

Chapter III The 1945 Constitution and its Amendments

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Chapter III

The 1945 Constitution and its Amendments

I. Introduction

The amendments to the 1945 Constitution have to be looked upon as a constitutional revolution, as since the 5th of July 1959 Soekarno's Presidential Decree was whole heartedly continued by the next president - namely President Soeharto – who upheld the Congressional Resolution no. IX/MPRS/1966¹ until his resignation on the 21st of May 1998.

Although the Transitional Period under the administration of President B.J. Habibie² was looked upon as a very liberal period, it was not president Habibie's honour to be the president that would have brought the amendments to the Constitution, but the honour historically and ironically goes to the two presidents of Indonesia, namely President Abdurrachman Wahid and President Megawati Soekarnoputri. In fact, Habibie's work was more the handling of the reigns of the state, in order not to totally lose control of the state and nation. One of his efforts was to keep 'peace' amongst others through his (wrong) decision to give to East Timor population the referendum that led to his downfall in 1999 and his succession by President Abdurrachman Wahid. Habibie's impulsive decision totally annihilated - the still often praised diplomatic lobbying and negotiations signed previously on the same day by his very experienced and honoured foreign minister Alatas - known as the 'Memorandum of the 15th of May 1998'. As later developments have proven, his decision on East Timor was not 'the end of all trouble' but 'the beginning of more and worst troubles' which still last until today.

The amendments to the Constitution did not come automatically; since the military (especially the army) were still very much involved in day-to-day politics, the struggle was: how to change the opinion (mostly) of the army, convincing them that the pressure - of at least nearly the whole Indonesian intellectual world at universities and mass media - were for amendments to the Constitution, which demand should be looked upon as a 'natural' change. Fortunately, many Founding Fathers have left a

number of documents (although in private hands), in which it was repeatedly stated (in 1945 and in the 50-ies), that ‘the 1945 Constitution is an **emergency constitution**, formulated towards the end of the Second World War; time was pressing³ to build *Indonesia Merdeka*⁴ (Free Indonesia) but without a Constitution as its legal bondage, the Indonesian nation⁵ would never have become a state.⁶

So, the student rebellions of 1998-1999 did not stop but continued, pressing for Constitutional Amendments.

Then an agreement was reached, namely that amendments to the paragraphs of the Constitution could be carried out, but not to its Preamble, containing the philosophy as well as the soul and history of the creation of the Indonesian state and nation. The Congress was of the opinion that a change of the Preamble would (politically) mean a change of the essentials of the Republic of Indonesia, namely Pancasila itself that is stipulated in the 4th alinea of the Preamble. This agreement opened the way for the amendments to the Constitution.

Yet, since the beginning the intellectual world of Indonesia was aware at the same time, of the fact that it was not only the Constitution, but that a number of very important political laws – especially those leading the state institutions itself, such as Parliament (DPR-RI) and Congress (MPR-RI) which are the fruit of elections, also needed a change of laws, such as the Law on Freedom of Speech, the Party Law, Law on Freedom of the Press. Those laws were exactly:

- Law no 9/1998 on Freedom of Speech in Public;
- Law no.2/1999 on Political Parties, replacing Law no. 3/1975 on the Parties and Golkar;
- Law no. 3/1999 on General Elections, replacing Law no. 15/1969 (reviewed by Law no. 5/1975 and Law no. 1/1985);
- Law no. 4/1999 on Status and Structure of Parliament (DPR-RI) replacing Law no. 16/1969 (reviewed by Law no. 5/1975 and Law no. 2/1985 as well as Law no. 5/1995 on the Status and Structure of Parliament);
- Law no. 6/1999 recalling Law no. 5/1985 on Referendum;
- Law no. 22/1999 on Local Government, replacing Law no. 5/1974 on Principles of Local Government and Law no. 5/1979 on Village Administration;
- Law no. 26/1999 on Recalling Law no. 11/1963 on Civil Government Officials in connection with Prevention to Subversion;
- Law no. 27/1999 on Clean Government, free from Corruption, Collusion and Nepotism;
- Law no. 39/1999 on Human Rights;

- Law no. 40/1999 on Freedom of the Press

Three laws specializing on political activities and aiming at a democratic life and democratic political representation are:

- Law no. 2/1999 on Political Parties;
- Law no. 3/1999 on General Elections;
- Law no. 4/ 1999 on the Status and Structure of Parliament (DPR-RI)⁷;

So, it can be concluded that Resolution No. IX/MPR/1999 on the Assignment to the Working Body of the People’s Consultative Assembly to Continue the Amendments of the 1945 Constitution heralded a *Revolution of Legal Strategy* (if the scope and speed of change are taken into consideration), or at its least a ‘devolution’ – if the softer word is preferred above the taboo word.

II. The First Amendment

The previous list of the new laws already gave a picture of how extensive and intensive (taking substance and time with due respect) changes had to be made in nearly all fields of legal policy, in order to meet the new requirements. It stretches from political-geographic relations between the regions and the central government, to individual human rights. As a consequence, a number of not less important laws had to be postponed to 2001, such as the Law on State Defence and the Law on the Police, although on the 18th of August 2000, Congress already made two Resolutions e.g. Resolution no. VI/MPR/2000 on the Separation of the Indonesian Armed Forces and the Police of the Republic of Indonesia; and Resolution no. VII/MPR/2000 on the Functions of the Indonesian Armed Forces and the Functions of the Police of the Republic of Indonesia.⁸

Thus the amendments to the Constitution did not stand alone, but new legislations based on a New Legal Strategy and Policy had to take place, parallel to the formulation of the amendments.

The first amendment to the Constitution only took place on the 19th of October 1999 (during the 12th session of Congress, 1999); it did not yet use the word ‘amendment’ but limited itself to the term ‘improved’ (*yang disempurnakan*). The Resolution ‘to improve’ the Constitution naturally took heed of the required 2/3 majority votes for the opportunity to introduce the amendment such as stipulated by

paragraph 37(1), but also took note of the 2/3 majority votes requirement for the voting of the Resolution.

Going through the ‘improvements’ to the 1945 Constitution, the reader will soon feel or even discover the struggle and sharp conflict between ‘the New Order’ (1967 – 1998) and the Reformation (1998 still continuing until now).

