articles 19, 20, 21 and 23

See above.

The Dewan Perwakilan Rakyat must give its agreement to each and every draft law originating with the Government. The Dewan Perwakilan Rakyat also possesses the right to initiate legislation.

III. The Dewan also possesses the **hak begroting** (right to fix the budget, Article 23). Through this right, the Dewan controls the Government.

It must also be recalled that all members of the Dewan Perwakilan Rakyat are concurrently members of the Majelis Permusyawaratan Rakyat.

Article 22

This article concerns the **noodverordeningsrecht** (right to make emergency regulations) of the President. Such a provision is indeed necessary, so that the safety of the State can be ensured by the Government in critical conditions which compel the Government to quick and appropriate action. Although this is so, the Government is not, however, to be released from the control of the Dewan Perwakilan Rakyat. Therefore, the Government Regulations referred to in this article, which have the same force as laws, have also to be ratified by the Dewan Perwakilan Rakyat.

Chapter VIII. Finance.

Article 23, clauses 1, 2, 3, 4

Clause 1 lays down the budget-making right of the Dewan Perwakilan Rakyat.

The method of fixing the estimates of revenues and expenditures is a criterion of the character of the government of a state. In countries based upon fascism, those estimates are fixed solely by the administration. But in democratic states or states based upon sovereignty of the people, such as the Republic of Indonesia, the estimates of revenues and expenditures are fixed by statute, which means: with the agreement of the Dewan Perwakilan Rakyat.

How the people -- as a nation -- shall live, and from where the expenses for living shall be obtained, must be determined by the People themselves through the intermediary of their representative body. The People determine their own fate and therefore their way of life also.

Article 23 states that in fixing revenues and expenditures, the position of the Dewan Perwakilan Rakyat is stronger than the position of the Government. This is a sign of the sovereignty of the People.

Because the fixing of expenditures concerns the right of the People to determine their own fate, all measures placing burdens upon the people, such as taxes etc., must be prescribed by statute, that is, with the agreement of the Dewan Perwakilan Rakyat.

Also the kinds and values of currency are prescribed by statute. This is important because the position of the currency has great influence upon the community. Money in the first place is an **instrument of exchange and of measurement of value**. As an instrument of exchange its purpose is to facilitate exchange -- buying and selling -- in society. It follows that it is necessary for there to be those kinds and forms of money needed by the people as measures of value as a basis for fixing the worth of the respective goods which are exchanged. The thing which becomes the measure of value must have it fixed worth, it must not be allowed to rise and fall because of the irregular condition of the money. Therefore, the state of the currency must be prescribed by statute.

Related to this, the position of Bank Indonesia, which is to issue and to regulate the circulation of paper money, is prescribed by statute.

Clause 5

The way in which the Government makes use of the allocations already agreed by the Dewan Perwakilan Rakyat must be in keeping with that decision. In order to investigate the Government's responsibilities in this respect, a body is needed which is free from the Government's influence and authority. A body which is subordinate to the Government could not perform so heavy a duty. On the other hand, neither is that body one which stands above the Government.

Because of this, the power and duties of that body are prescribed by statute.

Chapter IX. The Judicial Powers

The Judicial powers are powers which are independent, which means that they are free from the influence of the Government's authority. Therefore, guarantees must be established by statute concerning the position of judges.

Chapter X. Citizens

Article 26, clause 1

People of other nations, for instance, people of Dutch descent, of Chinese descent and of Arab descent, who are domiciled in Indonesia, who recognize Indonesia as their country and who are loyal to the State of the Republic of Indonesia, can become citizens.

Article 26, clause 2

Already clear.

Articles 27, 30 and 31 clause 1

These articles concern the rights of citizens.

Articles 28, 29 clause 1, and 34

These articles concern the position of the residents.

These articles referred to here, both those which concern citizens alone as well as those which concern all residents, contain the desire of the Indonesian people to build a state with a democratic character which seeks to put into practice social justice and the principle of humanity.

Chapter XI. Religion

Article 29, clause 1

This clause states the belief of the Indonesian people in the One, Supreme God.

Chapter XII. Defence of the State

Article 30

Already clear.

Chapter XIII. Education

Article 31, clause 2

The nation's culture is the culture which grows as the outcome of the endeavours expressing the identity and vitality of the entire People of Indonesia.

