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Politics of the 1945 Constitution:
Democratization and Its Impact on Political Institutions in Indonesia

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Introduction

Before 1998, no one could think about the amendment of the 1945 Constitution. The 1945 Constitution was a product of nationalist who had hard fought for independence from the Dutch colonization. This historical background made it the symbol of independence of the Indonesian nation. Thus, it has been considered as forbidden to touch contents of the 1945 Constitution whereas political leaders have legitimized their authoritarian rulership by utilizing a symbolic character of the Constitution. With the largest political turmoil since its independence, that is, a breakdown of authoritarian regime and democratic transformation in 1998-1999, however, a myth of the "sacred and inviolable" constitution has disappeared. A new theme has then aroused: how can the 1945 Constitution be adapted for a new democratic regime in Indonesia?

The Indonesian modern state has applied the 1945 Constitution as the basic law since its independence in 1945, except for around 10 years in the 1950s. In the period of independence struggle, contrary to the constitutional provision that a kind of presidential system is employed, a cabinet responsible for the Central National Committee was installed. Politics under this institution was in practice a parliamentary system of government. After the Dutch transferred sovereignty to Indonesia in 1949, West European constitutionalism and party politics under a parliamentary system was fully adopted with the introduction of two new constitutions: the 1949 Constitution of Federal Republic of Indonesia and the 1950 Provisional Constitution of Republic of Indonesia. Since a return from the 1950 Constitution to the 1945 Constitution was decided with the Presidential Decree in 1959, the 1945 Constitution had supported two authoritarian regimes of Soekarno's "Guided Democracy" and Soeharto's "New Order" as a legal base. When the 32-year Soeharto's government fell down and democratization started in 1998, the 1945 Constitution was not replaced with a new one,

as seen in many other democratizing countries, but successively reformed to adapt itself to a new democratic regime. In the result of four constitutional amendments in 1999-2002, political institutions in Indonesia are experiencing a transformation from an authoritative structure, in which the executive branch monopolized power along with incompetent legislative and judicial branches, to a modern democratic structure, in which the legislative branch can maintain predominance over the executive. However, as observed that President Abdurrahman Wahid, the first president ever elected democratically in Indonesian history, was impeached after one and a half years in office, democratic politics under a new political institution has never been stable.

Under the 1945 Constitution, how did authoritarian regimes maintain stability? Why can a democratic regime not achieve its stability? What did the two constitutional amendments in the process of democratization change? In the first place, how did the political institutions stipulated by the 1945 Constitution come out? Through answering the above questions, this chapter intends to survey the historical continuity and change of political institutions in Indonesia along with the 1945 Constitutions and to analyze impact of regime transformation on political institutions. First, we examine political institutions stipulated by the original 1945 Constitution as well as historical and philosophical origins of the constitution. Second, we search constitutional foundations in the 1945 Constitution that made it possible for Soekarno and Soeharto to establish and maintain authoritarian regimes. Third, we examine contents of constitutional amendments in the process of democratization since 1998. Fourth, we analyze new political dynamics caused by constitutional changes, looking at the impeachment process of President Abdurrahman Wahid. Finally, we consider tasks faced by Indonesia that seeks to establish a stable democracy.

1. Enactment of the 1945 Constitution

On August17, 1945, Soekarno, a leader of the nationalist movement, together with Mohammad Hatta, declared Indonesia's independence in Jakarta. On the next day, as the basic law of the new nation, 1945 Constitution of the Republic of Indonesia

(*Undang-Undang Dasar Negara Republik Indonesia 1945*) was announced and put into effect. This constitution was drafted in the Investigating Committee for the Preparation of Independence (*Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan Indonesia*: BPUPKI) established by the Japanese Military Headquarter of Java during the period when the Japanese military was about to surrender in the Pacific War, and ratified as a legal constitution in the Committee for the Preparation of Independence (*Panitia Persiapan Kemerdekaan Indonesia*: PPKI) on 18 August. Although the 1945 Constitution, which was prepared just two months before the independence by leaders of the Indonesian nationalist movement, was "incomplete" since it was consisted of only 37 articles with details left to laws enacted afterwards[1], the constitution was not an imitation of Western constitutions, but rather an original of Indonesia[2]: its originality can be seen, for example, the unique state principle of *Pancasila* in the Preamble[3], governing structure including the People's Consultative Assembly (*Majelis Permusyawaratan Rakyat*: MPR), and limited regulations on human rights. In fact, this uniqueness legally supported politics of authoritarianism under Soekarno, which was called the Guided Democracy (*Demokrasi Terpimpin*) and under Soeharto, which was called the New Order (*Orde Baru*). This caused the amendments of the

[1] It is clear that since its enactment, the 1945 Constitution was regarded as "provisional" for the early independence, when we read the proceedings of the Investigating Committee for the Preparation of Independence and the Committee for the Preparation of Independence, the testimony of people concerned. An opinion that the well-established constitution should be written, was surpassed by voices such as Soekarno that the provisional constitution be established in the first place for the early independence and it would be amended later. Incompleteness of the constitution was caused by its provisional character.

[2] Although the 1945 Constitution was established under the supervision of the Military Government in Java under the Japanese occupation, it did not erase the originality of the constitution. It is because the Java Military Administration kept a stance of non-interventionism in discussions of drafting the constitution at the Investigating Committee for the Preparation of Independence. Miyoshi, who was a consul of the Java Military Administration after the Armed Forces No. 16 Command to Java appointed from the Ministry of Foreign Affairs, described, "The Japanese authority took a stance of non-interventionism in discussions at the meeting, leaving decisions entirely to the committee" (Miyoshi [1966: 67]).

[3] *Pancasila* is the five state principles written in the Preamble of the 1945 Constitution. It was based on Soekarno's speech at the Investigating Committee for the Preparation of Independence on June 1, 1945. The speech was later summarized as the Jakarta Charter (*Piagam Djakarta*) on June 22, 1945. The Jakarta Charter was supposed to be the Preamble of the 1945 Constitution. Since the charter mentioned specifically Islam followers, however, it was modified, taking other religions into account. This point will be referred again in the Section 3 of this paper.

constitution to become a focus of political reform since democratization in 1998, while the content of amendments itself directed politics of post-democratization in Indonesia. In the first place, why such an unique governing structure was established? Before analyzing constitutional amendments after 1998, we look at contents of the 1945 Constitution, examining its historical and philosophical backgrounds.

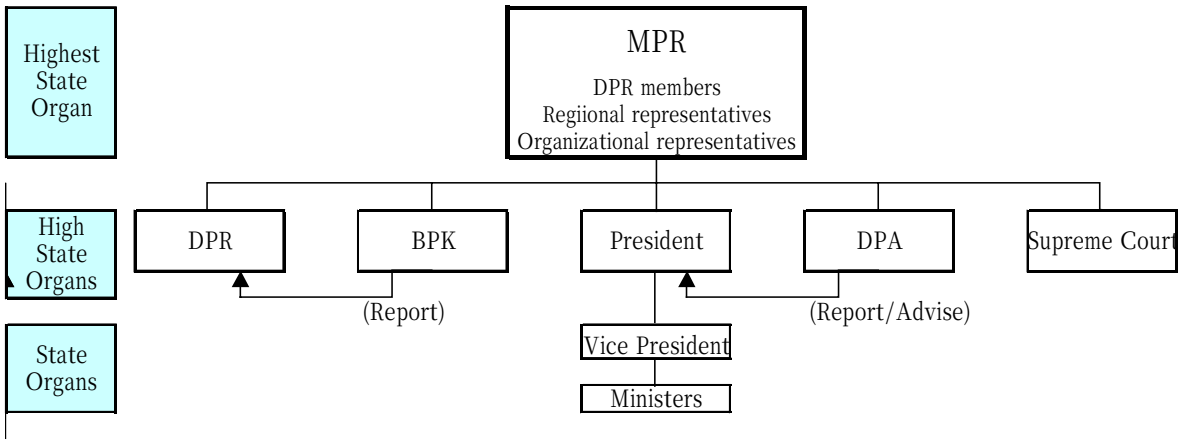
1. Governing Structure of the 1945 Constitution

Political institutions established by the 1945 Constitution are neither a transplantation of governing structure of the Netherlands, which colonized East Indies for over 340 years, nor a copy of the Meiji constitutional regime of Japan, which imposed military rule for 3 years. They are rather quite unique. In the Article 1, the form of government is provided as republic, rather than monarchy. The Japanese military administration in Java considered that the problem of the form of government was difficult to be solved since there would arise so many disputes in drafting the constitution at the meeting of the Investigating Committee for the Preparation of Independence (Miyoshi [1966: 62]). In fact, it was reported that council members from Central Java held a closed meeting, promising the establishment of monarchy under Yogyakarta's Sultan (Sekretariat Negara [1995: 120], Waseda University [1959: 418]). Contrary to the Japanese anticipation, however, almost all council members agree with republic form of government with no huge disputes. At the Investigating Committee for the Preparation of Independence on July 10, 55 members voted for republic while 6 voted for monarchy, choosing the former by an overwhelming majority (Sekretariat Negara [1995: 125-127]).

Regarding political institutions, a kind of presidential system was employed, rather than parliamentary system. President, as the head of the state, holds the executive power and organizes the government (Article 4). However, presidential system in Indonesia is not a simple presidential system based on an assumption that post of the president shall be guaranteed during his term of office and he be not forced to resign by the parliament. In a simple presidential system such as one in the United States, there is distinctive separation of power between the president as a head of the

government and the legislative body. In Indonesia, the president is not responsible for the legislative body, the House of Representatives (*Dewan Perwakilan Rakyat*: DPR), and, accordingly, has no right to dissolve it. The president, however, is elected at the "legislative" body named the MPR, which is consisted of the DPR and appointed members. Thus, the president is responsible for the MPR (Article 6). It means that post of the president is not guaranteed during his term of office, but, as the case may be, he could be forced to resign. On the contrary, the president does not have the right to dissolve the MPR.

Figure 1-1. The Governing Institutions in Indonesia under the 1945 Constitution



(Sources) Author.

It is because the MPR as the highest organ of the state is not the same institution as a parliament. As stated in Article 1, Clause 2, the MPR is the incarnation of all the people of Indonesia (Commentary)[4], fully exercising the sovereignty for the sake of the Indonesian people. The MPR as a political institution is literally the highest state organ, positioning all the above of other state organs such as the president, the DPR, and the Supreme Court (see Figure 1). The MPR is held a general assembly at least once

[4] Indonesian laws are basically attached with "Commentary" (*Penjelasan*) at the end. Upon the interpretation of law, this commentary possesses quasi-biding authority as the body of law. In this chapter, (Commentary) shows a quotation from the Commentary of the 1945 Constitution (*Penjelasan Tentang Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*).

in five years (Article 2, Clause2) for the establishment or amendments of the constitution, decision of the General State Policy Guideline (GBHN) during his term of office, elections of the president/vice-president (Article 3; Article 6, Clause 2; Article 37). Then, according to the General State Policy Guideline decided by the MPR, five high state organs below the MPR, that is, the president, the DPR, the Supreme Court, the Supreme Advisory Council (*Dewan Pertimbangan Agung*: DPA), and the Board of Audit (*Badan Pemeriksa Keuangan*: BPK) exercise respective functions.

2. Philosophical Origins of Political Institutions

Political institutions in Indonesia do not assume a separation of three state powers and check-and-balance among the legislature, the executive, and the judicial in order to prevent misuse of state power. In discussions of drafting the constitution before independence, an argument for the separation of three powers was not reached. When Muhammad Yamin proposed his personal draft of the constitution at the second meeting of the Investigating Committee for the Preparation of Independence, he explained that there should be the separation of six powers in Indonesia, referring to the separation of five powers in the constitution of China's Nationalist Party. According to him, the six powers included (1) the Head of the State and vice-president, (2) the Representative Institution, (3) the All Indonesia Assembly, (4) Ministers, (5) the Advisory Council, and (6) the Supreme Court (Sekretariat Negara [1995: 176-184])[5]. On the other hand, Soepomo, a leading figure in the drafting process of the 1945 Constitution as a chairperson of the Small Committee of Drafting the Constitution (*Panitia Kecil Perancang Undang-Undang Dasar*) under the Investigating Committee for the

[5] The state organs of the Chinese Nationalist Party after escaping to Taiwan with its defeat with the Chinese Communist Party was the National Assembly, the President Office, the Legislative Council, the Administrative Council, the Judicial Council, the Personnel Council, and the Audit Council. The five powers mentioned here are the Legislative Council as the legislative branch, the Administrative Council as the executive branch, and the Judicial Council as the judicial branch with the Personnel Council in charge of assigning bureaucrats and the Audit Council in charge of impeaching bureaucrats. The MPR in Indonesia was modeled after the National Assembly, which is supposed to elect the president as the head of the state.