The 1945 - Constitution⁹

Original Version	‘Improved’ version/amendment 19th of October 1999
Paragraph 5 (1) The President holds the power to make laws with the consent of Parliament; (2) The President issues the governmental regulation for the sake of its implementation;	Paragraph 5 (1) The President has the right to submit draft laws to Parliament; (2) The President issues the governmental regulations for the sake of its implementation;
Paragraph 7 The President and Vice President are in office for a period of five years, and after that still eligible for further appointments [to the same office]	Paragraph 7 The President and Vice President hold office for a period of five years, and after that only once are eligible for the same office;
Paragraph 9 Before taking office, the President and Vice President deliver their oaths based on their religion or sincerely promise in front of Parliament and Congress as follows: (Oath of both the President and Vice President): ‘In the name of Allah, I swear to fulfill the obligations of the President of the Republic of Indonesia (of the Vice President of the Republic of Indonesia) justly and at its best, uphold the Constitution and execute all laws and regulations as honest as possible and serve the Land and Nation’.	Paragraph 9 (1) Before taking office, the President and Vice President deliver their oaths based on their religion, or sincerely promise in front of Congress and Parliament as follows: (Oath of the President (and Vice President): ‘In the name of Allah, I swear to fulfill the obligations of the President of the Republic of Indonesia (the Vice President of the Republic of Indonesia) justly and at its best, uphold the Constitution and execute all laws and regulations as honest as possible and serve the Land and Nation’
Promise by the President (Vice President);	Promise ¹⁰ by the President (Vice President):

<p>‘I sincerely promise to fulfill the obligations of the President of the Republic of Indonesia (Vice President of the Republic of Indonesia) at its best and as just as possible, uphold the Constitution and execute all laws and regulations as honest as possible and serve the Land and Nation’</p>	<p>‘I sincerely promise to fulfill the obligations of the President of the Republic of Indonesia (the Vice President of the Republic of Indonesia) at its best and as just as possible, uphold the Constitution and execute the laws and regulations as honest as possible and serve the Land and Nation’</p> <p>(2) If Congress or Parliament cannot be in session, the President and Vice President deliver their oaths, based on their religion or sincerely promise in front of the Speaker of Congress and witnessed by the Chief of Justice’¹¹</p>
<p style="text-align: center;">Paragraph 13</p> <p>(1) The President appoints ambassadors and consuls;</p> <p>(2) The President receives the credentials of foreign ambassadors;</p>	<p style="text-align: center;">Paragraph 13</p> <p>(1) The President appoints ambassadors and consuls;</p> <p>(2) In case of appointing the ambassadors, the President has to take note of the considerations by Parliament;</p> <p>(3) The President receives the appointments of foreign ambassadors after having taking note of the considerations by Parliament¹²;</p>
<p style="text-align: center;">Paragraph 14</p> <p>The President grants clemency, amnesty, abolition and rehabilitation;</p>	<p style="text-align: center;">Paragraph 14</p> <p>(1) The President grants clemency and rehabilitation after considering the considerations of the Supreme Court of Justice¹³;</p> <p>(2) The President grants amnesty and abolition after taking note of Parliament considerations;</p>
<p style="text-align: center;">Paragraph 15</p> <p>The President confers honorary titles, service awards and other honorary awards;</p>	<p style="text-align: center;">Paragraph 15</p> <p>The President confers honorary titles, service awards and other honorary awards, based on laws¹⁴;</p>
<p style="text-align: center;">Paragraph 17</p> <p>(1) The President is assisted by State Ministers;</p> <p>(2) Ministers are appointed and dismissed by the President;</p> <p>(3) Each Minister is head of a Department;</p>	<p style="text-align: center;">Paragraph 17</p> <p>(1) The President is assisted by State Ministers;</p> <p>(2) The Ministers are appointed and dismissed by the President;</p> <p>(3) Each Minister is assigned to fixed administrative assignments¹⁵;</p>
<p style="text-align: center;">Paragraph 20</p> <p>(1) Every Law must be passed by Parliament;</p> <p>(2) When a draft Law has been passed</p>	<p style="text-align: center;">Paragraph 20</p> <p>(1) Parliament holds the power to make laws;</p> <p>(2) Each draft Law is discussed between</p>

<p>by Parliament, but is not ratified by the President, then the draft may not be re-submitted for discussion during the same session of Parliament.</p>	<p>Parliament and the President for mutual consensus; (3) If the draft Law does not reach a common consensus, the same draft Law cannot be submitted again in the same period of session; (4) The President ratifies the draft Laws mutually agreed upon before becoming Law;</p>
<p style="text-align: center;">Paragraph 21</p> <p>(1) A member of Parliament has the right to propose a draft Law; (2) When a Draft has been passed by Parliament, but is not ratified by the President, then the Draft may not be approved, and the said Draft has to be annulled;</p>	<p style="text-align: center;">Paragraph 21</p> <p>Members of Parliament have the right to initiate draft Laws;</p> <p>(In the Second Amendment of the 18th of August 2000, paragraph 20 was additionally amended as paragraph 20 and 20 A saying: ‘(5) In case a Draft Law had been commonly agreed upon and has not been ratified by the President within 30 days after the day of common agreement, that Draft Law legally becomes Law and has therefore be treated as Law’;</p> <p>On the 18th of August 2000, Congress again passed a Resolution no. III/MPR/2000 on the Resources of Law and the Hierarchies of the seven (7) kinds of Laws and regulations also in connection to Presidential Decree and Congressional Resolution, placing the Congressional Resolution under the Constitution but above the laws and governmental regulations as well as Temporary Laws (in case of Emergency), and Bye Laws having the lowest rank);</p>

From the Amendment to the Constitution as a Resolution of Congress on the 19th of October 1999 it is clearly to be seen, that the purpose of the Amendment was to increase the power of Parliament on the one hand, and to make the President dependent on Parliament on the other hand. The fact that the Congressional Resolution of the 18th of August 2000 confirmed and made ‘automatic ratification’ and legally coming into force of a Draft Law that had been agreed upon by Government and Parliament for more than 30 days, makes the State even less dependent from the possible whims of a president – who for whatever reason or all of

a sudden prefers not to ratify a commonly agreed Draft Law – and at the same time stresses the democratic principle to be adhered to and indirectly shows the upperhand of Congress .

In Home Affairs and especially in Defense and Security Matters, Parliament indeed has an upper hand, but which is still sanctioned by the needed signature (as token of agreement by the Government) of the relevant ministers for Draft Laws in question, being under their jurisdiction of the said ministers. But once agreement has been reached and signed by Parliament and Government on a Draft Law, even if the President all of a sudden objects, based on Amendment to the 1945 Constitution on paragraph 20 and 20A the Draft Law automatically comes into force after 30 days of the joint agreement, with or without the ratification of the President.