The ancient and indigenous cultures which are to be found as cultural heights in all the regions throughout Indonesia are part of the nation's culture. Cultural efforts should lead toward advances in civilisation, culture and unity without rejecting from foreign cultures new materials which can bring about the development of or enrich the nation's own culture, as well as to raise the height of humanity of the Indonesian nation.

Chapter XIV. Social Well-being

Article 33

In Article 33 is laid down the basis of economic democracy, production by all for all, under the leadership or control of the members of the community. It is prosperity of the community which is stressed, not prosperity of the individual.

For that reason, the economy is organised as a common effort, based upon ways of working that accord with the family principle. The co-operative is the form of enterprise in harmony with this.

The economy is based upon economic democracy, prosperity is for everybody. Therefore, branches of production which are important for the state and which affect the life of most people should be under the control of the State. If they are not, the top management of production will fall into the hands of individuals who are in power and numbers of people will be oppressed by them.

Only those enterprises which do not affect the life of most people may be in the hands of individuals.

The earth and waters and the natural riches contained therein are the fundamentals of the people's prosperity. Therefore they should be controlled by the State and be made use of for the greatest possible prosperity of the people.

Article 34

Already clear enough; see above

Chapter XV. Flag and Language**Article 35**

Already clear.

Article 36

Already clear.

In the areas possessing languages of their own which are actively used by the people concerned (for instance, Javanese, Sundanese, Madurese, and so forth), those languages will be respected and also cared for by the State.

Those languages are a part of the living culture of Indonesia.

Chapter XVI. Alteration to the Constitution**Article 37**

Already clear.

Courtesy: Embassy of the Republic of Indonesia in Washington D.C.

The First Amendment to the 1945 Constitution⁽¹⁾

Article 5

- (1) The President shall be entitled to submit bills to the DPR.
- (2) The President may issue Government regulations as required to give effect to laws.

Article 7

The President and Vice President shall hold office for a term of five years and may subsequently be reelected to the same office for one further term only.

Article 9

- (1) Prior to taking office, the President and Vice President shall swear an oath in accordance with their respective religions or shall make a solemn promise before the MPR or DPR. The oath or promise shall be as follows:

Presidential (Vice-Presidential) Oath:

"I swear before God that, to the best of my ability, I shall fulfil as justly as possible my duties as President (Vice-President) of the Republic of Indonesia, that I shall uphold faithfully the Constitution, conscientiously implement all statues and regulations, and shall devote myself to the service of Country and Nation."

Presidential (Vice-Presidential) Promise:

"I solemnly promise that, to the best of my ability, I shall fulfil as justly as possible my duties as President (Vice-President) of the Republic of Indonesia, that I shall uphold faithfully the Constitution, conscientiously implement all statues and regulations, and shall devote myself to the service of Country and Nation."

- (2) In the event that the MPR or DPR is unable to convene a sitting, the President and Vice-President shall swear an oath or make a solemn promise before the leadership of the MPR witnessed by the leadership of the Supreme Court.

Article 13

- (1) The President shall appoint ambassadors and consuls.
- (2) In the case of appointment of ambassadors, the President shall have regard to the opinion of the DPR.
- (3) The President shall receive the accreditation of ambassadors of other nations and shall in so doing have regard to the opinion of the DPR.

Article 14

- (1) The President may grant clemency and restoration of rights and shall in so doing have regard to the opinion of the Supreme Court.
- (2) The President may grant amnesty and the dropping of charges and shall in so doing have regard to the opinion of the DPR.

Article 15

The President may grant titles, decorations and other honours as provided by law.

Chapter V

State Ministers

Article 17

- (1) The President shall be assisted by State Ministers.
- (2) State Ministers shall be appointed and dismissed by the President.
- (3) Each State Minister shall be responsible for a particular area of Government activity.

Article 20

- (1) The DPR shall hold the authority to establish laws.
- (2) Each bill shall be discussed by the DPR and the President to reach joint approval.
- (3) If a bill fails to reach joint approval, that bill shall not be introduced again in the same DPR term of

sessions.

(2) The President signs a jointly approved bill to become a law.

Article 21

The members of the DPR shall be entitled to submit proposals for draft laws.

1. Where the First Amendment only affected portions of an article, the remainder of the article from the original 1945 Constitution is also included.

