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.

Article11

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 absolete. 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 staatgewalt lieght allein bei der Majelis).

3. The sovereignty of the people is held by a body named the Majelis Permusyaratan 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 Desan 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 (volksgemeeschappen), such as the "desa" (village) in Java and Bali, the "nagari" in Minangkabau, the "dusun" and "marga" in Palembang and other social-adminstrative 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 (noodverordeningsrect) 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 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 stands 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.

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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.

Article 12

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 Permusyarwaratan 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 charactersized 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).

I**II. 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 Dean 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.