III. The Second Amendment (known as the ‘First Amendment’)

On the 18th of August 2000 a second amendment took place. This time, stress was given to:

- (1) The political competencies of the regions towards the central government and visa-versa (Paragraph 18);
- (2) the election and place of members of Parliament as well as its sanctions (paragraph 19);
- (3) the rights of the citizens such as democratic and individual rights (human rights, cultural rights, social rights, political rights, economic rights and the rights for protection by the State for the execution of those rights (Paragraph 26, 27, 28, 28 A, 28B, 28 C, 28 D, 28E, 28F, 28 G, 28 H, 28 I, 28 J);
- (4) Territory of the State (25 E), State Defense (paragraph 30), flag and symbols of the state (paragraph 36 A), National Anthem (36B, 36C);
- (5) Separation of the Military Armed Forces from the Police (Congressional Resolution no. IV/MPR/2000);

The paragraphs of Amendment II (18th of August 2000) really show the efforts made by both Government and Congress to go more into details on the legal formulations and possible consequences, which is proof of the seriousness of both the Government and the Congress of those days, to meet the modern and global demands and challenges, modernize the Indonesian State, society and nation with one very important decision is to separate the Police from the Armed Forces, thus also separating more clearly the assignments and responsibilities of the Police as the state

arm for social order, security and law enforcement. On the other hand the Armed Forces are more stressed in their territorial defense and possible combatant approach. Its full-fledged translation a.o. is found in 'Part 5 : 'Rights and Human Fundamental Freedoms' (= '*Hak-hak dan kebebasan-kebebasan dasar manusia*') of the UUDS-1950. This part was extended by 'Part 6: 'The Fundamentals of the Principles' (= '*Asas-asas Dasar*') as point 35 (the first point of Part 6) starting with the sentence **'The will of the people is the foundation of the power holder; this will is pronounced through periodic, secret, honest and public elections, carried out by the population who are holders of the ballotetc.'** Looking at this sentence, one is apt to say that the drafting of the Amendments to the 1945 Constitutions in many ways were similar or even also inspired and reinforced by the legal spirit of the 1950 Constitution, having been drafted by the same Founding Fathers of the 1945 Constitution. It is regrettable that soon after the 5th of July 1959, the 1950 Constitution was quickly forgotten and with it slowly the nationalistic spirit and optimism for the nation and state of Indonesia became vague and thus more open for foreign and sometimes strange political models and ideas, which negative effects and impacts are still to be felt and to be overcome until today (and hopefully not for too long). Internal political strives than soon made the UUDS-1950 irrelevant for nearly another 50 years, although so much wisdom of Political Philosophy and Philosophy of Law was imbedded in that Constitution.

It was only the Total Crisis of 1997/1998 – that forced many academicians to restudy and compare the already forgotten Constitutions of our nation. It was a consolation to find out that in many ways the idealism for Reformation on Constitutional and Legal questions, did not differ too much from the ideals found in the old Constitutions; the fact was that the rediscovered dreams, ideals and thoughts of the Founding Fathers were enlightening and became a new source of strength and confidence for many intellectuals, knowing that the Reformation was on the right track. This knowledge and confidence were again a source of additional courage to continue Legal and Constitutional Reformation, and slowly a hope for a better tomorrow returned. It is then with this background and within this light, that this study and report on the present three Amendments to the 1945 - Constitution should be understood.

In this context the writer of this report had been very lucky to be one of the participants of the so important Congresses of 1999, 2000, 2001 and so, part of the

report is also based on personal observations and experience during those so important sessions and meetings¹⁶.

The 1945 Constitution

The Original Text	The Second Amendment 18 th August 2000
<p>Chapter VI Regional Governments Paragraph 18</p> <p>The subdivision of Indonesia into larger and smaller units with their administrative compositions will be determined by Law, giving due thought and consideration to the principles of consultation in government's state administration, and providing rights of origins in regions that are extraordinary in their nature;</p>	<p style="text-align: center;">Chapter VI Regional Governments Paragraph 18</p> <p>(1) The Indonesian Unitary State is subdivided into provinces and the provinces into regions/<i>kabupatens</i> and towns with each province, region-and town having their own Local Government, which is determined by law;</p> <p>(2) The Local Government of the Provinces, regencies /<i>kabupaten</i>, towns administrate their own administrative affairs based on the principles of autonomy and responsibility of assistance;</p> <p>(3) The Local Government of the province, region/<i>kabupaten</i>, and town each have their Local Parliament, whose members are chosen by elections;</p> <p>(4) The Governor, the regent/<i>bupati</i> and mayor, in concurrently being head of the province, regency/<i>kabupaten</i> and town are elected on the principles of democracy;</p> <p>(5) The Local Government exerts autonomy in its widest sense, except for those competencies which by law are the competencies of the Central Government;</p> <p>(6) The Local Government has the rights to set its own Bye Laws and other laws needed for the execution of the autonomy and responsibility of assistance;</p> <p>(7) The structure and ways of the execution of Local Governments is stipulated by law;</p>
	<p>Paragraph 18 A</p> <p>(1) The relation of the competencies between the Central Government and</p>

	<p>the governments of the provinces, regencies/<i>kabupatens</i> and towns, or the relation of competencies between the provinces and their regencies/<i>kabupatens</i> and towns, is to be regulated by laws which take into consideration the special traits of each area and their multiplicity;</p> <p>(2) The financial relations, public services, exploitation of the natural and other resources is set in laws regulating the relations between the Central Government and the Regional Governments, and is executed justly in accordance to the laws;</p>
	<p style="text-align: center;">Paragraph 18 B</p> <p>(1) The State acknowledges and respects by law the special units or extraordinary traits of local administration;</p> <p>(2) The State acknowledges and respects units of Common Law Communities and their respective still existing traditional rights, and parallel to the development of society and based on the principle of the Indonesian Republican Unitary State, which has to be regulated by law;</p>
<p style="text-align: center;">Chapter VII Parliament Paragraph 19</p> <p>(1) The structure of Parliament will be determined by law;</p> <p>(2) Parliament comes to session at least once a year;</p>	<p style="text-align: center;">Chapter VII Parliament Paragraph 19</p> <p>(1) Members of Parliament are elected through elections;</p> <p>(2) The structure of Parliament will be regulated by law;</p> <p>(3) Parliament comes to session at least once a year;</p>

<p style="text-align: center;">Paragraph 20</p> <p>(1) Every Law must be passed by Parliament;</p> <p>(2) When a Draft Law does not receive the endorsement of Parliament, the said Draft may not be re-submitted to Parliament for discussion again during the same session;</p>	<p style="text-align: center;">Paragraph 20</p> <p>(1) The legislative power is in the hands of Parliament;</p> <p>(2) Every Draft Law has to be discussed by Parliament and the Government, in order to reach common agreement;</p> <p>(3) If the Draft Law cannot be agreed upon [between Parliament and the President], it cannot be re-submitted for re-discussion during the same Parliamentary session;</p> <p>(4) The President ratifies the Draft Law already commonly agreed upon, to become Law ¹⁷;</p> <p>(5) In case of an already reached common agreement on a Draft Law and the President had not ratified the said Draft Law after 30 days since such agreement, that Draft Law legally come into force, and has to be treated accordingly¹⁸;</p>
	<p style="text-align: center;">Paragraph 20 A</p> <p>(1) Parliament is empowered with the functions of legislation, budgeting, and control;</p> <p>(2) In the execution of her functions, apart from the rights already determined in this Constitution, Parliament also has the right of interpellation, enquette, and freedom to question;</p> <p>(3) Apart from the rights already stipulated in other paragraphs of this Constitution, each Member of Parliament has the right to request an answer, submit suggestions and opinions and enjoy the right of immunity;</p> <p>(4) Further regulations on the rights of Parliament and the rights of the Members of Parliament will be regulated by Law;</p>
	<p style="text-align: center;">Paragraph 22 A</p> <p>Further ways and means of legislation will be stipulated by Law;</p>
	<p style="text-align: center;">Paragraph 22 B</p> <p>Members of Parliament can be dismissed from their position, for which conditions and requirements are stipulated by Law;</p>
	<p style="text-align: center;">Chapter IX A</p>