The Second Amendment to the 1945 Constitution⁽¹⁾

Chapter VI

Regional Authorities

Article 18

- (1) The Unitary State of the Republic of Indonesia shall be divided into provinces and those provinces shall be divided into regencies (*kabupaten*) and municipalities (*kota*), each of which shall have regional authorities, as regulated by law.
- (2) The authorities of the provinces, regencies and municipalities shall administer and manage their own affairs according to the principles of regional autonomy and the duty of assistance (*tugas pembantuan*).
- (3) The authorities of the provinces, regencies and municipalities shall include for each a Regional People's Representative Assembly (DPRD) whose members shall be elected by general election.
- (4) Governors, Regents and Mayors, respectively as head of government of the provinces, regencies and municipalities, shall be elected democratically.
- (5) The regional authorities shall exercise wide-ranging autonomy, except in matters provided by law to be the affairs of the central government.
- (6) The regional authorities shall have the authority to adopt regional regulations and other regulations to implement autonomy and the duty of assistance.
- (7) The structure and administrative mechanisms of regional authorities shall be regulated by law.

Article 18A

(1) The authority relations between the central government and the regional authorities of the provinces, regencies and municipalities, or between a province and its regencies and municipalities, shall be regulated by law having regard to the distinctiveness and diversity of each region.

(2) The relations between the central government and regional authorities in finances, public services and use of natural and other resources shall be regulated and administered with justice and equity according to law.

Article 18B

(1) The state shall acknowledge and respect units of regional authorities that are special and distinct, which shall be regulated by law.

(2) The state shall acknowledge and respect traditional societies along with their customary rights as long as these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia, and shall be regulated by law.

Chapter VII

People's Representative Assembly

(Dewan Perwakilan Rakyat or DPR)

Article 19

(1) Members of the DPR shall be elected by general election.

(2) The structure of the DPR shall be regulated by law.

(3) The DPR shall meet at least once a year.

Article 20

- (1) The DPR shall hold the authority to establish laws.
- (2) Each bill shall be discussed by the DPR and the President to reach joint approval.
- (3) If a bill fails to reach joint approval, that bill shall not be introduced again in the same DPR term of sessions.
- (4) The President signs a jointly approved bill to become a law.
- (5) If the President fails to sign a jointly approved bill within 30 days following such approval, that bill shall legally become a law and must be promulgated.

Article 20A

- (1) The DPR shall hold legislative, budgeting and oversight functions.
- (2) In carrying out its functions, in addition to the rights regulated in other articles of this Constitution, the DPR shall hold interpellation (*interpelasi*), investigative (*angket*), and opinion rights.
- (3) Other than the rights regulated in other articles of this Constitution, every DPR member shall hold the rights to propose questions, to convey suggestions and opinions, and of immunity.
- (4) Further provisions concerning the rights of the DPR and the rights of DPR members shall be regulated by law.

Article 21

DPR members shall have the right to submit proposed bills.

Article 22

- (1) Should exigencies compel, the President shall have the right to establish government regulations in lieu of laws.
- (2) Such government regulations must obtain the approval of the DPR during its next session.
- (3) Should there be no such approval, these government regulations shall be revoked.

Article 22A

Further provisions concerning the procedures to establish laws shall be regulated by law.

Article 22B

DPR members may be removed from office, whose conditions and procedures shall be regulated by law.

Chapter IXA

State Territory

Article 25E

The Unitary State of the Republic of Indonesia is an archipelagic state, the boundaries and rights of whose territory shall be established by law.

Chapter X

Citizens and Residents

Article 26

- (1) Citizens shall consist of indigenous Indonesian peoples and persons of foreign origin who have been legalised as citizens in accordance with law.
- (2) Residents shall consist of Indonesian citizens and foreigners living in Indonesia.
- (3) Matters concerning citizens and residents shall be regulated by law.

Article 27

- (1) All citizens shall be equal before the law and the government and shall be required to respect the law and the government, with no exceptions.
- (2) Every citizen shall have the right to work and to earn a humane livelihood.
- (3) Each citizen has the right and duty to participate in the effort of defending the state.

Article 28

The freedom to associate and to assemble, to express written and oral opinions, etc., shall be regulated by law.

Chapter XA

Human Rights

Article 28A

Every person shall have the right to live and to defend his/her life and existence.

