



**THE
1945 CONSTITUTION
OF THE
REPUBLIC OF INDONESIA**

DEPARTMENT OF INFORMATION
REPUBLIC OF INDONESIA

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P R E F A C E

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

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

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

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

Thank you.

1. THE PREAMBLE TO THE CONSTITUTION

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

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

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

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

2. THE 1945 CONSTITUTION

Chapter I. Form of the State and Sovereignty

Article 1

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

Chapter II. The Majelis Permusyawaratan Rakyat

Article 2

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

Article 3

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

Chapter III. The Executive Power

Article 4

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

Article 5

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

Article 6

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

Article 7

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

Article 8

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

Article 9

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

The President's/Vice-President's Oath

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

The President's/Vice-President's Promise

"I solemnly promise that I will perform the duties of the President (Vice-President) of the Republic of Indonesia to the best of my ability and as justly as possible, and that I will strictly observe the Constitution and consistently implement the law

and regulations in the service of the country and the people."

Article 10

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

Article 11

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

Article 12

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

Article 13

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

Article 14

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

Article 15

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

Chapter IV. The Supreme Advisory Council

Article 16

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

Chapter V. The Ministers of State

Article 17

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

Chapter VI. The Regional Governments

Article 18

The division of the territory of Indonesia into large and small regions shall be prescribed by

law in consideration of and with due regard to the principles of deliberation in the government system and the hereditary rights of special territories.

Chapter VII. The Dewan Perwakilan Rakyat

Article 19

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

Article 20

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

Article 21

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

Article 22

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

Chapter VIII. Finance

Article 23

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

Chapter IX. The Judiciary Power

Article 24

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

Article 25

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

Chapter X. The Citizens

Article 26

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

Article 27

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

Article 28

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

Chapter XI. Religion

Article 29

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

Article XII. National Defence

Article 30

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

Chapter XIII. Education

Article 31

- (1) Every citizen has the right to education.
- (2) The government shall establish and conduct a na-

tional educational system which shall be regulated by law.

Article 32

The government shall advance the national culture.

Chapter XIV. Social Welfare

Article 33

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

Article 34

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

Chapter XV. The Flag and the Language.

Article 35

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

Article 36

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

Chapter XVI. Amendments to the Constitution

Article 37

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

3. TRANSITIONAL PROVISIONS

Clause I

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

Clause II

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

Clause III

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

Clause IV

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

4. ADDITIONAL PROVISIONS

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

5. ANNOTATIONS TO THE CONSTITUTION

General

I. The Constitution as a part of the Basic Law

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

Indeed, to study the basic law (droit constitutionnel) of a country we cannot only analyze the articles of the constitution (loi constitutionnelle). We need to know the circumstances and the spiritual background (geistlicher Hintergrund) that led to the drafting of the document.

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

II. The basic thoughts in the Preamble

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

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

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

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

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

4. The fourth basic idea in the preamble is that the state shall be based on the belief in the One and Only God and on just and civilized humanity. It follows that the constitution must

make it the duty of the state and all its institutions to foster high human ethical norms and to live up to the noble moral aspirations of the people.

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

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

IV. The Constitution is concised and flexible

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

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

Hence the system in which the constitution is drafted.

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

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

tion while the instruments of execution should be left to the law.

6. THE GOVERNMENT SYSTEM

The government system emphasized by the constitution is as follows :

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

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

II. The constitutional system

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The position of the Dewan Perwakilan Rakyat is strong.

The Dewan Perwakilan Rakyat is in a strong

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

The Ministers of State are no ordinary senior officials

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

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

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

Chapter I. Form of the State and Sovereignty

Article 1

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

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

Chapter II. The Majelis Permusyawaratan Rakyat

Article 2

Section 1

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

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

22

Section 2

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

Article 3

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

Chapter III. The Executive Power

Article 4 and Article 5, section 2

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

Article 5, section 1

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

23

Articles 6, 7, 8 and 9

These are self-explanatory.

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

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

Chapter IV. The Supreme Advisory Council

Article 16

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

Chapter V. The Ministers of State

Article 17

See above points VI and VII.

Chapter VI. The Regional Governments

Article 18

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

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

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

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

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

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

Chapter VII. The Dewan Perwakilan Rakyat

Articles 19, 20, 21 and 23

The Dewan has to approve all bills submitted

by the government. It also has the right to initiate bills.

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

Article 22

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

Chapter VIII. Finance

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

Section 1 refers to the right of the Dewan Perwakilan Rakyat to control the budget (begrooting). The method to decide a budget is a yardstick to assess the characteristics of the government. In a

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

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

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

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

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

Section 5

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

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

Chapter IX. The Judicial Power

Articles 24 and 25

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

Chapter X. The Citizens

Article 26, section 1

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

Article 26, section 2

Self-explanatory

Articles 27, 30, 31 and, section 1

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

Articles 28, 29 section 2, and 34

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

Chapter XI. Religion

Article 29, section 1

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

Chapter XII. National Defence

Article 30

Self-explanatory.

Chapter XIII. Education

Article 31, section 2

Self-explanatory.

Article 32

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

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

Chapter IX. Social Welfare

Article 33

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

The economy is based on economic democracy which envisages prosperity for everybody. Therefore, economic sectors which are essential for the country and which affect the life of the people, must be controlled by the state. Otherwise the control of

production might fall in the hands of powerful individuals who could exploit the people. Hence, only enterprises which do not affect the life of the general population may be left to private individuals.

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

Article 34

Self-explanatory.

Chapter XV. The Flag and the Language

Article 35

Self-explanatory.

Article 36

Self-explanatory.

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

Chapter XVI. Amendments to the Constitution

Article 37

Self-explanatory.

Article 32

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Chapter XV. The Flag and the Language

Article 35

Self-explanatory.

Article 36

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