	<p style="text-align: center;">The State's Territory Paragraph 25 A</p> <p>The Unitary State of the Republic of Indonesia is an Archipelago State with the characteristics of island groups and seaways (= Nusantara), which borders has been determined by Law</p>
<p style="text-align: center;">Chapter X Nationals Paragraph 26</p> <p>(1) Nationals are native Indonesians and other nationals who have been conferred with the legal status of a national by Law; (2) Requirements for Nationality will be determined by Law;</p>	<p style="text-align: center;">Chapter X Population and Nationality Paragraph 26</p> <p>(1) Nationals are native Indonesians and other nationals who have been conferred with the legal status of a national by Law; (2) The population consists of Indonesian citizens and foreigners having their domicile in Indonesia; (3) Matters concerning nationality and citizenship are stipulated by Law;</p>
<p style="text-align: center;">Paragraph 27</p> <p>(1) All citizens are equal in status before the law and government, and have the duty to uphold the law and the government without exception; (2) Each citizen has the right to work and earn an adequate human livelihood;</p>	<p style="text-align: center;">Paragraph 27</p> <p>(1) All citizens are equal in status before the law and government, and have the duty to uphold the law and the government without exception; (2) Each citizen has the right to work and earn an adequate human livelihood; (3) Each citizen has the right and duty to participate in the defense of the State;</p>
<p style="text-align: center;">Paragraph 28</p> <p>The freedom to gather and associate, express freely ones thoughts in writing or in speech or other forms, are stipulated by the Law;</p>	<p style="text-align: center;">Paragraph 28</p> <p>The freedom to gather and associate , express freely ones thoughts in writing or speech and other forms are stipulated by the Law;</p>
	<p style="text-align: center;">Chapter XA Human Rights Paragraph 28 A</p> <p>Every person has the right to live and the right to maintain his/her life and way of life;</p>
	<p style="text-align: center;">Paragraph 28 B</p> <p>(1) Every person has the right to build a family and his/her descendants through a legal marriage; (2) Each child has the right for its life sustainability, to grow up and to develop and has the right on protection against violence and discrimination;</p>
	<p style="text-align: center;">Paragraph 28 C</p> <p>(1) Every person has the right to develop</p>

	<p>himself/herself through the fulfillment of his/her basic needs, have the right to enjoy education and benefit from science and technology, art and culture, for the improvement of his/her quality of life for the sake of the welfare of human being;</p> <p>(2) Each person has the right to improve himself in order to enable him/her to struggle for his/her collective rights in building society, the nation and the state;</p>
	<p style="text-align: center;">Paragraph 28 D</p> <p>(1) Each person has the right on acknowledgement, guarantee, protection, and just legal security and equal treatment before the law;</p> <p>(2) Each person has the right to work and receive just compensation and treatment in return such as is usual in working relations;</p> <p>(3) Each citizen has the right to receive the same opportunities in government jobs;</p> <p>(4) Each citizen has the right to obtain the legal status of citizenship;</p>
	<p style="text-align: center;">Paragraph 28 E</p> <p>(1) Each person is free to profess the religion, choose the [kind] of education and teaching, choose his/her job, choose his/her citizenship, to choose his/her domicile in the territory of the State, to leave and return to it again;</p> <p>(2) Each person has the right to enjoy the freedom to profess his/her religion, express his/her thoughts and attitude according to his/her conscience;</p> <p>(3) Each person has the right of freedom to gather and associate, as well as to express his/her opinion;</p>
	<p style="text-align: center;">Paragraph 28 F</p> <p>Each person has the right to communicate and to obtain information needed to develop him/herself and his/her social environment, and has the right to seek, obtain, own, store, process and disseminate information by using all kinds of available channels;</p>
	<p style="text-align: center;">Paragraph 28 G</p>

	<p>(1) Each person has the right on protection for him/herself, family, honor and dignity, as well as material wealth which he/she owns, and has the right to feel secure and protected against threats and fear when choosing to do or not to do something which is his/her human right;</p> <p>(2) Each person has the right to be free from torture or treatment which is below the dignity of man and has the right to seek asylum from other countries;</p>
	<p style="text-align: center;">Paragraph 28 H</p> <p>(1) Each person has the right to lead a prosperous life materially and mentally, to live, and enjoy good and healthy surroundings, and has the right to enjoy health services;</p> <p>(2) Each person has the right to enjoy opportunities and special treatments in order to obtain and enjoy the same enjoyments of justice;</p> <p>(3) Each person has the right on social insurance which can enable him/her to develop him/herself to become a person of equal worth to others;</p> <p>(4) Each person has the right to own properties individually, which property cannot willy-nilly be taken away from him/her;</p>
	<p style="text-align: center;">Paragraph 28 I</p> <p>(1) the right to live, the right no to be tortured, the right for freedom of thought and conscience, the right to profess one's religion, the right no to be kept in slavery, the right to be recognized as a complete person before the law, and the right not to be brought to court on actions of the past, are the human rights of man, which cannot be diminished in whatever condition;</p> <p>(2) Each person has the right to be free from discriminative treatment based on whatever assumption and has the right for protection against such discriminative actions;</p> <p>(3) Cultural identity and the traditional</p>

	<p>rights of the community are respected in accordance to the development of time and civilization;</p> <p>(4) Protection, promotion, the enforcement and the fulfillment of human rights is the responsibility of the State, especially the government;</p> <p>(5) In order to enforce and to protect human rights based on the principles of the democratic State upholding Supremacy of Law, the execution of the human rights are guaranteed , regulated, and reflected in the regulations and laws;</p>
	<p style="text-align: center;">Paragraph 28 J</p> <p>(1) Each person is obliged to respect the human rights of other people for the sake of an orderly societal life in nationhood and statehood;</p> <p>(2) In exercising and executing ones right and freedoms, each person has the responsibility to abide to the beaconing of those rights by the law, in order to secure adherence to those rights and freedoms also to others, in order to meet the demand for justice based on moral considerations, religious values, social order and security within a democratic society;</p>
<p style="text-align: center;">Chapter XII State Defense Paragraph 30</p> <p>(1) Each citizen has the right and responsibility to join in the efforts of state defense;</p> <p>(2) Requirements for this defense will be stipulated by law;</p>	<p style="text-align: center;">Chapter XII Defense and State Security Paragraph 30</p> <p>(1) Each citizen has the right and responsibility to join in the efforts to secure and defend the State;</p> <p>(2) The efforts for security and defense executed through the Total People’s Security and Defense System by the Indonesian National Armed Forces/TNI and the Police of the Republic of Indonesia as the main forces and the people as the supporting ones;</p> <p>(3) The Indonesian National Armed Forces consists of the Army, the Marine and the Air Force as the forces of the State assigned with the responsibility to defend, protect and maintain the unity and the sovereignty of the State;</p>