Article 28B

- (1) Every person shall have the right to establish a family and to procreate based upon lawful marriage.
- (2) Every child shall have the right to live, to grow and to develop, and shall have the right to protection from violence and discrimination.

Article 28C

- (1) Every person shall have the right to better him/herself through the fulfillment of his/her basic needs, the right to education and to benefit from science and technology, art and culture, for the purpose of improving the quality of his/her life and for the welfare of the human race.
- (2) Every person shall have the right to improve him/herself through collective struggle for his/her rights to develop his/her society, nation and state.

Article 28D

- (1) Every person shall have the right to recognition, guarantees, protection and certainty before a just law, and to equal treatment before the law.
- (2) Every person shall have the right to work and to receive fair and proper recompense and treatment in employment.
- (3) Every citizen shall have the right to obtain equal opportunities in government.
- (4) Every person shall have the right to citizenship status.

Article 28E

- (1) Every person shall be free to embrace and to practice the religion of his/her choice, to choose one's education, to choose one's employment, to choose one's citizenship, and to choose one's place of residence within the state territory, to leave it and to subsequently return to it.
- (2) Every person shall have the right to the freedom to hold beliefs (*kepercayaan*), and to express his/her views and thoughts, in accordance with his/her conscience.

(3) Every person shall have the right to the freedom to associate, to assemble and to express opinions.

Article 28F

Every person shall have the right to communicate and to obtain information for the purpose of the development of his/her self and social environment, and shall have the right to seek, obtain, possess, store, process and convey information by employing all available types of channels.

Article 28G

(1) Every person shall have the right to protection of self, family, honor, dignity, and property, and shall have the right to feel secure against and receive protection from the threat of fear to do or not do something that is a human right.

(2) Every person shall have the right to be free from torture or inhuman and degrading treatment, and shall have the right to obtain political asylum from another country.

Article 28H

(1) Every person shall have the right to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment, and shall have the right to obtain medical care.

(2) Every person shall have the right to receive facilitation and special treatment to have the same opportunity and benefit in order to achieve equality and fairness.

(3) Every person shall have the right to social security in order to develop oneself fully as a dignified human being.

(4) Every person shall have the right to own personal property, and such right may not be arbitrarily interfered with by any party.

Article 28I

(1) The rights to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and the right not to be tried under a

law with retrospective effect are all human rights that cannot be limited under any circumstances.

(2) Every person shall have the right to be free from discriminative treatment based upon any grounds whatsoever and shall have the right to protection from such discriminative treatment.

(3) The cultural identities and rights of traditional communities shall be respected in accordance with the development of times and civilisations.

(4) The protection, advancement, upholding and fulfilment of human rights are the responsibility of the state, especially the government

(5) For the purpose of upholding and protecting human rights in accordance with the principle of a democratic and law-based state, the implementation of human rights shall be guaranteed, regulated and set forth in laws and regulations.

Article 28J

(1) Every person shall have the duty to respect the human rights of others in the orderly life of the community, nation and state.

(2) In exercising his/her rights and freedoms, every person shall have the duty to accept the restrictions established by law for the sole purposes of guaranteeing the recognition and respect of the rights and freedoms of others and of satisfying just demands based upon considerations of morality, religious values, security and public order in a democratic society.

Chapter XII

State Defence and Security

Article 30

(1) Every citizen shall have the right and duty to participate in the defence and security of the state.

(2) The defence and security of the state shall be conducted through the total people's defence and security system, with the Indonesian National Military (TNI) and the Indonesian National Police (POLRI) as the main force, and the people as the supporting force.

(3) TNI, consisting of the Army, Navy and Air Force, as an instrument of the state has the duty to defend, protect, and maintain the integrity and sovereignty of the state.

(4) POLRI, as an instrument of the state that maintains public order and security, has the duty to protect, guard, and serve the people, and to uphold the law.

(5) The structure and status of TNI and POLRI, the authority relationships between TNI and POLRI in performing their respective duties, the conditions concerning the participation of citizens in the defence and security of the state, and other matters related to defence and security, shall be regulated by law.

Chapter XV

National Flag, Language, Coat of Arms and Anthem

Article 35

The national flag of Indonesia shall be the Red and White (*Sang Merah Putih*).

Article 36

The national language shall be Indonesian (*Bahasa Indonesia*).