Preparation of Independence, agreed on Yamin's proposal, suggesting the separation of powers among the MPR, the DPR, the President, the Supreme Advisory Council, the Board of Audit, and the Supreme Court[6]. Soepomo explained that the reason why Indonesia should not adopt the separation of three powers was "because in practice a law-making institution was handed over governmental works, a court was handed over governmental works, and the government was given authority making laws. Because of it, the separation of three powers [*Trias Politica*] in theory did not fit with reality." Soekarno, a chairperson of the Constitution Committee (*Panitia Undang-Undang Dasar*) which presided over the Small Committee, also agreed that the separation of powers was already outdated, not guaranteeing social justice as shown in that the Soviet Union and China did not adopt it (Sekretariat Negara [1995: 221-222]). In fact, members who drafted the constitution in the Investigating Committee for the Preparation of Independence had surveyed constitutions of various countries including not only in the West but also in Asia such as Japan, the Philippines, and Thailand. In the 1930s before the World War II, however, developed countries in Europe were under the time of "constitutional crisis. While socialists enlarged the scope of their influence after the Russian revolution, conservative anti-revolutionalists furiously attacked bourgeois democracy and modern constitutionalism, leading to the emergence of Fascism. In particular, when the Weimar Constitution collapsed in Germany, "the cabinet depended on the president, rather than the representative assembly, since there were too many political parties in the representative assembly to constitute a stable majority group supporting the parliamentary cabinet system" (Higuchi [1998: 181-186]). Reflecting such a political condition in the world, the parliamentary politics in Europe was not a model to be followed, but a subject to be criticized by founding fathers of Indonesia. They recognized political institutions like the separation of three powers or the parliamentary cabinet system as dysfunction, referring to institutions adopted by the

[6] Regarding Yamin's proposal that the ministers be responsible for the House of Representatives, Soepomo opposed it since it was the parliamentary system, finally rejecting it (Sekretariat Negara [1995:302]).

Chinese Nationalist Party and the 1936 Soviet Constitution[7].

Furthermore, as a background of rejecting Western political institutions such as presidentialism/parliamentarism or separation of powers by independence leaders of Indonesia, it can be pointed out that there had existed an influential philosophy of anti-Western, anti-modernism successively inherited among Javanese intellectuals since the 1910s. At the meeting of Investigating Committee for the Preparation of Independence, Soepomo declared to reject liberal democracy and individualism as Indonesia's founding philosophy, therefore not adopting the parliamentarism or the parliamentary cabinet system (*sistem parlementer/sistem Kabinet*) as a practice of these philosophy, since they caused imperialism and wars all over the world (Sekretariat Negara [1995:274]). Soepomo, instead, presumed "our own institutions" in which the head of the state was given "predominance" in exercising power and concentrated power and responsibility at his hand. Under these institutions, "the Government has to be given confidence in order to keep permanent power, not depending on power of the DPR," and "the Head of the State who have the right of appointing Ministers, takes consequences from all the philosophical currents existing in the society." Here, the government, especially the head of the state, was considered as "the Head of the Big Family (*Kepala Keluarga besar*), standing over all the people. Yet, Soepomo supposed that while the people "believe policies of the head of the state", "it is necessary to set up a system of consultative institution in order to guarantee that the Head of the State as the supreme national leader be always identified with spirits of the nation" (Sekretariat Negara [1995: 42, 274, 302-306]). Thus, while Yamin proposed the separation of six powers in terms of preventing a rise of totalitarianism, Soepomo supposed sharing of respective governmental functions by six institutions, not the separation of powers. He proposed institutions in which power was given to the head of the state who was identified with the nation and who could lead the nation with his knowledge in daily governmental affairs while the MPR was held once in five year to

[7] The concept of the Supreme Advisory Council and the Board of Audit was possibly referred to the state organs in the Netherlands since Soepomo himself used the words, *Raad van State* or *Rekenkamer*, respectively in the discussions at the Investigating Committee for the Preparation of

check the identification between the head of the state and the nation (Sekretariat Negara [1995: 42]). Nearly all the members of the Investigating Committee for the Preparation of Independence or the Committee for the Preparation of Independence agreed with his idea.

3. Philosophy of "Family Principle" as Legitimization

After rejecting individualism and liberal democracy as a basis of Western democratic regime, founding fathers adopted family principle (*kekeluargaan*) as a philosophical base for constructing original political institutions in Indonesia. This concept grew up through intellectual efforts to derive an indigenous principle of social integration from Indonesia's own cultural tradition. Indonesia's nationalism activists tried to formulate a legitimizing principle to build a new nation-state in their resistance movement against the Dutch colonialism. There emerged an idea that who presides over the Indonesian state be "the people" (*rakyat*) from those intellectual efforts. *Priyayi* (feudal lords), who constituted a group of nationalist intellectuals, made an effort to redefine its idea in the context of Java culture in order to fill up in contents of this new concept, "*rakyat*" (Tsuchiya [1982: 72-76]). Who played a major role in redefining its concept of populism (*kerakyatan*) in the context of Java culture were R.M. Soetatmo Soeriokoesoemo and Ki Hadjar Dewantoro, founding members of a private educational institution, *Taman Siswa*, which was a organizational base for nationalist movements in the colonial time. According to Tsuchiya [1982], Soetatmo regarded character of Java society as a unity of a leader and followers (*Kawula-Gusti*), which was enabled mainly by "wisdom" (*wijsheid*). By redefining this concept of *Kawula-Gusti* in a new concept of "democracy" (*demokrasi*), Soetatmo concluded that poplusim-cum-democracy could bring about catastrophe without leading wisdom of a leader. He, then, explained it with an idea of "order and peace" (*tata-tentrem*) in family (*keluarga*). Dewantoro succeeded to this thesis of Soetatmo as "democracy and leadership" (*democratie en*

Independence (Sekretariat Negara [1995:271, 273]).

leiderschap) in family principle, while practicing this ideal in *Taman Siswa*, an institution to contend the colonial bureaucratic state. Nationalist leaders including Dewantoro recognized that Eastern philosophy of life, especially Indian philosophy, was a key to overcome a crisis in Western democracy, because they philosophically experienced ideology of "the fall of the West" and Eastern recurrence, which were obviously seen in philosophy of Tagor and Theosophy. In other words, Java culture, since it was based on the Indian world, had potential to overcome the modernity. As Dewantoro suggested, therefore, Western democracy, which was based on individualism, caused anarchy, while Javanese democracy "regarded the establishment of 'uniting all individuals' as the most important. It means that each individual is less independent while he is united with the whole and that he sincerely sacrifices for interests of all. Thus, 'a leader and followers are united' (*manunggal ing Kaulo-Gusti*)" (Tsuchiya [1982: 334]), which attains order and peace.

Accordingly, legitimizing principle of a new state was grown up from an ideology which was consciously derived from Javanese culture[8]. However, the concept suggested by Dewantoro was strongly influenced by the doctrine of totalitarian state in the Third Empire of Germany. The Nazi's doctrine of totalitarian state recognized the state as substantially the organic and the mystic, rejecting the distinction between an individual, society, and the state in principle (Higuchi [1998: 192-193]). In fact, at the meeting of the Investigating Committee for the Preparation of Independence on 31 May 1945, Soepomo explained that the doctrine of totalitarian state or integralistic ideology, which emphasized the unity of a leader and followers or integral characteristic of the state as a family, would be the most appropriate for tradition of Indonesian society, showing examples of state socialism in Germany and *Tenno* system in the Japanese Empire. He, then, continued as follows:

[8] It should be also pointed out, as Tsuchiya describes, that intellectual efforts of *Taman Siswa* has an intention to well-establish a leading principle of Javanese *priyayi* in nationalist movements as well (Tsuchiya [1982: 79]). Shiraishi argues that the practice of family principle has been widely deployed inside the state structure, having nothing to do with Dewantoro's "democracy and leadership." In particular, the practice was systematically deployed under the Soeharto regime (Shiraishi [1994]).

> "the indigenous social structure of Indonesia is the creation of Indonesian culture, the fruit of the Philosophy or inner spirit of the Indonesian people. The inner spirit and spiritual structure of the Indonesian people is characterized by the ideal of the unity of life (*persatuan hidup*), the unity of leaders and followers (*persatuan kawulo dan gusti*), that is, of the outer and the inner world, of the macrocosmos and the microcosmos, of the people and their leaders. All men as individuals, every group or grouping of men in a society, and every society in the life of the entire world---each of these is considered to have its own place and its own obligations (*dharma*) according to the law of nature, the whole being aimed at achieving spiritual and physical balance. Men as an individual are not separated from other individuals or the outside world. Men, groups of men, and, indeed, all groups of creatures, all are interacting and interrelated and all have influence on each other. This is the totalitarian idea (*ide totaliter*), the integralistic idea (*ide integralistik*) of the Indonesian people which is embodied in its indigenous form of government." (Sekretariat Negara [1995: 35])[9]

It can be rephrased "mutual help" (*gotong royong*) and "family principle" (*kekeluargaan*) in the context of Indonesian society

Certainly, all the concepts expressed by Indonesia's nationalist leaders including family principle, integralism, or mutual help lack precision and concreteness. They are also characterized as Javanese *priyayi* as described above[10]. These philosophy and ideas were, however, obtained from intellectual trend in the world at the time by nationalists who struggled for constructing an image of the new Indonesian state. When giving shape indigenous governing doctrine of family principle and mutual help

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[9] English translation was cited from Feith and Castles [1970:190] with some modifications of the author.

[10] As a reason why a philosophy of Javanese *priyayi* was accepted in the 1945 Constitution without strong oppositions, it can be pointed out that a majority of the members of the Investigating Committee for the Preparation of Independence was from Javanese *priyayi*, while the discussions in the Council prioritized early independence. According to an estimation by Anderson, among 62 members of the Council, *priyayi* elite including *Pangre Peraja* (Javanese senior colonial bureaucrats) were 17, consisting of 27.4%. On the other hand, members from Islamic elites, another major group of independence movements, were 7, consisting of only 11.3% (Anderson [1961: 21]).

to political institutions in the constitution, they referred to late-developed countries like the Soviet Union or the Chinese Nationalist Party government as a concrete model[11]. While the 1945 Constitution was drafted after only two-week discussions, it actually reflected a long history of anti-colonial, independence struggle in Indonesia.

2. The 1945 Constitution and the Authoritarian Regime

1. Articles of the Constitutions Supporting the Authoritarian Regime

As shown in the history of constitutional enactment, the 1945 Constitution was drafted from a philosophy which deferred from the constitutionalism of the modern West so that it had a quite different structure from the modern constitution which was supposed to protect rights and freedom of the nation by limiting the state power. Politics under political institutions based on this constitution was also different from Western democracy, that is, authoritarian politics. The executive branch, especially the president, monopolized power, leading to arbitrary conduct of politics. The president as the highest power holder maintained its position for a long period by making other political groups incompetent. These politics was observed in two authoritarian regimes under the first president of Soekarno and the second president of Soeharto. What regulations in the constitution enabled the establishment of authoritarian regimes possible? What regulations supported long-term governments by two presidents? In this section, we analyze the regulations in the constitution to enable the establishment and maintenance of authoritarian regime.

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[11] Tsuchiya pointed out 9 facts or intellectual movements as influential to nationalists at the time: (1) policy of "Rich Nation, Strong Army" in Japan and the Russo-Japanese War; (2) Chinese nationalism and Three Principles of Sun Yat-sen, and overseas Chinese response to nationalism; (3) Pan-Islam and modernist Islam; (4) the Young Turks Party and modernization in Turkey; (5) Indian nationalism especially the *Suwaraji-Suwadeji* movement and Gandhi's leadership; (6) "national self-determination" after World War I, especially the independence movement in Ireland; (7) socialist democracy in the Netherlands; (8) the Russian Revolution and the birth of the Soviet, the Communist International movement; and (9) ideology of "the fall of the West" and Eastern recurrence, obviously seen in philosophy of Tagor and Theosophy (Tsuchiya [1982: 7]). This shows that intellectuals at that time were active in a rather international context.