	<p>(4) The Police of the Republic of Indonesia is the state force which has to maintain social order and security, for which it has been assigned to protect, to cover, to service society and enforce the law;</p> <p>(5) The structure and the status of the Indonesian Armed Forces, the Police of the Republic of Indonesia, the relation of competencies between the Armed Forces and the Police of the Republic of Indonesia within the execution of those competencies , the prerequisites for the involvement of the citizens in the efforts to enforce security and defense, and other matters connected with security and defense , will be determined by law ¹⁹</p>
<p>Chapter XV Flag and Language Paragraph 35 The flag of the Indonesian State is the Sacred Red-and White;</p>	<p>Chapter XV Flag, Language and State Symbols and the National Anthem</p>
<p>Paragraph 36 The State Language is Bahasa Indonesia</p>	<p>Paragraph 36 A The State Symbol is <i>Garuda Pancasila</i> and the spirit of <i>Bhineka Tunggal Ika</i>;</p>
	<p>Paragraph 36 B The National Anthem is <i>Indonesia Raya</i>/Great Indonesia;</p>
	<p>Paragraph 36 C Further regulations on the flag, language, State Symbol, and the National Anthem will be stipulated by laws;</p>
<p>Jakarta, On the 10th of October 1945 President of the Republic Of Indonesia</p> <p>Soekarno Published on the 10th of October, 1945, The State Secretary</p> <p>A.G. Pringgodigdo</p>	<p>Decided in Jakarta, On the 18th of August 2000</p> <p>Majelis Permusyawaratan Rakyat Republik Indonesia/<i>the Congress of the Republic of Indonesia</i></p>

Before continuing to the next stage of the amendments, mention should be made here about the enormous changes and perhaps the most important breach made

by the Reformation with the New Order, namely the separation of the Armed Forces from the Police. That this breach was not only technically but also politically and perhaps also psychologically very difficult to be carried out, but on the other hand a *sine qua non* to secure democracy and a guarantee that the despotic days of the past would not return, forced the Congress of the year 2000 to make two Resolutions, namely Resolution no. VI/MPR/2000 and Resolution no. VII/MPR/2000. This separation of the Indonesian National Armed Forces from the Police of the Republic of Indonesia is known as the 'Repositioning and the Restructuring of the Indonesian National Armed Forces'. This repositioning and restructuring – according to the Resolution no. VI/MPR/2000 is to avoid the overlap of the roles and functions of the Armed Forces as a state's forces of defence on the one hand and the Police as the state arm for social order and security²⁰ on the other hand. Congress was very well aware of the fact that the second function e.g. the social political function was the cause of the socio-political excesses carried out in the past, that it hampered the democratic development of society, nation and state (TAP/no. VI/MPR/2000-Menimbang d.). Therefore Congress made the explicit stipulation as follows:

Article 1

The Indonesian National Armed Forces and the Police of the Republic of Indonesia are institutionally separated, according to its each individual institutional roles and functions;

Article 2

- (1) The Indonesian National Armed Forces are the state arms who function during the defense of the State;
- (2) The Police of the Republic of Indonesia is the state arm which functions when maintaining security;
- (3) In case of interlink age between defense and security activities, the Indonesian National Armed Forces and the Police of the Republic of Indonesia have to work together and support one another;

Article 3

- (1) The role of the Indonesian National Armed Forces and of the Police of the Republic of Indonesia, will be determined by Resolution of the Congress;
- (2) Activities by the Indonesian National Armed Forces and the Police of the Republic of Indonesia, will be further expressed in detail by law

Determined in Jakarta, the 18th of August 2000

Congress Resolution no. VII/MPR/2000 further stipulates the ‘The role of the Indonesian National Armed Forces and the role of the Police of the Republic of Indonesia’ as follows:

- the wish to protect the whole nation and the whole land of Indonesia; the wish to improve the general welfare, to uplift the educational knowledge and reach a knowledgeable nationhood, at the same time participating in creating world order which in turn helps to fulfill the national ideals, make imperative to have a System of Defense and Security for the Unitary State of the Republic of Indonesia which its nation-wide-interests-approach/*ber-Wawasan Nusantara*;
- whereas in the execution of defense and security of the Unitary State of the Republic of Indonesia , each citizen has the right and the obligation to participate in the defense of the state and the maintenance of security of social order;
- that it is a fact of need that there is are state apparatus as the Indonesian National Armed Forces/TNI which are assigned with the responsibility of the defense of the state;
- but that it is also a fact of need for society to have an apparatus to maintain security and order as well as provide protection and law enforcement such as the Police of the Republic of Indonesia;
- congruent to the process of democratization and globalization as well as meeting the future demands , there is an urgent need for increase of output and professionalism by both the apparatus for defense and security, there is also a pressing need to have a restructuring of both the Indonesian National Armed Forces and the Police of the Republic of Indonesia;
- and since separation of the Indonesian National Armed Forces from the Police of the Republic of Indonesia already has taken place

Congress – during its session on the 18th of August 2000 decided as follows:

Chapter 1

The Indonesian National Armed Forces

Article 1

Identity of the Indonesian National Forces

- (1) The Indonesian National Armed Forces as part of the people, was born together and fought together with the people, in defending the interest of the state;
- (2) The Indonesian National Armed Forces function as a main component in the system of state defense;
- (3) The Indonesian National Armed Forces are obliged to master professional capabilities and skills, congruent to each individual roles and functions;

Article 2

Role of the Indonesian National Armed Forces

- (1) The Indonesian National Armed Forces are arms of the State and function as Defense Forces for the Unitary State of the Republic of Indonesia;
- (2) The Indonesian National Armed Forces as Defense State Forces, have the main responsibility to uphold the sovereignty of the State, keep the integrity of the territory of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 – Constitution , as well as protect the whole nation and the whole land of Indonesia from threats and disorders to the integrity of the State;
- (3) The Indonesian National Armed Forces execute state functions whenever executing conscription which will be regulated by law;

Article 3

Structure and Status of the Indonesian National Armed Forces

- (1) The Indonesian National Armed Forces comprises of the Army, the Marine and the Air Force, which organization is structured based on needs which further will be determined by law;
- (2) The Indonesian National Armed Forces are directly under the discretion of the President;
- (3) The Indonesian National Armed Forces are led by a Coordinative Chief of Staffs, who is appointed and dismissed by the President, after having received the agreement of Parliament;
- (4) (a) Members of the Indonesian National Armed Forces are under the jurisdiction of the Military Courts in case of military offence and come under the jurisdiction of the general courts, when general public is offended;
(b) In case of public offence as stated in sub (4)(a) is not relevant, members of the Indonesian National Armed Forces come under the jurisdiction of the Military Courts;