Article 36A

The national coat of arms shall be the Pancasila eagle (*Garuda Pancasila*) with the motto Unity in Diversity (*Bhinneka Tunggal Ika*).

Article 36B

The national anthem shall be *Indonesia Raya*.

Article 36C

Further provisions regarding the national flag, language, coat of arms and anthem shall be regulated by law.

1. Where the Second Amendment only affected portions of an article, the remainder of the article from the original 1945 Constitution or the First Amendment is also included in this appendix.

**THIRD AMENDMENT to THE
1945 CONSTITUTION
OF THE REPUBLIC OF INDONESIA**

WITH THE MERCY OF THE ONE AND ONLY GOD

THE MPR

After thoroughly and seriously studying, analysing and considering the basic matters confronted by the people, nation, and state, and additionally by using its authority based on Article 37 of the 1945 Constitution of the Republic of Indonesia, the MPR amends and/or adds Article 1 Paragraph (2) and (3); Article 3 Paragraph (1), (3), and (4); Article 6 Paragraph (1) and (2); Article 6A Paragraph (1), (2), (3), and (5); Article 7A; Article 7B Paragraph (1), (2), (3), (4), (5), (6), and (7); Article 7C; Article 8 Paragraph (1) and (2); Article 11 Paragraph (2) and (3); Article 17 Paragraph (4); Chapter VIIA, Article 22C Paragraph (1), (2), (3), and (4); Article 22D Paragraph (1), (2), (3), and (4); Chapter VIIB, Article 22E Paragraph (1), (2), (3), (4), (5), and (6); Article 23 Paragraph (1), (2), and (3); Article 23A; Article 23C; Chapter VIIIA, Article 23E Paragraph (1), (2), and (3); Article 23F Paragraph (1) and (2); Article 23G Paragraph (1) and (2); Article 24 Paragraph (1) and (2); Article 24A Paragraph (1), (2), (3), (4), and (5); Article 24B Paragraph (1), (2), (3), and (4); Article 24C Paragraph (1), (2), (3), (4), (5), and (6) of the 1945 Constitution of the Republic of Indonesia. The revised articles shall read as follows :

Article 1

- (2) Sovereignty is in the hands of the people and is implemented according to this Constitution.
- (3) The State of Indonesia is a state based on law.

Article 3

- (1) The People's Consultative Assembly (*Majelis Permusyawaratan Rakyat* or MPR) has the authority to amend and enact the Constitution.
- (3) The MPR will inaugurate the President and/or Vice President.
- (4) The MPR may only dismiss the President and/or Vice-President during his/her

term of office according to the Constitution.

Article 6

(1) Any candidate for President or Vice-President shall be a citizen of Indonesia since birth, shall never have acquired another citizenship by his/her own will, shall never have betrayed the country, and shall be mentally and physically capable of implementing the duties and obligations of President or Vice-President.

(2) The requirements to become President or Vice-President are further regulated by law.

Article 6A

(1) The President and Vice-President are elected as a single ticket directly by the people.

(2) Each ticket of candidates for President and Vice-President shall be proposed prior to the holding of the general election by political parties or combination of political parties which are participants of the general election.

(3) Any ticket of candidates for President and Vice-President which polls a vote of more than fifty percent of the total number of votes during the general election and in addition polls at least twenty percent of the votes in more than half of the total number of provinces in Indonesia shall be declared elected as the President and Vice-President.

(5) The procedure for the holding of the election of the President and Vice-President is further regulated by law.

Article 7A

The President and/or the Vice-President may be dismissed from his/her position by the MPR on the proposal of the House of Representatives (*Dewan Perwakilan Rakyat* or DPR), both if it is proven that he/she has violated the law in the form of betraying the state, corruption, bribery, other criminal acts, or disgraceful behaviors or if it is proven that he/she no longer meets the requirements as President and/or Vice-President.

Article 7B

(1) Any proposal for the dismissal of the President and/or the Vice-President may be submitted by the DPR to the MPR only by first submitting a request to the Constitutional Court to investigate, bring to trial, and issue a decision on the opinion of the DPR either that the President and/or Vice-President has violated the law through an act of treason, corruption, bribery, or other act of a grave criminal nature, or through moral turpitude, and/or that the President and/or Vice-President no longer meets the qualifications to serve as President and/or Vice-President.