First, we look at articles in the constitution that explicitly brought about the concentration of power to the president. As Soepomo described at the Investigating Committee for the Preparation of Independence, the constitution was expected to establish political institutions in which power was concentrated on the president as the state leader. Certainly, regulations about the president in the constitution are numbered 19 points, 13 articles, the most in number (Chapter III, Articles 4-15 about "The State Administration Power"; Chapter V, Article 17 about "The Cabinet"; and Chapter VII, Article 22, Clause 1 about "the DPR"), in which various authorities are given to the president. For example, the president “holds the highest right to command the Armed Forces, the Navy, and the Air Forces" (Article 10). The president can declare war (with agreement of the DPR), concludes peace and a treaty (Article 11) and declares a state of emergency (Article 12). The president holds authority to appoint and accept diplomatic envoys (Article 13), to decide granting of amnesty (Article 14), and to confer decorations (Article 15) as the right of personnel. The president also appoints state ministers as the head of the cabinet (Article 17) and participates in daily administration.

The most important among president’s authority in terms of the concentration of power in his hand is the right to legislate. Article 5, Clause 1 says that “the President holds the right to determine a law with the agreement of the DPR”. This shows a formulation that the president and the DPR co-hold the right of legislation, which is different from system that the right of legislation only belongs to the parliament, one typically seen in the period of modern constitutionalism. Thus, it does not reflect an idea of power control that the executive be restricted by legislation and its activity be controlled by the legislature. Rather, the president who is “a leader with wisdom” and the DPR should cooperate and coordinate in legislation. The president as the head of administration (Article 4, Clause 1) also can “determine an ordinance to implement a law” (Article 5, Clause 2). In addition, “the President can determine an ordinance in the place of a law in the time of emergency” (Article 22, Clause 1). Thus, the president is given the right of legislation such as a law and an ordinance. The superiority of the executive over the legislative is written in the constitution. The Constitutional Commentary also defines clearly that “the President is the highest among

government organizations under the MPR."

On the other hand, regulations about the DPR are only 9 points, 5 Articles. Furthermore, regulations about the court are only 3 points, Article 24 and 25 in Chapter IX "The Justice". As Article 20, Clause 1 says that "all laws have to get approval from the DPR", the right of legislation is defined in the constitution. However, since the president is admitted the right of veto against a law passed by the DPR (Article 21, Clause 2), the superiority of DPR's legislative right over the president is rather low. On the contrary, the DPR is not given any methods to restrain the president's right of personnel, treaty-conclusion, and legislation. Thus, it is difficult for the legislative to control the executive in terms of law. The only regulation to establish the superiority of the legislative over the executive is the right to vote for budget (Article 23, Clause 1) and the right to tax (Article 23, Clause 2). The Constitution Commentary explains that the DPR can monitor behavior of the president and when concluding that the president is against the state policy, the DPR can force the president to make a report of accountability by calling the MPR. However, the Commentary does not explain further in detail about monitoring by the DPR[12].

Regulations about the justice are scantier. Article 24, Clause 1 only defines that "the right of Justice is exercised by the Supreme Court and ... other organizations of justice" and that organizations, authority, and ways of appointing the judges are regulated by laws concerned. The Constitutional Commentary says that "Indonesia is a constitutional state" (*negara yang berdasar atas hukum [rechtsstaat]*) and the justice is an independent power from the executive, while its details are not defined in the constitution. That is why, as Mulya Lubis pointed out, the meaning of "independent justice" ought to be unstable, depending on interpretations of what is a constitutional state (Lubis [1993: 97]). Because the 1945 Constitution does not regulate judicial

[12] Yet, "the MPR Decision Year 1978 No. 3 about positions and duty procedure relations between the highest state organ and high state organs and/or between high state organs" defines monitoring behavior of the president as an obligation of the DPR, regulating that the DPR can warn against behavior of the president and request a call for the special meeting of the MPR to impeach the president. This decision became a legal base when the powerful parliament tried to impeach the fourth President Abdurrahman Wahid after democratization in 1998. This point will be discussed later in this chapter.

review, there is no method for the justice to check the executive and the legislative.

Regarding other state organizations, for example, the Supreme Advisory Council is only defined that “the Supreme Advisory Council functions to respond to questions of the president and has authority to suggest to the government” (Chapter IV, Article 16, Clause 2). Similarly, the Board of Audit is simply defined that “the Board of Audit shall be established ... in order to inspect responsibility of the state budget. The result of inspection by the Board of Audit is made a report to the DPR” (Article 23, Clause 5). However, the Board of Audit is not given authority to control behavior of the state organizations including the president.

2. The MPR and the Constitutional Base of the Authoritarian Regime

There is certainly an intention to concentrate power on the president in the constitution. However, it does not necessarily mean that the constitutional regulations automatically yield a strong power holder. The constitution regulates that an actor to exercise the sovereignty is the MPR, in which the president is elected. While the president is not responsible for the DPR, he is responsible for the MPR (Commentary). Since separation of six powers is adopted as a matter of principle as shown in the discussions of constitutional drafting, it is possible to attain a kind of check-and-balance among powers by sharing government functions.

In reality, however, the history of the 1945 Constitution equals to the history of authoritarian regime in Indonesia. What regulations, except for ones on authority of the president, made it possible to form and sustain authoritarian regime? The answer lies in regulations about composition of the MPR. Article 2, Clause 1 defines that “the MPR is composed of members of the DPR ..., added by representatives of regions and organizations (*golongan-golongan*)”. The Constitutional Commentary explains about it that “all the people, all organizations, and all regions can have representatives in the Assembly so that this Assembly can be regarded as truly the incarnation of the people.” The question is how members of the MPR are elected. First, a method to elect members of the DPR is not defined in the constitution. In other words, elections by

the people are not constitutionally guaranteed. Popular vote for DPR members is not assured in the constitution, not to mention representatives of regions and organizations.

Here is an ultimate clue for the 1945 Constitution to enable the formation and maintenance of authoritarian regime. It is not constitutionally explicit who can become members of the MPR, the highest organ of the state. Then, a method to vote for members of the MPR and the DPR would be regularized after the enactment of the constitution. As described above, who holds stronger power next to the MPR is the president. Moreover, as Article IV of the Transitional Regulation in the constitution defines that "all authority ... is exercised by the president until the MPR, the DPR, and the DPA are organized according to this constitution," the president is given dictatorial power immediately after independence. As long as there is no regulation about popular vote, there is no constitutional problem if the president himself appoints members of either the MPR or the DPR. To put it strongly, the president can appoint by his authority all members of the MPR, which holds authority to elect himself. Even if members of the DPR are elected by popular vote after the example of Western countries, it is logically possible that representatives of regions and organizations are reserved for appointees by the president. Thus, once the president holds authority to appoint members of the MPR, he can maintain his posts securely. Furthermore, because there is no regulation regarding limits on reelection of the president (Article 7), the president can maintain his government for a long term after he acquires power. The two authoritarian regimes of Soekarno and Soeharto was made it possible to maintain long-term governments by neutralizing the MPR with its use of the president's strong power (Umezawa [1992:10]).

The MPR was first conveyed in November 1960, after Soekarno declared the return to the 1945 Constitution with the Presidential Decree on 5 July 1959[13]. The

[13] For 4 years between independence in 1945 and the transfer to the Constitution of the Federal Republic of Indonesia in 1949, the MPR was not established in spite of the constitutional regulation, because of a chaotic state of independence struggle with the Dutch. As Article IV of the Transitional Clause of the 1945 Constitution states, state power is concentrated on the president immediately after independence, while the Central National Committee (*Komite Nasional Indonesia Pusat*: KNIP) supports him until the MPR and the DPR are officially institutionalized. The KNIP was an institution expanded from the Committee for the Preparation of Independence on August 29,

Provisional People's Consultative Assembly (*Majelis Permusyawaratan Rakyat Sementara*: MPRS) at the time were consisted of 283 DPR members, 232 organizational representatives, and 94 regional representatives. Its composition was decided by Soekarno himself and regulated in the Presidential Regulation (The Presidential Regulation [*Peraturan Presiden*] Year 1959 No. 12) as a legal base[14]. Among 609 members of the MPRS, organizational and regional representatives were counted as many as 326 members. They were all appointed by the president himself (The Presidential Decision Year 1959 No. 2). Besides, on March 5, 1960, Soekarno by the Presidential Decision suspended the function of the DPR who repelled arbitrary behavior of the president, replacing it with "the Mutual Help (*Gotong Royong*) Parliament" by appointing all the members by his authority. This parliament was consisted of 130 political party representatives, 152 organizational representatives (including 35 armed forces representatives), and one representative from West Irian. In other words, organizational representatives in the MPRS with those from the DPR were 384. With 95 regional representatives (including a DPR member from West

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1945. However, the KNIP decided to give itself the power of legislation and additionally to establish the Working Committee (*Badan Pekerja*), which implemented daily administration. On the same day, the first Vice-President Hatta admitted its decision (the Proclamation of Vice-President No. 10 about bestowing the legislative power to the Central National Committee and participation in decision of the General State Policy Guideline) so that the Working Committee virtually held the legislative power. According to Kahin, the organization of the Working Committee was set up after the model of organizations of the National Congress in India (Kahin [1952: 152]). On November 14, replacing the first "Presidential Cabinet", a new cabinet with Sjahrir as the head was organized with the confidence of the KNIP. This was in real terms a responsible cabinet government. Since then until 1949, there had continued responsible cabinet governments under the 1945 Constitution regime. These series of events were spearheaded by Sjahrir and Hatta who considered that the problem of winning independence should have been resolved through cooperation and negotiation with the Dutch with the exclusion of cooperative elements of the Japanese military during the Pacific War. They intended to exclude Soekarno and others who had authoritative thinking and claimed armed struggle against the Dutch (Kahin [1952: 153]). They little by little modified the political institutions regulated in the 1945 Constitution with the Proclamation of Vice-President, materializing the transfer to the parliamentary cabinet system. (Goto & Yamazaki [2001: 130-132]).

[14] This Presidential Regulation defined that the MPRS was consisted of 200 organizational representatives and 94 regional representatives in addition to DPR members. Its composition was different from the number of representatives appointed in September 1960 (Nagai [1986: 260]). It is considered that members were added before the MPR was conveyed since the appointment of organizational representatives was authority monopolized by the president. Although the number of MPRS members and the Mutual Help Parliament was increased a little, its composition did not change drastically (Umezawa [1992:51]).

Irian), over three fourth members of the MPRS were non-partisan, directly chosen by President Soekarno.

Moreover, on December 31, 1959, Soekarno, with "the Presidential Decision Year 1959 No. 7 about conditions of political parties and simplification", gave the president himself authority to unilaterally decide conditions to set up political parties and to declare ban and dissolution of parties who opposed basic principles and objectives of the state or were involved in a rebellion. Then, on July 5, 1960, "the Presidential Regulation Year 1960 No. 13 about approval, supervision, and dissolution of political parties" defined that the president approved and supervised activities of political parties. With this regulation, the president could constrain activities of political parties by his own authority. By using its authority, Soekarno banned the modernist Islam party of *Masyumi*, which was involved in a regional rebellioin in West Sumatra in 1967 and Indonesian Socialist Party (*Partai Sosialis Indonesia*: PSI).

However, in the period of "Guided Democracy" under Soekarno, since political parties sustained organizational bases, most of organizational representatives were affiliated with certain political parties (Umezawa [1992: 51]). Moreover, the armed forces made use of this "doctrine of organizational representatives" the most aggressively because they were dissatisfied with the parliamentary politics in the 1950s and looked for structuring of a formal channel to participate in politics. Because Soekarno needed confront the power-increasing armed forces, he switched from the doctrine of party abolition to the doctrine of party regulation. In the end, he did not make use of organizational representatives for his own support base. Therefore, the MPR in Soekarno period was not a complete institution to marginalize political parties and to continually secure the legitimacy of the government.

Soeharto, who inherited the Soekarno's authoritarian regime, more aggressively made use of appointment system of additional members of organizational and regional representatives regularized in the 1945 Constitution than Soekarno, and he finally succeeded to acquire the legitimacy of the government and to sustain power for a long term. After "the September 30th Movement" in 1965, Soeharto was transferred presidential authority from Soekarno with "the Letter of Order on March 11" (*Surat*

Perintah Sebelas Maret: Supersemer) in 1966. One year later, on March 12, 1967, Soeharto was appointed as the acting president at the special session (*Sidang Istimewa*) of the MPRS (the MPRS Decision Year 1968 No. 64). One year later again, on March 27, 1968, Soeharto was officially inaugurated as the president at the MPRS (the MPRS Decision Year 1968 No. 64). At that time Soeharto already made use of appointment system in the MPR and the DPR. He expelled pro-Soekarno and communist members from both legislatures, replacing members appointed by him (Umezawa [1992: 51-52]).