Article 4

Supportive Assignments for the Indonesian National Armed Forces

- (1) The Indonesian National Armed Forces takes part in humanitarian civic missions;
- (2) The Indonesian National Armed Forces supports the Police of the Republic of Indonesia in matters of public security, based as request, which will be determined by law;
- (3) The Indonesian National Armed Forces actively supports the peacekeeping operation activities carried out under the banner of the United Nations;

Article 5

Participation of the Indonesian National Armed Forces in the activities of the State

- (1) The State Policies are the foundation for the execution of the assignments by the Indonesian National Armed Forces;
- (2) The Indonesian National Armed Forces keep a neutral distance towards political life in general and refrain from getting involved in practical politics;

- (3) The Indonesian National Armed Forces stands for democracy, upholds the Supremacy of Law and the Human Rights;
- (4) Members of the Indonesian National Armed Forces do not participate as active voters to elect or to be elected; The involvement of the Indonesian National Armed Forces in determining the direction of the national aspirations, is channeled through Congress until the year 2009;
- (5) Members of the Indonesian National Armed Forces are only eligible for civilian posts after retiring from the military services, or after having reached retirement;

Chapter II

The Police of the Republic of Indonesia

Article 6

- (1) The Police of the Republic of Indonesia are a state apparatus assigned with the maintenances of security and social order, enforcement of law, provides protection and services to society.
- (2) In the execution of its responsibilities, the Police of the Republic of Indonesia are obliged to profess professionalism and skills.

Article 7

Structure and Status of the Police of the Republic of Indonesia

- (1) The Police of the Republic of Indonesia are the National Police which organization is hierarchical from the Center to the Regions;
- (2) The Police of the Republic of Indonesia are directed by the President;
- (3) The Police of the Republic of Indonesia is headed by the Head Chief of Police of the Republic of Indonesia, who is appointed and dismissed by the President with the approval of Parliament;
- (4) Members of the Police of the Republic of Indonesia come under the jurisdiction of the Public Courts.

Article 8

The National Police Institution

- (1) The President, in determining the policies for the Police of the Republic of Indonesia, is assisted by a National Police Institution;
- (2) The National Police Institution is built by the President and regulated by law;
- (3) The National Police Institution gives considerations to the President in activities of appointing and dismissing the Head of Chief Police;

Article 9

Assisting assignments of the Police of the Republic of Indonesia

- (1) In State of Emergency, the Police of the Republic of Indonesia render assistance to the Indonesian National Armed Forces, which is stipulated in the laws;

- (2) The Police of the Republic of Indonesia actively assist the [international] peacekeeping operations under the banner of the United Nations;

Article 10

Participation of the Police of the Republic of Indonesia in the Execution of the State Activities

- (1) The Police of the Republic of Indonesia keep a neutral distance to day-to-day political life and does not involve itself in those activities;
- (2) Members of the Police of the Republic of Indonesia do not actively or passively participation in the elections. The participation of the Police of the Republic of Indonesia in participating in the determination of the national policies, are channeled through Congress until the year 2009;
- (3) Members of the Police of the Republic of Indonesia can be eligible for public posts outside the Police, after having withdrawn from the police activities or when retired from the Police Services;

Chapter III

Closure

Article 11

Detailed stipulations on matters mentioned in this Resolution will be determined by law;

Article 12

These Resolutions come into force on the day of its decision.

Decided in Jakarta,
The 18th of August 2000
The Congress

From the above articles stipulated by Congress (2000) on the Indonesian National Armed Forces and the Police of the Republic of Indonesia, one can draw the conclusion that both have been ordained to refrain from direct political activities, by keeping a neutral distance. At least until the year 2009 both are forbidden to join the elections neither as passive nor as active holders of ballots; their political aspirations are channeled and have to be channeled through their respective members in Parliament and Congress who have either requested for earlier retirement or reached the age of retirement, or who have to withdraw from their active military or police services.

Very obvious is now that the Indonesian National Armed Forces had gone through a process of democratization, after repositioning and restructuring themselves, and in the execution of their responsibilities on the other hand have to uphold Supremacy of Law and the Human Rights. This change surely is a very heavy psychological burden for their members and will need a longer time for adjustment. But at least the fact that these cornerstones for a democratic and just society has been accepted, and that the demand for restriction and repositioning by the public from the Armed Forces had been carried out without rebellion by the armed forces or the police, really deserves the praises for their leaders who could bring their manpower in this present situation.

Although the Armed Forces are directly ordained by the President, the placement of the Coordinative Chief of Staffs can only be appointed by the President, after approval of Parliament [article 3 (2), (3)] which again shows that even the armed forces – for certain technical jobs which could be connected to political interests and assignments (as happened in the past), Parliament has a controlling role to play apart from its special role by approving or not approving an appointment. The same thing accounts for the Head Chief of Police for the Republic of Indonesia, who also needs the approval of Parliament for his appointment or dismissal [article 7 (3)].

At the same time care is taken that the Armed Forces cannot easily or too quickly be involved in day-to-day politics.

The real change for the Indonesian National Armed Forces can be found in article 5 (2), (3) where is stated that the Indonesian National Armed Forces is for democracy, upholding the Supremacy of Law and adheres to the realization of Human Rights.

A real difference can be seen between the place in society of the members of the Indonesian National Armed Forces and the members of the Police Force. If the Indonesian National Armed Forces mostly for military offences come under the jurisdiction of the Military Courts, the members of the Police Force on the other hand right from the beginning come under the jurisdiction of the Public Courts. Exception for members of the Armed Forces to be prosecuted at Public Courts, can only take place when the offence made had not been a military but a public offence.

The reader would have received a wrong picture of the process of democratization in Indonesia, through a.o. the amendment activities towards the Constitution if the part on the military forces and police was omitted . It is an

unavoidable fact, that if the Amendments to the 1945 – Constitution were really aimed at the development and improvement of democracy (as one side of a coin), and the realization of Human Rights within the Supremacy of Law (as the other side of the same coin) – the repositioning and restructuring of the two forces cannot be neglected; the New Legal Strategy without repositioning and restructuring of the Indonesian National Armed Force and the Police of the Republic of Indonesia, would then be incomplete. Therefore, the Resolution no. VI/MPR/2000 and Resoltuion no. VII/MPR/2000 are even more important in value, becoming the precondition for the possibility of democratization and very much yearned for just legal actions. The so many demands for legal prosecution still very much heard of today, is a.o. a proof of how indispensable the repositioning and the restructuring as key issue was for the Reformation. Without this, Reformation would still have had a much longer way and time to go. Fortunately, presently we can say that the history of democracy and rule of law for Indonesia have taken a U-turn for the better.