(2) The opinion of the DPR that the President and/or Vice-President has violated the law or no longer meets the qualifications to serve as President and/or Vice-President is undertaken in the course of implementation of the supervision function of the DPR.

(3) The submission of the request of the DPR to the Constitutional Court shall only be made with the support of at least 2/3 of the total members of the DPR who are present in a plenary session that is attended by at least 2/3 of the total membership of the DPR.

(4) The Constitutional Court has the obligation to investigate, bring to trial, and reach the most just decision on the opinion of the DPR at the latest ninety days after the request of the DPR was received by the Constitutional Court.

(5) If the Constitutional Court decides that the President and/or Vice-President is proved to have violated the law in the form of an act of treason, corruption, bribery, or other act of a grave criminal nature, or moral turpitude; and/or the President and/or Vice-President is proved no longer to meet the qualifications to serve as President and/or Vice-President, the DPR shall hold a plenary session to submit the proposal to impeach the President and/or Vice-President to the MPR.

(6) The MPR shall conduct a session to decide on the proposal of the DPR at the latest thirty days after its receipt of the proposal.

(7) The decision of the MPR over the proposal to impeach the President and/or Vice-President shall be taken during a plenary session of the MPR which is attended by at least 3/4 of the total membership and shall require the approval of at least 2/3 of the total of members who are present, after the President and/or

Vice-President have been given the opportunity to present his/her explanation to the plenary session of the MPR.

Article 7C

The President may not freeze and/or dissolve the DPR.

Article 8

(1) In the event that the President dies, resigns, is impeached, or is not capable of implementing his/her obligations during his/her term, he/she will be replaced by the Vice-President until the end of his/her term.

(2) In the event that the position of Vice-President is vacant, the MPR should hold a session within sixty days at the latest to select a Vice-President from two candidates nominated by the President.

Article 11

(2) The President in making other international agreements that will produce an extensive and fundamental impact on the lives of the people which is linked to the state financial burden, and/or that will requires an amendment to or the enactment of a law, shall obtain the approval of the DPR.

(3) Further provisions concerning international agreements are regulated by law.

Article 17

(4) The formation, change, and dissolution of state ministries shall be regulated by law.

Chapter VIIA

HOUSE OF REPRESENTATIVES OF THE REGIONS

(Dewan Perwakilan Daerah or DPD)

Article 22C

(1)The members of the DPD shall be elected from every province through a general election.

(2)The total number of members of DPD in every province shall be the same, and the total membership of the DPD shall not exceed a third of the total membership of the DPR.

(3)The DPD shall hold a session at least once every year.

(4)The structure and composition of the DPD shall be regulated by law.

Article 22D

(1)The DPD may propose to the DPR Bills related to regional autonomy, the relationship of central and local government, formation, expansion and merger of regions, management of natural resources and other economic resources, and Bills related to the financial balance between the centre and the regions.

(2)The DPD shall participate in the discussion of Bills related to regional autonomy; the relationship of central and local government; formation, expansion, and merger of regions; management of natural resources and other economic resources, and financial balance between the centre and the regions; and shall provide consideration to the DPR over Bills on the State Budget and Bills related to taxation, education, or religion.

(3)The DPD may oversee the implementation of laws concerning regional autonomy, the formation, expansion and merger of regions, the relationship of central and local government, management of natural resources and other economic resources, implementation of the State Budget, taxation, education, or religion and shall in addition submit the result of such oversight to the DPR in the form of material for its further consideration.

(4)The members of the DPD may be removed from office under requirements and procedures that shall be regulated by law.

CHAPTER VIIB

GENERAL ELECTIONS

Article 22E

- (1) General elections shall be conducted in a direct, general, free, secret, honest, and fair manner once every five years.
- (2) General elections shall be conducted to elect the members of the DPR, DPD, the President and Vice-President, and the Regional House of Representatives (*Dewan Perwakilan Rakyat Daerah* or DPRD).
- (3) The participants in the general election for the election of the members of the DPR and the members of the DPRD are political parties.
- (4) The participants in the general election for the election of the members of the DPD are individuals.
- (5) The general election shall be organised by a general election commission of a national, permanent, and independent character.
- (6) Further provisions concerning the general election is regulated by law.