Thereafter, Soeharto was reelected by the MPR on March 23, 1973 after he successfully got through the general elections in 1971 by constraining political parties on the one hand and strengthening a political base by propping up the Functional Group (*Golongan Karya*: Golkar) on the other. The composition of the MPR, which was formally convened for the first time, was regularized in "the Law Year 1969 No. 16 about compositions and positions of the MPR, the DPR, and the Regional Parliament (DPRD)" (hereinafter called "the Law on Legislative Composition"), which was established through compromise between Soeharto and political parties in 1969 (Umezawa [1992: 26-27]). According to its law, there were 100 organizational representatives (including 75 armed forces representatives) among the total number of 460 DPR members. The MPR was supposed to be consisted of DPR members and the same number of additional members. Among the 460 additional members, there were 207 organizational representatives (including 155 armed forces representatives) and 130 regional representatives (the remainder was allotted to political parties in proportion to results of the general elections. Thus, Soeharto ensured a little less than a half among the total number of 920 MPR members[15].

The Law on Legislative Composition was revised to increase the total number of legislative seats and to change their composition, first in 1975 with a few modifications (the Law Year 1975 No. 5) and the second in 1985 with further revisions when the so-called 5 political laws were enacted (the Law Year 1985 No. 2). The total members

[15] Furthermore, since the 1971 general elections, Soeharto propped up the Golkar, which embodied the concept of "organizational (*golongan*) representatives", against political parties. In the result, the Golkar had a great victory in the general elections (Nishihara [1972]; Reeve [1985]).

of the DPR were increased to 500, while the appointee was decreased only to 100 armed forces representatives. The total members of the MPR were changed to 1,000 including 500 DPR members and 500 additional members. Within 500 additional members, 253 seats were allotted to political parties in proportion to acquired seats in the DPR (including 51 armed forces representatives), while 100 seats were reserved for organizational representatives and 147 seats were reserved for regional representatives. This new seats' allocation decreased the proportion of appointees from organizational, regional, and armed forces representatives to 40% in total seats of the MPR. Yet, by this time, the ruling Golkar had already put its vote-gathering function on a firm footing. Besides, political parties and other societal groupings were so completely marginalized that the Soeharto regime could secure footholds. Therefore, Soeharto was confident of his reelection even if the number of appointee was decreased.

The number of appointee in the DPR and the MPR was in fact manipulated with skill in order not to enable the amendment of the 1945 Constitution, which was conducive to maintain authoritarian regime. According to the constitution, the amendment requires attendance of over two third members of the MPR (Article 37, Clause 1), and the enactment of the amendment resolution requires over approval of two third attendance (Article 37, Clause 2). For example, according to the composition decided in the 1969 Law on Legislative Composition, the deliberation can be started when 614 in the total 920 members of the MPR attend the discussion. If Soeharto wants to disturb the beginning of the deliberation on the constitutional amendment, he ought to secure over one third MPR members, that is, 307 in this case, from his supporters. And this figure exactly coincides with the sum total of 100 organizational representatives in the DPR and 207 additional organizational representatives in the MPR. According to the 1985 Law on Legislative Composition, the sum of armed forces, organizational, and regional representatives is 398, more than needed 334 members to disturb the deliberation on the constitutional amendment.

This is not at all a coincidence. Soeharto mentioned the importance of this figure in "the Pekanbaru speech" (*Pidato Pekanbaru*) before the staff conference of the

armed forces on March 27, 1980[16].

> "Because the Armed Forces itself does not want to amend (the 1945 Constitution), we have to use guns if the amendment is enacted. If we do not want to use guns, then I will explain to all political parties as follows: When facing amendment of the 1945 Constitution and *Pancasila*, it would be better for us to kidnap one from the two third who want to amend than to use guns. Because taking one from the two third is no longer effective according to the 1945 Constitution." (Fatwa [2000: 214])

Thus, Soeharto clearly recognized that the number of appointee in the legislature is quite important for maintaining his government.

3. Philosophical Origins of "Organizational Representatives" Doctrine

As explained above, the 1945 Constitution supported authoritarian regimes of the two men of power, i.e., Soekarno and Soeharto, since the constitution institutionalized the system of the president's appointee in the legislature to elect the president himself as the head of the state. Now, it comes out a following question: why were non-elected parliamentary members such as "organizational representatives" regulated in the constitution? What does "organizational representatives" in Article 2 of the constitution mean?

According to the Constitutional Commentary, organizations mean "institutions such as cooperatives, labor unions, and other collective institutions". When explaining the draft of the constitution at the Committee for the Preparation of Independence on August 18, 1945, Soepomo described that "organizations are ones like economic organizations" (Sekretariat Negara [1995: 425]). Since Indonesia aimed at structuring cooperative economic institutions, it is necessary to add representatives from those economic organizations to the highest organ of the state power in order to "made the

[16] This was pointed out by Mr. Kazuhisa Matsui, a researcher at the Institute of Developing Economies (IDE), Japan. After the Pekanbaru speech, the 50 petitioner group (*Petisi 50*) submitted "the Statement of Concern" (*Pernyataan Keprihatinan*) to the DPR. Regarding a series of

MPR a truly nation's paragon"[17]. Soekarno had already had the idea of "organizational representatives" during the 1930s. He explained in an article titled "I am less dynamic" (*Saja kurang dinamis*), which was written in the 1940s for his argument to oppose the establishment of Islam state, as follows:

> "Representatives from all the people assemble in the legislature (which is the national representative institution based on the principle of democracy) regardless of their belief. They are representatives from 100% Islam believers, superficially Islamic believers, Christians, non-religious believers, intellectuals, merchants, farmers, laborers, and fishermen, and in other words all components of nations, all components of the people constitute of its legislature (Sultan of Turkey did not establish such an organization. That is why the Young Turks Party movement arose)." (Sukarno [1963: 451])

Almost the same phrase appeared 27 years later in his speech to criticize malfunction of party politics at the time of the parliamentary democracy (Reeve [1978: 63]). That was the speech of "the Soekarno Concept" (*Konsepsi*) on February 21, 1957. After suggesting the establishment of "the National Council" (*Dewan Nasional*) to advise and recommend to the cabinet, he mentioned as follows: "This National Council should be consisted of, in the first place, representatives from functional groups in our society or individuals from this group." Examples of these functional groups, according to Soekarno, were representatives from laborers, farmers, intellectuals, national enterprises, Protestants, Catholics, Islam theologians, women's associations, youth associations, the 1945 generation, and regions. Behind this speech was his suspicion on parliamentary politics played by political parties, retroactively his suspicion on Western liberalism and individualism, and contrarily his trust in traditional governing principle in Indonesian (especially Javanese) society. Thus, "organizational representatives" doctrine has the same philosophical origin as one referred in the establishment of state institutions.

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incidents, see Fatwa [2000: 200-229], Jenkins [1984: 157-173].

[17] On the contrary, Hatta argued to regulate a principle of popular vote in the constitution since the concept of "organizations" was no t clear. However, his argument was overwhelmed by voices of the committee's members to leave detailed, theoretical arguments until early independence was achieved later (Sekretariat Negara [1995: 218]).

4. The 1945 Constitution and Basic Human Rights

Finally, one more constitutional characteristic to connect the 1945 Constitution and authoritarian regime is pointed out. That is a lack of the human rights regulations in the 1945 Constitution. Articles explicitly regulating the basic human rights in the 1945 Constitution are only six, that is, Article 27 (equality under the law, the nation's right to life, the right to work), Article 29 (freedom of religion), Article 30 (right to participate in the national defense), Article 31 (the right of education), and Article 34 (social welfare) (Lubis [1993: 74-85]). Moreover, even these articles are quite incomplete in terms of protecting the basic human rights from violations by the state power. For example, Article 26, Clause 2 states that "matters relating to the nation were regulated in laws," meaning that there is no effective protection from violation by the state power. As Article 28 also states that the freedom of association, assemble, and thought and expression "are regulated in laws", the right of liberty, the most basic human rights in a democratic regime, is not regulated in the constitution.

Of course, when drafting the 1945 Constitution, there were arguments to include the human rights articles in the constitution as Western countries. For instance, Yamin pointed out the importance of regulating the basic human rights in the constitution, citing the Declaration of Independence and the Bill of Rights in the United States of America as an example (Sekretariat Negara [1995: 177-179]). Hatta also suggested preventing arbitrary human-rights intervention of the government by guaranteeing the freedom of expression, association, and assembly in the constitution (Sekretariat Negara [1995: 262-263]). However, it was Soekarno as well as Soepomo who opposed to them with "the Family Principle."

> "The constitution we are drafting, is based on the doctrine of family principle, not based on the doctrine of individualism we have rejected. Declaring the freedom of assembly and association in the constitution is systematic from the doctrine of individualism, so that if we declare the freedom of assembly and association in our constitution, we will challenge the rationality of the family principle doctrine. ... In

> the system of family principle, attitude of the nation (*warga negara*) is not always asking 'what is my rights', but asking 'what is my duty as a member of the big family, that is, this Indonesian State'."

As Soepomo described as such, he strongly opposed the articles of basic human rights as the adoption of individualism (Sekretariat Negara [1995: 275-276]). Article 28 in the 1945 Constitution was a meeting ground between the two camps (Sekretariat Negara [1995: 358-361]).

Thereafter, the 1945 Constitution had never been amended until the fall of the Soeharto regime, and accordingly articles on human rights had never been included in the constitution[18]. Besides, there was an effort to establish the bill of basic human rights at the early period of Soeharto regime[19]. The general session of the MPRS in July 1966 adopted "the MPRS Decision of Year 1966 No. 14 about the set-up of MPRS ad hoc committees to carry out duties of the survey of state institutions, the execution of a plan to separate authorities among state institutions according to the 1945 Constitution system, the preparation of a draft of a revised and enlarged edition of the 1945 Constitution Commentary, and the preparation of detailed human rights." According to this decision, 4 ad hoc committees (*Panitia Ad Hoc*) were establish to discuss the survey of state institutions, separation of powers, a revised and enlarged edition of the constitutional commentary, and the bill of human rights. The committee finished drafting the bill of human rights itself in 1967, waiting the deliberation at the general session of the MPRS the next year. However, when Soeharto was inaugurated as the acting president in 1967 and as the president in 1968, Golkar and the armed forces, who supported Soeharto, withdrew their support on the bill of human rights. Afterwards, he never took up the bill of human rights for discussion (Lubis [1993: 6-7])[20].

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[18] The 1949 Constitution of Federal Republic and the 1950 Provisional Constitution, both of which referred to the Western constitutions, had detailed articles on human rights. Actually, it was Soepomo, one of the main members drafting the 1945 Constitution, who insert human rights articles of the Universal Declaration of Human Rights in these two constitutions. However, Soepomo himself mentioned later that the constitutions recognized human rights too much (Lubis [1993: 5]).

[19] Ismail Suny, a professor of the constitution, answered to the interview with Mulya Lubis that "the first two years of the New Order were the best years for human rights" (Lubis [1993: 5]).

[20] There is a description about this in "the Manuscript of Basic Human Rights", appendix of the MPR Decision Year 1998 No. 17. It says that the general session of the MPRS in 1968 did not

As analyzed above, the 1945 Constitution legitimized the establishment of authoritarian rulership and its long-term duration because it included regulations on concentrated authority of the president and president's appointee in legislature while it has no regulation on human rights. Of course, power holders successfully maintained their positions by manipulating administrative-centered characteristics of the 1945 Constitution, making use of its incompleteness as often seen in wording "it is regulated by laws". What at the same time legitimized the constitution supporting authoritarian regime was anti-Western, anti-colonialism at the base of the 1945 Constitution and indigenous philosophies of "family principle" or "mutual help" grown up in Indonesia's nationalist movement. Both Soekarno and Soeharto well recognized it, and they made use of the doctrine of family principle in daily politics.

On the other hand, anti-Establishment groups made use of the 1945 Constitution or *Pancasila* as a tool to criticize the government, as shown in an example of the 50 Petition group who submitted a document criticizing Soeharto to the DPR in May 1980. After 1985, when Soeharto constitutionally established authoritarian rulership and succeeded to stabilize its regime, "the rule of law" was gradually substituted by "the rule of person". Anti-Establishment groups inversely made use of changing characteristics of the regime, criticizing that the rule of Soeharto was against spirits of the 1945 Constitution and *Pancasila* (Tosa [2000: 71]; Ramage [1995: 184-202]). With changing nature of the government in the later Soeharto regime, the constitution and its supporting philosophy were reconsidered, and the 1945 Constitution became a method to criticize authoritarian regime.