IV. The Third Amendment (known as the ‘Second Amendment’)

Although the Third Amendment was ready for presentation and decision making during the yearly Session of Congress in October 2001, the sessions in all the Commissions (A, B, C, D)²¹ took too much time, that decision on the ‘Second Amendment’ had to be postponed to Congress Session, 2002. The reason probably was also that the ‘second amendment’ brought three less known new institutions, being:

- (1) the Constitutional Court/*Mahkamah Konstitusi*
- (2) the Regional Representation Institution/*Dewan Perwakilan Daerah*
- (3) the *Ombudsman* as an institution to oversee and improve the execution of Public Services by governmental and judicial institutions

Therefore the detailed discussions on the ‘Second Amendment’ was agreed to be determined in 2002. The ‘Amendment in the drawer’ comprises of a number of alternatives to be decided upon:

- (1) (a) Principles of the State as it stands in the Preamble; or (b) Principles of the State to be taken from alinea 4 of the Preamble
- (2) Sovereignty in the hands of the people and executed by Congress;
- (3) Indonesia being a state with Rule of Law;

- (4) Members of Congress to comprise of elected representatives with (appointed) representatives, whose (public function) prevent them from active /and or passive elections;

Very crucial discussions and decisions have to be taken during the sessions of Congress – 2002 on the system of election for the president and vice president: be it direct or indirect elections (through Congress as is the case now). Changes in attitudes are already showing themselves now: some parties who were in favor of direct elections, by and by are changing their moods for indirect elections, or the other way around. If for the 1st round generally there seems no problem, it is more the 2nd round which bring the question: what if non of the remaining two candidates cannot reach the (50% + 1) ? (amendment to article 2)

Another crucial point will again be the additional sub-paragraph on the rights and duties of the president to seek approval from Parliament before Financial Aids Agreement or not. Actually this responsibility had already been stipulated by the Law on Foreign Agreements (2001), but again the financial economists might stand for a rejection again.

These then are some of the crucial points to be expected during Congress 2002 next to the more hopeful and future oriented institutions like the Constitutional Court and the Regional Representation Parliament that should balance the (traditional) National Parliament where parties strife for political upper hand. Since the purpose of the paper is not to do political and legal estimations the ‘Second Amendment’ stage cannot be discusses any further.

V. Conclusions

The writer of this Report had not the pretension to write ‘a nice story’ of the amendments to the Constitution. Yet, looking upon those two-and-a-half years and pondering upon the results documented before, I could only wonder what a revolutionary Constitutional and Legal Change Indonesia has (and is still going) through, with such a wide scope to be tackled by both the Government and Congress of the Republic of Indonesia; they had to meet the challenges called into life by the Total Crisis. The intellectuals obviously and in real terms seem to have managed to meet the pressing political demands, which in their turn was cast into a New Legal Strategy, which hopefully could overcome the many problems. While being in the

midst of those preparations and discussions, people mostly cannot do anything but let our own conscience and responsibility be the guide to find ways and means to bring the nation out of this Crisis.

And now, going through what had been written above, the intellectuals and politicians themselves are surprised at the results of how little by little, step by step Indonesia managed to bring forward such a progress within the legal revolution for the sake of a quick stable society. Although many groups are still dissatisfied, but academically speaking, the results of those two-and-a-half years had been tremendous! If during the sessions of Congress in August 2002 the third Amendment will become a fact, then indeed the Amendment should be ready by 2002, that from then onward for some one-or-two decades the Amended Constitution will serve its purpose. The matching of the demands to keep the Original Preamble of the 1945 Constitution and yet to combine it with modern constitutional tasks and institutions to meet the future demands, was nearly an impossibility. But now, with the draft of the Third Amendment to the Constitution in the drawer, and seeing that slowly order is returning by using these new amendments and laws, one can only thank God that Indonesia at least has passed its deepest and darkest valley of disorder and unrest and turmoil. Thus credit goes to the Spirit of Reformation, which has forced the whole nation and above all the politicians and intellectuals to work as fast as possible while climbing in the dark out of the dungeon, looking for the sunshine! At least, now we are not groping in the dark anymore, since the right constitutional and judicial decisions had been taken before, and each previous decision is able to become the stepping-stone for further decisions forwards and upwards.

From the academic point of view, it is surprising and really stunning that in the noise of confusion (often caused by thousands of demonstrators), the Indonesian intellectuals and politicians still managed to bring to life constitutional and legal products such as the First, Second and Third Amendment to the Constitution, which if studied properly is surprisingly very systematic and very academic having three stages of Amendments:

- the First Amendment – 1999 :
reflecting the struggle between the too dominant executive power against Parliament, with democracy on the winning side;
- the Second Amendment – 2000 :

reflecting the interests of the citizens stressing Human Rights and at the same time the separation between the Armed Forces and the Police also upholding Supremacy of Law, Democracy and Human Rights;

- the Third Amendment – 2001/02 :
the modernization of the Constitution by three important judicial institutions : the Constitutional Court (for political matters), the Regional Parliamentary Representation (for synchronization the conflicting information often received from the local governments versus the Local Parliaments, with the Central Government as the third Party) and the *Ombudsman* as overseer and improver of Public Services in the interests of the public at large.

At the end of the conclusion, it should be added that all those intellectual and political efforts would be less successful if there was not the strong commitment of the so often criticized Armed Forces and Police, having done their utmost – sometimes beyond the possibilities given by logic – to keep as much as possible order (even if at least only at a limited radius from the Congressional-Parliamentary Grounds), to enable those responsible Members of Congress and Parliament to do their work. Their blind trusts in the Members' efforts and good intention is a precious capital and contribution into the whole process of the three Amendments to the Constitution. Without such dedication and trust the results would never be so surprising as it is now. Thus, in *summa summarum* it can be said that the three Amendments are the contribution of every citizen of Indonesia, and therefore all Indonesians can be proud of the achievement and contribution for a better future for our children, grand-grand children and other future generations at the beginning of the 21-century. This was even achieved without replacing the Original 1945 Constitution, such as given by our Founding Fathers since the beginning of the 20th century through their thoughts and feelings as expressed in the Constitution. The Constitution has remained the same, thus has the state and nation. But the Constitution has now been refurnished with fresh and modern thoughts and ways, so it shines brighter again and makes it possible for the future generations of the 21st century to go on using the 1945 Constitutions (although amended three times) as their leading star towards Modern Indonesia, which indeed had been the dream of the Founding Fathers for this nation living in this Archipelagoes – State.