Article 23

- (1) The State Budget as the basis of the management of state funds is determined annually by law and shall be implemented in an open and accountable manner in order to best attain the prosperity of the people.
- (2) The Bill on the State Budget shall be submitted by the President for joint consideration with the DPR, which consideration shall take into account the opinions of the DPD.
- (3) In the event that the DPR fails to approve the proposed Bill on the State Budget submitted by the President, the Government shall implement the State Budget of the preceding year.

Article 23A

All taxes and other levies for the needs of the state of a compulsory nature shall be regulated by law.

Article 23C

Other matters concerning state finances shall be regulated by law.

CHAPTER VIIIA

SUPREME AUDIT BOARD

(Badan Pemeriksa Keuangan or BPK)

Article 23E

- (1) To investigate the management and accountability of state finances, there shall be a single Supreme Auditing Body which shall be free and independent.
- (2) The result of any investigation of state finances shall be submitted to the DPR, DPD or DPRD in line with their respective authority.
- (3) Action following the result of any such investigation will be taken by representative institutions and/or bodies according to law.

Article 23F

- (1) The members of the BPK will be chosen by the DPR, which shall have regard to any considerations of the DPD, and will be formally appointed by the President.
- (2) The leadership of the BPK will be elected by and from the members.

Article 23G

- (1) The BPK is based in the capital of the nation, and shall be represented in every province.
- (2) Further provisions concerning the BPK shall be regulated by law.

Article 24

- (1) The judicial power shall be independent and shall possess the power to organise the judicature in order to enforce law and justice.
- (2) The judicial power shall be implemented by a Supreme Court and judicial bodies underneath it in the form of public courts, religious courts, military tribunals, and administrative courts, and by a Constitutional Court.

Article 24A

(1)The Supreme Court has the authority to hear a trial at the highest (cassation) level, to review ordinances and regulations made under any law against such law, and shall possess other authorities as provided by law.

(2)Each justice of the Supreme Court must possess integrity and a personality that is not dishonourable, and shall be fair, professional, and possess legal experience.

(3)Candidate justices of the Supreme Court shall be proposed by the Judicial Commission to the DPR for approval and shall subsequently be formally appointed to office by the President.

(4)The Chair and Vice-Chair of the Supreme Court shall be elected by and from the justices of the Supreme Court.

(5)The structure, status, membership, and judicial procedure of the Supreme Court and its subsidiary bodies of judicature shall be regulated by law.

Article 24B

(1)There shall be an independent Judicial Commission which shall possess the authority to propose candidates for appointment as justices of the Supreme Court and shall possess further authority to maintain and ensure the honour, dignity and behaviour of judges.

(2)The members of the Judicial Commission shall possess legal knowledge and experience and shall be persons of integrity with a personality that is not dishonourable.

(3)The members of the Judicial Commission shall be appointed and dismissed by the President with the approval of the DPR.

(4)The structure, composition and membership of the Judicial Commission shall be regulated by law.

Article 24C

(1)The Constitutional Court shall possess the authority to try a case at the first

and final level and shall have the final power of decision in reviewing laws against the Constitution, determining disputes over the authorities of state institutions whose powers are given by this Constitution, deciding over the dissolution of a political party, and deciding over disputes on the result of a general election.

(2)The Constitutional Court shall possess the authority to issue a decision over an opinion of the DPR concerning alleged violations by the President and /or Vice-President of this Constitution.

(3)The Constitutional Court shall be composed of nine persons who shall be constitutional justices and who shall be confirmed in office by the President, of whom three shall be nominated by the Supreme Court, three nominated by the DPR, and three nominated by the President.

(4)The Chair and Vice-Chair of the Constitutional Court are elected by and from the constitutional justices.

(5)Each constitutional justice must possess integrity and a personality that is not dishonourable, and shall be fair, shall be a statesperson who has a command of the Constitution and the public institutions, and shall not hold any position as a state official.

(6)The appointment and dismissal of constitutional justices, the judicial procedure, and other provisions concerning the Constitutional Court shall be regulated by law.

The text of this amendment is part of and shall not be separated from the text of the 1945 Constitution of the Republic of Indonesia.

This amendment was agreed in the 7th Plenary Session of the MPR (2nd continuation) on 9 November 2001 during the Annual Session of the MPR, and will take effect on the date of its enactment.

Enacted in Jakarta

on 9 November 2001