3. Democratization and the 1945 Constitution

As mentioned above, the 1945 Constitution is characterized as "the historical document" of Indonesia's independence, reflecting indigenous culture and philosophies

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discuss a draft of the bill of human rights "since it gave priority over discussions on rehabilitation and establishment of the state (after the September 30th Movement) and ... emergent problems on rebirth of nation's life."

of Indonesia created by nationalist in a long-time struggle for independence. This means that it is almost impossible to amend the constitution, let alone throw it away. In fact, until 1998 it was true. Both Soekarno and Soeharto, adhering strictly to this constitution, established authoritarian rulership under the name of the constitution. However, the longer the Soeharto government sustained, the gloomier the prospect for the regime's future, the higher the people's dissatisfaction against authoritarian rulership, and the stronger the demand for democratization. At that moment, Indonesia was hit by the financial crisis in Southeast Asia and the following economic crisis. This aroused a strong criticism against Soeharto, who rejected "revolution" as the legitimacy of the political regime in the Soekarno period and justified the authoritarian governance with "development" as the legitimacy. The people's trust in the Soeharto government plummeted and voices clamoring for "Reform" (*Reformasi*) mounted as Soeharto tried to cling to power and continued to put his family's interests ahead of those of the nation. The general public and political elites came to share the notion that "the government that does not try to implement reform no longer has legitimacy," ultimately forcing Soeharto to step down (Sato [1998]; Shiraishi [1999]). Thus, "reform" has replaced "development" as the key word to ensure the legitimacy of a political regime in Indonesia. Then, democratization began in Indonesia. With the drastic transformation of political regime from the authoritarian to the democratic, the 1945 Constitution, which had long sustained the authoritarian regime legally, has to undergo a change. In this section, we analyze the impact of political transformation as democratization on the constitutional regime in Indonesia.

1. Three Political Laws and the First Constitutional Amendment

B. J. Habibie, who took over from Soeharto as president on May 21, 1998 named his own cabinet the "Development Reformation Cabinet" (*Kabinet Reformasi Pembangunan*). With his political footing still fragile, Habibie successively announced a series of political reforms in order to keep his government afloat, very eagerly trying to wipe away the impression that he was on the side of the old regime.

As the result, in the half-year period after taking office, Habibie laid out a broad range of political reform steps. Specifically, the 12-point decisions at the special session of the MPR in November 1998 and the three political laws that went through the DPR in January 1999 were the results of that endeavor. Habibie's political reform initiative culminated in the general election that took place on June 7, 1999. The reform of political institutions carried out under the Habibie government can be categorized into the following three: “political liberalization”, “institutionalization of political competition and participation”, and “institutionalization of power relationships” (Kawamura [1999c: 21-29]).

(1) Political Liberalization

The first and foremost condition for establishing a democratic regime demands guaranteed political freedoms such as freedom of creed, freedom of speech and freedom of association. The Soeharto regime tried to secure national stability by de-politicizing society by imposing tight restrictions on political freedoms. Habibie, for his part, pushed through rapid political liberalization soon after taking office, making decisions to allow the people to regain political rights such as freedom of speech and association before the related laws were enacted. On May 25, 1998 only four days after the launch of the Habibie government, he released political prisoners. The release of these political prisoners marked the beginning of a series of political liberalization measures.

First came the decision to allow freedom of speech. On June 5, 1998, the government abolished the Minister of Information's authority to license newspapers, magazines and other publications, instead introducing a registration system for publications. On September 13, 1999, the DPR enacted a new law on press, legally stipulating the abolition of publishing licenses and creating penalty provisions for organizations or people that infringed upon the freedom of the press (The Law Year 1999 No. 40). In tandem with the abolition of the publishing license system, the government decided to liberalize the establishment of press associations. The liberalization of press associations made it no longer possible for the government to

manipulate information by taking advantage of press associations.

Further headway toward democratization was made also in the area of freedom of creed. The Decision No. 5 adopted by the special session of the MPR in November 1998 annulled the 1978 MPR Decision No. 2 on the guidelines for "Propagation and Implementation of *Pancasila* (*ekaprasetia pancakarsa*)." With the abolition by the MPR special session of the guidelines requiring the study of the *Pancasila* and making the *Pancasila* the sole principle of the state, the *Pancasila*, which had been made use of as a tool of creed control, no longer became the sole principle of the state that every nation should follow.

The freedom of assembly is one item of political liberalization that made progress through debate in the DPR. In the days of the Soeharto regime, there was a decision issued on December 27, 1995 jointly by the Minister of Home Affairs and the Minister of Defense that required permission from the security authorities for street demonstrations while political meetings of more than 10 people needed police sanction. On October 22, 1998 the DPR unanimously carried the "law on freedom of expression of views in public places" (the Law Year 1998 No. 9) that adopted the prior reporting system for assembly, ensuring freedom of demonstrations and assemblies.

These basic human rights guarantee including the right of liberty was advanced under the Habibie government although not reported widely. At the special session of the MPR in November 1998, “the MPR Decision Year 1998 No. 17 about the basic human rights” was adopted. This decision marked a historic turning point of human rights perspectives in Indonesia. As shown in discussions on the constitution before independence, Indonesia was dominated by a doctrine that rejected individualism and rights inherent to the human being, separated from the society, since an individual to the utmost has the right and duty as a member of the society. Yet, “the Manuscript of the Basic Human Rights” (*Naskah Hak Asasi Manusia*) attached to this MPR Decision declares that “the basic rights are the basic right given to all the human beings without discrimination” and the right about dignity and prestige of the human, although it admits that Indonesian society is “basically the society of family principle” and “all individuals are a part of the society and ... have responsibility and duty to respect to the

human rights of other individuals, protection of social order and functions, upgrade of life environment quality and institutional improvement".

Moreover, in the same attached manuscript, "the Bill of Basic Human Rights" (*Piagam Hak Asasi Manusia*) was declared. It was established with reference to the Universal Declaration of Human Rights. This was the first legal document to write down comprehensive human rights regulations under the 1945 Constitution regime. This bill of basic human rights are composed of the preamble and 44 articles. Here are exhaustively regulated all kinds of human rights, such as the equality before law, the freedom of religion, the freedom to choose occupation, the right to work, the liberty to travel, the right of economic liberty including the protection of property rights, and the social rights including the right to life. This was later legislated (the Law Year 1999 No. 39) and constituted the foundation of the human rights regulations in the second amendment of the 1945 Constitution.

(2) Institutionalization of Political Competition and Participation

An important requirement in establishing a democratic regime, along with political liberalization, is institutions that would guarantee the people's participation in the political process and free competition for political power. Political institutional reforms, especially electoral and parliamentary, were needed. In announcing a schedule for political reform on May 28, 1998, Habibie spoke of a plan to set up a team within the government to draw up political bills. He established within the Ministry of Home Affairs a team of seven political scientists from universities and research institutes to prepare the bills[21]. On September 17, the government submitted bills to the DPR for revisions of the three political bills: the law on political parties; the law on general elections; and the law on the legislative composition. Deliberations at the DPR's special committee initially saw a heated debate over issues such as the

[21] These political scientists are rising professionals including Ryaas Rasyid, who drafted laws on regional autonomy and assumed office as the State Minister for Regional Autonomy in the first Abdurrahman Wahid cabinet, Afan Gaffar, and Andi Mallarangeng.

single-member district system versus the proportional representation system, reductions of appointed seats for the military, and whether to allow government employees to participate in political activities. But the three bills passed the DPR on January 28, 1999 and put in place an institutional framework for political competition and participation.

First, the new law on political parties (the Law Year 1999 No. 2) allowed all political parties to participate in elections in addition to the "two party and one organization" (the United Development Party [*Partai Persatuan Pembangunan*: PPP], Indonesia Democratic Party [*Partai Demokrasi Indonesia*: PDI], and Golkar)[22]. The law, however, stipulates requirements which parties must meet to participate in general elections: a qualified party must have branches in at least half of Indonesia's all provinces and also have branches in a majority of districts/cities in those provinces[23].

Government employees' participation in political activities was banned in principle. They have so far supported the ruling Golkar Party through the Indonesian Government employees Corp. (*Korpri*), a core organization of Golkar, and have been active participants in vote-collecting activities for Golkar during election periods. Against this background, a row erupted between Golkar, which had relied on the support of some 4 million government employees, and opposition parties, who insisted on the political neutrality of government employees. As Golkar and the two opposition parties failed to find common ground, a government regulation was written separately from the law to stipulate the neutrality of government employees (the Government Ordinance of Year 1999 No. 12). The regulation states that a public employee who is currently a member of a political party would lose his or her membership. But a government employee can participate in activities of a political party after resigning from public duties with the permission of a directly responsible

[22] Under the Soeharto regime, the law to constrain parties to participate in general elections into two parties and one organization was “the Law Year 1975 No. 3 on political parties and *Golongan Karya*, which was revised in the Law Year 1985 No. 3.

[23] Yet, in the 1999 general elections, the requirements to participate in the general elections were relaxed to “the establishment of party branches in one third of all provinces and a majority of district/city of those provinces”, considering a short period between the law enactment and the elections.

superior within three months of the new regulation's enforcement. A government employee who became a member of a political party is assured basic salary for a year. Under these conditions, Golkar compromised and accepted the regulation.

In revising the general election law (the Law Year 1999 No. 3), the government's original plan would have replaced the proportional representation system with the single-member district system. However, as all parties in the DPR saw advantages in maintaining the proportional representation system ahead of the next general elections, the plan for the new single-member district system was dropped as early as November 1998. Despite their agreement on adoption of the proportional representation system, parties broke ranks over how to demarcate electoral districts, bringing parliamentary debate to a deadlock. Assured of firm grass-roots support in local communities thanks to close ties with government employees and the military, Golkar proposed the demarcations at the levels of districts/cities. On the other hand, opposition parties insisted on demarcations at provincial levels, as previously they had not been allowed to set up branches at levels lower than district capitals. What was enacted in the end was an eclectic compromise between the two arguments. The revised general election law adopted the proportional representation system with each province as an electoral district. The number of votes a party garnered in each province determined the number of seats it received. But for an individual candidate to get elected, he/she must collect the highest number of votes in a district/city where he/she runs. And, at least one candidate is returned from each district/city. To enable this electoral method, a party must list as candidates people recommended by district/city branches. The winners of the remaining parliamentary seats are determined by the central executive organ of each political party.

There were also major changes in the provisions for the organization responsible for the administration of a general election. The revision was needed as the election committee has an important role to play to ensure a fair election. In the Soeharto era, the General Election Agency (*Lembaga Pemilihan Umum*: LPU), an organization for election management, was headed by the Minister of Home Affairs. At regional election committees, the heads of first-level (province) and second-level (district/city)

regional governments, who doubled as top regional officials of Golkar, served as chairmen of the committees, thus making these committees government tools for election manipulation. The newly-established General Election Commission (*Komite Pemilihan Umum*: KPU), that took over from the LPU, consists of five civilian government representatives and representatives of all political parties qualified to participate in general elections, a structure that is expected to ensure the neutrality of election committees[24].

The most contentious issue in the enactment of the law on the legislative composition (the Law Year 1999 No. 4) was how to handle the number of parliamentary seats allocated to the military in each parliament of the MPR, the DPR, and the DPRD. Before revision, the number of DPR seats automatically allocated to the military was 75 out of 500 (the Law Year 1995 No. 5). After the collapse of the Soeharto regime, democratic forces outside the government called for a review of the military's "dual function" (*dwi-fungsi*), and as a first step of that review, elimination of DPR seats allotted to the military was proposed. Faced with the need to respond to public demands, all parties in the DPR reached consensus that the military's appointed seats should be reduced but were unable to agree on a number due to the divergent opinions of the parties involved. In particular, the opposition PPP demanded total abolition of appointed military seats, going head-to-head with the military faction in the DPR that wanted to maintain the military's involvement in politics. Eventually, an agreement was forged to halve the number to 38 in the DPR (10% of the total seats in the DPRD).