NOTES

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- ¹ At that time the Speaker of the Congress (1966) was the very well known General Nasution;
- ² from the 21st of May 1998 - November 1998 when President Habibie was replaced by the newly chosen President Abdurrahman Wahid);
- ³ Japan already started to show signs of losing World War - II, although had not yet surrendered before the disastrous bombing on Nagasaki and Hiroshima on the 15th of August 1945;
- ⁴ This name (meaning 'Free Indonesia') had been the name given by the Indonesian students in the Netherlands since the 20ies when referring to the independent state they dreamt of;
- ⁵ Officially proclaimed on the 28th of October 1928;
- ⁶ this statement actually gives some additional information about the influence of 1) the Dutch ethnologist **Eerde** (1923, *Ethnologie van Nederlandsch Indie*) who taught that the Common Laws - and especially the **common laws on the lands - for a territory stretching from Madagaskar to the Netherlands Indies including West New Guinea were the same**, thus pointing at the legal similarity over a very large territory, which is the very constitutional foundation of the Indonesian state (leaving out Madagaskar) ; note that the territorial-political-constitutional and legal approach totally opposes the racial - anthropological state approach; these two theories are still opposing one another and had given cause to different thinking on some population groups in Indonesia nowadays; 2) the second scientist who influenced the Indonesian Freedom Movement amongst the students in the Netherlands during the 20ies of the 20th century, was **Professor Haberlandt (1917, *Allgemene Anthropologie - I*)** who stated that same race and culture; same language; same occupation of same territory does not automatically make a group of population to be members of the same community until stated and thus has become a legal-political statement, binding territory and population together, thus the *Sumpah Pemuda* (= Youth's Pledge) was born on the 28th of October 1928. Thus **Youth's Pledge combined the theory of Professor Eerde (1922) and Professor Haberlandt (1917), uniting the same common laws, and the uttered pledge by students of different race/sub-race and culture on the common territory stretching from Aceh to West New Guinea (the previous Netherlands Indies); this was the beginning of the Indonesian Nation**; Professor Ernest Renan's theory entitles: "*Qu'est est ce qu'une Nation*" had the greatest impact on the Youth Pledge of 1928.
- ⁷ Didit Hariadi Estiko and Novianto M. Hantoro, (2000 : 29-30), *Reformasi Hukum Nasional : Suatu Kajian terhadap Undang-Undang Produk Pemerintahan Transisi (1998 - 1999)*;
- ⁸ Ketetapan-Ketetapan Sidang Tahunan MPR-RI tahun 2000, Jakarta, Penerbit Restu Agung;
- ⁹ See Prof. Drs. C.S.T. Kansil SH, Christine S.T. Kansil SH, MA, and Engeline R. Palandeng, SH, January 2001, *Konstitusi-Konstitusi Indonesia : 1945 - 2000*, Jakarta, Sinar Harapan;
- ¹⁰ The promise is for followers of the ancient religions/*kepercayaan* not professing one of the five big religions acknowledged in Indonesia, being the Moslem, Christian, Hindu, Buddha religion and Kong Fu Chu;
- ¹¹ This sub-article (2) has been inserted after the *fait a compli* but historical fact for the Indonesians on the 21st of May 1998, when President Soeharto straight-handedly in his farewell speech said that he appointed straight away his Vice President Habibie to take over the Presidency, after which Habibie also said his Presidential oath; all this happened so suddenly and quickly, while in the adjoining room a number of dignitaries were 'waiting for an important announcement' (as the instruction was); present were amongst others the (Minister) Public Prosecutor and the (Minister) Chief of Justice; thus that incident has now become a documented history, not to be repeated in the future; also take note of the words 'Congress or Parliament' which means that in case of emergency - if need be and if only one of these institutions is in session - even although Parliament only consists of 462 elected members and 38 appointed military representatives - it can already suffice if the 2/3 of Congress majority votes is reached - it can 'replace' the role of Congress. This again shows the possibilities to increase the power

of Parliament in **emergency times**, which indeed often happened during the administration of President Abdurrachman Wahid.

¹² If the two previous sub-paragraphs can be taken as 'usual', the 3rd sub-paragraph had indeed caused some embarrassments for some newly appointed ambassadors accredited to Indonesia, the more since some letters 'got lost' during the transitional period from President Abdurrachman Wahid to President Megawati Soekarnoputri; another confusion also befell a number of Indonesian ambassadors accredited abroad, who left Indonesia with credentials signed by President Abdurrachman Wahid, but when the moment came to present their credentials to the heads of states of the accredited countries, an additional process was faced, e.g. sudden need for new credentials from home, which again took some months; in general, this assignment on foreign ambassadors is an additional burden to Commission I of Parliament and until now with just one exception beyond the mishap mentioned above during the change of administration to President Megawati - the process of scrutinizing the ambassador's CV's had been cut short by parliament herself, omitting two internal steps of agreement 1) inter-party agreement; 2) agreement by Plenary Session which assignment was transferred to Commission I with straight agreement suggested to the Speaker of Parliament who then conveys his recommendations to the President;

¹³ The additions to this paragraph by two amendment sub-paragraphs want to stress: 1) the Supremacy of Law to be above political and personal likes and dislikes which at its best can be measured by sub-paragraph 14 (1); 2) since abolition and rehabilitation might include political detainees (from the Soeharto administration period who - when still alive - had all been released by the year 2000) as well as detainees dangerous for public order and security;

¹⁴ again another proof for more justice - also in conferring awards and titles - to secure that decision had been based on existing laws/rule of law; President Habibie had much shown his preference for family and friends in carrying out this subject;

¹⁵ This additional requirement was meant to diminish the number of minister and to avoid the appointment of too many ministers of state without portfolio; but practice in the years 1999-2001 has proven that somehow - for ministerial assignments in **new fields** still to be developed such as the fields of Information and Communication, also Marine Affairs (which also covers fishery and other sea-environmental products and non-products), such as boundaries as set for departments are difficult to develop, since it is the (often expert) appointed minister who has to find and develop his own area of competences;

¹⁶ see Sekretariat Jenderal MPR-RI, 2000, *Putusan Majelis Permusyawaratan Rakyat Republik Indonesia; Sidang Tahunan MPR, 7-18 Agustus 2000*, Jakarta;

¹⁷ This paragraph is an Amendment of the Constitution as Congressional Resolution on the 19th of October 1999, during its 12th session;

¹⁸ this paragraph is part of a Congressional Resolution of the 18th August 2000;

¹⁹ It can also be reported here, that since November 2001 two laws had been passed, namely 'The Defence Law' and 'The Law on the Police of the Republic of Indonesia' but unluckily - probably due to busy schedules, President Megawati Soekarnoputri has not ratified the two agreed upon Draft Law, yet in practice these two laws are effective already and regularly applied, since more than 30 days have elapsed since their agreement;

²⁰ Ketetapan-Ketetapan Sidang Tahunan MPR-RI Tahun 2000/TAP/MPR/No. VI/MPR/2000/-Menimbang-c;

²¹ Commission A discussed Amendment III, which contained a number of very new ideas like the introduction of a second parallel to parliament, which has to house both elected representative from the local governments (50%) and from the local parliaments (50%), hoping for a real just and balanced

policy between the interests of the Central and Regional Governments (like the Senate in the USA); Commission B evaluated the Reports of the Departments and the Higher State Institutions; Commission C evaluated the Presidential Report in congruence to the Departmental and Higher State Institutional Reports, and Commission E prepared the new guidelines to be taken by the impacts of the Total Crisis - without previous consultations inter-commission - came to the conclusion that the year 2001 - 2002 should be a **rescue program**, occupying more time for the discussions on the Crisis than the prepared Amendment III;