The composition of the MPR also has been altered. First, the total number of MPR seats was cut from 1,000 to 700. The new total is broken down as follows: 500 for DPR members, 135 for regional representatives, five each elected from each province, and 65 for representatives of organizations. Regarding regional and

[24] However, in the 1999 general elections, various problems aroused from the KPU itself. For example, the result of the general elections was not smoothly approved because of conflicts over interests of KPU members from political parties. It was also found out that KPU members themselves committed in corruption scandals. Thus, in June 2000, the law on general elections was revised (the Law Year 2000 No. 4). It regulates that KPU members are taken over by non-party, independent professionals. On April 24, 2001, the new KPU was inaugurated after the president acknowledged 11 candidates selected by the DPR.

organizational representatives practically appointed by the president, the new law stipulates that the latter is named by the DPR in real terms and the former is appointed by the DPRD of each province. The new law, therefore, made it impossible for the president to arbitrarily intervene in the makeup of the legislatures. As analyzed in the section 2, limits on political parties and the system of appointed members in the MPR were the major key tools for Soeharto to maintain the authoritarian regime for a long term. The enactment of this new law, however, deprived the president of all tools to control parliamentary politics.

(3) Institutionalization of Power Relationships

Together with political liberalization and the institutionalization of political competition and participation, another important component of the political institutional reforms are changes regarding the powers of state organizations and the power relationships among various organizations. The question of how to institutionalize the political power and how to regulate the use of that power inevitably entails the question of what sort of a constitutional system should be established. After the Soeharto regime collapsed, political elites came to share the understanding that the 1945 constitution allowed Presidents Soekarno and Soeharto to concentrate power in their own hands and abuse that power while holding the reins of government for many years. Thus, the first issue that came up in discussions on the institutionalization of new power relationships was how to deprive the president of state powers currently concentrated in his hands.

The first step taken to eliminate such powers was adopted by the MPR special session in November 1998. The MPR Decision Year 1998 No. 12 scrapped the MPR Decision Year 1998 No. 5 in March 1998 that granted the president the so-called emergency supreme power --- the right to declare a state of emergency and take whatever measures necessary to maintain the security and stability of the nation. The MPR Decision Year 1999 No. 13 set a maximum tenure of office for the president and vice-president of two five-year terms. Previously, there had been no legal limit on their tenure.

However, at this point, intellectuals and political elites began to point out that MPR decisions were not enough to institutionalize limitations on presidential powers. Political parties which won seats at the June 1999 general elections also began strongly demanding the necessity of the constitutional amendment. The MPR that went into session on October 1, 1999, set up the working committee (*Badan Pekerja*) on constitutional revisions in a bid to include MPR special session decisions of the previous year in the constitution. The committee agreed to make the minimum revisions to the constitution necessary to curtail presidential powers, including a specific term of office for the president and limitations on the president's legislative and personnel powers.

The most significant change in the constitution is the two-term, 10-year limit placed on the president's term of office (Article 7). The pre-revision constitution's Article 7 stipulated that "the term of office of the president and the vice-president is five years, and they can be reelected." Thus, there was no legal reference to multiple terms. The revised constitution stipulated that the president and vice-president can be reelected for one more term only, with the provision that "the term of office of the president and vice-president is five years, and they can be reelected for another term only."

On presidential legislative power, the constitution was revised to state that "the president has the authority to submit legislative bills to the DPR", instead of "the president has the authority to enact laws with the consent of the DPR" (Article 5, Clause 1). The revisions also require the approval of both the DPR and the president for the enactment of all legislative bills (Article 20, Clause 2). While the pre-amendment article defined the sharing of legislative authority between the president and the DPR, this revision deprived the president of the right to enact laws by the president’s own authority. The president now has only the authority to propose bills. This amendment constitutionally guaranteed the dominance of the DPR over the president in the governing structure of Indonesia.

Presidential authority over appointments and other personnel matters was also curtailed. The so-called presidential privileges can no longer be exercised single-handedly, including the right to appoint and receive envoys, pardons and

amnesties such as commutations and restoration of civil rights, and conferment of honors and medals. The president now needs to consult with the DPR for ambassadorial appointments (Article 13, Clauses 1 and 2), with the Supreme Court for commutations and restoration of civil rights, and with the DPR over amnesty and pardon (Article 14, Clause 1). The conferment of honors and medals is subject to a separate law to be written later.

Constitutional revision was a very serious undertaking because the 1945 constitution was changed for the first time since independence. But the revision work went ahead without facing any particular roadblocks, because parliamentarians beyond party lines all shared the awareness that the two previous governments of Soekarno and Soeharto had monopolized and abused power. In addition, the revision work was made easier after the November 1998 MPR special session repealed the MPR Decision Year 1983 No. 4 about the national referendum for the constitutional revisions (the MPR Decision Year 1998 No. 8). The 1983 decision required a national referendum on the need to deliberate a constitutional revision, before the MPR begins its consideration. The law on national referendum was enacted in 1985 (the Law Year 1985 No. 5). Soeharto turned the 1945 constitution, a convenient tool for his effort to retain power, into an eternal code of law of the nation by erecting high procedural hurdles against constitutional revisions.

As looked at above, political transformation with democratization enabled the amendment of the 1945 Constitution, which had been supposed highly difficult. Even under the circumstances described above, however, the first revisions were kept to a minimum. The MPR decided to continue deliberations at the working committee on constitutional revisions after the adjournment of the 1999 session. The committee was expected to reach conclusions by August 2000. The pending issues for continued debate include the direct election of the president, a review of the roles of the MPR and the DPR, abolition of the DPA, and strengthening of the functions of the BPK (the MPR Decision Year 1999 No. 9).

2. The Second Constitutional Amendment and the Emergence of New Political

Institutions

The transition from authoritarian to democratic regime with the fall of Soeharto government was inevitably accompanied with the transfer of power from the president and the executive branch to the legislative branch. The democratization reform was implemented in the form of depriving the power of the president and giving it to the legislature since it was reviewed that the concentration of power in the president and the merginalization of the legislature allowed the dictatorial government of Soeharto. The MPR was convened once in five years practically only to elect Soeharto as the president under his regime. But it is decided in the general session of the MPR in October 1999 that the annual session (*Sidang Tahunan*) to discuss administrative polices of each high state organ is convened every year in addition to the general and special sessions. The MPR is expected to play a function as the highest state organ in a real term with meeting annually.

In August 2000, the MPR held its annual session as the first attempt to evaluate the deeds of the President in the previous year. This annual session was opened at the time of a furious confrontation between President Abdurrahman Wahid and political parties in the legislature, so that it turned out the political bargaining table between the two (Kawamura & Sato [2001: 389-391]). However, from the perspective of democratization, the MPR delivered an important decision which would possibly influence the dynamic of Indonesian politics in the future: that is, the second amendment of the 1945 Constitution.

As mentioned above, the Ad Hoc Committee I of the Working Committee of the MPR started to discuss the second round after the general session of the MPR in November 1999. It came up with an amendment draft revising 79 clauses in 20 chapters of the constitution and presented it to the annual session. At the annual session, the Committee A deliberated it and sent its draft to the plenary session which adopted it on August 18. We analyze the main amendments below.

The first point of the amendment is the regulation of basic human rights. If Indonesia intends to become a democratic state, one of the top priority tasks is the

establishment of constitutional guarantee of human rights and freedom as inalienable rights of human beings certainly. The Ad Hoc Committee of the MPR had already agreed at an earlier stage of discussions that this had to be done. Thus, the constitutional guarantee of human rights was established in the 1945 Constitution.

Provisions about fundamental human rights were based on the Bill of Basic Human Rights in the MPR Decision Year 1998 No. 17 and finally incorporated in Articles 28A through 28J in the new Chapter XA. First of all, the rights of equality and freedom were proclaimed. Equality of all citizens under the law (Article 28D) and prohibition of discrimination (Article 28I) were proclaimed along with the freedom of thought and conscience, freedom of religion, freedom of assembly and association, and freedom of expression (Article 28E). Second, in order not to repeat the rampant state abuses of human rights in the past, the revised constitution has new provisions on the freedom of human body. These provide for protection of children (Article 28B), the protection by laws (Article 28D) and prohibition of use of threat or torture (Article 28G), any kinds of bondage, and retroactive punishment (Article 28I). New stipulations were also adopted to guarantee freedom of economic activities, including freedom to choose one's occupation, freedom to choose and change one's residence (Article 28E, Clause 1), and property rights (Article 28H, Clause 4). The right to work and to get good value for it is provided in Article 28D. Further, quite a few clauses were introduced to guarantee social rights. Beginning with the guarantee of the right to life in the first article of the chapter for human rights (Article 28A), these articles provide for a broad range of social rights, such as children's right to grow (Article 28B) and receive education, the right to benefit from development of scientific technology and culture (Article 28C), the right to disseminate and receive information (Article 28F), and the right to receive health and medical services and social security benefits (Article 28H). Finally, the revised constitution declares that these fundamental human rights "shall not be restricted under any circumstances" and "guaranteeing, developing, maintaining, and enriching the basic human rights shall be the duty of the state" (Article 28I).

The second point of the amendment is the clauses about local government.

Following the collapse of the centralized governance of the Soeharto regime, local residents began to strongly demand that the central government powers be largely ceded to local governments. The central government is eager to satisfy this demand as a way to preserve national integrity and decided to implement decentralization as from January 2001. Accordingly, the constitutional amendments about local government have been introduced this time. Although there was Chapter VI about the local administration in the original constitution, pre-amendment Article 18 had only stated that "matters on local administration shall be decided by law". This amendment thus revised Article 18 and enriched the regulations on regional autonomy with the addition of Article 18A and 18B.

These clauses affirm the principle of regional autonomy. Local governments are to have their respective characteristics reflecting local conditions and will respect local custom laws (*hukum adat*) and traditions. It was also stipulated that at the provincial and district/city levels, local governments and regional legislative assemblies are to be established. It is also important that the local assembly representatives are to be elected by popular vote.

Whereas the clauses about the DPR had been revised through the first amendment of the constitution, they were again amended, if slightly, through some change of texts and addition of new articles. First, amended Article 19, Clause 1 establishes the constitutional principle of popular vote, stating that "DPR representatives are chosen in the general elections". Some DPR seats still occupied by the military de jure are for abolition in 2004 (MPR seats for the military will be abolished by 2009), but the constitution has confirmed it. Second, a clause was also added to Article 20, stating that a bill passed by the DPR but not signed by the president shall automatically become a law after the lapse of thirty days. Article 20A, a new provision, defines that the DPR has the following functions and rights: that is, functions to make laws, examine the state budget, and check the activities of administration; and rights to interpellate (*hak interpelasi*), investigate government affairs (*hak angket*), and express opinions (*hak imunitas*). In addition, DPR members have the rights to submit questions, deliver proposals, express opinions, and present views with immunity (*hak imunitas*). These

amendments are intended to strengthen the powers of the legislature and rectify the Soeharto period's power bias in favor of the executive branch.

Other matters to be pointed out are additions and revisions of Chapter XII, Article 30 about the state defense and security. Here, the military and police were clearly defined as separate organizations with a legal base. The Indonesian military was defined as the national defense force and the State Police as the public order enforcer.

Other amended clauses are those regarding the national territory (Chapter IXA, Article 25E), citizens and residents (Articles 26 and 27), and the national flag, language, coat of arms and the national anthem (Articles 36A-C).

The major progress of constitutional amendments in 2000 certainly is the establishment of constitutional guarantee of fundamental human rights. The 1945 Constitution as revised has certainly come a step closer to a modern constitution model. National human rights NGOs also welcomed the achievements. However, the human rights clause in Article 28I that "prohibits retroactive punishment" (*hak untuk tidak dituntut atas dasar hukum yang berlaku surut*) aroused controversy among lawyers and human rights activists, however. This clause follows the principle that "an act that was not considered a crime when committed shall not be punishable even if a law enacted later makes it punishable." The constitutions in developed countries including the Constitution of Japan adopt this principle as the prohibition of ex post facto law, especially in the case of penalty, to protect human rights.

Questions about this principle are raised because there are concerns that due to this clause, it may become impossible to bring to the court the various human rights violations committed in the past by the military and other government agencies. For the Indonesian government promoting democratization, "settlement of the past" is one of the most crucial tasks. After the fall of Soeharto government, the Supreme Public Prosecutor's Office began to inspect human rights violation committed by the military in Aceh and East Timor (Kawamura [1999a: 400]; Kawamura [2000a: 385-387]; Kawamura & Sato [2001: 385]). The government also set up the special court to inquire into a case on human rights violation, based on the law on the human rights court (the Law Year 2000 No. 26), and tried to resolve those problems. However, fears

are being voiced that this constitutional clause may close doors to legal settlement of the past human rights abuses. Suspicion was intensified as the fact that military had actively lobbied for the insertion of this clause was exposed. The clause, in fact, had not been discussed in the Ad Hoc Committee I before the annual session. However, the addition of its clause was decided by political maneuvering of the military against other MPR members during the annual session. Neither did the Committee A of the MPR deliberate about it. Thus, it is a questionable amendment procedurally as well.[25]

These deficiencies notwithstanding, the new amendment represents a major step toward the substantiation of constitutional democracy. In this context, it is important to pay attention to the aborted parts of the amendment proposal. Although 79 clauses were prepared for the amendment, only 25 were eventually adopted. The items on which agreement was not attained, were deferred to further deliberation. The MPR Decision Year 2000 No. 9 stated that another amendment draft should be finalized by the annual MPR session in 2002.

MPR left three issues unsettled when it finished the first round of constitutional amendment. These were a change in the method of electing President, abolition of appointed MPR members, and constitutional guarantee of human rights. Only the last point was settled in the second round of amendment. Regarding the former two items, the parties and factions in the MPR failed to form a consensus despite their unanimous admission of the need for the two revisions. Agreement was difficult to be achieved because the envisioned changes involved serious and delicate matters that could affect future positions of all the parties.

In addition to the above, the PPP, the Moon Star Party (*Partai Bulan Bintang*: PBB), and some other Islamic parties tabled in the Ad Hoc Committee I of the MPR a proposal that a clause from "the Jakarta Charter" be incorporated into the constitution. This proposal aroused a headed debate. Proposed for insertion was the Jakarta Charter passage reading, "with adherence to Islamic laws (*syariat Islam*) obligatory to its followers," which, according to those who proposed, should be put together with the

[25] Regarding an evaluation about the clause of the prohibition of retroactive punishment in the

constitutional clause of Article 29 reading, "The state shall be based upon the belief in the One, Supreme God." In fact, this proposal went back to the time of drafting the 1945 Constitution. Prior to independence, Islamic forces pressed the adoption of the Jakarta Charter as the principle of the nascent state. But Soekarno and other nationalist leaders opposed it strongly as they were seeking "unity in diversity" as the principle of the state. Soekarno replaced the words especially referring to Islam with "the belief in the One, Supreme God," making it *Pancasila*. After independence, *Pancasila* was considered as the single, inviolable principle of the state, but democratization destroyed its sacredness. Democratization also prompted Islamic forces to bring the Charter forward again.

Responding to this, the Indonesia Democratic Party of Struggle (*Partai Demokrasi Indonesia Perjuangan*: PDI-P), Golkar Party, and other nationalist parties, of course, were against the Islamic proposal. The National Awakening Party (*Partai Kebangkitan Bangsa*: PKB), the National Mandate Party (*Partai Amanat Nasional*: PAN) and other moderate Islamic groups also opposed it since they considered that it would undermine national unity. Outside the MPR, major Islamic organizations like Nahdlatul Ulama (NU) and Muhammadiyah, along with intellectuals, raised critical voices against it. As criticism from inside and outside the MPR was overwhelming, the proposal was not discussed at the annual session. Most parties did not take the proposal seriously, regarding it as some Islamic parties' propagandistic maneuver to attract their supporters[26].

These three and many other items were carried into the working committee of the MPR for further examination. On points where agreement was considered highly unlikely because of differences over interests and views, no serious efforts to come to compromise were made during the annual session. Resolution by voting was left out of consideration. Many issues had to be put off as well because the largest party PDI-P was patently unenthusiastic on the issue of constitution amendment. PAN, rather eager to amend the constitution, criticized PDI-P for its reluctance.

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context of democratization in Indonesia, see Kawamura [200b: 49-50].

The MPR Decision of Year 2000 No. 9 was attached with proposals of articles so far for the deliberation of the third constitutional amendment. Based on these proposals, the MPR continued debates to prepare a draft until the MPR annual session in 2002.

4. The Changing 1945 Constitution and Politics under "the Parliament-Dominating Presidential System"

The democratic transition in Indonesia, beginning from the fall of the Soeharto regime in May 1998 to the formation of the Abdurrahman Wahid government in October 2000 went rather smooth, smoother than expected. At the very moment when the transition from the Soeharto's authoritarian regime to the democratic regime was over, however, Indonesian politics began to suffer from a gap between dream and reality. Although "the National Unity Cabinet" (*Kabinet Persatuan Nasional*) was formed by all the major political parties in the legislature after the election of President Abdurrahman Wahid, lack of unity among the cabinet members aroused shortly, and the management of the government became rather party-oriented.

The president, then, relegated ministers from political parties, replacing them with non-party politicians who had an individual relationship of mutual trust in order to enhance the homogeneity. Contrarily, political parties deprived of administrative power launched an offensive against the government in the legislature. Especially, PAN led by MPR chairperson, Amien Rais, PBB, PPP and other Islamic parties were offended by the president, who proposed policies against interests of "the Central Axis" (*Poros Tengah*), a Islamic-party alliance which played a distinguished role in electing President Abdurrahman Wahid. The president, for example, proposed an anti-Islamic policies including opening diplomatic relationship with Israel. On another occasion, the president forced a minister from an Islamic party to resign. In April 2000, ministers from PDI-P and Golkar party were dismissed, bringing all political parties in

[26] Interview with a MPR member, Alvin Lie (PAN) on August 24, 2000.

the DPR to the anti-president camp.

In the annual session of the MPR of August 2000, Abdurrahman Wahid sidestepped a raid from political parties by devolution of daily administration to Vice-President Megawati. This compromise, however, did not satisfy the *Poros Tengah*. They, on the contrary, began to pursue a suspicion of corruption committed by the president in the legislature (Kawamura & Sato [2001: 389-391]). The DPR, exercising the right to investigate government affairs, investigated its corruption case. On February 1, 2001, when the Special Committee of the DPR released a report to point out the possible involvement in the scandal of the president, the DPR delivered "the Memorandum" in order to warn against Abdurrahman Wahid (the Decision of the 36th DPR Plenary Session on February 1, 2001). The president responded to this memorandum on 28 March, criticizing the DPR with a confrontational posture that the memorandum lacked a persuasive legal base. The DPR, then, delivered the second memorandum on April 30 (the Decision of the 53rd DPR Plenary Session on April 30, 2001), warning the president again. Because the president's response to this memorandum on May 29 was unsatisfactory, the DPR adopted on May 30 the resolution to demand a summons of the MPR special session that would discuss the impeachment of the president (the DPR Decision Year 2000-2001, No. 51). The confrontation worsened quickly after this date. On July 22, Abdurrahman Wahid announced the Presidential Declaration (*Maklumat Presiden*) that regulated the suspension of the DPR, the advancement of the general elections, and the suspension of Golkar party. This reminded the Indonesian people the suspension of the DPR in 1960 by Soekarno, but the difference was that neither the military nor most of political parties support the president at this time. The MPR Chairperson Amien Rais, quickly responding the president's move, denied the effectiveness of *Maklumat* with the supporting legal judgement from the Chief Justice of the Supreme Court (the Letter of the Chief Justice of the Supreme Court, Year 2001, No. 419). At the same time, he moved up the date of opening the MPR special session, and decided the impeachment of Abdurrahman Wahid (the MPR Decision of Year 2001, No. 2) and the promotion of Vice-President Megawati to the president (the MPR Decision Year 2001, No. 3).

A series of these events showed the emergence of new political phenomenon in the post-democratization period. Political parties in the legislature have been given a greater role since democratization. They challenged the president as the head of the administration in order to further their influences. Besides, the confrontation between the administration and political parties hindered the Abdurrahman Wahid government from tackling tasks of the realization of social justice, the maintenance of the state unity, the resolution of regional conflicts and the stabilization, and the economic recovery (Kawamura & Sato [2001: 383-388]). The competition between the executive and the legislative is certainly a characteristic of democratic politics. Why did its competition in Indonesia get worse enough to bring about political stagnation? Why was the president driven into the impeachment? Here we examine new democracy in Indonesia and reasons of political crisis in relation to new political institutions resulted by the constitutional amendment.

The fundamental reason of political crisis in Indonesia after democratization lies in a problem inherited in its political institutions. In Indonesia, the MPR is situated above all the state organs. This structure looks like political institutions dominated by the legislature. By the Soeharto government fell down, however, the president had never been threatened its position. It is because the president who held much of the state power established the system favorable to his power maintenance. Thus, he limited the establishment of political parties, ensured the election of his supporters in the DPR with using vote-getting system, and sent a great number of his appointees into the MPR, which elected the president. The president finally succeeded in merginalizing the legislature of both the MPR and the DPR. In other words, the president manipulated the system of elections and the legislature in order to make the ruling party dominated legislature. This was the governing regime of Soeharto.

Yet, democratization changed all. First, since the free elections are ensured, the DPR is no longer under the control of the president. Next, the new law on the legislative composition altered the composition of MPR members. Because the total number of MPR members is reduced from 1,000 to 700, the ratio of 500 DPR members in the MPR increases relatively. The president’s right to appoint 135 regional

representatives and 65 organizational representatives is abolished. The president can no longer control the MPR institutionally. Instead, those who can control the MPR have become the DPR members.

Furthermore, as mentioned in the Section 3, the president has been deprived of the huge authority as regulated in the 1945 Constitution while the constitution has been amended two times. Instead, here also, the DPR is given various authorities to control the administration. Political parties who gained influences after democratization have reformed political institutions in a way of giving less power to the president and more power to the legislature, i.e., their own base. The result is the emergence of political institutions, overwhelmingly dominated by the legislature. Thus, political institutions in Indonesia is transformed from "the administrative-dominated presidential system" in the Soekarno and Soeharto period to "the legislative-dominated presidential system" after democratization.

Abdurrahman Wahid was elected as the president while the institutional framework was undergoing such a big change. Under the legislative-dominated presidential system, the president has to greatly rely on political parties in the legislature. Although Abdurrahman Wahid gained a majority of the MPR in the presidential election due to the strategy of *Poros Tengah*, his own party base was the fourth party, PKB who held 51 seats in the DPR. He could not control the DPR without other political party. Thus, the National Unity Cabinet was formed by a coalition of all the major parties without a clear policy agreement, which led to a gradual decay of the government. First, the opposition *Poros Tengah* began to attack against the president as ministers from their party was dismissed by Abdurrahman Wahid. Golkar Party and PDI-P gradually left the government as well. As 90% of DPR members abandoned Abdurrahman Wahid, the political crisis came.

In addition to the problem of this "legislative-dominated presidential system", there are two other reasons for the rapid aggravation of political crisis: first, the party system in Indonesia as "the polarized pluralism"; second, the leadership of Abdurrahman Wahid not as the coordinative style but the initiative style (Kawamura

[2001])[27]. Even in the legislative-dominated presidential system, for example, if there is a political party that holds a majority of MPR seats, it can form a stable government as the single ruling party. However, it is quite difficult to expect such a major political party to emerge in Indonesia. Accordingly, cooperation among parties is always necessary at the presidential election in the MPR. Therefore, a new government is likely to be formed by a coalition of political parties. Even if a single minority government is formed, its minority party must presuppose cooperation with other parties in daily political management. When the president does not have a political base getting a majority in the legislature, he is always in a weaker position against parties in the legislature in political administration. Because the president does not have the right to dissolve the DPR, he always has to make a concession. If the president wants to realize his policy, he has to maneuver to form a majority in the DPR while coordinating various interests and expectations of parties in the legislature. Thus, in order to manage politics of Indonesia in a stable manner, the president needs to be equipped with high political skills. On the contrary to this need, Abdurrahman Wahid curtailed his political base by himself as dismissing political parties from the cabinet immediately after the inauguration. Besides, he never maneuvered to form a majority in the legislature. Abdurrahman Wahid continued to carry out politics without recognizing the newly emerged "legislative-dominated presidential system under the polarized pluralism". The lack of its recognition was fatal to him[28].

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[27] "The polarized pluralism" is, of course, cited from the model of party system argued by Sartori [1976]. According to him, in the system of polarized pluralism, ideologically distant 6-8 parties compete in the elections, and in many cases a central party takes office either by itself or by a coalition. The ideology mentioned here refers to the competition of right and left, basically observed in European continental countries. If "the *aliran*," the unique ideological competition, is recognized as the ideological condition in Indonesia, however, the Sartori's model of party system is fully applicable to Indonesia. In this connection, if we calculate the effective number of political parties (which equals to one divided by the total of the square of obtained votes percentage or seats percentage of each party; that is, the number of political parties with the consideration of a scale of parties) in the DPR after the 1999 general elections, the effective number of political parties are 5.1, if calculated by obtained votes percentage, and 4.7, if calculated by seats percentage. By the way, the first five biggest political parties are in due order PDI-P, Golkar Party, PPP, PKB, and PAN, followed by PBB. As considering influences of parties over the deliberation in the DPR, 5 effective political parties are a reasonable result. For the result of the 1999 general elections, see Kano [1999] and Kawamura [1999b].

[28] In addition to three problems, that is, the legislative-dominated presidential system, polarized

President Megawati, promoted from the vice-president on July 23, 2001, formed the Mutual-Help Cabinet (*Kabinet Gotong Royong*) after learning the experiences of Abdurrahman Wahid. While taking a balance among political groups into account, she appointed scholars and experts as ministers due to avoid party-oriented administration.

5. Further Amendments and the End of Democratic Transition

The first and second amendments in 1999-2000 were rather smoothly determined because items to be revised did not cause conflicting interests among political parties. After the annual session in 2000, the MPR continued debates to prepare a draft of further amendments in accordance to the MPR Decision of Year 2000 No. 9. Many observers anticipated a deadlock since unsettled issues were potential to change power balance among political parties. However, a lot of important items were newly regulated in the third constitutional amendment.

First, articles on the justice were widely enriched. Article 1, Clause 3 defines that Indonesia is "the legal state" (*negara hukum*). Articles on independence of the justice and court organizations are amended to guarantee its own power and independence (Article 24). A new clause defines the qualification of supreme court judges as well, reflecting the fact that a lot of judges have been condemned for their deep commitment to corruption (Article 24A, Clause 2). Article 24A, Clause 3 and Article 24B reguulate that they are appointed by the newly-established, independent Judicial Committee (*Komisi Yudisial*). More importantly, Article 24C provides the new Constitutional Court (*Mahkamah Konsitusi*). The Constitutional Court has authority of judicial review, decisions on dissolving political parties, and decisions on objections to results of general elections.

Second, the third amendment defines power relationship between the president and the legislative branch more clearly. Of the most importance is that the President is

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pluralism, and initiative president, it should be added as a reason of political crisis that heated political conditions immediately after democratization aggravated political crisis. Indonesia is still in the transitional period toward a stable democratic regime. Both politicians and the people are

elected directly by the people (Article 6A). By this article, the President can have his/her own legitimacy and responsibility toward the people so that he/she can strengthen his/her position. In accordance to this amendment, the procedure of impeaching the president is clearly stated in Article 7B. When the DPR proposes the impeachment of the president to the MPR, the new Constitutional Court interprets its justification before the MPR begins to deliberate its proposal. The MPR can pass its proposal with over two third of votes at the plenary session in which over three fourth of the total MPR members participate. This revision improves unbalanced power relationship between the stronger legislative and the weaker executive, making it difficult for the former to dismiss the latter. On the other hand, in order to legislative authority, Article 7C regulates that the President cannot freeze and/or dissolve the DPR.

Third, the establishment of the House of Regional Representatives (DPD) is also regulated in Article 22C and Article 22D. With this provision, members of regional representatives, who were formerly appointed by the DPRD, are directly elected in each province, forming an independent legislative assembly. The DPD has the authority of discussing, supervising, and submitting laws on regional autonomy or central-local relations.

Furthermore, articles on the general elections, the national finance, BPK are newly inserted or revised as well. As such, many critical amendments were realized in the 2001 annual session of the MPR on the contrary to skepticism. Some items, however, with which political parties could not reach an agreement, were left unchanged again, and would be discussed further until the 2002 annual session. Constitutional issues which have to be deliberated by 2002 were attached to "the MPR Decision Year 2001, No. 11 about the Revision of the MPR Decision Year 2000 No.9 about the Duty of the MPR Working Committee to prepare for a draft of the amendment of the 1945 Constitution," the revised MPR Decision Year 2000 No. 9.

For example, the way of presidential election was one of the biggest focal points for the next amendment. While the direct election by the people were introduced in

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learning "the game of the rule" in democracy (Kawamura [2001: 19]).

the third amendment, there was a difference between PDI-P, who wanted the second voting in MPR, and Islamic parties, who suggested the second direct voting by the people, in such a case that there is no candidate who cannot get a majority vote in the first round of election. This opposing opinions were caused by a difference in strategy in the presidential election between PDI-P, who could ensure one fourth of total seats in the legislature, and Islamic parties, who could not be united at the party level. There were opposing views about another important issue at the third amendment, that is, the alterations on the composition of the MPR. It is proposed that MPR shall adopt the bicameral system, consisted of the DPR and the DPD. PDI-P and Golkar Party, who had many members from the regional representatives, are negative about this proposal due to the fear of decreased faction members in the DPR. On the other hand, the military and police faction in the MPR tried to keep the regulation on "the organizational representatives" because they still want to have seats in the MPR.

Before August 2002, there arouse broad skepticism and criticism about patchy amendments of the 1945 Constitution: some observers demanded to establish an independent constitutional committee which should be given authority to draft a new constitution, while others rejected all the past revisions, suggesting the issuance of the presidential decree to revert to the original 1945 Constitution. Despite of those pessimism, the 2002 annual session of the MPR successfully finalized the fourth amendment, completing all the necessary revisions of the 1945 Constitution.

One of the most significant amendments is the revised Article 2, Clause 1 which stipulates that the MPR is composed of DPR members and DPD members, who are all elected in the general elections. This revision is important in two meaning: first, the MPR has no appointed members of regional representatives, organizational representatives, and military representatives. All the members in the MPR are elected directly by the people. As discussed above, appointed legislative members have been used by the authoritarian regimes of Soekarno and Soeharto as a tool to enable long maintenance of their powers. With this revision, the president cannot any longer hold authority to manipulate composition of the legislative assembly. Second, this new stipulation means that the MPR is consisted of the DPR and DPD. Institutionally, the

MPR is not the highest state organ, but one of the high state organs.

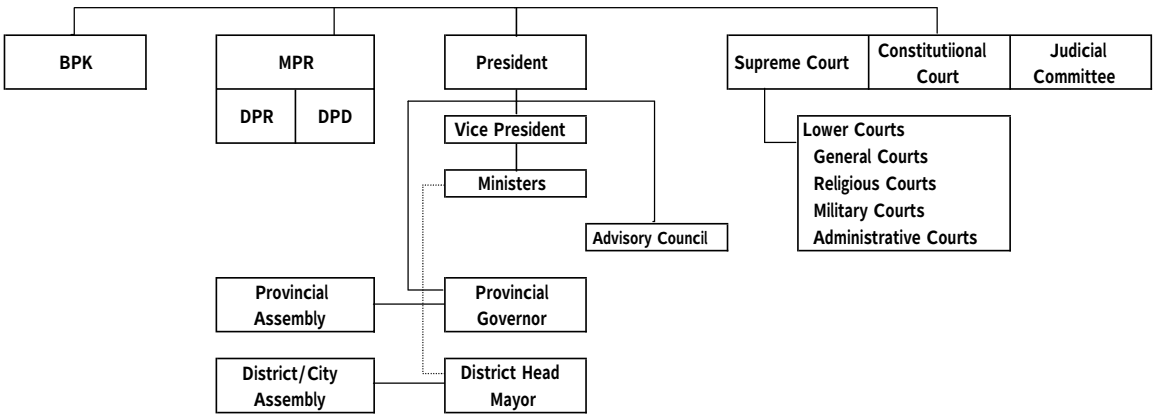
The next important issue in the fourth amendment is how to regulate the second round voting in the direct presidential elections. The new stipulation of Article 6A, Clause 4, says that the first and second pairs of president-vice president candidates in the first round vote advance to the second round vote. The winner in the second vote will be appointed as the new president and vice president. The MPR, which has been the most important and powerful political institution in the post Soeharto period, lost its formal political power against other institutions again, completely changing institutional landscape.

Furthermore, the process of the constitutional amendment is clearly regulated in Article 37. First, the amendment has to be proposed by over one third of MPR members. The session to deliberate the constitutional amendment has to be participated by over two third of the MPR members. And the amendment is decided by majority of the total number of MPR members. Before this amendment, the constitutional amendment required agreement by two third of participants of the MPR session: that is, 334 of 750 MPR members in the case of present MPR, for example. After the amendment, majority of the total members has to agree to a proposal: that is, 375. In addition, Clause 5 of Article 37 prohibits the amendment on the unitary state.

Other revisions include deletion and revision of an article on the DPA (Chapter 4, Article 16) and revisions of articles on education (Article 31, Clause 2, 3, and 4) and economy (Article 33, Clause 4 and Article 34, Clause 2, 3). To note here is the revision in Article 31, Clause 3, saying that the government organize and manage the national educational system in order to elevate faith (*keimanan*), piety (*ketakwaan*), and noble moral in the development of nation's intellectual life. These two Indonesian words have clearly religious implications, especially Islamic implications. Actually this revision was strongly recommended by Islamic political parties. They have continuously failed to revise articles on religion for the past three years. In the fourth amendment, they could not insert the words, "with adherence to Islamic laws obligatory to its followers," into Article 29 again. On the other hand, they succeeded to persuade other parties to agree with these words in the section of education.

With the fourth amendment of the 1945 Constitution, a long process of the constitutional revision after the fall of the Soeharto's authoritarian regime was over. The Indonesian constitution, which had never been revised since 1945 up until 1998, experienced four-time amendments for four-year period of democratic transition. Now the 1945 Constitution has almost no trace of its original form. The governing political institutions have drastically changed, compared with those stipulated in the original 1945 Constitution (see Figure 1-2). Differing from other democratizing countries, Indonesia did not discard old constitution which supported former authoritarian regime, but revised existing constitution to make it adjust to a new democratic regime. However, the amended 1945 Constitution is almost new in content. With the fourth amendment, it can be said that the democratization in Indonesia was over in terms of political institutions. Institutionally, Indonesia successfully transformed its political regime from authoritarian to democratic.

Figure 1-2. The Governing Institutions in Indonesia after the Fourth Amendment of the 1945 Constitution



(Sources) Author.

Conclusion

What has happened in Indonesia since 1998 is a paradigm shift about what "politics" means in Indonesia. Then, where did the traditional values such as "family principle" or "mutual help" go? The values of human rights and democracy were accepted as the

universal in Indonesia. The impact of democratization not only brought a big transformation of political institutions including political liberalization, human rights, elections system, and governing organizations, but also altered the values on “politics” or “political legitimacy” behind the scene.

On the other hand, we need pay attention to the fact that Indonesia after democratization did not replace the 1945 Constitution, the legal base of the past authoritarian regime, with a new one, but adopted it to the new democratic regime through its amendments. Many of other democratizing countries discarded the old constitution and establish a new one after experiencing democratization. The continuity of the constitution is rarely observed after the regime transformation such as in Indonesia. It can be pointed out as its reason that the 1945 Constitution was characterized as “the historical document” in which traditional values like “family principle” found by nationalists in the independence struggle were woven into. Thus, the 1945 Constitution is not only the basic law of the state, but a document that notes the liberalization from oppressive colonialism and a symbol of identity of the Indonesian state. Therefore, values such as family principle and mutual help were not discarded completely. The constitutional amendment after democratization in Indonesia, is an intellectual activity of adopting traditional values into the new era and of accepting a new value.

However, it is also true that arguments on the constitutional amendment after democratization were filled with a bare interest-seeking attitude and a lust for power of each political party. For that reason, some law scholars and NGOs expressed at the early stage concerns that the constitutional amendment by MPR members would easily result in a patchwork, since it could be affected by party interests. Some MPR members, including the chairperson of the Ad Hoc Committee I of the MPR, Jacob Tobin (PDI-P), also recognized that the drafting the constitutional amendment be made by a professional committee consisted of law professors. In response to a strong demand from the society, the MPR decided to set up the Constitutional Committee (*Komisi Konstitusi*) in the MPR Decision Year 2002 No. 1, although it is clear that its committee lost its chance.

The constitutional amendment in the democratic transition has already ended. The Indonesian people are now facing a next issue to manage daily politics in a democratic way under the newly-constructed democratic institutions. Now the people cannot shift the responsibility of political dissatisfaction onto political institutions or leaders. There is no definite model of "democratic politics," in fact. Each country has its own management of democratic politics. A type of democracy reflects history, culture, and social structures of its country. Indonesia is exactly in the middle of establishing its own type of democracy. Political parties and other groups are at the height of negotiation for its selection. Once again, the people of Indonesia may consider for a moment what kind of political life is desirable. (*)

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